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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR 1427

RIN 0560-AH63

#### 2005 Cottonseed Payment Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a portion of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery of 2006 to provide assistance to producers and first-handlers of the 2005 crop of cottonseed in counties which were declared a natural disaster area by the President of the United States, and contiguous counties, due to Hurricanes Katrina, Ophelia, Rita, Wilma or a related condition in 2005.

**DATES:** This rule is effective October 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Chris Kyer, phone: (202) 720-7935; e-mail: [chris.kyer@wdc.usda.gov](mailto:chris.kyer@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Final Rule

Section 3015(a) of Subtitle A of Title III of Pub. L. 109-234 states, "The Secretary shall use \$15,000,000 of the funds of the Commodity Credit Corporation to provide assistance to producers and first-handlers of the 2005 crop of cottonseed in hurricane-affected counties." (Title III, Subtitle A, 120 Stat. 477, June 15, 2006) ("2006 Act"). This rule provides the Commodity Credit Corporation (CCC) regulations for implementation of the 2005 Cottonseed Payment Program authorized by this provision.

Assistance under the 2005 Cottonseed Payment Program is provided under the same terms and conditions, generally, as

it was for the 2004 Cottonseed Payment Program. However, section 3015(b)(2) of the 2006 Act states that, for the 2005 program, funds will be distributed " \* \* \* based on cottonseed production during the most recent year for which a disaster payment specifically for cottonseed was not authorized." (120 Stat. 477) The most recent year for which a disaster payment specifically for cottonseed was not authorized was the 2003 cottonseed production year. Accordingly, this rule provides that 2003 cottonseed production will be used as a basis for payments provided under the 2005 Cottonseed Payment Program.

Also, as provided in section 3015(b)(2) of the 2006 Act, payment calculations for the 2005 Cottonseed Payment Program will differ from those used for the 2004 Cottonseed Payment Program. The 2004 program payments were based upon a loss attributable to the disaster. The 2005 Cottonseed Payment Program shall be based solely upon production during the most recent year for which a disaster payment specifically for cottonseed was not authorized (the 2003 crop), without requiring proof of a loss.

Another difference from the 2004 program is that this rule clarifies which counties are eligible for assistance. This rule clearly defines the term "hurricane affected counties" for the 2005 program as those counties designated as a disaster area resulting from Hurricanes Katrina, Ophelia, Rita, Wilma, or a related condition, and contiguous counties thereof, meaning counties directly adjoining the primary disaster county.

#### Executive Order 12866

This rule has been determined to be "Significant" under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

#### 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 for the subject of this rule.

#### Environmental Assessment

The environmental impacts of this rule have been considered consistent 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 NEOA, 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 foreseeable 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 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 set forth at 7 CFR part 11 and 780 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 19115 (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.

#### Paperwork Reduction Act of 1995

Section 3034(b)(3) of the 2006 Act requires that this rule be implemented and administered without regard to the Paperwork Reduction Act. Therefore, the normal 60-day public comment period and OMB approval do not apply to the information collections required by this rule.

#### 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. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

#### List of Subjects in 7 CFR Part 1427

Agriculture, Cottonseed.

■ 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. 7231–7236; 15 U.S.C. 714b, 714c; Pub. L. 108–324, Pub. L. 108–447, Pub. L. 109–234.

#### Subpart H—2005 Cottonseed Payment Program

■ 2. Add subpart H as follows:

#### Subpart H—2005 Cottonseed Payment Program

Sec.

1427.1300	Applicability.
1427.1301	Administration.
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1427.1303	Eligible cottonseed.
1427.1304	Eligible applicants (first handlers).
1427.1305	Payment application and deadline.
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1427.1311	Liability of first handler.

#### § 1427.1300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions under which the Commodity Credit Corporation (CCC) will provide payments under the cottonseed payment program for the 2005 crop year 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 as provided in this subpart and only with respect to 2005 crop cottonseed in hurricane-affected counties according to § 1427.1303 of this part.

#### § 1427.1301 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 in 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 subpart.

