

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by adding areas in Indiana, Michigan, and Ohio to the list of areas quarantined because of emerald ash borer. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the emerald ash borer from infested areas in the States of Indiana, Michigan, and Ohio into noninfested areas of the United States.

**DATES:** Effective on August 30, 2006, we are adopting as a final rule the interim rule that became effective on May 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule<sup>1</sup> effective May 18, 2006, and published in the **Federal Register** on May 24, 2006 (71 FR 29762-29766, Docket No. APHIS-2006-0046), we amended the emerald ash borer regulations contained in 7 CFR 301.53-1 through 301.53-9 by adding all or portions of Adams, Hamilton, Huntington, LaGrange, Marion, Randolph, and Steuben Counties, IN; Alcona, Barry, Benzie, Berrien, Charlevoix, Cheboygan, Chippewa, Huron, Ionia, Iosco, Kalamazoo, Kent, Mason, Montcalm, Montmorency, Oceana, Ogemaw, Presque Isle, Roscommon, Sanilac, St. Joseph, and Van Buren Counties, MI; and Defiance, Delaware, Erie, Fulton, Hancock, Henry, Huron, Lorain, Ottawa, Sandusky, Williams, and Wood Counties, OH, to the list of quarantined areas in § 301.53-3(c). The interim rule restricted the interstate movement of regulated articles from these quarantined areas to prevent the artificial spread of emerald ash borer to noninfested areas of the United States.

Comments on the interim rule were required to be received on or before July 24, 2006. We did not receive any comments. Therefore, for the reasons

given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 29762-29766 on May 24, 2006.

Done in Washington, DC, this 24th day of August 2006.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Parts 1421, 1423 and 1427**

**RIN 0560-AH48**

**Storage, Handling, and Ginning Requirements for Cotton Marketing Assistance Loan Collateral**

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations governing the cotton Marketing Assistance Loan Program of the Commodity Credit Corporation (CCC). The changes provide that bales of upland cotton pledged as collateral for CCC loans may be stored outside at warehouses approved by CCC subject to special storage, protection, receipting, and reporting requirements and loss of any applicable storage credits for the period stored outside. Second, the rule provides that producers or their agents may transfer cotton loan collateral to another approved location. Third, the rule provides limits on the amount of storage credits provided to producers when an upland cotton marketing assistance loan is repaid. Fourth, the

rule requires ginned cotton to meet the definition of good condition and not be wet cotton in order to be eligible for a CCC loan. Fifth, this rule requires any unpaid warehouse compression charges to be billed to producers on loan cotton collateral that is delivered to CCC in satisfaction of the loan obligation. Sixth, this rule defines a minimum acceptable shipping standard for cotton warehouses. This rule also corrects and clarifies the Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Program regulations of CCC regarding loss of beneficial interest in commodities delivered to certain facilities engaged in storing and handling commodities under those programs.

**DATES:** This rule is effective August 30, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Gene Rosera, Cotton Program Manager, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250-0512; phone (202) 720-8481; *e-mail:* [gene.rosera@wdc.usda.gov](mailto: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:**

**Discussion of the Final Rule**

**I. Background**

*A. Cotton Stored Outside*

The revisions established by this final rule to the cotton marketing assistance loan program generally result from changing industry practices and marketing needs over recent years. For both the 2004 and 2005 crops, west Texas cotton storage warehouse capacity has not kept pace with production increases. In response to those shortages, CCC granted authorization to some warehouses to temporarily store cotton loan collateral outside subject to special insurance and storage requirements. The use of such storage was significant for the 2005 crop, topping 435,000 bales. This shortage of traditional cotton storage capacity has occurred at a time when cotton usage is increasingly dependent on export sales. Export use represented about 37 percent of total use for the 1995 through 1999 crops, but is estimated at about 75 percent for the 2006 marketing year. This shift in use has raised merchant concerns about both the quality of U.S. cotton, especially cotton stored outside, and the timeliness of its delivery from storing warehouses to export customers.

