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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN: 0560-AI16

Upland Cotton Base Quality

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule makes technical changes to the Commodity Credit Corporation (CCC) upland cotton marketing assistance loan (MAL) regulations to revise certain grade and quality references. Changes include revising references to specific quality characteristics of certain base quality grades to simply a reference to the “base quality” of the grade without further specification. CCC uses base quality to calculate upland cotton loan rates, Adjusted World Price (AWP), and related adjustments. This change will accommodate any future changes to the base quality specifications that define the base quality characteristics of a particular grade. This rule also changes a broad reference of a base grade to a more specific reference that names the particular relevant grade. None of these changes involve a change of policy and would not have affected any program determinations in past crop years, had these changes been in place at the time. They improve the regulations by maintaining consistency with base quality specifications as that may change in the future. This amendment will apply starting with the 2012 crop.

DATES: Effective date: **[Insert date of publication in the FEDERAL REGISTER]**.

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Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The Farm Service Agency (FSA) operates an upland cotton MAL program for upland cotton using CCC funds. The base quality loan rate is set in section 1201 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110-246) at 52 cents a pound for the 2008 through 2012 crop years. Loan rates for individual bales depend on the grade of the cotton and the quality within the grade. The grades referenced in this rule are Middling (M), Strict Middling (SM), and Strict Low Middling (SLM). The loan schedule provides a base grade that produces a loan rate of 52 cents per pound at base quality. That base grade is SLM 1 1/16-inch, leaf 4 cotton. Producers can either forfeit the cotton in satisfaction of the loan or repay the loan at a rate that is based, generally, on a calculated AWP. Repayment rates are adjusted, like the loan rates themselves, based on grade and quality within the grade. FSA uses measures of strength and length uniformity in determining the price support value of a bale of upland cotton. The base-quality ranges for these factors are those for which loan rate premiums and discounts do not apply. The calculations specified in § 1427.25(c)(2) are used to make an overall adjustment in basic repayment rates for cotton loans while § 1427.25(e)(2)(ii) and

(f)(2)(ii) are directed at coarse count and fine count adjustments, respectively, in the repayment rates for certain cotton grades.

Prior to this rule, the cotton regulations specified in 7 CFR part 1427 that various AWP adjustments be made based on comparisons between certain loan rates for base qualities of certain grades. However, rather than simply refer to the “base quality” those specific qualities of the base grade (micronaire, length uniformity, and strength) are stated in the rules. That specificity creates technical problems if the loan schedules and base grade specifications are changed. CCC establishes upland cotton base quality ranges administratively, based in part on the ranges reported by the cotton industry to the USDA Agricultural Marketing Service (AMS). AMS can and does change the specification of “base quality” cotton in response to observed market valuation of quality attributes. By replacing the specific ranges with the term “base quality,” CCC’s use of the term in the regulation remains consistent with AMS in the future.

Prior to this rule, § 1427.25(c) made an adjustment, “between the applicable loan rate for an upland cotton crop for M 1 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 79.5 through 82.4 percent) cotton and the loan rate for base quality upland cotton.” This rule addresses, first, the specification in § 1427.25(c)(2) regarding the references to M 1 3/32–inch, leaf 3. This rule eliminates the base quality specifications in the regulation (micronaire 3.5 through 3.6 and 4.3 through 4.9, etc.). The text regarding that grade is being changed to simply refer to “base quality M 1 3/32–inch, leaf 3.” Should the specifications for base quality for “M 1 3/32–inch, leaf 3” change in the future, there will be no need to change the regulations.