#### § 1427.1302 Definitions.

The definitions in this section shall apply to the cottonseed payment program in this subpart. The terms defined in § 1427.3, Subpart A, Nonrecourse Cotton Loan and Loan Deficiency Payment 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.

*Hurricane-affected county* means a county declared a natural disaster or included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma, a related condition, or a county contiguous to such a county.

*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.

*Ton* means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

#### § 1427.1303 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been produced from cotton grown in a hurricane-affected county as defined in section 1427.1302 during the 2005-crop production period.

(b) Have been the result of ginning 2005-crop cotton by the applicant.

(c) Not have been destroyed or damaged in any amount at the gin by fire, flood, or other events such that its loss or damage was compensated by any other local, State, or Federal government or private or public insurance or disaster relief payments.

#### § 1427.1304 Eligible applicants (first handlers).

(a) An eligible applicant shall be a first handler of cottonseed or a gin that has an eligible payment quantity as determined under § 1427.1307. This is the gin(s) that ginned 2005 crop cotton for the producer except if the 2005 gin is no longer in business to the extent the company has no means to apply for payment on behalf of producers and distribute funds, the current gin becomes the applicant. Only an eligible first handler shall be eligible to file an application for payment in this subpart.

(b) Applicants must comply with the terms and conditions set forth in this subpart 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 in this subpart must share and distribute any payment with the producer of the cotton that was the basis for the cottonseed payment to the extent that the effect of the loss of 2005 crop cottonseed was borne by the producer rather than the gin. To the extent that such funds shall be shared with and distributed to the producer by the gin pursuant to this subpart, those funds will be considered to have been received by the applicant on behalf of such producers.

#### § 1427.1305 Payment application and deadline.

(a) Payments in 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) The application deadline shall be 45 calendar days after the rules in this subpart become effective. A further

extension of application time may be announced by CCC. 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) The 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 in this subpart, first handlers of cottonseed must execute and submit to CCC according to announced instructions the Cottonseed Payment Program Application and Certification.

#### **§ 1427.1306 Available funds.**

The total available program funds for the 2005-crop cottonseed program provided for in this subpart shall be \$15 million.

#### **§ 1427.1307 Applicant payment quantity.**

(a) The applicant's payment quantity of cottonseed will be calculated by the applicant and submitted on the Cottonseed Payment Application and Certification for approval by CCC.

(1) An applicant must be an eligible gin to which a producer delivered 2005 cotton and the applicant's payment eligibility will be based on the determination of the total amount of 2003 crop lint deliveries by cotton producers in eligible counties.

(2) The 2003 crop lint delivery determination will be made by the applicant for each eligible county producer by producer, based upon producer certification, ginning records, or other relevant information as applicable. If the producer delivered 2003 crop cotton to a gin(s) different from the gin that received 2005 crop deliveries, the 2005 gin shall contact the other gins for production information or obtain other proof of the eligible quantity from the cotton producer so as to make or verify the calculation called for in paragraph (a) of this section.

(3) If the producer delivered cotton to more than one 2005 gin, each gin shall be an applicant. If the producer did not deliver cotton to the same gins in 2003, the applicants shall divide the total 2003 production, obtained according to paragraph (a)(2) of this section, equally between each applicant gin.

(4) If the producer did not grow any 2005 crop cotton in the eligible county, the applicant shall not apply for payment on behalf of the producer.

(5) If the producer grew 2005 crop cotton but did not produce 2003 crop cotton, the producer shall be considered a new producer. In this case, the applicant shall compute an assumed

2003 lint delivery amount by multiplying the 2003 USDA National Agricultural Statistics Service (NASS) county average yield for the applicable county times the producer's 2005 cotton acreage in the eligible county. Proof of cotton acreage may be obtained by the applicant from producer certification, FSA county office acreage reports, or crop insurance records. If the NASS county average yield is not computed for the applicable county, the applicant shall use the NASS county average yield for the nearest cotton producing county with the highest NASS county average yield.