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0046, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

These concerns may have been aggravated by CCC's temporary approvals of outside storage, a step viewed by some merchants as contributing to an increase in so-called "country damage" (loss of quality due to dust, rain, and packaging damage) and the slowing of cotton flow from warehouses with inventories exceeding their performance abilities. Concurrently, CCC had no process for allowing producers or their agents to move their cotton loan collateral from outside locations to available inside storage in other locations, or from warehouses considered unreliable to meet load-out requests.

#### *B. Cotton Moisture Content*

Additionally, several sectors of the U.S. cotton industry have been concerned about excess moisture in ginned cotton. FSA issued a Notice to the Trade (BCD-121) on February 1, 2006 to alert cotton warehouse operators of the incidence of water-packed cotton in Missouri. After similar problems were observed at a Tennessee warehouse CCC examined cotton from seven other gins for moisture damage. Initial results indicated similar moisture problems. The growing use of direct water spray moisture restoration systems concerns many in the cotton industry. And there is concern that these systems may be the cause of most moisture-damaged cotton. Prior to proposing changes regarding bale moisture, CCC was urged to revise loan eligibility requirements to provide that bales subject to direct water spray would be ineligible as collateral for a CCC loan starting after the 2007 crop year. CCC received other comments in opposition to that proposal. An estimated 200 U.S. gins use some form of direct-spray moisture restoration systems, and that the incidence of moisture problems, according to comments received, does not justify denial of loan eligibility to cotton from all the gins that use such systems.

In response to these issues, CCC initially published an advance notice of proposed rulemaking on February 13, 2006 at 71 FR 7445. During the 60-day comment period CCC received forty-three comments. Respondents included four national organizations, eight regional organizations, fifteen cotton storage warehouses, and sixteen individuals or companies. Based on the comments on the advance notice of proposed rulemaking, CCC published a proposed rule on May 26, 2006 at 71 FR 30318. Eighty nine comments were submitted on the proposed rule from six national/state organizations, twenty-four warehouse/warehouse associations,

twenty-seven ginners/ginner associations, twelve merchants/merchant organizations, thirteen producers/producer cooperatives/associations, and seven individuals.

## **II. Discussion of Comments on Proposed Rule**

### *A. Outside Storage of Cotton*

Thirty four comments were received regarding CCC's proposal to permit the outside storage of loan cotton and indicate industry support for allowing the outside storage of cotton loan collateral if it is subject to various constraints and conditions. The majority of comments support approval only under special circumstances, although the majority of merchant comments oppose use of outside storage due to the increased risk of country damage. Many comments suggest that if outside storage is permitted it also be subject to denial of storage credit.

A recommendation submitted by the National Cotton Council on behalf of all cotton industry sectors was that warehouses subject to the U.S. Warehouse Act or with a Cotton Storage Agreement be required to indicate on the Electronic Warehouse Receipt (EWR) for such cotton the dates the bale was stored outside. Many comments stress the increased risk to the quality of cotton stored outside, and support its use only if limited to areas having unavoidable circumstances and subject to special storage requirements to assure the protection of the cotton. Some comments suggest that CCC should provide a grace period during which cotton may be stored outside. To constrain the use of outside storage, even when special circumstances occur, the comments also support CCC's proposal to limit the storage credits provided and to impose more stringent receipting, storage, reporting, and insurance requirements as a condition for approval. Therefore, to document the number of days a bale is stored outside, and to calculate the period for which a storage credit will not be provided, this rule also requires that warehouses requesting approval to indicate on the bale EWR the dates of outside storage and to submit weekly reports identifying such bales.

As suggested by the comments, this final rule provides that the warehouse must be in an area that has inadequate approved inside capacity to store the current crop. CCC will determine whether a state, a county, or a group of counties within a State is such a cotton storage deficit area based on the most recent cotton production estimate for the area provided by the National

Agricultural Statistics Service. The area will be considered a deficit storage area for the crop year if cotton production for the crop year exceeds the combined approved inside storage capacity of warehouses in the area that have entered into a Cotton Storage Agreement with CCC.

