

Commodity Credit Corporation, USDA

Pt. 1427

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§ 1425.25 Appeals.

Parts 11 and 780 of this title apply to this part.

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Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of upland cotton and extra long staple cotton. These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payment programs shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the cotton marketing assistance loan and loan deficiency payment programs are available from FSA offices. The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Marketing assistance loans and loan deficiency payments will not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Notwithstanding the other provisions of this part, a producer may only receive the maximum assistance allowed by part 1400 of this chapter.

(e) Eligible producers, under 7 CFR 1421.4, who produce upland cotton during the 2002 through 2007 crop years on a farm that is not covered under a direct and counter-cyclical program contract, as defined in part 1412 of this chapter, are eligible for marketing assistance loans or loan deficiency payments as are eligible producers who produced commodities on farms covered by such a contract.

§ 1427.2 Administration.

(a) The marketing assistance loan and loan deficiency payment programs shall be administered under the general

supervision of the Executive Vice President, CCC, or a designee and shall be carried out by FSA employees, and state and county committees.

(b) No FSA employee or committee may modify or waive any requirement in this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) For the 2001 crop year only, allow producers who, in good faith, violated the terms and conditions of the note and security agreement resulting in the producer losing beneficial interest in the commodity before repaying the loan, to repay the loan at a rate that is the lesser of the loan plus interest, or the adjusted world price, as determined under § 1427.19, in effect on the date the beneficial interest was lost.

(2) Correct, or require a correction of an action that is not in compliance with this part; or

(3) Stop an employee from taking an action or decision that is not in accordance with the regulations of this part.

(d) The Executive Vice President, CCC, or a designee may determine any question arising under these programs, and reverse or modify a determination made by an FSA employee or State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the marketing assistance and loan deficiency payment programs.

(f) A representative of CCC may execute marketing assistance loan and Loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.3 Definitions.

The definitions in this section shall apply for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in part 718 of this title and parts 1412, 1421, 1425 and 1434 of this chapter shall also apply, except where they conflict with definitions in this section.

Adjusted spot price means the spot price adjusted to reflect any lack of data for base quality to make the adjusted spot price comparable to a spot price assuming the base quality. If base quality spot price data are not available, spot prices for other qualities will be used and adjusted by the average difference between base quality spot prices and those for other qualities over the available observations during the previous 12 months.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved under part 1425 of this chapter which has executed a Cotton Cooperative Loan Agreement on a form prescribed by CCC.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately before use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Commodity certificate exchange means the exchange, as provided in part 1404 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Consumption means the use of eligible cotton by a domestic user in the manu-

facture in the United States of cotton products.

Cotton means upland cotton and extra long staple cotton meeting the definition in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Electronic Agent Designation is an electronic record that:

- (1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specific loan;
- (2) Is maintained by providers of electronic warehouse receipts; and
- (3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

- (1) American-Pima;
- (2) All other varieties of the Barbados species of cotton, and any hybrid thereof; and
- (3) Any other variety of cotton in which one or more of these varieties predominate.

False packed cotton means cotton in a bale containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing

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pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a nonrecourse loan entered into between a producer and CCC.

Form G loan means a CCC non-recourse loan entered into between a CMA and CCC.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

Lint Cotton means cotton that has passed through the ginning process.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton under §1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced growths of the growths quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

Northern Europe price means, during the period in which only one daily price quotation is available for the growth quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

Reconcentration means the process for moving a warehouse stored loan commodity to another warehouse location.

Seed cotton means cotton which has not passed through the ginning process.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

U.S. Northern Europe price means, during the period in which only one daily price quotation is available for the United States growths quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1³/₃₂-inch cotton, C.I.F. northern Europe.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) 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;

(2) 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; or

(3) Other such acceptable evidence of title, as determined by CCC.

§ 1427.4 Eligible producer.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity that produces cotton as a landowner, landlord, tenant, or sharecropper;

(2) Comply with all provisions of this part; and

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation and Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures; and

(v) 7 CFR part 1405—Loans, Purchases and Other Operations; and

(3) Have made an acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are le-

gally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by CCC to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(2) The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) A CMA may obtain a marketing assistance loan and loan deficiency payments on eligible cotton on behalf of its members who are eligible to receive loans or loan deficiency payments for a crop of cotton. For purposes of this subpart, the term "producer" includes a CMA.