Second, this rule makes another change to § 1427.25(c)(2). The regulation as quoted above refers to comparing the applicable “M 1 3/32–inch, leaf 3” loan rate to “the loan rate for base quality upland cotton.” That reference in § 1427.25(c)(2) to “base quality upland cotton” is to the base grade for upland cotton MALs -- as noted above -- namely, base quality SLM 1 1/16-inch, leaf 4 cotton. So that the regulations may be specific and not create confusion with the “base quality” references that are being added with respect to other grades, this rule changes the reference in § 1427.25(c)(2) to “base quality upland cotton” to a specific reference to “base quality SLM 1 1/16-inch, leaf 4 cotton.” With these two changes, the regulations in § 1427.25(c)(2) will provide for a comparison “between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.” Had that language been in place in 2011, there would have been no change in adjusted price determinations specified in § 1427.25(c)(2). The same will be true in 2012 and thereafter if there is no change to the base quality specifications for the “M 1 3/32-inch, leaf 3” and “SLM 1 1/32-inch, leaf 4” grades. But if there are changes, then no conforming adjustment in the regulations will be needed since the changes in the base quality specifications would be incorporated, in effect, by the generic reference to the “base quality” of those two grades. The base qualities of the grades will be whatever the standards current at that time specify.

Similarly, in § 1427.25(e)(2)(ii) and (f)(ii) of the regulations there are other references to the “M 1 3/32-inch, leaf 3” grade like the one to that grade in § 1427.25(c)(2) - that is, with the specific qualities of the base grade set out. There are also similar references with similar specificity regarding the grade “SLM 1 1/32 -inch,

leaf 4” in § 1427.25(e)(2)(ii) and grade “SM 1 1/8-inch, leaf 2” in § 1427.25 (f)(2)(ii). As with the change regarding grade “M 1 3/32-inch, leaf 3” in § 1427.25(c)(2), the references to base quality for that grade and the other grades § 1427.25(e)(2)(ii) and (f)(2)(ii) are modified to replace the specification for base quality with a reference to the use of the “base quality” grade in the comparison (whatever those specifications have been). Therefore, this rule changes the reference in § 1427.25(e)(2)(ii) to a comparison “between the applicable loan rate for an upland cotton crop for M 1 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 1/32-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 79.5 through 82.4 percent) cotton” to a comparison “between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.”

Likewise, this rule changes the comparison in § 1427.25(f)(2)(ii) from a comparison “between the applicable loan rate for an upland cotton crop for M 1 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 79.5 through 82.4 percent) cotton and the loan rate for an upland cotton crop for SM 1 1/8-inch, leaf 2, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton” to specify that it is a comparison “between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 1 1/8-inch, leaf 2 cotton.”

Neither of these changes in § 1427.25(e)(2)(ii) and (f)(2)(ii) would have affected, had they been in place earlier, previous determinations of loan repayment rates. However like the § 1427.25(c)(2) changes, these changes accommodate future changes in what constitutes “base quality” in the specific grades listed there.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations to implement Title I of the 2008 Farm Bill be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Also, this rule is technical in nature, not substantive, and a delay in implementing this rule would be contrary to the public interest.

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The technical corrections identified in this final rule do not change the structure or goals of the program and can be considered simply administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the Federal Register on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act

OMB has designated this rule as not significant. As a result, this rule is not considered a major rule under SBREFA and FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the Federal Register.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Domestic Federal Assistance to which this rule will apply is Commodity Loan and Loan Deficiency Payments – 10.051.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 1427

Cotton, Cottonseeds, Loan programs-agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety Bonds, Warehouses.

For the reasons discussed above, this rule amends 7 CFR part 1427 as follows:

PART 1427—COTTON

1. The authority for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7236 and 8737; and 15 U.S.C. 714b, and 714c.

2. Amend § 1427.25 by revising paragraphs (c)(2), (e)(2)(ii), and (f)(2)(ii) to read as follows:

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

* * * * *

(c) * * *

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for base quality SLM 1 1/16-inch, leaf 4 cotton.

* * * * *

(e) * * *

(2) * * *

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SLM 1 1/32-inch, leaf 4 cotton.

* * * * *

(f) * * *

(2) * * *

(ii) The difference between the applicable loan rate for an upland cotton crop for base quality M 1 3/32-inch, leaf 3 cotton and the loan rate for an upland cotton crop for base quality SM 1 1/8-inch, leaf 2 cotton.

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Signed on March 28, 2012.

Bruce Nelson,
Executive Vice President,
Commodity Credit Corporation.

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