### *B. Storage Credits*

#### *Denial of Credit for Outside Storage*

CCC proposed to deny storage credit for all bales under a loan if one or more bales were stored outside for any period while under loan. Thirty three comments were received about this proposal. The comments indicate wide support for denying storage credits to cotton stored outside, but only for the period outside, and only if administered on a bale-by-bale basis. Four national organizations favor this proposal. Related comments are that bale receipts or associated records should indicate the dates the bale was stored outside for calculating denied storage credits.

CCC proposed to deny storage credits on outside-stored bales as an incentive for gins and producers to seek inside storage rather than to use warehouses where cotton inventory exceeds its inside capacity. CCC originally proposed to deny the storage credits for an entire loan quantity if one or more bales were stored outside. However, based on comments received, CCC understands that the proposal would disadvantage some producers whose loan cotton may be stored at multiple locations. CCC agrees that a more equitable policy is to deny credits on a bale-by-bale basis and this rule provides that, however, warehouses must provide weekly reports to CCC identifying bales stored outside. CCC also considered the suggestion that the credit should be denied only for the period of outside storage and resumed if the cotton is moved inside. CCC agrees that it would be inconsistent to deny storage credits for outside-stored loan cotton that is being transferred to inside storage. Therefore, this rule provides that storage credits are denied only for the period of time the cotton is stored outside.

Comments also suggested that CCC more precisely define when a bale is considered as stored outside. CCC agrees. Accordingly, this rule, in section 1427.19, provides that CCC shall not provide storage credits to a bale of upland cotton loan collateral for the period of time the bale is stored outside that exceeds a 15-day period beginning on the day the warehouse was notified that the bale is under loan.

### Maximum Storage Credit

CCC proposed a uniform national rate of the lesser of a warehouse's 2005-crop tariff rate or \$2.15/bale/month for calculating any storage credits applicable. This limit was intended to reduce incentives for warehouses to delay load-outs in order to maximize CCC storage payments, and discourage transfer of cotton under loan to maximize storage payments. Sixty-seven comments were received regarding this proposal. Very few support the proposed uniform rate of \$2.15 or any other national rate. Some comments state that warehouse tariff rates and storage credits do not influence cotton flow, and that any reduction of rates will be disruptive, hurt producers, or ought to be postponed. Other comments state that the rates used for storage credits need to rise over time to cover operating cost increases. Many comments, including those submitted as the joint industry recommendation, suggest establishing two storage credit rates, each based on the weighted average tariff rates of two regions—California and Arizona comprising one region, and all other states comprising the other. The California and Arizona average would be reduced by an estimated average receiving charge for that area. This would allow the warehouses with tariff rates below the regional averages the opportunity to raise their rates to the average. CCC agrees that the objectives of capped rates may be better achieved by taking into account regional warehousing costs. Accordingly, section 1427.19 is revised to provide that the maximum storage credit rate for the 2006 and subsequent crops of upland cotton shall be the lesser of the 2005-crop tariff rate of a warehouse or \$4.37 per bale per month for warehouses located in Arizona and California, and \$2.66 per bale per month for warehouses located in all other cotton-producing States.

Additionally, section 1427.13 is amended to provide that if producers elect to forfeit the loan collateral to CCC, they shall pay any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan that are based on a rate exceeding CCC's maximum storage credit rate for the warehouse. This will provide for uniformity of storage credits whether the cotton is redeemed from loan or forfeited to CCC in satisfaction of the loan obligation.