(f) In case of death, incompetency, or disappearance of any producer who is

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entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon application to CCC, be made to the persons who would be entitled to the producer's payment under the regulations contained in part 707 of this title.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the applicant and submitted to CCC or a loan servicing agent. Submissions by cotton clerks must occur within 15 calendar days after the producer signs the forms and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office that is responsible under part 718 of this title for administering programs for the farm on which the cotton was produced; or
(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the cotton commercial bank within the period of loan availability.

(b) For a bale of cotton to be eligible to be pledged as collateral for a marketing assistance loan or a subject of a loan deficiency payment application, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition, be covered by fire insurance, be stored in a warehouse with an existing cotton storage agreement under §§ 1427.1081 through 1427.1089 at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f), and be stored in approved storage as determined under § 1427.10;

(3) Be represented by a warehouse receipt meeting the requirements of

§ 1427.11, except as provided in §§ 1427.10(e) and 1427.23(a)(4);

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

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds may be pledged for loan at 600 pounds.

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable year or which are identified and approved by the Joint Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year, except that producers approved for the outside storage of 2003 and subsequent crops of ELS cotton as provided for in § 1427.10(e) must assure that the packaging materials used for bales stored outside must meet the materials, sealing, and humidity specifications contained in the outside-storage addendum to their ELS cotton marketing assistance loan agreement.

(11) Be ginned by a ginner which:

(i) Has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Has entered into a Cooperating Ginners' Bagging and Bale Ties Certification and Agreement on a form prescribed by CCC, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section and;

(12) Be production from acreage that has been reported timely under part 718 of this title.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be of a grade, strength, staple length, and other factors specified in the schedule of loan rates for ELS cotton;

(2) Have a micronaire specified in the schedule of micronaire premiums and discounts for ELS cotton; and

(3) Have an extraneous matter specified in the schedules of premiums and discounts for extraneous matter for ELS cotton.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been graded by using a High Volume Instrument;

(2) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(3) Have a strength reading specified in the schedule of strength premiums and discounts for upland cotton;

(4) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(5) Have an extraneous matter within the limits specified in the schedule of discounts for extraneous matter for upland cotton; and

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer, and a former producer whom the producer tendering the cotton to CCC has succeeded, had such an interest in the cotton. Cotton obtained by gift, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations

under an existing marketing assistance loan shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the cotton occurs before or after harvest so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for marketing assistance loans or loan deficiency payments including those cases where the producer:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, for such cotton if all other eligibility requirements are met and the option to purchase contains the following:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1427.5, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation (CCC) loan which is secured by such commodity; (2) the date CCC claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser pays no advance payment amount or any incentive payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes a designation of agent on a form prescribed by CCC. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a marketing assistance loan;

(B) Identifies the warehouse receipts for which the authorization is given;

(C) Expires upon maturity of the marketing assistance loan;

(D) Allows agents so designated by the producer to designate a subsequent

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agent by endorsement of the form by the agent;

(E) Must be presented at the time the marketing assistance loan is repaid at the county office or loan servicing agent where such loan originated if the agent or subsequent agent exercises any authority granted by the producer, unless the producer provides authorization to CCC to use an electronic agent designation as the basis for accepting redemption of some or all bales of the specified loan; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Cooperating Ginners' Bagging and Bale Ties Certification and Agreement that was provided by the Agency. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If marketing assistance loans or loan deficiency payments are made available to producers through a CMA under part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a marketing assistance loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall

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be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn under Agricultural Marketing Service (AMS) dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(h) Marketing assistance loans may be disbursed to eligible producers who store upland cotton in unlicensed storage facilities only if the producer agrees to redeem the marketing assistance loan on the date on which the loan is disbursed with a commodity certificate exchange.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004]

§ 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

- (1) County in CCC and FSA offices;
- (2) Loan servicing agents; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on a form prescribed by CCC.

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible under § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed under § 1427.5(a).

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess

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of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) of this section by the applicable loan rate.

(d) CCC will not increase the amount of the loan made for any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made for the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include color grade, leaf, staple length, extraneous matter and micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale under instructions to samplers drawing samples under AMS procedures.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the

samples to the AMS Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(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, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

(e) With respect to 2003 and subsequent crops of ELS cotton, a producer may obtain a loan on cotton that is not stored as otherwise provided in this section if such cotton is stored:

(1) At a commercial entity that is involved in the handling or storage of cotton in a county or area determined

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and announced by CCC as approved for outside storage of loan collateral;

(2) The site is constructed so as to prevent the accumulation of water under such cotton; and

(3) As otherwise provided in the loan agreement. The collateral for such loan shall be as specified in the loan agreement and may include the actual bale of cotton.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004]

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or before the date the producer signs the note and security agreement.

