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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560-AI18

Clarification of Bales Made Available for Shipment by CCC-Approved Warehouses

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

ACTION: Final rule.

SUMMARY: This rule amends the regulations that specify the requirements for the Commodity Credit Corporation (CCC)-approved warehouses storing cotton, which are administered by the Farm Service Agency (FSA). FSA is changing the definition of Bales Made Available for Shipment (BMAS). CCC-approved cotton warehouses are currently required to report BMAS, among other data, to FSA every week. FSA is clarifying that bales made available, but not picked up by the shipper, can only be reported by the warehouse operator as BMAS for no longer than the first 2 weeks that such bales have been made available for delivery but have not yet been picked up. This rule change includes whether bales not picked up are reported by the warehouse operator to FSA in the weekly report; it does not change any warehouse tariffs, late fees, or restocking fees. The quality of reported information about bales made available for shipment will improve, which will benefit both FSA and the cotton industry.

DATES: Effective Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Dan Schofer, telephone: (202) 720-2121. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

The Commodity Operations Division of FSA administers the CCC-approved warehouse program for CCC. This responsibility includes approving and licensing warehouses where commodities that are under various types of CCC loans may be stored. Those approved warehouses are required to comply with CCC regulations, which include reporting information about the stored commodities to FSA. The specific requirements that approved warehouses must meet are specified in the regulations in 7 CFR part 1423, “Commodity Credit Corporation Approved Warehouses,” and in the written storage agreements between CCC and the warehouse for each type of commodity.

CCC-approved cotton warehouses are currently required to report BMAS, among other data, to FSA every week. This rule will clarify that bales made available, but not picked up may only be reported as BMAS for no longer than the first 2 weeks that such bales were made available for shipment. The rule only changes how bales not picked up are counted in the weekly report to CCC; it does not change any warehouse tariffs, late fees, or restocking fees.

As specified in this rule, bales made available for shipment, but not picked up may not be reported as BMAS for longer than the first 2 weeks that such bales were made available for shipment. There was no such time limit in the previous regulations or in the previous Cotton Storage Agreement (CSA) between FSA and approved warehouses.

FSA is clarifying how BMAS is defined in the regulations in 7 CFR 1423.11 that apply to CCC-approved cotton warehouses; a conforming change will be made to Amendment 2 of CCC's CSA. CSA is the agreement between CCC and the warehouse on the requirements that the warehouse must meet for storing cotton that is under loan to CCC. The standard CSA form and the subsequent amendments are available on FSA's website at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ca>.

There is no expected cost to warehouses or CCC of reporting BMAS as specified in this rule. Since very few cotton warehouses currently list BMAS for longer than 2 weeks, this rule will not affect the majority of warehouse operators. The rule will only change how bales made available for shipment, but not picked up by the shipper 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 make the flow of cotton from U.S. producers and cotton warehouses to shippers, and ultimately to cotton merchants, more efficient based upon more accurately knowing and reporting what cotton is available for shipment. Availability and consistent supply of cotton are crucial for the U.S. cotton, and having accurate information about bales available for shipment contributes to an efficient supply of U.S. cotton.

Discussion of Comments

In response to the proposed rule, eight comments were submitted by commenters during the 60-day comment period. Comments were submitted by cotton industry associations, association members, and an individual cotton warehouse. Seven of the

eight comments support the proposed rule change. Most of the supportive comments expressed the feeling that the proposed rule change will strengthen USDA enforcement of the current shipping standard requirement of 4.5 percent of a warehouse's applicable storage capacity per week.

One of the supportive comments offers a suggestion for an additional change. One commenter disagrees with the proposed rule change. The following provides a summary of public comments received on the proposed rule and FSA's responses.

Comment: Only count a bale once in flow calculation – when the load is first assembled (broken out), rather than counting it again if unloaded and reloaded at a transit warehouse.

Response: Warehouse operators report the number of bales shipped, made available for shipment, or not picked up in the weekly BMAS report. Warehouse operators are not required to list bales individually in the BMAS report, nor is the reporting format set up to handle that amount and type of data. There will be no change in response to the comment.

Comment: Bales made available for delivery, but not picked up should stay a part of the BMAS total until shipment; they should not be removed from the report after only 2 weeks.

Response: The flow of cotton from warehouses will continue regardless of the amount of bales not picked up; the change in the definition and the resulting change in the reporting will not change that. Warehouses are still required to deliver, schedule, and have cotton bales ready for delivery without unnecessary delay. In order to be considered to have delivered cotton without unnecessary delay, the warehouse operator must make

available for shipment at least 4.5 percent of the applicable storage capacity in effect during the relevant week of shipment. Accurate BMAS data and cotton flow information contributes to the efficient supply of U.S. cotton. It could be detrimental to the cotton industry as whole if BMAS data gave the appearance that cotton is flowing at a steady, consistent rate, but in reality months of cotton bales not picked up remain in warehouses across the country. In order to improve the quality of reported information about bales made available for shipment, there will be no change in response to the comment.

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 emphasizes 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 and, therefore, OMB 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 whenever an agency is

required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA is certifying that this rule would not have a significant economic effect on a substantial number of small entities. New provisions in this rule would not impact a substantial number of small entities to a greater extent than large entities. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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). This rule would only change how bales not picked up are counted in the weekly report to CCC and does 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 proposed rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed federal financial assistance. The objectives of the Executive Order are to foster

an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the final rule related document regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. This rule will not have retroactive effect. Before any judicial action may be brought regarding provisions of this proposed rule, the administrative appeal provisions of 7 CFR parts 11 and 780 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, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does 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 in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates

Title II of the Unfunded Mandate 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 by Title II of UMRA for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

This rule is not a major rule under the SBREFA (Public Law 104-121). Therefore, 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 30 days after publication in the Federal Register.

Paperwork Reduction Act

The cotton information covered in this rule is the weekly reporting of BMAS by cotton warehouses. BMAS is reported through the Electronic Warehouse Receipt (EWR) system, to which FSA has access. EWR is operated by a private 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 change in the regulation would not change the burden associated with reporting BMAS, which is required to be reported weekly. The only thing that would change is which bales are required to be included in the calculation of the total BMAS for that week. EWR is approved under OMB control number 0560-0120.

E-Government Act Compliance

FSA 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 1423

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

For the reasons discussed above, 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 § 1423.11(b)(1)(ii) to read as follows:

§ 1423.11 Delivery and shipping standards for cotton warehouses.

* * * * *

(b) * * *

(1) * * *

(ii) Were scheduled and ready for delivery in a previous week, but were not picked up by the shipper and remain available for immediate loading and another shipping date has not been established, or such bales are not subject to a restocking fee as provided in the warehouse operator's public tariff. Bales that have been available for delivery but not picked up may be counted as BMAS for no longer than the first two

weeks that such bales have been made available for delivery but not yet picked up by the shipper.

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Dated: November 23, 2014.

Val Dolcini,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.

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