### C. Cotton Bale Eligibility

CCC proposed to amend cotton bale eligibility rules to require that cotton must be ginned by a ginner that, in

addition to certifying to using approved bale packaging materials, would certify to not producing bales that are water-packed, false-packed, re-ginned, or re-packed. Thirty-two comments were received regarding this proposal. Although some support this proposal, the majority oppose it either as inadequate to remediate the problem of excessive moisture in cotton, or as an unfair certification to require from ginner. Three major national organizations, including a national ginner association, urge CCC to curtail all ginner use of direct water-spray systems after the 2007 crop, and to impose bale marketing and certification requirements in the meantime for gins that employ direct spray systems. Some ginner expressed an opposing view that CCC should not require moisture certifications for which no measurement protocols exist or dictate equipment specifications.

CCC shares the concern of most respondents regarding the use of direct water-spray equipment to increase bale moisture. The predominance of comments received, including the comments from USDA researchers, is that there is an increased risk of damage to cotton that is directly sprayed with water. Comments received from an industry task force, a national ginner association, and those representing the joint industry position urge CCC to prohibit directly sprayed cotton as being eligible to be pledged as loan collateral for marketing assistance loans starting after the 2007 crop. Although, the comments received indicate that this proposal is the majority view of the industry, CCC is aware that direct spray systems are used by about 20 percent of U.S. ginner. These ginner, with a few exceptions, feel that the system can be used without damaging cotton.

To the extent practicable, CCC generally supports the use of industry standards in the establishment of CCC cotton loan program regulations, most notably by requiring the use of packaging and ties that conform to industry specifications. However, CCC lacks authority to direct all of the processing requirements of gins based on loan collateral eligibility. Further, the equipment and a process for accurately measuring bale moisture at a gin are not commonly employed, and a moisture certification requirement would impose costs on ginner to comply. Therefore, CCC will not establish any new certification by ginner regarding the production of wet-packed, false-packed, re-ginned, or re-packed cotton. However, CCC agrees with the comments that suggest that the maximum level of moisture before fiber

damage would occur, as measured at a gin, wet basis, is 7.5 percent at any point in the bale. Thus, while this rule imposes no new inspection process at the gin or warehouse, in evaluating complaints received about wet or damaged cotton, CCC will impose a maximum moisture level requirement for a bale of cotton. Similarly, to encourage maintenance of the quality of ginned cotton, CCC will incorporate into its bale eligibility requirements the standards established by the Joint Cotton Industry Bale Packaging Committee ("Committee") publication "A Guide for Cotton Bale Standards." Accordingly, this rule revises the regulations at 7 CFR 1427.5 to provide that a bale must be in good condition and shall not be wet cotton to be eligible as loan collateral. "Wet cotton" is defined as a bale at a gin that has 7.5 percent or more moisture, wet basis, at any point in the bale. "Good condition" is defined as a bale of cotton determined to be a Grade A or Grade B bale, by comparing the bale with the photographic standards of the Committee.

### D. Transfer of Cotton Loan Collateral

CCC proposed to allow the transfer of loan cotton to other CCC-approved warehouses to provide producers or their agents the means to relocate outside-stored cotton, or to reduce marketing risks by removing cotton from warehouses considered unreliable in meeting load-out requests. CCC received seventy-one comments in response to the proposal. In general, the comments received are favorable to the concept of the relocation of loan cotton, although support is conditional on the imposition of several conditions. Support is stated by ginner, many warehouses, producers, and national organizations. Commonly suggested conditions are that producers must authorize such movement; that relocation costs be paid in full by the requestor; that relocations count against flow standards; and that storage credits be limited in some cases to reduce predatory transfers. Some comments in opposition are that relocations may disadvantage smaller warehouses, stress transportation resources, increase storage outlays, and only benefit larger merchants without improving cotton flow.

Based on the comments received, there is industry support to allow producers to move their cotton, and that proposal is adopted in this final rule. Also, CCC has decided to incorporate the recommendation of the joint industry position to limit storage credits applicable to some transferred cotton to 75 days to provide an incentive for

timely marketing of transferred cotton. This time period has been determined to be the average required by a cotton merchant from warehouse loadout to final marketing. Accordingly, this rule provides that producers may request the transfer of cotton loan collateral represented by an EWR to another approved cotton warehouse. The loan settlements of transferred cotton will be based on rates applicable at the original storing location, and storage credits may be limited based on the circumstances of the transfer.