(b) Warehouse receipts, under § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall 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:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare 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, 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.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

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

(g) The warehouse receipt must show the compression status of the bale; *i.e.*,

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flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Such fee shall be in addition to a cotton clerk fee paid under paragraph (b) of this section. The fee amounts are available in State and county offices and are shown on the note and security agreement. Fees shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available from CCC and is shown on the note and security agreement.

(c) Interest which accrues for a loan shall be determined under part 1405 of this chapter. All or a portion of such interest may be waived for a quantity of upland cotton which has been redeemed under §1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents were provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in §1427.11.

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§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on cotton eligible to be pledged as collateral for a marketing assistance loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the marketing assistance loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To marketing assistance loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts

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shown on the Form A loan documents, except for:

- (i) Authorized cotton clerk fees;
- (ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and
- (iii) CCC loan service charges.

(c)(1) All marketing assistance loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the marketing assistance loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by a Transmittal Schedule of Loan and Loan Deficiency Payment Documents (Transmittal) on a form prescribed by CCC, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advance. The Transmittal shall show the amounts invested by the person, firm, or financial institution in the marketing assistance loans or loan deficiency payments.

(3) Upon receipt of the marketing assistance loan or loan deficiency payment documents and Transmittal, the county office will stamp one copy of the Transmittal to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date marketing assistance loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron

postage meter date stamp will not be recognized as a postmark date.

(e) Interest will be computed on the total amount invested by the person, firm, or financial institution in the marketing assistance loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by CCC.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by CCC after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the marketing assistance loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

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

(2) Any reconcentration charges, fees, costs, or expenses incident to such actions shall be charged against the cotton, and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Collateral warehouse receipts, using forms prescribed by CCC, and related documents will be maintained in the custody of CCC, its designee, the loan servicing agent, or the cotton commercial bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a marketing assistance loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the marketing assistance loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC for the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages under paragraph (e) of this section; and

(vi) About amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(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 delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a marketing assistance loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the com-

modity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the marketing assistance loan or loan deficiency payment is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and this subpart. Each producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to their share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application for the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

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(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages under paragraph (e) of this section;

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or for a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages under paragraph (e) of this section; and

(2) Call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and for a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation under paragraph (e) of this section, CCC shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken under paragraph (f) or (g) of this section.

(i) If the marketing assistance loan is called under this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate under §1427.19 or utilize the provisions of part 1401 of this chapter for such loan.

(j) Any or all of the liquidated damages assessed under paragraph (e) of this section may be waived as determined by CCC.

(k)(1) Notwithstanding any other provision of this part, for ELS cotton stored as provided in §1427.10(e), the producer shall be liable for all costs associated with the storage of the cotton while it is stored outside. CCC shall make no storage payment or any other payment with respect to ELS cotton stored as provided in §1427.10(e).

(2) The producer of ELS cotton which is stored as provided in §1427.10(e) shall:

(i) Certify the quantity of such cotton on the loan application; certify the cotton is packaged in a hermetically sealed bag with an internal humidity level established by the gin as appropriate to safeguard the cotton; certify that packaging materials meet or exceed industry minimum standards; certify that the storage area is suitable for cotton storage and is in an area approved by CCC; certify that the storage area is constructed to prevent water accumulation under the cotton and is outside a 100-year floodplain; and certify that the storage area is serviced by bale handling and transport equipment that will not damage the sealed bag or degrade the storage area;

(ii) Be responsible for any loss in quantity or quality of such cotton;

(iii) If the loan is satisfied by forfeiting the cotton to CCC, be responsible for all costs associated with delivering such cotton to a warehouse designated by CCC, all costs associated with any re-classification and repackaging that may be required by CCC or the warehouse operator to whom the cotton is delivered, all charges by the receiving warehouse for receiving the cotton and issuing an electronic warehouse receipt for the cotton, and other charges as may be levied by the warehouse specific to outside-stored cotton; and

(iv) Not move such cotton after the loan application is submitted to CCC without prior written approval of the county committee. Failure of the producer to receive such permission shall subject the producer to administrative actions.

