

Rules and Regulations

Federal Register

Vol. 68, No. 80

Friday, April 25, 2003

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AG97

Cottonseed Payment Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the 2002-crop Cottonseed Payment Program authorized by section 206 of the Agricultural Assistance Act of 2003. Section 206 requires the Commodity Credit Corporation to provide assistance to producers and first-handlers of the 2002 crop of cottonseed. Other provisions of Agricultural Assistance Act of 2003 will be implemented under separate rules.

EFFECTIVE DATE: April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Gene Rosera at (202) 720-8481, or via electronic mail at gene_rosera@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 217(b) of Title II of Division N of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7) provides that the regulations to implement that title, including those implemented in this notice, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). Thus, this rule is final as published. Division N, Title II, of Public Law 108-7 is also known as the "Agricultural Assistance Act of 2003" ("2003 Act").

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.073—Crop Disaster Program.

Regulatory Flexibility Act

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

Environmental Assessment

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

Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V,

published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

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

Small Business Regulatory Enforcement Fairness Act of 1996

Section 217(c) of the 2003 Act requires CCC to use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), to forgo the usual 60-day delay in the effective date of major final rules required by SBREFA (5 U.S.C. 801(a)(3)(A)(ii)). Also, this rule affects a number of persons who may have a strong need for the relief provided in this rule. For these reasons, the rule is made effective on publication in the **Federal Register**.

Paperwork Reduction Act

Section 217 of the Agricultural Assistance Act of 2003 requires that these regulations be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public do not have to be approved by the Office of Management and Budget or be subject to the 60-day public comment period required by 5 CFR 1320.8(d)(1).

Background

Section 206 of the 2003 Act directs the Secretary of Agriculture to use \$50 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers and first handlers of the 2002 crop of cottonseed. Previous 1999-crop and 2000-crop cottonseed programs were codified in 7 CFR part 1427. This rule follows the model set by those preceding programs.

The major provisions of this program are as follows. The CCC will announce a period during which U.S. cotton gins may apply for cottonseed payments. To

participate, cotton gins must complete an application form including: (1) Applicant name, address, and a contact person and phone; (2) bank account information for payees electing to have payments made by direct account deposit; (3) the gin 5-digit identifying code; (4) the number of bales of cotton ginned from the 2002 cotton crop; and, (5) the weight (in pounds) of cotton lint of the reported bales for which payment is requested. CCC must receive the application within the announced application period.

Upon receipt of all payment applications from gins, CCC will estimate the national total quantity of cottonseed for payment based on the number of bales and the weight of cotton lint for which payment is requested. The payment rate per ton of cottonseed will be determined by dividing the available \$50 million by the total quantity of cottonseed for payment. With the available funding, the resulting payments to individual cotton gins are not subject to any payment limitation.

CCC plans to provide all 2002-crop cottonseed payments to cotton gins and to require gins to share such payments with cotton producers to the extent that the effect of low cottonseed prices for the 2002 crop were borne by producers or to the extent that such sharing is consistent with the arrangements between the producer and the gins. This is as it was in previous cottonseed programs which appeared to work well. Presumably, Congress expected the old program to serve as the model for the program provided for in the new legislation as no dissatisfaction was expressed. Based on their contractual or marketing agreements, ginner and producers are best suited to know how to most equitably distribute the funds. A producer's recourse, for an unfavorable distribution, will be against the "first handler" or ginner that receives the payments. Other program provisions also remain as before except that changes have been made for clarity and to allow for greater program efficiency.

List of Subjects in 7 CFR Part 1427

Agriculture, Cottonseeds.

■ For the reasons set out in the preamble, 7 CFR part 1427 is amended as set forth below.

PART 1427—COTTON

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

Authority: 7 U.S.C. 7213–7237; 15 U.S.C. 714b, 714c; Pub. L. 108–7.

■ 2. Add subpart F to read as follows:

Subpart F—2002-Crop Cottonseed Payment Program

Sec.

- 1427.1100 Applicability.
- 1427.1101 Administration.
- 1427.1102 Definitions.
- 1427.1103 Eligible cottonseed.
- 1427.1104 Eligible first handlers.
- 1427.1105 Payment application.
- 1427.1106 Available funds.
- 1427.1107 Applicant payment quantity.
- 1427.1108 Total payment quantity.
- 1427.1109 Payment rate.
- 1427.1110 Payment calculation and form.
- 1427.1111 Liability of first handler.

Subpart F—2002-Crop Cottonseed Payment Program

§ 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.

(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 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 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.

Signed in Washington, DC, on April 9, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03-10222 Filed 4-24-03; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 03-005-1]

Tuberculosis in Cattle and Bison; State Designations; California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing California from the list of accredited-free States and adding it to the list of