

# Proposed Rules

Federal Register

Vol. 70, No. 121

Friday, June 24, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1427

RIN 0560-AH29

#### Cottonseed Payment Program

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes regulations to implement provisions of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, enacted on October 13, 2004 ("2004 Act") to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President of the United States due to 2004 hurricanes and tropical storms.

**DATES:** Comments on this rule must be received July 25, 2005 in order to be assured consideration. Comments on the information collection in this rule must be received by August 23, 2005 in order to be assured consideration.

**ADDRESSES:** The Farm Service Agency invites interested persons to submit comments on this proposed rule and on the collection of information. Comments may be submitted by any of the following methods:

E-Mail: Send comments to [chris.kyer@wdc.usda.gov](mailto:chris.kyer@wdc.usda.gov)

Fax: Submit comments by facsimile transmission to (202) 690-3307.

Mail: Submit comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095-S, 1400 Independence Avenue, SW., Washington, DC 20250-0512.

Hand Delivery or Courier: Deliver comments to the above address.

Federal eRulemaking Portal: Go to <http://www.regulations.gov> Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095, South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD Web site at <http://www.fsa.usda.gov/dafp/psd>.

Comments on the information collection requirements of this rule must also be sent to the addresses listed in the Paperwork Reduction Act section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Chris Kyer, phone: (202) 720-7935; e-mail: [chris.kyer@wdc.usda.gov](mailto:chris.kyer@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 104 of Division B of the 2004 Act (Pub. L. 108-324), requires the Commodity Credit Corporation (CCC) to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President of the United States due to hurricanes. Section 789 of Division A of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) further amended section 104 of Division B of the 2004 Act by adding as eligible counties those which were declared disasters because of tropical storms. The 2004 Act appropriated \$10 million for these payments. As amended, the provisions of section 104 read in full:

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

Further, section 105 of Division B of the same Act provides that the funds, facilities and authorities of the CCC shall be used to carry out Section 104.

CCC most recently operated a Cottonseed Payment Program in 2003, the 2002-Crop Cottonseed Payment Program (68 FR 20332, April 25, 2003). This rule proposes that the 2004 Cottonseed Payment Program operate somewhat like the 2002 program in that payments will be made to cotton gins for distribution to eligible producers. However, the 2002 program was tied simply to previous year's production. Consistent with the terms of section 104 and other provisions of the same legislation, this rule proposes to provide

payments for cottonseed loss in eligible counties based on a comparison of a producer's production in the year before the disaster (making the 2003 crop year the base year) to the amount produced in 2004, the year of the hurricanes. Generally, a gin's eligibility will be based on the lint lost to gins in deliveries of 2004-crop cotton because of reductions in lint production in eligible counties adjusted for changes in plantings and for crop losses due to other causes. This rule proposes special provisions for producers who for the 2004 crop were new producers, and for producers who delivered, or would have delivered, cotton to more than one gin. Accordingly, whereas previous cottonseed programs have covered all cottonseed, benefits here will be tied to losses of cottonseed because of eligible losses of delivered cotton lint in eligible disaster counties. Comment is invited on all aspects of the proposed regulations.

CCC will announce a period during which U.S. cotton gins may apply for cottonseed payments. To participate, cotton gins must complete an application form including: (1) Applicant name, address, and a contact person and phone; (2) bank account information for payees electing to have payments made by direct account deposit; (3) the gin 5-digit identifying code; (4) the weight (in pounds) of cotton lint for which payment is requested; and (5) the number of bales of cotton ginned from the applicable lint weight. CCC must receive the application within the announced application period.

So that the basic method of operation of the proposed rule is clear, the following example is offered:

**Example:**

1. Producer A grows 450 acres of 2004 cotton in an eligible county and gin A obtains 225,000 pounds of lint from that cotton. Producer A grew 500 acres of 2003 cotton, and gin A obtained 375,000 pounds of lint weight from the 2003 cotton.

2. Gin A calculates the producer's loss in lint weight was 112,500 pounds, taking into consideration the difference in acres between the two years and the difference in production by calculating the per-acre yield for each year and multiplying the difference in yield by the 2004 acres. The 112,500 pound loss is derived by multiplying the 450 acres

of 2004 cotton by the 250-pound loss in lint yields per acre from 2004 to 2003.