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49328, Aug. 18, 2003; 69 FR 12056, Mar. 15, 2004]

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer, an authorized agent or anyone subsequently designated by the producer in the manner prescribed by CCC may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined under this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized in writing in a manner prescribed by CCC may repay the loan amount for one or more bales of cotton pledged as collateral for a marketing assistance loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC under §1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or cotton commercial bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton under §1427.7.

(g) In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under §1427.25(e).

(h) If the upland cotton pledged as collateral is eligible to be redeemed at a rate less than the loan level and charges, plus interest, and the adjusted world price determined under §1427.25:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, the warehouse storage charges which have accrued, for the cotton pledged as collateral for such loan, during the period the cotton was pledged for 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 or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, 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 without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the

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sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

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

§ 1427.20 Handling payments and collections not exceeding \$9.99.

Amounts of \$9.99 or less will be paid to the producer only at their request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless CCC demands in writing that they be paid.

§ 1427.21 Settlement.

(a) The settlement of loans shall 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.

(b) Settlements made by CCC for eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay CCC the amount due under a loan, CCC shall take title to the cotton as provided in § 1427.7(b).

(d) With respect to ELS cotton which is stored as provided in § 1427.10(e), settlement of loans shall be made based upon the determination of the quantity and quality made by CCC at the time of acceptance of the cotton by CCC at the warehouse designated by CCC as provided in § 1427.18(k).

[67 FR 64459, Oct. 18, 2002, as amended at 68 FR 49329, Aug. 18, 2003]

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:

(1) The loan rate and charges, plus interest applicable to the loan, or

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(2) The adjusted world price for cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines,

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral, and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

§ 1427.23 Cotton loan deficiency payments.

(a) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton marketing assistance loan eligibility requirements under this subpart;

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

(3) File a request for payment for a quantity of eligible cotton under § 1427.5(a) on a form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) For loan deficiency payments requested before ginning of the cotton based on a locked-in adjusted world price, provide identifying numbers for modules or other storage units that will correspond to the gin-assigned numbers of the bales produced from the unginning cotton; and

(6) Otherwise comply with all program requirements.

(b) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined under paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan, excluding any quantity for which the producer obtains a marketing assistance loan.

(c) The loan deficiency payment rate for a crop of upland cotton shall be the

amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC under § 1427.25, in effect on the day the request is received by, the county office, loan servicing agent, or cotton commercial bank. In no case shall the loan deficiency payment rate for a bale exceed the value of the bale had it been pledged as collateral for a marketing assistance loan.

(d) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(e) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified under § 1427.5(c) on the date the cotton was ginned, and the producer meets all the other requirements in paragraph (a) of this section on or before the final date to apply for a loan deficiency payment under § 1427.5, the loan deficiency payment rate applicable to such cotton will be:

(1) Based on the date the cotton was ginned if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(2) Based on the date of request for lock-in of the adjusted world price if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(3) Based on the date a completed request including production evidence is submitted in the manner prescribed by CCC for obtaining such rate.

(f) In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under § 1427.25(e).

(g) With respect only to loan deficiency payments for upland cotton produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final availability for such payment is November 18, 2002.

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

(a) CCC shall 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 $1\frac{3}{32}$ inch) cotton, C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe (Northern Europe current price (NEc)), and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe (Northern Europe forward price (NEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the NEc and NEf price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: $((2 \times \text{NEc}) + \text{NEf})/3$.

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- (ii) Weeks 3 and 4: $(NEc + NEf)/2$.
- (iii) Weeks 5 and 6: $(NEc + (2 \times NEf))/3$.

(iv) Week 7 through July 31: NEf.

(3) The upland cotton prevailing world market price as determined under paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the "Northern Europe price (NE)."

(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 shall be based upon the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted under paragraph (c) of this section (adjusted world price (AWP)), shall be applicable to the 2002 through 2007 crops of upland cotton.

(c) The upland cotton AWP shall equal the NE price as determined under paragraph (a) of this section, adjusted as follows:

(1) The NE shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe, during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe, during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of 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, as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined under paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low

Middling (SLM) $1\frac{1}{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton (U.S. base quality) by deducting the difference, as CCC announces, 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 of the U.S. base quality.

(3) The price determined under paragraph (c)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for an upland cotton crop of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for an upland cotton crop of the U.S. base quality, as CCC announces.