(b) The applicant's lint eligibility will be calculated individually with respect to all eligible cotton producers and those individual eligibilities for the gin will then be added together to determine the total lint eligibility of the gin.

#### **§ 1427.1308 Total payment quantity.**

(a) The total quantity of 2005-crop cottonseed eligible in this subpart shall be based on the total payment quantity of cottonseed as determined under this subpart for which timely applications are filed. Eligible cottonseed for which no application is received according to the announced application instructions shall not be included in the total payment quantity of cottonseed.

(b) The total payment quantity of cottonseed (ton-basis) shall be calculated by CCC by multiplying the weight of cotton lint (ton-basis) for which payment is requested by all applicants, as approved by CCC, by the Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint, excluding the highest and lowest years' production, as determined by CCC for the 5 years preceding the 2005 crop.

#### **§ 1427.1309 Payment rate.**

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance in this subpart shall be determined by CCC by dividing the total available program funds, less an amount reserved for approved corrections, by the total eligible payment quantity of cottonseed. However, in no event may the total payment to an eligible applicant exceed the national average price of 2005 crop cottonseed as determined by CCC, or \$98 per ton, multiplied by the applicant's total eligible payment quantity.

#### **§ 1427.1310 Payment calculation and form.**

(a) Payment in accordance in subpart shall be determined for individual applicants by multiplying:

(1) The payment rate as determined in subpart § 1427.1309 by

(2) The eligible payment quantity of the applicant was determined in § 1427.1308 and other provisions in this part.

(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 payment be made by mailed check.

#### **§ 1427.1311 Liability of first handler.**

(a) If any person makes any erroneous or fraudulent representation in obtaining a cottonseed payment in 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 on the same quantity and payments are made there under, 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 in this subpart, that person shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(d) For three years after the date of the application for 2005-crop payments, 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 payment received, plus interest thereon, as determined by CCC. In the event of a controversy concerning payments, records must be kept for such longer period as may be specified by CCC until such controversy is resolved. Destruction of records at any time is at the risk of the applicant.

Signed in Washington, DC, on October 25, 2006.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6-18249 Filed 10-30-06; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1430

RIN 0560-AH59

#### 2005 Dairy Disaster Assistance Payment Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the regulations for the 2005 Dairy Disaster Assistance Payment Program. This program will assist dairy producers by providing payments to those who suffered dairy production and milk spoilage losses due to hurricanes or a related condition in 2005.

**DATES:** This rule is effective October 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512. Telephone: (202) 720-1919; e-mail: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 3034 of the Emergency Agricultural Disaster Assistance Act of 2006 (the 2006 Act) requires that the regulations necessary to implement Title III of the 2006 Act, which includes the regulations for this program, are to be promulgated 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. These regulations are thus issued as final.

##### Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

##### 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 rule have been considered consistent 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 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 set forth at 7 CFR parts 11 and 780 must be exhausted.

##### Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

##### 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.

##### Paperwork Reduction Act of 1995

Section 3034 of the 2006 Act provides that the promulgation of regulations and the administration of Title III of the 2006 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

##### Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

##### Background

Section 3014 of the 2006 Act requires the Secretary of Agriculture to use \$17 million to make payments to dairy producers for losses in counties affected by 2005 hurricanes. Hurricanes Katrina, Ophelia, Rita, and Wilma severely impacted dairy producers in certain areas of the Gulf region of the United States during the months of August through October of 2005. As a result, several dairy producers incurred devastating decreases in production due to cattle losses and milk that had to be dumped because of closed milk plants and damaged containment equipment. Also, the loss of electricity, the shortage of fuel, and infrastructure damage temporarily interrupted the flow of dairy products to markets.

Pursuant to the legislation, this rule addresses the situation by establishing a program similar to the 2004 Dairy Disaster Assistance Payment (DDAP-I) Program authorized by section 103 of Division B of Public Law 108-324, for dairy production and spoilage losses incurred by producers in the southeastern region of the United States, due to 2004 Hurricanes Charley, Frances, Ivan, and Jeanne. The final rule for DDAP-I was published on