



## **DEPARTMENT OF AGRICULTURE**

### **Commodity Credit Corporation**

#### **7 CFR Part 1423**

**[Doc. No. AMS-FTPP-18-0085]**

### **Delivery and Shipping Standards for Cotton Warehouses**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture's (USDA) Commodity Credit Corporation (CCC) proposes to amend the regulations that specify the requirements for CCC-approved warehouses storing and handling cotton. The amendment would change how warehouse operators account for bales made available for shipment (BMAS) and how CCC determines BMAS compliance. The current regulation allows bales that are made available for shipment by the warehouse operator but not picked up (BNPU) by the shipper to count for up to two reporting weeks when calculating and reporting BMAS for the reporting week. This amendment proposes to limit BNPU to be counted for one week, with BMAS to include only bales actually shipped or not picked up for that reporting week. CCC also proposes to allow two additional options for the warehouse operator to meet the 4.5% cotton flow requirement by averaging either the BMAS for the reporting week and the week prior to the reporting week, or by averaging the BMAS for the reporting week and the week after the reporting week. In addition, CCC proposes to amend the regulations to reflect the transfer of warehouse programs and activities from USDA's Farm Service Agency to AMS in 2018.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments should be submitted electronically at [www.regulations.gov](http://www.regulations.gov). Comments may also be submitted to: Dan Schofer, AMS, 1400 Independence Ave. SW, Stop 3061, Room 2555 South Building, Washington, DC. 20250-3061. Comments will be made available for public inspection at Room 2530-S of the above address during regular business hours or electronically at [www.regulations.gov](http://www.regulations.gov). Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS-FTPP-18-0085, the date of submission, and the page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dan Schofer at [dan.schofer@ams.usda.gov](mailto:dan.schofer@ams.usda.gov) or 202-690-2434.

**SUPPLEMENTARY INFORMATION:**

In order to provide cotton warehouse operators the flexibility to address real-time scheduling changes and market demands faced by cotton merchants and shippers, CCC would use a two-week rolling average of BMAS to determine a warehouse operator's compliance with the minimum cotton flow rate of 4.5% of applicable storage capacity.

For example, a cotton warehouse operator has scheduled 4.5% of the warehouse's applicable storage capacity to be available for shipment for several consecutive weeks. The week before a load is scheduled to be picked-up, a shipper requests to change its load out date to an earlier load out date in the preceding week, for an amount representing 0.25% of the warehouse's applicable storage capacity. If the warehouse operator has that specific load (0.25% of licensed capacity) already staged for a scheduled delivery the following week, that load could be picked up earlier, in the week preceding the original

load out date. Without using a two-week rolling average and without making any additional bale adjustments, the warehouse operator would be considered to have delivered cotton without unnecessary delay for the first week because its BMAS is 4.75%, which is greater than the required 4.5%. However, the warehouse operator would not be considered to have delivered cotton without unnecessary delay during the second week because its BMAS is 4.25%, which is less than the required 4.5%. In this example, the option to calculate BMAS compliance using the rolling average of the reporting week and the week preceding the reporting week would result in a determination by CCC that the cotton warehouse operator is in compliance with a BMAS of 4.5% for the reporting week.

In another example, one that illustrates the third option of meeting the cotton flow requirement, a cotton warehouse operator schedules 4.5% of the applicable storage capacity for delivery in each of three consecutive weeks. During the first week, the cotton warehouse operator actually makes available for shipment 6.0% of the applicable storage capacity. During the second week, the cotton warehouse operator only makes 2.0% of applicable storage capacity available for shipment. During the third week, the cotton warehouse operator makes 7.0% of applicable storage capacity available for shipment. In this example, the cotton warehouse operator is considered to have delivered cotton without unnecessary delay during the first and the third weeks. During the second week however, the CCC will use the two-week rolling average of either the applicable week and the immediately preceding week, which results in an average BMAS of 4.0%, or the two-week rolling average of the applicable week and the immediately succeeding week, which results in an average BMAS of 4.5% to make its compliance determination

for the second week. Using the two-week rolling average of the second and third week to calculate the BMAS for the second week allows the CCC to consider the cotton warehouse operator to have delivered cotton without unnecessary delay for that second week because the 4.5% average met the cotton flow requirement.