(4)(i) The prevailing world market price, adjusted under paragraphs (c)(1) through (c)(3) of this section, may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe (U.S. Northern Europe price (USNE)), is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. northern Europe, the USNE provided in paragraph (c)(4)(i)(B) of this section shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced U.S. growth, as quoted for M $1\frac{3}{32}$ inch cotton, C.I.F.

northern Europe (U.S. Northern Europe current price (USNEc)), and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1³/₃₂ inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price (USNEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which including April 15 in which both the average of the USNEc and the average of the USNEf are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: $((2 \times \text{USNEc}) + \text{USNEf})/3$.

(B) Weeks 3 and 4: $((\text{USNEc}) + \text{USNEf})/2$.

(C) Weeks 5 and 6: $((\text{USNEc}) + (2 \times \text{USNEf})/3$.

(D) Week 7 through July 31: USNEf.

(iii) In determining the USNE as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(1) The U.S. share of world exports;

(2) The current level of cotton export sales and shipments; and

(3) Other data CCC determines relevant in establishing an accurate prevailing world market price, adjusted to U.S. quality and location.

(B) The adjustment may not exceed the difference between the USNE, as determined in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, and the NE, as determined in paragraph (a) of this section.

(d) In determining the average difference in the 52-week period as pro-

vided in paragraph (c)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory, as quoted for M 1³/₃₂ inch cotton, C.I.F. northern Europe, and the average price of M 1³/₃₂ 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 as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory, as quoted for M 1³/₃₂ inch cotton, C.I.F. northern Europe, is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory, as quoted for M 1³/₃₂ inch cotton, C.I.F. northern Europe, and the average price of M 1³/₃₂ 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, as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) Both the Memphis territory and the California/Arizona territory as quoted for M 1³/₃₂ inch cotton, C.I.F. northern Europe, or

(ii) The average price of M 1³/₃₂ 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, as quoted

in the designated U.S. spot markets, that week will not be considered.

(e) The upland cotton AWP, determined under paragraph (c) of this section, and the amount of the additional adjustment determined under paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. Eastern Standard time each Thursday continuing through the last Thursday of July, 2008. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. Eastern Standard time the next work day.

(f)(1)(i) The AWP, as determined under paragraph (c) of this section, shall be subject to further adjustments 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 and staple length must be determined under § 1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided under paragraph (f)(1) of this section shall be determined by deducting from the AWP:

(i) The difference between the NE, and

(A) During the period when only one daily price quotation for each growth quoted for “coarse count” cotton, C.I.F. northern Europe, 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, C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for “coarse count” cot-

ton, C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday including April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, C.I.F. northern Europe (Northern Europe coarse count current price (NECCc)), and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for “coarse count” cotton, C.I.F. northern Europe (Northern Europe coarse count forward price (NECCf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week including April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(1) Weeks 1 and 2: $(2 \times \text{NECCc}) + \text{NECCf}/3$;

(2) Weeks 3 and 4: $(\text{NECCc} + \text{NECCf})/2$;

(3) Weeks 5 and 6: $(\text{NECCc} + (2 \times \text{NECCf}))/3$; and

(4) Week 7 through July 31: The NECCf, 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 $1\frac{1}{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton.

(iii) The result of the calculation as determined under this paragraph shall hereinafter be referred to as the “Northern Europe coarse count price.”

(3) Regarding the determination of the Northern Europe coarse 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 under paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) If the 6-week transition period from using current shipment prices to using forward shipment prices in the determination of the NE under paragraph (a)(2) of this section, and the Northern Europe coarse count price under paragraph (f)(2)(i)(B) of this section do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof to determine the NE and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton under paragraph (f)(1) of this section and determined under paragraph (f)(2) of this section to prevent distortions in such adjustment.

(h) The AWP determined under paragraph (c) of this section, shall be subject to further adjustments to a value no less than zero, as CCC determines, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced under the loan program for an upland cotton crop.

Subpart B [Reserved]

Subpart C—Upland Cotton User Marketing Certificates

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2008. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate pro-

gram under section 1207 of the Farm Security and Rural Investment Act of 2002.

(b) During the period beginning August 1, 1991, and ending July 31, 2008, CCC shall issue marketing certificates or cash payments to domestic users and exporters under this subpart in a week following a consecutive 4-week period in which:

(1) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch (M 1 $\frac{3}{32}$ inch) cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, (U.S. Northern Europe (USNE) price) exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 $\frac{3}{32}$ -inch cotton, delivered C.I.F. northern Europe, (Northern Europe (NE) price) by:

(i) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(ii) During the period beginning August 1, 2006, and ending July 31, 2008, more than 1.25 cents per pound;

(2) The adjusted world price (AWP) for upland cotton, determined under § 1427.25, does not exceed 134 percent of the crop loan level for upland cotton.