#### *E. Producer Liability for Unpaid Charges*

CCC proposed amending section 1427.12 to correct two inconsistencies. First, regulations provide that if there are any liens or encumbrances on cotton provided as collateral for a marketing assistance loan, CCC must obtain waivers that fully protect the interest of CCC before disbursement of the loan even if the liens or encumbrances are satisfied from the loan proceeds. However, section 1427.25 provides for CCC to credit the loan repayment amount by all or a portion of the warehouse storage charges that have accrued during the period the cotton was pledged for loan. Second, over 40 percent of cotton warehouses have tariff charges for compression services that are not actually provided, and that such unpaid charges have followed the bale and were payable on cotton forfeited to CCC in satisfaction of the loan obligation. Accordingly, CCC proposed to establish consistency between these two requirements, and to clarify that CCC shall not be responsible for any charges attached to a bale other than for the storage charges as provided in 7 CFR 1427.19(h).

Eight comments were received in response to the proposal that CCC will not be responsible for unpaid charges associated with a loan bale (such as warehouse compression) and will bill a producer for such charges on forfeited cotton. All comments received either did not object, or were in favor of the proposal, thus no change from the proposal is made in the final rule.

### **III. Shipping Standards**

Comments were received on the proposed rule suggesting significant industry support for regulations defining a minimum acceptable shipping standard for cotton warehouses. Such standards are currently set forth in the CCC Cotton Storage Agreement. CCC agrees that these terms should be clarified and set forth in those regulations governing cotton storage warehouses. Accordingly, this rule makes amendments to the

terms and conditions for approval of a warehouse operator by CCC to store and handle CCC interest commodities at 7 CFR part 1423 to provide such a definition and to require mandatory weekly reporting of bales made available for shipment.

### **IV. Clarification**

This rule amends § 1421.6(h)(1) of 7 CFR part 1421 to clarify the use of contracts with respect to beneficial interest. On June, 6, 2006 the agency published a final rule at 71 FR 32415 that amended regulations governing beneficial interest with respect to eligible commodities delivered to facilities governed by a Federal license, State license or CCC storage agreement. This provision unintentionally restricts a producer's ability to obtain a loan deficiency payment or freely market commodities of which they still maintain control and title in limited cases. This rule clarifies that facilities governed by a Federal license, State license, or CCC storage agreement can be bailees and the producers who deliver commodities may continue to have beneficial interest. Regardless, CCC may still require acceptable documentation from a producer to indicate whether the producer retains title and control of the stored commodity.

This rule also corrects the amendments made by the June 6, 2006 rule regarding beneficial interest provisions for cooperative marketing associations by restoring them consistent with that amendment as § 1421.6(j). And, finally, this rule amends 7 CFR 1421.201 to clarify that the loan deficiency payment rate shall be based on the date the commodity is delivered, if the producer elects this option.

### **Executive Order 12866**

This rule is issued in conformance with Executive Order 12866, was determined to be significant and has been reviewed by the Office of Management Budget.

### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

### **Environmental Assessment**

The environmental impacts of this rule have been considered 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 the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This rule will preempt State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

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

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

### **Paperwork Reduction Act**

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

### **Executive Order 12612**

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and

responsibilities among the various levels of government.