This proposed rule change would continue to require warehouse operators to report their BMAS each week based upon the revised definition of BMAS. CCC would determine compliance on an individual reporting week, or if needed, use an option of one of the rolling average calculations of BMAS for two consecutive reporting weeks. In the event that CCC uses the average of the applicable week and the immediately succeeding week, CCC would determine compliance for the applicable week after it receives the data from the immediately succeeding week. These options would allow cotton warehouse operators to meet the cotton flow requirements of the regulation while being flexible to the needs of the shipping and merchant industries.

#### **Executive Orders 12866 and 13771, and Initial Regulatory Flexibility Analysis**

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 et seq.], CCC has considered the economic effect of this action on small

entities and has determined that this proposed rule would not have a significant economic impact on a substantial number of small business entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Currently, there are 326 CCC-approved warehouses that store cotton. The U.S. Small Business Administration's Table of Small Business Size Standards matched to the North American Industry Classification System (NAICS) Codes identifies small business size by average annual receipts or by the average number of employees at a firm. This information can be found at 13 CFR parts 121.104, 121.106, and 121.201. CCC estimates that 50 CCC-approved warehouses that store cotton would be considered small businesses according to SBA standards.

Sizes of cotton warehouses vary in size as well as business type, including small, independent country warehouses, small to large sized warehouses owned by cooperatives of producers, and small to large sized warehouses owned by corporate shippers/merchants. The effects of this proposed rule are not expected to be disproportionately greater or lesser for small businesses than for large businesses.

USDA is committed to complying with the E-Government Act of 2002 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. Accordingly, CCC developed options for companies requesting service to do so electronically.

**Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The warehouse operator may resolve any claim for noncompliance from any entity, such as a merchant or shipper, other than CCC with the cotton shipping standard in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. CCC does not have authority to limit an entity from filing suit in a court of law against another entity.

The warehouse operator may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action.

### **Paperwork Reduction Act**

The cotton information covered in this proposed rule is the weekly reporting of BMAS by cotton warehouses. BMAS is reported through the Electronic Warehouse Receipt Inc. (EWR Inc.) system, to which AMS has access. EWR Inc. is a USDA licensed provider company and generally contains information that is exempt from the Paperwork Reduction Act (44 U.S.C. Chapter 35) because it is usual and customary

business information. The proposed change in the regulation would not change the burden associated with reporting BMAS, which is required to be reported weekly.

### **Background and Proposed Revisions**

AMS administers the CCC-approved warehouse program for CCC. This responsibility includes entering into contracts for the storage and handling of CCC-interest commodities with warehouses. The operators of those approved warehouses are required to comply with CCC regulations, which include reporting information about the stored commodities to CCC. The specific requirements that operators of approved warehouses must meet are specified in the regulations at §7 CFR 1423 “Commodity Credit Corporation Approved Warehouses” and in the signed storage agreement between CCC and the warehouse operator for each type of commodity.

Operators of CCC-approved cotton warehouses are currently required to report BMAS, among other data, to the CCC on a weekly basis. Under the current rule at §7 CFR 1423.11(b)(1)(ii), bales that were scheduled and ready for delivery in a previous week, but not picked up by the shipper, remained available for loading and for which another shipping date had not been established could be counted toward BMAS for up to two weeks. This proposed rule would clarify that bales scheduled and ready for delivery during a week but not picked up by the end of that reporting week can only be reported as BMAS for that one week that such bales were made available for shipment. The National Cotton Council, on behalf of the U.S. cotton industry, requested this change in order to increase the cotton flow rate to domestic and foreign manufacturers, to more quickly respond to domestic and international market needs, and to optimize performance by approved cotton warehouse operators. This change is being made to simplify the

calculation of BMAS so that certain bales do not need to be accounted for beyond the applicable reporting week. The proposed rule would change how BNPU are counted in the weekly report to CCC. It would not change any warehouse tariffs or fees.