(c) Additional terms and conditions are in the Upland Cotton Domestic User/Exporter Agreement which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe forms used in administering the upland cotton user marketing certificate program.

§§ 1427.101–1427.102 [Reserved]

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2008, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2008, during a Friday through Thursday period in which a payment rate, determined under § 1427.107, is in effect and which meets the requirements of paragraphs (b) and (c) of this section.

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(b) Eligible upland cotton must be either:

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

(2) Loose;

(3) Semi-processed notes which are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Re-ginned (processed) notes.

(c) Eligible upland cotton must not be:

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

(2) Imported cotton;

(3) Raw (unprocessed) notes; or

(4) Textile mill wastes.

§ 1427.104 Eligible domestic users and exporters.

(a) For purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of manufacturing such cotton into cotton products in the United States (domestic user), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible upland cotton for exportation from the United States (exporter), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

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

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms

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and conditions in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office, P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141-6205. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

§ 1427.106 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the program participant.

§ 1427.107 Payment rate.

(a) Beginning July 18, 1996, and ending July 31, 2008, the payment rate for purposes of calculating payments made under this subpart shall be determined as follows for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(1) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price, the Northern Europe forward (NEf) price, the U.S. Northern Europe current (USNEc) price, and the U.S. Northern Europe forward (USNEf) price first become available, the payment rate shall be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the U.S. Northern Europe (USNE) price, minus 1.25 cents per pound, and the Northern Europe (NE) price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNE price and the NE price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNE price, minus 1.25 cent per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by:

(iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;

(v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted work price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which the NEc, the NEf, the USNEc, and the USNEf prices first become available and ending the Thursday following July 31, the payment rate shall be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEc price and the NEc price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by:

(iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;

(v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted world price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period.

(3) If either or both the USNEc price and the NEc price are not available, the payment rate may be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEf price and the NEf price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of NE, NEc, and NEf prices only for one to three weeks, such as occurs in the spring when the NE price is succeeded by the NEc and the NEf prices (Spring transition), and at the start of a new marketing year when the NEc and the NEf prices are succeeded by the NE price (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc and USNEc prices in combination with the NE and the USNE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the USNEc price and the NEc price are not available, the USNEf and NEf prices in combination with the USNE and NE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart:

(1) For the determination of the USNE, USNEc, USNEf, NE, NEc, and the NEf prices:

(i) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not consider a week in which no daily quotes are available for the entire 5-day period for either or both the USNE and the NE during the period when only one daily price quotation is available for each growth quoted for M 1³/₃₂-inch cotton, delivered cost insurance, and freight (C.I.F.) northern Europe, or the USNEc and the NEc, or the USNEf and the NEf. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined under paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc, the marketing year transition shall be implemented immediately.

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(2) Regarding the determination of the USNE, the USNEc, and the USNEf, if a quotation for either the U.S. Memphis territory or the California/Arizona territory, as quoted for M 1³/₃₂-inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, available quotation(s) will be used.

(d) Payment rates for semi-processed notes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

§ 1427.108 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under §1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined under paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens or an eligible exporter sold for export during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the cotton was based (landed mill weight);

(2) For reginned notes processed by an end user who converted such notes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned notes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered—

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

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(2) Exported by the exporter on the date CCC determines is the date on which the cotton is shipped through July 31, 2008.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchase and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the CCC-issued provisions of the Upland Cotton Domestic User/Exporter Agreement.

Subpart D—Recourse Seed Cotton Loans

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.160 Applicability.

(a) This subpart is applicable to the 2002 through 2007 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which 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 shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall

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be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not under the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not under the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize waiver or modification of deadlines and other program requirements where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not

executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.162 [Reserved]

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

An eligible producer must meet the requirements of § 1427.4.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

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(2) Be stored in identity-preserved lots in approved storage meeting requirements of §1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely under part 718 of this title; and

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in §1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a non-refundable loan service fee to CCC at a rate determined by CCC.