**Government Paperwork Elimination Act**

CCC 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 FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov) for downloading. The regulation is available at FSA's Price Support Division Internet site at [www.fsa.usda.gov/dafp/psd](http://www.fsa.usda.gov/dafp/psd). Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

**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. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

**Federal Assistance Programs**

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

**List of Subjects**

7 CFR Part 1421

Agricultural commodities, Feed grains, Grains, Loan programs—agriculture, Oilseeds, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1423

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

7 CFR Part 1427

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

■ For the reasons set out in the preamble, 7 CFR parts 1421, 1423, and 1427 are amended as follows:

**PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS**

■ 1. The authority citation for part 1421 continues to read as follows:

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

**Subpart A—General**

■ 2. Amend § 1421.6 by revising paragraphs (h)(1), (h)(2) and adding paragraph (j) to read as follows:

**§ 1421.6 Beneficial interest.**

\* \* \* \* \*

(h) \* \* \*

(1) A provision that allows the producer to select the sales price of the commodity at a time the contract is entered into or at a later date, for example, a contract normally referred to as a deferred-price, forward or price later contract. The following conditions apply:

(i) Producers under a deferred-price, forward, or price later contract will lose beneficial interest in the commodity once the commodity is applied in fulfillment of such a contract.

(ii) Beneficial interest in the commodity is retained by the producer if the contract has no restrictive or contradictory clauses within the contract that may cause the producer to lose beneficial interest in the commodity.

(2) A provision between the producer and a warehouse approved in accordance with § 1421.103(c) for the storage of CCC loan collateral that provides the producer a period of time following the date of physical delivery of the commodity to elect whether the commodity is to be stored and receipted on behalf of the producer or is to be considered transferred to the warehouse.

\* \* \* \* \*

(j) If marketing assistance loans and loan deficiency payments are made available to producers through an approved cooperative marketing association in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the approved cooperative marketing association or its member approved cooperative marketing association,

except as otherwise provided in this section. If the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter, commodities delivered to an approved cooperative marketing association shall not be eligible to be pledged as collateral for a marketing assistance loan or be taken into consideration when a loan deficiency payment is made.

**Subpart C—Loan Deficiency Payments**

■ 3. Section 1421.201 is amended by adding paragraph (b)(3)(iii) to read as follows:

**§ 1421.201 Loan deficiency payment rate.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) The commodity is delivered, if the producer elects to receive the LDP rate based on the date of delivery.

\* \* \* \* \*

**PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES**

■ 4. The authority citation for part 1423 continues to read as follows:

*Authority:* 15 U.S.C. 714b and 714c.

■ 5. Add § 1423.11 to read as follows:

**§ 1423.11 Delivery and shipping standards for cotton warehouses.**

(a) Unless prevented from doing so by severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, acts of civil or military authority, non-availability of transportation facilities or any cause beyond the control of the warehouse operator that renders performance impossible, the warehouse operator will:

(1) Deliver stored cotton without unnecessary delay.

(2) Be considered to have delivered cotton without unnecessary delay if, for the week in question, the warehouse operator has made available for shipment at least 4.5 percent of their applicable storage capacity in effect during the relevant week of shipment.

(b) The warehouse operator shall provide a written report to CCC on a weekly basis. The reporting week shall be the seven day period starting at midnight following the close of business on each Saturday and ending at midnight after close of business of the following Saturday. Before close of business of the first business day of the following week, the warehouse operator

will provide following information to CCC:

(1) Bales made available for shipment (BMAS) during such week. BMAS is defined as any cotton bales that:

(i) Have been delivered, or are scheduled and ready for delivery during such week; and

(ii) Were scheduled and ready for delivery in a previous week, but were not picked up by the shipper and remain available for immediate loading and another shipping date has not been established, or such bales are not subject to a restocking fee as provided in the warehouse operator's public tariff.

(2) Active shipping orders, by week; and

(3) Applicable storage capacity that is the higher of CCC approved capacity or the maximum number of bales stored at any time during the applicable crop year.

(c) The warehouse operator may resolve any claim for noncompliance from any entity other than CCC with the cotton shipping standard in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. In no case will CCC provide assistance or representation to parties involved in arbitration proceedings arising with respect to activities authorized under the Cotton Storage Agreement.

