



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: Final rule.

SUMMARY: This rule amends the regulations that specify the storage and handling of cotton at warehouses approved by the Commodity Credit Corporation (CCC). The amendment modifies the weekly accounting and reporting for cotton bales made available for shipment to assure compliance with CCC requirements. This rule also revises the regulations to reflect transfer of administrative oversight of warehouse programs and activities from the Farm Service Agency (FSA) to the Agricultural Marketing Service (AMS).

DATES: Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dan Schofer, Cotton Program Manager, Warehouse Commodity Management Division, AMS Fair Trade Practices Program, USDA, 1400 Independence Ave. SW, Stop 3061, Room 2555-South, Washington, DC 20250-3061; email: dan.schofer@ams.usda.gov, or telephone: 202-690-2434.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation Charter Act (15 U.S.C. 714) authorizes CCC to enter into storage agreements with private

individuals and companies to allow warehouse operators to store commodities owned by CCC or pledged as security to CCC for marketing assistance loans. Warehouse operators who enter into these agreements must comply with regulations established by the United States Department of Agriculture (USDA) at 7 CFR part 1423 – Commodity Credit Corporation Approved Warehouses. Section 1423.11 specifies delivery and shipping standards for cotton warehouses. Under § 1423.11, cotton warehouse operators are required to deliver stored cotton without unnecessary delay. To assure delivery without unnecessary delay, warehouse operators are required to maintain an inventory of bales made available for shipment (BMAS) of at least 4.5 percent of the warehouse’s storage capacity in effect during the relevant week of shipment. Warehouse operators are required to report the number of BMAS to CCC on a weekly basis.

Previously, § 1423.11 of the regulations allowed bales 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 rule revises the definition of BMAS in § 1423.11(b) by allowing BNPU to be counted for only one week, with BMAS to include only bales actually shipped or not picked up for that reporting week. Under the revised regulations, the warehouse operator can meet the 4.5% cotton flow requirement by averaging the BMAS for the current reporting week with either the BMAS for the previous week or the BMAS for following week. Under revised § 1423.11(a), CCC will 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. This change is intended to give cotton warehouse operators the flexibility to address real-time scheduling changes and market demands

faced by cotton merchants and shippers.

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 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, 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 can 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 rule continues to require warehouse operators to report their BMAS each week based upon the revised definition of BMAS. CCC will determine compliance on the basis of an individual reporting week, or if needed, use one of the optional rolling average calculations of BMAS for two consecutive reporting weeks. If CCC uses the average of the applicable week and the immediately succeeding week, CCC will determine compliance for the applicable week after it receives the data from the immediately succeeding week. These options 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.

Finally, this rule revises § 1423.2 to reflect the transfer of responsibility for administration of CCC warehouse programs and activities from FSA to AMS in 2018. Corresponding changes are made to § 1423.3, removing the definition for the Kansas

City Commodity Office (KCCO) from the list of definitions, and to §§ 1423.7(d), 1423.8(b), and 1423.13, replacing references to FSA and KCCO with references to AMS.

A proposed rule concerning this action was published in the FEDERAL REGISTER on April 5, 2019 (84 FR 13562), and a 30-day comment period ending May 6, 2019, was provided to allow interested persons to respond to the proposal. Three comments were received.

All three comments, including one comment submitted on behalf of eight cotton industry associations, expressed support for the proposed changes. Commenters explained that the proposed changes to BMAS accounting should have a positive effect on the flow of U.S. cotton into the market and improve shipping and tracking efficiency.

One commenter asked why other recommendations from the industry at a National Cotton Council meeting were not addressed in the proposed rule. One recommendation pertained to the revision of the Cotton Storage Agreement (Form CCC-823) (CSA), which must be signed and complied with by warehouses storing CCC-interest cotton. The other recommendation pertained to changes to the licensing agreement between USDA and EWR, Inc., the licensed provider of electronic warehouse receipts for cotton.

The proposed rule explained that conforming changes to the CSA would be made to reflect the regulatory revisions in the proposed rule, meaning the change in reporting BMAS. The other recommendations noted by the commenter refer to actions outside the scope of this final rule. Additional changes to the CSA are being made to reflect the transfer of administrative oversight for the program from FSA to AMS. Additionally, AMS has been working closely with the National Cotton Council to address industry

recommendations regarding staging orders, shipping orders, and shipping update files contained within EWR provider services. AMS addresses compliance in the Cotton Storage Agreement between CCC and individual warehouse operators. AMS and the National Cotton Council have agreed to provide notices to all cotton warehouses, shippers, and merchants regarding the regulatory changes in this final rule and the conforming changes to the CSA. EWR will notify its customers separately of any EWR programming changes and new requirements.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

Executive Orders 12866 and 13771, and Final 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 rule does 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. CCC estimates that approximately 50 CCC-approved warehouses would be considered small businesses, according to standards established by the U.S. Small Business Administration (13 CFR part 121), which identifies small business size by average annual receipts or by the average number of employees at a firm.