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(b) Interest which accrues for a loan shall be determined under part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined under paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure;

(2) Condition of the cotton;

(3) Location of the storage site or structure; and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's

farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time before maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days after the date of the producer received the AMS classification under § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment under subpart A of this part, on the lint cotton, but:

(i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan under subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved under subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage before obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on

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or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a non-recourse loan under subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan under subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

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§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

- (i) The amount of the loan;
- (ii) Any additional amounts paid by CCC for the loan;
- (iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;
- (iv) Applicable interest on such amounts; and
- (v) Liquidated damages under paragraph (e) of this section.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such 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 acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's

claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages under paragraph (e) of this section; and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which

CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages under paragraph (e) of this section;

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation under paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken under paragraphs (f) or (g) of this section.

(i) Any or all of the liquidated damages assessed under the provision of paragraph (e) of this section may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining

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approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC-49, "Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,"

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing

authority as required under §1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of \$25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed \$250,000. If the calculated net worth exceeds \$25,000, the warehouseman may satisfy any deficiency in net worth between the \$25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of §1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of

legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC. CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may

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be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least \$25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 56 FR 11502, Mar. 19, 1991]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility

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for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

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§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

Subpart F—2002-Crop Cottonseed Payment Program

SOURCE: 68 FR 20332, Apr. 25, 2003, unless otherwise noted.

§ 1427.1100 Applicability.

(a) This subpart sets forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments under the cottonseed payment program for the 2002 crop 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 for cottonseed produced and ginned in the United States.

§ 1427.1101 Administration.

(a) The cottonseed payment program shall be administered by the Executive Vice President, CCC, or a designee and carried out by employees of the Farm Service Agency (FSA).

(b) Representatives and employees of FSA have no authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any determination made by any FSA official or employee.

(d) The Deputy Administrator for Farm Programs, FSA, may specify, waive or modify deadlines and other program requirements where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program.

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(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void except as otherwise provided in this part.

§ 1427.1102 Definitions.

The definitions in this section shall apply to the cottonseed payment program provided for in this subpart. The terms defined in §1427.3 of this part shall also be applicable to this subpart.

Application period means a period, as announced by CCC, during which applications for payments under the Cottonseed Payment Program must be received to be considered for payment.

Cottonseed means the seed from any varieties of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

Gin means a person (*i.e.*, an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cotton seed from cotton lint in commercial quantities.

Lint means cotton lint as contained in bales of cotton ordinarily marketed as cotton and excludes any linters, raw motes, re-ginned motes, cleaned motes, and any other gin waste or byproduct not traditionally defined as cotton lint.

Number of ginned cotton bales means the number of ginned running bales of cotton based on individual bale weights unadjusted to a uniform bale weight.

Running bale means a bale of cotton lint that has a minimum weight of 425 pounds and is not a bale of motes, linters, gin waste, or other gin byproduct.

Ton means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

§ 1427.1103 Eligible cottonseed.

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

(a) Have been grown in the United States during the 2002-crop production period.

(b) Have been ginned by the applicant from 2002-crop cotton.

(c) 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.

§ 1427.1104 Eligible first handlers.

(a) For the purpose of this subpart, an eligible first handler of cottonseed shall be a gin that ginned 2002-crop cotton.

(b) Applicants must comply with the terms and conditions set forth in this subpart and instructions issued by CCC, and sign and submit an accurate, legible and complete Cottonseed Payment Program Application and Certification.

(c) Applicants signing the cottonseed payment application or receiving payment under this subpart must share any payment with the producer of the cotton that was the basis of the cottonseed payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent that such funds will be shared with the producer by the gin, those funds will be considered to have been received by the applicant on behalf of such producers.

§ 1427.1105 Payment application.

(a) Payments in accordance with this subpart shall be made available only to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application and Certification.

(b) Payment applications must be received by the program application deadline announced by CCC. Applications received after such application deadline will not be accepted for payment.

(c) Cottonseed Payment Program Application and Certifications may be obtained from the CCC as announced by press release. In order to participate in the cottonseed payment program under this subpart, first handlers of cottonseed must execute and submit to CCC according to announced instructions

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the Cottonseed Payment Program Application and Certification.

§ 1427.1106 Available funds.

The total available program funds shall be \$50 million for 2002-crop cottonseed.

§ 1427.1107 Applicant payment quantity.

The applicant's payment quantity of cottonseed will be determined by CCC based on the eligible number of ginned cotton bales and the cotton lint weight from those bales as submitted on the Cottonseed Payment Application and Certification and/or obtained by CCC, with the agreement of the applicant, from the Agricultural Marketing Service. The applicant's payment quantity of cottonseed shall be calculated by multiplying:

(a) The applicant's weight of eligible lint for which payment is requested, as approved by CCC, by;

(b) The national Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, as determined by CCC for the 5 years preceding the 2002 crop year.

§ 1427.1108 Total payment quantity.

The total quantity of 2002-crop cottonseed produced in the United States is potentially eligible for payment under this subpart. The total payment quantity of cottonseed will be the total of eligible quantities of cottonseed for which completed applications for payment are received within the application period announced by CCC. 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 weight of cotton lint (ton-basis) for which payment is requested by all applicants, as approved by CCC, by

(b) The national Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, as determined by CCC for the 5 years preceding the crop year for which the cottonseed payments are provided.

§ 1427.1109 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance with this subpart shall be determined by CCC by dividing the total available program funds by the total eligible payment quantity of cottonseed unless the calculation would provide an excess rate of payment in which case an alternative method will be used as determined appropriate by CCC.

§ 1427.1110 Payment calculation and form.

(a) Payments in accordance with this subpart shall be determined for individual applicants by multiplying:

(1) The payment rate, determined in accordance with § 1427.1109, by

(2) The eligible payment quantity of the applicant, determined in accordance with § 1427.1107 and other provisions of this subpart.

(b) After receipt of the application for payment, CCC will issue payments to the applicant by electronic funds transfer to the applicant's account except that applicants may request that payment be made by mailed check.

§ 1427.1111 Liability of first handler.

(a) If any person makes any erroneous or fraudulent representation in obtaining a cottonseed payment under this part, or in connection with such a payment engages in a scheme or device that tends to defeat the purposes of this program, the person shall be liable to CCC for the amount of the payment and interest on such payment as determined by CCC. Such remedy will be in addition to whatever additional remedies may be allowed by law.

(b) If more than one person executes a program payment application with CCC and payments are made thereunder, each such person shall be jointly and severally liable for any violation of the terms and conditions for any payment made to anyone under that application or for any refund due from any person signing that application. Such liability shall remain until payment in full is made of any such refund and its related charges.

(c) If a person receives a program payment in excess of the amount authorized by this subpart, that person

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shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(d) From the date of the payment application until the earlier of 3 years after the date of the application or July 31, 2006, 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 or questions involving the payments, records must be kept for such longer period as may be specified by CCC until such controversy is resolved.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

SOURCE: 67 FR 64459, Oct. 18, 2002, unless otherwise noted.

§ 1427.1200 Applicability.

(a) These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program under section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 and section 1208 of the Farm Security and Rural Investment Act of 2002.

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient under this subpart, in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Friday through Thursday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe, is less than the Friday through Thursday adjusted average domestic spot price quotation for base quality U.S. Pima cotton, as determined by the Secretary for purposes of administering the ELS Cotton Competitiveness Payment Program, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined under § 1427.1207, is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton as determined by the Secretary.

(c) Additional terms and conditions may be in the ELS Cotton Domestic User/Exporter Agreement, which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe the forms to be used in administering the ELS cotton competitiveness payment program.

§ 1427.1201 [Reserved]

§ 1427.1202 Definitions.

Consumption means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations

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for foreign growths of ELS cotton, quoted cost, insurance, and freight C.I.F. northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C.I.F. northern Europe.

(2) *Forward LFQ* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C.I.F. northern Europe.

Spot price means the Friday through Thursday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for base quality U.S. Pima, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be a weighted average of the two quotations, as determined by the Secretary. If only one quotation is available, that quotation will be used.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

(1) Opened by an eligible domestic user on or after October 1, 1999, or

(2) Exported by an eligible exporter on or after October 1, 1999, during a Friday through Thursday period in which a payment rate, determined under § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

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

(2) Loose.

(c) Eligible ELS cotton must not be:

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

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Textile mill wastes; or

(5) Semi-processed or reginned (processed) motes.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (domestic user), and who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (exporter), and who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications under this subpart must contain documentation required by the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Thursday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Thursday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, current LFQ and forward LFQ for only one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ (Spring transition) and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the current LFQ in com-

ination with the LFQ shall be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

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(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement.

PART 1430—DAIRY PRODUCTS

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AUTHORITY: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c.

Subpart A—Price Support Program for Milk

SOURCE: 67 FR 64476, Oct. 18, 2002, unless otherwise noted.

§ 1430.1 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

AMS means the Agricultural Marketing Service, USDA.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

USDA means the United States Department of Agriculture.