**PART 1427—COTTON**

■ 6. The authority citation for part 1427 continues to read as follows:

**Authority:** 7 U.S.C. 7231–7237 and 7931–7939; and 15 U.S.C. 714b and 714c.

**Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments**

■ 7. Amend § 1427.3 by revising the definition of “Reconcentration” and adding definitions for “Cotton storage deficit area”, “Good condition”, “Transfer”, and “Wet cotton” to read as follows:

**§ 1427.3 Definitions.**

\* \* \* \* \*

*Cotton storage deficit area* means a State, County, or group of contiguous counties within a State, where the production of cotton for the area based on the most recent estimate from the USDA, National Agricultural Statistics Service exceeds the combined approved inside storage capacity of warehouses that have entered into a Cotton Storage Agreement with CCC.

\* \* \* \* \*

*Good condition* means a bale of cotton that, by comparison with the photographic standards of “A Guide for

Cotton Bale Standards” of the Joint Cotton Industry Bale Packaging Committee, is determined to be a Grade A or Grade B bale.

\* \* \* \* \*

*Reconcentration* means the process for moving CCC-owned cotton from one approved warehouse to another CCC-approved warehouse location.

\* \* \* \* \*

*Transfer* means the process for a producer or an authorized agent of the producer to move warehouse-stored loan collateral to another warehouse.

\* \* \* \* \*

*Wet cotton* means a bale of cotton that, at a gin, has 7.5 percent or more moisture, wet basis, at any point in the bale.

■ 8. Amend § 1427.5 by revising paragraphs (b)(2) and (b)(4) to read as follows:

**§ 1427.5 General eligibility requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) Be in existence and good condition, be covered by fire insurance, and at the time of disbursement of the loan proceeds, 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.

\* \* \* \* \*

(4) Not be false-packed, wet cotton, water-packed, mixed-packed, re-ginned, or repacked;

\* \* \* \* \*

■ 9. Amend § 1427.10 by revising paragraph (b), redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and adding a new paragraph (c) as follows:

**§ 1427.10 Approved storage.**

\* \* \* \* \*

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, as directed by CCC place such cotton within such warehouse.

(c) An approved cotton storage warehouse may temporarily store cotton pledged as collateral for a CCC loan outside, subject to the following conditions:

(1) The warehouse submits an application for approval of outside storage on a form prescribed by CCC.

(2) The warehouse is located in a storage deficit area as determined by CCC.

(3) The warehouse complies with all outside storage requirements established

by CCC including but not limited to the duration of such outside storage as granted by CCC for the individual application, all-risk insurance for the loan value of the cotton with CCC as loss payee, and use of additional protective coverings and materials that elevate the entire bottom surface of the bale to protect such cotton from damage by water or airborne contaminants.

(4) The electronic warehouse receipt for any bale or bales of cotton pledged as collateral for a CCC loan must include the dates that the bale was initially stored outside, and the date that outside storage stopped.

(5) The warehouse provides CCC a weekly report in a format proscribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside.

\* \* \* \* \*

■ 10. Revise § 1427.12 to read as follows:

**§ 1427.12 Liens.**

(a) Waivers that fully protect the interest of CCC must be obtained before loan disbursement, notwithstanding provisions in § 1427.19(h), if there are any liens or encumbrances on the cotton tendered as collateral for a loan, even though the liens or encumbrances are satisfied from the loan proceeds.

(b) CCC may elect to accept cotton as loan collateral that has warehouse receiving, compression, or other charges without a lien waiver if the producer at the time of loan application agrees to reimburse CCC for any such charges that CCC may pay on behalf of the producer or that reduce the value of the cotton delivered to CCC.

■ 11. Add paragraph (e)(3) to § 1427.13 to read as follows:

**§ 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 exceed such charges calculated based on CCC's maximum storage credit rate for the warehouse established in § 1427.19.