3. Gin A calculates the loss for each of its customers and submits the total of the losses to FSA as a basis for payment. Producers who did not have a loss in yield are not included in the total amount submitted for payment.

Cases involving producers who might have been unable to deliver any cotton in 2004 to any gin because of the disaster are dealt with separately in the rule.

Upon receipt of all payment applications from all gins seeking to participate, CCC will estimate the national total quantity of cottonseed for payment based on the weight of cotton lint for which payment is requested. The payment rate per ton of cottonseed will be determined by dividing the \$10 million available by the total quantity of cottonseed for payment. In order to be sure that an eligible producer is not over compensated (does not receive more than the total economic value of the loss suffered), payments to individual cotton gins will be subject to a payment limitation equal to the result of multiplying the total pounds of cottonseed determined eligible by the 2004 national average price of cottonseed (\$112 per short ton).

CCC plans to provide all 2004-crop cottonseed payments to cotton gins and to require gins to share such payments with applicable cotton producers to the extent that the effect of cottonseed prices was borne by the producer rather than the gin. This payment plan is proposed because of the various agreements between ginners and producers regarding the costs of ginning and the disposition of the proceeds from the sale of cottonseed. These agreements were entered into prior to the ginning of 2004-crop cotton and the authorization of this cottonseed payment program, and CCC has no knowledge of their terms. Based on these existing contracts and marketing agreements, ginners and producers are best suited to equitably distribute the cottonseed assistance payments. However, producers dissatisfied with the distribution by the gin will, as in previous cottonseed programs, be limited to complaints directed toward the gin itself as may be allowed under law—that is, the regulations propose no administrative remedy.

In order to identify eligible production from designated counties, CCC will also ask gins to identify cotton production from designated counties versus that from non-designated counties and apply for only an eligible payment quantity. CCC believes that gins are well suited to be able to identify

eligible production using existing systems and readily available data. Because of the nature of the interest involved in this notice it has been determined that the comment period should be limited to 30 days; that is, that a longer period would be contrary to the public interest.

#### *Executive Order 12866*

This proposed rule has been determined to be “Significant” under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act does not apply to this proposed rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

#### *Environmental Assessment*

The environmental impacts of this proposed rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA’s regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

#### *Executive Order 12988*

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

#### *Executive Order 12372*

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

#### *Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

#### *Paperwork Reduction Act of 1995*

In accordance with the Paperwork Reduction Act of 1995, FSA intends to request approval by OMB of an information collection required to support the proposed rule establishing a 2004 crop year cottonseed payment program. Copies of the information collection may be obtained from Linda Turner, the Agency Information Collection Coordinator, at (202) 690–1855.

*Title:* 2004 Cottonseed Payment Program.

*OMB Control Number:* 0560-NEW.

*Type of Request:* Request for Approval of a New Information Collection.

*Abstract:* Section 104 of the 2005 Act requires the Commodity Credit Corporation to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President of the United States due to hurricanes and tropical storms. This rule is intended to implement this legislative mandate and assist producers who suffered financially as a result of unfavorable weather conditions in 2004 caused by hurricanes and tropical storms. Applicants are asked to provide: (1) The weight of lint to be used by CCC for determining seed weight for payment based upon calculation of a loss in lint production; (2) the number of bales ginned and applicable to the lint weight for which payment is requested, not adjusted to a uniform bale weight basis; and (3) basic data such as name and address, direct deposit information, and tax identification number. The information will be used by FSA to determine the program eligibility of the gin. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on lint weight and bale numbers, the national payment rate could be inaccurate and could result in payments being made to ineligible recipients, or overpayments, compromising the integrity and accuracy of the program.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 45 minutes per response.

*Respondents:* Cotton gins receiving 2004 crop cotton from counties declared a disaster by the President of the United States due to hurricanes and tropical storms.

*Estimated Number of Respondents:* 120.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 90 hours.

Proposed topics for comment include:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
  - (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;
  - (c) ways to enhance the quality, utility, and clarity of the information collected; or
  - (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.
- Comments should be sent to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512 or telephone (202) 720-7901.

*Government Paperwork Elimination Act*

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

**List of Subjects in 7 CFR Part 1427**

Agriculture, Cottonseed.

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

**PART 1427—COTTON**

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

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

**Subpart F—2004 Cottonseed Payment Program**

2. Revise the title of part 1427 subpart F to read as set forth above:

3. Revise § 1427.1100 to read as follows:

**§ 1427.1100 Applicability.**

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

(b) Payments shall be available only as provided in this subpart and only with respect to cottonseed losses related to 2004-crop cotton production in counties declared a disaster by the President of the United States due to hurricanes or tropical storms.

**§ 1427.1102 [Amended]**

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

5. Revise § 1427.1103 to read as follows:

**§ 1427.1103 Eligible cottonseed.**

To be eligible for payments under this subpart, cottonseed losses must:

(a) Be related to 2004-crop cotton production in a county declared a disaster by the President of the United States due to 2004 hurricanes or tropical storms.

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

6. Amend § 1427.1104 by revising the section heading, revising paragraph (a) and in paragraph (c) changing the term "low cottonseed prices" to "loss of the cottonseed" to read as follows:

**§ 1427.1104 Eligible applicants (first handlers).**

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

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

**§ 1427.1105 Payment application and deadline.**

\* \* \* \* \*

(b) The application deadline shall be 30 days after the rules in this subpart become effective unless otherwise announced by CCC.

\* \* \* \* \*

8. Revise § 1427.1106 to read as follows:

**§ 1427.1106 Available funds.**

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

9. Revise § 1427.1107 to read as follows:

**§ 1427.1107 Applicant payment quantity.**

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

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

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

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

(c) If the producer delivered 2004-crop cotton to a gin different than the gin to which the producer delivered 2003-crop cotton, or delivered cotton to

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

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

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

(1) The applicant gin's eligible weight of lint for which payment is requested, as approved by CCC, and as determined in paragraphs (a) through (d) of this section by;

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

10. Revise § 1427.1108 to read as follows:

**§ 1427.1108 Total payment quantity.**

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

(a) The total weight of cotton lint (ton-basis) for which payment is requested by all applicants, as approved by CCC, by

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

11. Revise § 1427.1109 to read as follows:

**§ 1427.1109 Payment rate.**

The payment rate (dollars per ton) shall be determined by CCC by dividing the total available program funds by the total eligible payment quantity of cottonseed. However, in no event may the total payment to an eligible applicant exceed \$112 per ton of cottonseed multiplied by the applicant's total eligible payment quantity.

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

**§ 1427.1111 Liability of first handler.**

\* \* \* \* \*

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

Signed in Washington, DC, on June 15, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-12485 Filed 6-23-05; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**User Input to the Aviation Weather Technology Transfer (AWTT) Board**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation, (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** The FAA will hold an informal public meeting to seek aviation weather user input on icing products. Details: July 13, 2005; Northrop Grumman, Conference Room A, 475 School Street, SW., Washington, DC 20024; 9 a.m. to 5 p.m. The objective of this meeting is to provide an

opportunity for interested Government and commercial sector representatives who use government-provided aviation weather information in operational decision-making to provide input on FAA's plans for implementing new icing weather products.

**DATES:** The meeting will be held at Northrop Grumman, 475 School Street, SW., Washington, DC 20024; Times: 9 a.m. to 5 p.m. on July 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Debi Bacon, Air Traffic Organization, Operations Planning, Weather Policy and Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385-7705; Fax: (202) 385-7701; e-mail: [debi.bacon@faa.gov](mailto:debi.bacon@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**History**

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development (R&D) into operations. The Director of the National Airspace (NAS) Weather Office, Operations Planning, Air Traffic Organization chairs the AWTT Board. The board is composed of stakeholders in the Air Traffic and Aviation Safety organizations in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, the Office of Science and Technology, and the National Center for Environmental Predictions (NCEP) in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the readiness of weather R&D products for experimental use, full operational use for meteorologists or full operational use for end users. The board makes the determination based on technical and operational readiness, cost and benefits, user needs and budget considerations.

FAA has the sole responsibility and authority to make decisions intended to provide a safe, secure, and efficient U.S. national airspace system. However, it behooves FAA to not make decisions in a vacuum. Rather, FAA is seeking inputs from the user community before decisions are finalized.

Industry users are invited to participate in one-day meetings about three times per year to give specific feedback to the Government. Meetings will be focused on a specific domain (e.g. terminal, enroute) or specific weather phenomena (e.g. turbulence, convection). Meetings will include a time for users to provide input on specific weather products and aviation