A conforming change would also be made to CCC's Cotton Storage Agreement (Form CCC-823). The storage agreement is the agreement between CCC and the cotton warehouse operator on the requirements that the warehouse operator must meet for storing and handling CCC-interest cotton. The standard cotton storage agreement form and the subsequent amendments are available on the USDA web site at:

<https://forms.sc.e.gov.usda.gov/efcommon/eFileServices/eForms/CCC823.PDF> .

There is no expected cost to warehouses or CCC of reporting BMAS as specified in this proposed rule. The proposed rule would only change how bales made available but not picked up by the shipper or merchant are reported by the warehouse operator to CCC in the weekly report. It does not change warehouse tariffs or restocking fees.

This change is intended to improve the efficiency of cotton flow from U.S. producers and cotton warehouses to shippers, and ultimately to cotton manufacturers, by more accurately reporting cotton that is available for shipment. Under the current rule, it has become apparent that certain bales may have been scheduled and ready for shipment but were never picked up for two weeks or more, potentially inflating BMAS calculations. This proposed rule change is meant to more accurately reflect how the cotton industry actually makes bales available for shipment during that one week. Availability and consistent supply of cotton are crucial for the U.S. cotton industry in order to compete with other cotton producing nations and having accurate information about bales made available for shipment contributes to more efficient and effective



marketing of U.S. cotton.

**List of Subjects in 7 CFR Part 1423**

Agricultural commodities, Cotton, Honey, Oilseeds, Reporting and recordkeeping requirements, Surety bonds, Warehouses

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to amend 7 CFR part 1423 as follows:

**PART 1423 – COMMODITY CREDIT CORPORATION APPROVED**

**WAREHOUSES**

1. The authority citation for part 1423 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

2. Amend § 1423.2 by revising it to read as follows:

**§ 1423.2 Administration.**

On behalf of CCC, the Agricultural Marketing Service (AMS) will administer this part under the supervision of the AMS Administrator.

3. Amend § 1423.3 by removing the definition for “KCCO.”

4. Amend § 1423.7 by revising paragraph (d) to read as follows:

**§ 1423.7 Net Worth Alternatives.**

\* \* \* \* \*

(d) Other alternative instruments and forms of financial assurance as the AMS Administrator determines appropriate to secure the warehouse operator’s compliance with this section.

5. Amend § 1423.8 by revising paragraph (b) to read as follows:

**§ 1423.8 Approval or rejection.**

\* \* \* \* \*

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the causes for rejection. CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the AMS Administrator. Appeals shall be as prescribed in part 780 of this title.

6. Amend § 1423.11 by revising paragraphs (a)(2) and (b)(1) to read as follows:

**§ 1423.11 Delivery and shipping standards for cotton warehouses.**

(a) \* \* \*

(2) Be considered to have delivered cotton without unnecessary delay if the warehouse operator has made available for shipment at least 4.5 percent of its applicable storage capacity in effect, measured as the BMAS:

(i) During the relevant week of shipment, or

(ii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately preceding week, or

(iii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately succeeding week.

(b) \* \* \*

(1) Bales made available for shipment (BMAS) during such week is defined as

any cotton bales that have been delivered or are scheduled and ready for delivery but not picked up during such week.

\* \* \* \* \*

7. Amend § 1423.13 by revising paragraph (a) to read as follows:

**§ 1423.13 Appeals, suspensions, and debarment.**

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the AMS Administrator. Appeals shall be as prescribed in part 780 of this title, and under such regulations the warehouse operator shall be considered as a "participant."

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Dated: April 2, 2019

Robert Stephenson,  
Executive Vice President,  
Commodity Credit Corporation.

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