

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

RIN 0560-AF13

Amendments to the Regulations for Cotton Warehouses Regarding the Delivery of Stored Cotton

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations governing cotton warehouses under the United States Warehouse Act (USWA) to establish a cotton shipping standard that would define the statutory phrase "without unnecessary delay" which could be used to determine whether warehouse operators deliver cotton timely. The Department of Agriculture (USDA) is taking this action as the result of two Federal District Court orders requesting USDA to define the statutory phrase "without unnecessary delay" as set forth in the USWA. Concurrently, several segments of the cotton industry requested the implementation of a uniform national cotton shipping standard for the delivery of stored cotton that would increase the market value of producer cotton through timely and improved delivery. Before issuing this proposed rule, the Farm Service Agency (FSA) published an advanced notice of proposed rulemaking (ANPRM) in the May 26, 1998, **Federal Register** (63 FR 28488) seeking comments on two independent options and specific questions regarding National Cotton Flow Standard issues. Each option contained identical methods for defining "without unnecessary delay," and establishment of both a uniform cotton shipping standard and dispute resolution. Along with minimal USDA involvement Option I offered nothing more. However, Option II offered standardized terminology, definitions, dispute mediation, a national cotton flow shipping status report, user fees, and

greater USDA regulatory role. Public comments favored Option I and expressed a strong conviction that USDA should only establish a cotton shipping standard, but allowed enforcement by the cotton industry without USDA involvement, assessment of user fees, or increased governmental costs. This proposed rule expresses those public comments and provides another opportunity for the public to comment before FSA publishes a final rule.

DATES: Comments should be submitted on or before July 27, 1999 to be assured of consideration.

ADDRESSES: FSA invites interested persons to submit written comments on this proposed rule to: Steve Gill, Director, Warehouse and Inventory Division, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, D.C. 20250-0553; telephone (202) 720-2121; fax (202) 690-3123; or by E-mail comments to: Steve Mikkelsen@wdc.fsa.usda.gov. Additionally, interested persons may send comments via the Internet through the National Cotton Flow's (NCF) homepage at: <http://www.fsa.usda.gov/nfc>.

All written comments received in response to this proposed rule will be available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Deputy Director, Warehouse and Inventory Division, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, D.C. 20250-0553; telephone (202) 720-2121; or fax (202) 690-3123. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has reviewed the proposed rule and determined the rule to be significant for

the purposes of Executive Order 12866. A Cost-Benefit Assessment (CBA) was prepared. The costs associated with the implementation of the proposed rule will be minimal to all parties involved. The CBA summarized the cost and benefit impact of the proposed rule as follows:

The cost associated with the implementation of the proposed rule will be minimal to all parties involved.

The cotton industry will benefit from FSA establishing a shipping standard that the industry can apply through arbitration or legal proceedings to determine whether warehouse operators are delivering cotton "without unnecessary delay." Establishment of a national shipping standard would potentially help (1) maintain the competitiveness of U.S. cotton in domestic and world markets, (2) improve the prices that producers receive in those areas affected by delivery delays, and (3) eliminate any disruption in commerce due to uncertainty of delivery expectations.

Copies of the CBA are available upon request at the address listed above.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12612, Federalism

This proposed rule would not involve any policies that have federalism implications under Executive Order 12612.

Executive Order 12372

FSA programs are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments set forth in this proposed rule do not affect information collection or recordkeeping requirements.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouseman's part.

Unfunded Mandate Reform Act of 1995 (UMRA)

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Since the early 1960's, the timely delivery and shipping of stored cotton (cotton flow) has been an ongoing issue throughout the cotton industry. While cotton shippers and cotton merchants require timely delivery and shipping to meet the demands of the marketplace, cotton warehousemen contend that the delivery and shipping demands placed on them by shippers and merchants are unreasonable and exceeded warehouse capabilities. When delivery and shipping delays began to occur during the 1995/96 crop year, rather than exercising the arbitration rights incorporated in the voluntary standard that was implemented by the Coalition for Cotton Flow Standards (CCFS), an organization created by the National Cotton Council, several cotton shippers filed complaints with FSA. These shippers requested FSA to investigate the cotton flow situation, and suspend the federal license of those warehouses that had not delivered and shipped cotton "without unnecessary delay" as required by the USWA. USWA personnel investigated and found the lack of uniform common terms and a standard process for requesting services may have contributed to confusion and the appearance of longer delivery and shipping delays.