■ 12. Revise § 1427.16 to read as follows:

**§ 1427.16 Movement and protection of warehouse-stored cotton.**

(a) CCC may insure or reinsure stored cotton against any risk, or otherwise take an action it deems necessary to protect the interest therein of CCC.

(b) CCC may reconcentrate cotton as defined in § 1427.3 subject to the following:

(1) A loan servicing agent, or CMA shall arrange for reconcentration of cotton under the direction of CCC and CCC shall obtain new warehouse receipts; and

(2) Any charges, fees, costs, or expenses incident to the reconcentration of cotton shall be paid by CCC.

(c) A producer may transfer cotton loan collateral from one CCC-approved cotton storage warehouse to another CCC-approved cotton storage warehouse subject to the following conditions:

(1) The cotton is represented by electronic warehouse receipts;

(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; and

(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.

(d) Following written notice by CCC to the producer and warehouse operator, CCC may transfer cotton pledged as collateral for the marketing assistance loan from one CCC-approved warehouse to another if:

(1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage; or

(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.

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

(f) CCC shall 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:

(3) Out of compliance with the terms of its Cotton Storage Agreement;

(4) Storing cotton loan collateral outside, or

(5) Under common ownership with the receiving warehouse.

■ 13. Amend § 1427.19 by revising paragraphs (h)(1) and (h)(2), and adding paragraph (j) to read as follows:

**§ 1427.19 Repayment of loans.**

\* \* \* \* \*

(h) \* \* \*

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer, agent, or subsequent agent authorized by the producer in the manner prescribed by CCC for the period the cotton was pledged as collateral for such loan:

(i) The warehouse storage charges which have accrued, and

(ii) With respect to the 2006 and subsequent-crops of upland cotton, for each bale of the loan stored inside an approved cotton warehouse during the entire period of the loan, storage charges based on paragraph (j) of this section, except that CCC shall not credit the loan repayment amount for a bale for any accrued storage charges for any period that the cotton bale was stored outside exceeding a continuous 15-day period beginning on the day the warehouse was notified that the bale is under loan.

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer, agent, or subsequent agent authorized by the producer in the manner prescribed by CCC, without regard to any warehouse charges that accrued before the cotton was pledged for loan:

(i) That portion of the warehouse storage charges that accrued during the period the cotton was pledged for loan that are determined to be necessary to permit the loan to be repaid at the adjusted world price; and

(ii) With respect to the 2006 and subsequent crops of upland cotton stored inside an approved cotton warehouse during the entire period of the loan, storage charges based on the rates in paragraph (j) of this section, except that CCC shall not credit the loan repayment amount for a bale for any accrued storage charges for any period that the cotton bale was stored outside exceeding a continuous 15-day period beginning on the day the warehouse was notified that the bale is under loan; or

\* \* \* \* \*

(j) For the purpose of calculating storage credits that may be applicable under paragraph (h) of this section to the 2006 and subsequent crops of upland cotton, the warehouse storage rates to be used shall be the lower of:

(1) 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

(2) For warehouses located in Arizona and California, \$4.37 per bale per

month; and for warehouses located in all States other than Arizona and California, \$2.66 per bale per month.

\* \* \* \* \*

Signed in Washington, DC on August 23, 2006.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6-14370 Filed 8-29-06; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 77**

[Docket No. APHIS-2006-0004]

**Tuberculosis in Cattle and Bison; State and Zone Designations; Minnesota**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations regarding State and zone classifications by removing Minnesota from the list of accredited-free States and adding it to the list of modified accredited advanced States. The interim rule was necessary to help prevent the spread of tuberculosis because Minnesota no longer met the requirements for accredited-free State status.

**DATES:** Effective on August 30, 2006, we are adopting as a final rule the interim rule that became effective on January 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-5467.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule<sup>1</sup> effective January 24, 2006, and published in the **Federal Register** on January 30, 2006 (71 FR 4808-4810, Docket No. APHIS-2006-

<sup>1</sup> To view the interim rule and the comments we received, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0004, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.