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 requirements that warehouse operators must deliver stored cotton without unnecessary delay and make at least 4.5 percent of their applicable storage capacity available for shipment apply to all sizes of warehouses. Thus, the effects of this rule are not disproportionately greater or lesser for small businesses than for large businesses.

E-Gov

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

A warehouse operator may resolve any claim regarding noncompliance with the shipping standards by any entity other than CCC, such as a merchant or shipper, in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. CCC does not have authority to prohibit one entity from filing suit against another in a court of law.

When addressing compliance matters with CCC, the warehouse operator may seek reconsideration of enforcement decisions after demonstrating that corrective actions have been taken.

Paperwork Reduction Act

The cotton warehouse information collection required in this final rule is the weekly reporting of BMAS by cotton warehouses. BMAS is reported through the EWR system, to which AMS has access. Authority to collect the information gathered by EWR, Inc., is provided in Pub. L. 107-171, the Farm Security and Rural Investment Act of 2002, which also exempts the information collection from the Paperwork Reduction Act (44 U.S.C. Chapter 35). The regulatory changes in this final rule will not change the burden associated with reporting BMAS, which must be reported weekly. This rule only changes the way CCC accounts for the information collected and uses it to determine

compliance with cotton delivery and shipping requirements.

Background

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 part 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 CCC on a weekly basis. Prior to the revisions in this rule, bales that were scheduled and ready for delivery in a previous week, but not picked up by the shipper, and for which another shipping date had not been established, remained available for loading and could be counted toward BMAS for up to two weeks. This rule clarifies that bales scheduled and ready for delivery during a specific week but not picked up by the end of that reporting week can only be reported as BMAS for the 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 rule

revises the accounting for BNPU in the weekly report to CCC. It does not change any warehouse tariffs or fees.

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

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

Additional changes to the regulations reflect the transfer of administrative responsibility for warehouse management from FSA to AMS.

The revisions in this rule are 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. Before the revisions in this final rule, accounting for certain bales that may have been scheduled and ready for shipment but were not picked up for two weeks or more, potentially inflated BMAS calculations. This rule change is meant to more accurately reflect how the cotton industry actually makes bales available for shipment each week. Availability and consistent supply of cotton are crucial for the U.S. cotton industry in order to compete with other cotton producing nations. Having accurate information about bales made available for shipment contributes to more efficient and effective marketing of U.S. cotton.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) requires the publication of a

substantive rule 30 days before its effective date, unless the rule grants or recognizes an exemption or relieves a restriction (5 U.S.C. 553(d)(1)), or the agency finds good cause for excepting the rule from the 30-day notice requirement (5 U.S.C. 553(d)(3)). USDA finds that it is unnecessary and contrary to the public interest to postpone the effective date of this rule for 30 days after publication in the FEDERAL REGISTER. The revisions herein represent a relaxation of the regulations and provide additional flexibilities to the cotton industry, which recommended the changes. The revisions are necessary prior to the beginning of the 2019 cotton shipping season, which begins July 1 in south Texas. Interested parties were invited to comment on the proposed rule, and three comments were received, all of which supported the proposed actions. A comment in behalf of eight cotton industry associations of producers, ginner, warehouse operators, shippers, marketers, and textile manufacturers urged USDA to finalize the revision in time for the 2019 shipping season. It would be contrary to the public interest to unnecessarily delay implementation of this final rule, thereby potentially disrupting the orderly shipping of cotton as required by CCC. Moreover, postponing the effective date of the final rule for 30 days is unnecessary to allow for adjustment of behavior because none is required of regulated entities, who will continue to file the same weekly BMAS reports they have in the past. Therefore, good cause exists for making this rule effective 1 day after publication in the FEDERAL REGISTER.

List of Subjects in 7 CFR Part 1423

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

For the reasons set forth in the preamble, 7 CFR part 1423 is amended 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. Revise § 1423.2 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.

§ 1423.3 [Amended]

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

4. Amend § 1423.7 by removing “, or” at the end of paragraph (c) and adding “; or” in its place and 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 bales made available for shipment (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) 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."

* * * * *

Dated: June 14, 2019.

Robert Stephenson,
Executive Vice President,
Commodity Credit Corporation.

BILLING CODE 3410-02 P

[FR Doc. 2019-13089 Filed: 6/20/2019 8:45 am; Publication Date: 6/21/2019]