In addition to filing complaints with FSA, several shippers also filed lawsuits in United States District Courts against two cotton warehousemen. In each of these cases, the lack of determination by USDA in the use and meaning of the USWA statutory phrase "without unnecessary delay" was a key issue for the courts. Ultimately, the shippers

elected to dismiss their suits after jointly agreeing to request that the cases be remanded for USDA to determine the definition of the statutory phrase "without unnecessary delay." The Courts agreed and remanded the matter of defining "without unnecessary delay" to USDA.

Concurrently, several segments of the cotton industry requested USDA to implement a uniform national cotton shipping standard, based on weekly deliveries of 4.5% of each warehouse's Commodity Credit Corporation's (CCC) Cotton Storage Agreement (CSA) approved capacity. The industry presented 4.5% as the level that would expedite the delivery and shipment of U.S. cotton into marketing trade channels and enhance prices paid producers while reducing the cost of handling cotton. Because the CSA's applicability was for CCC-interest cotton only and about 80% of all cotton being receipted under the USWA's electronic warehouse receipt authority. USDA perceived that a delivery and shipping standard should be based on the USWA rather than the CSA.

As a result of these events, on May 26, 1998, USDA published an ANPRM (63 FR 28488) that sought public comments on two independent options and specific questions regarding National Cotton Flow Standard issues. Each contained identical methods for defining "without unnecessary delay," and establishment of both a uniform cotton shipping standard and dispute resolution. Along with minimal USDA involvement Option I offered nothing more. However, Option II offered standardized definitions, terminologies, dispute mediation, a national cotton flow shipping status report, operated with user fees, and a greater USDA regulatory role. Public comments favored Option I and strongly expressed a conviction that USDA should only establish a cotton shipping standard, but allow enforcement by the cotton industry without USDA involvement, assessment of user fees, or increased governmental costs.

Summary of Public Comments

FSA received 47 public comments in response to the ANPRM that was published on May 26, 1998 (63 FR 28488). Comments and suggestions were received from 6 sectors of the trade-industry as follows: 6 Cotton Trade Associations; 23 Cotton Warehouse Operators; 15 Cotton Brokers/Merchants; 1 Attorney; 1 Retired USDA Employee; and 1 Cottonseed Oil Processor. Of the comments received, 1 respondent approved of the ANPRM's Option I as written; 35 respondents

approved of the ANPRM's stated cotton flow standard, but believed that any dispute resolution should be administered by cotton industry arbitration procedures; 4 respondents favored the ANPRM's stated cotton flow standard without arbitration procedures; 2 respondents believed that compliance should be enforced through the Commodity Credit Corporation's Cotton Storage Agreement with modified cotton industry arbitration provisions; 1 respondent favored the ANPRM's 4.5% shipping requirement, but opposed the 14-day shipping period included in Option II; 1 respondent favored the ANPRM's 4.5% shipping requirement, but wanted it to be based on the previous week's ending inventory rather than a licensed or approved capacity; 1 respondent opposed the entire ANPRM, but favored cotton industry self-regulation; and 2 respondents favored no established cotton shipping standard.

Public comments received in response to the ANPRM expressed the strong conviction that USDA should define "without unnecessary delay" through the establishment of a national cotton shipping standard based on weekly deliveries of 4.5% of a warehouse's approved capacity, but allowed enforcement by the cotton industry without governmental involvement, assessment of user fees, or increased governmental costs. Since public comments strongly expressed that USDA limit its role and involvement to defining "without unnecessary delay" through establishing a national cotton shipping standard, reserving enforcement by the cotton industry without governmental involvement, assessment of user fees, or governmental costs. FSA is limiting USDA's role and involvement in publishing this proposed rule that sets forth a national cotton shipping standard that defines "without unnecessary delay," and reserves any compliance or dispute resolution for the cotton industry without USDA enforcement or involvement.

The provisions in this proposed rule would be applicable to cotton warehousemen licensed under the USWA and warehousemen who utilize electronic warehouse receipts stored in a central filing system approved under the USWA.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Delivery, Reporting and recordkeeping requirements, Shipping, Surety bonds, Warehouses.

For the reasons stated in the preamble, the Farm Service Agency

proposes to amend 7 CFR part 735 as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR part 735 continues to read as follows:

Authority: 7 U.S.C. 241 *et seq.*

§§ 735.106 through 735.199 [Added and Reserved]

2. Sections 735.106 through 735.199 are added and reserved.

3. Section 735.2 is amended by adding paragraph (jj) to read as follows:

§ 735.2 Terms defined.

* * * * *

(jj) *Force majeure*. Severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military authority, non-availability of transportation facilities, or any other cause beyond the control of the warehouseman that renders performance impossible.

4. Add an undesignated center heading entitled, "Delivery and Shipping" after reserved § 735.199.

5. Sections 735.200 through 735.202 are added under the undesignated heading "Delivery and Shipping" to read as follows:

§ 735.200 Applicability.

The cotton shipping standard set forth in § 735.201 is applicable to all cotton warehousemen licensed under the Act and to all warehousemen that issue electronic warehouse receipts through an authorized electronic warehouse receipt provider in accordance with §§ 735.100 through 735.105 regardless of whether the warehouse is licensed under the Act.

§ 735.201 Cotton Shipping Standard.

Unless prevented from doing so by force majeure, a warehouseman identified in § 735.200 shall deliver stored cotton without unnecessary delay. A warehouseman shall be considered to have delivered cotton without unnecessary delay if for the week in question, the warehouseman has delivered or staged for scheduled delivery at least 4.5% of either their licensed capacity or Commodity Credit Corporation approved storage capacity or other storage capacity as determined by the Secretary to be in effect during the week of shipment.

§ 735.202 Compliance and Dispute Resolution.

(a) Any claims for noncompliance with the cotton shipping standard will be resolved by the parties involved through established industry,

professional, or mutually agreed upon arbitration procedures. The arbitration procedures shall be nondiscriminatory and provide all persons equal access and protection relating to the cotton shipping standard.

(b) No arbitration determination or award resulting from noncompliance with the shipping standard shall affect, obligate, or restrict the Farm Service Agency's authority to provide, administer, and regulate the issuance of licenses and receipts, contractual agreements, or authorized electronic warehouse receipt provider systems in accordance with the Act.

(c) The Farm Service Agency shall not settle unresolved disputes involving the cotton shipping standard or associated damages.

(d) In the event any party requests assistance from or initiates the involvement of the Farm Service Agency in matters relating to the cotton shipping standard, the initiating party shall be responsible for all costs incurred by the Farm Service Agency. Before any such assistance is provided, the initiating party shall make payment to the Farm Service Agency in an amount equal to the Agency's good faith estimate of costs and expenses that will be incurred in fulfilling the request. Costs incurred that exceed the Agency's good faith estimate will be the responsibility of the initiating party.

Signed at Washington, D.C., on May 24, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99-13635 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 98-065-1]

Animal Welfare; Confiscation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to allow us to place animals confiscated from situations detrimental to the animal's health and well-being with a person or facility that is not licensed by or registered with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, if the person or facility can offer a level of care equal

to or exceeding that required by the regulations. The change would facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98-065-1, Regulatory Analysis and Development, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 98-065-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-8100.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 sets forth general requirements, and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities.