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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

Rice and Upland Cotton Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the regulations found at 7 CFR Parts 1421 and 1427 in order to (1) implement the (i) 1986 rice marketing certificate program; (ii) the upland cotton inventory protection program; and (iii) the upland cotton first handler program; and (2) invite public comment on the interim rule. These actions are required by Section 603 of the Food Security Act of 1985 and section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended.

DATES: Effective Date: August 1, 1986. Comments must be received on or before November 10, 1986.

ADDRESS: Send comments to Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013. The Final Regulatory Impact Analysis describing the options considered in developing this interim rule is available on request from the above-named individual.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, (202) 477-7954.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these provisions will result in an annual effect on the economy of \$100 million or more.

The titles and numbers of the Federal Assistance Programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Rice Production Stabilization—10.065; and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the provisions of this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of 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).

Since the 1949 Act provides that the rice marketing certificate program, the upland cotton first handler program, and the upland cotton inventory protection program be implemented beginning August 1, 1986, it has been determined that this rule should be effective on such date. However, comments are requested with respect to the provisions of this interim rule. In order to be assured of consideration, such comments must be received by November 10, 1986.

Rice Marketing Certificate Program—7 CFR Part 1421

Section 603 of the Food Security Act of 1985 provides that whenever, during the period beginning August 1, 1986, and ending July 31, 1991, the world price for a class of rice adjusted to United States quality and location, as determined by the Secretary of Agriculture, is below the current loan repayment rate for that class of rice, then in order to make United States rice competitive in world markets and to maintain and expand exports of rice produced in the United States, the Commodity Credit Corporation (CCC) shall make

payments, through the issuance of negotiable marketing certificates, to persons who have entered into an agreement with CCC to participate in the rice marketing certificate program.

This interim rule implements the provisions of § 603 of the Food Security Act of 1985 by providing that payments, in the form of commodity certificates, shall be made available to producers of rice and to cooperative marketing associations, which have established eligibility under 7 CFR Part 1425 to participate in the price support program. Such payments shall be made available to persons who enter into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions of such agreement and this interim rule.

Section 1421.322 of the interim rule provides that the payments shall be made available only with respect to domestically produced rice (*Oryza Sativa* L.) which consists of 50.0 percent or more paddy kernels, and which is of a class, variety, and grade at least equivalent to price support eligibility requirements. Such rice must be unmilled and unprocessed, and marketing certificates must not have been and must not be separately issued with respect to such rice.

Certificates shall be made available only on a quantity of eligible rice which, during a period when the adjusted world price for such rice is below the loan repayment rate for such rice, is either (1) redeemed from a price support loan with cash or (2) sold.

The payment rate shall be based upon the difference between the loan repayment rate and the adjusted world price for the eligible rice on the day of loan redemption or sale.

First Handlers of Upland Cotton—7 CFR Part 1427

Section 103A(a)(5)(D)(i) of the 1949 Act provides that during the period beginning August 1, 1986, and ending July 31, 1991, if a program carried out under Plan A or Plan B fails to make U.S. upland cotton fully competitive in world markets and the prevailing world market price of upland cotton (adjusted to U.S. quality and location), as determined by the Secretary, ("the adjusted world price") is below the current loan repayment rate for upland cotton, then, in order to make U.S. upland cotton competitive in world

markets and to maintain and expand domestic consumption and exports of upland cotton produced in the U.S., the Secretary shall provide for the issuance of negotiable marketing certificates.

Section 103A(a)(5)(D)(ii) of the 1949 Act further provides that CCC, under such regulations as the Secretary may prescribe, shall make payments, through the issuance of such negotiable marketing certificates to first handlers of cotton (persons regularly engaged in buying or selling upland cotton) who have entered into an agreement with CCC to participate in the program. Such payments shall be made in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the U.S. available at competitive prices.

Under the interim rule, payments, in the form of commodity certificates shall be made available to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions of such Agreement and this interim rule. Such payments will be made available with respect to eligible 1986-crop upland cotton which is purchased by the first handler during a time period when the adjusted world price for upland cotton, as determined by the Secretary, is below the announced loan repayment rate. Section 1427.51 of the interim rule defines eligible upland cotton to include 1986-crop upland cotton which has not been pledged as loan collateral, or which has been redeemed from a price support loan with cash.

Section 1427.52 of the interim rule defines eligible first handlers as (1) persons regularly engaged in buying or selling upland cotton who are the first such persons to apply for a payment with respect to a bale of eligible upland cotton; (2) producers of upland cotton who sell such cotton directly to textile mills or for export or who tender upland cotton on a New York Futures Exchange number 2 contract; and (3) cooperative marketing associations which acquire the upland cotton production of their members.

The payment rate applicable to first handler payments shall be based on the difference between the adjusted world price for upland cotton and the loan repayment rate, as specified in the Upland Cotton First Handler Agreement.

Inventory Protection Payments—7 CFR Part 1427

Section 103A(a)(5)(D)(ii) of the 1949 Act provides that if, beginning August 1, 1986, the Secretary determines that the

adjusted world price for upland cotton is below the current loan repayment rate for a crop of upland cotton and that the cotton loan program implemented under Plan A or Plan B has failed to make domestically produced upland cotton competitive in world markets, then the Secretary shall make such payments available, in the form of negotiable marketing certificates, as is determined to be necessary to make raw upland cotton in inventory as of August 1, 1986, available at competitive prices.

This interim rule sets out the terms and conditions under which CCC shall make payments, in the form of commodity certificates, to persons who have raw upland cotton in inventory as of 12:01 a.m. August 1, 1986, in order to make such cotton available at competitive prices, in accordance with section 103A(a)(5)(D)(ii) of the 1949 Act. Such payments shall be based upon the quantity of eligible raw upland cotton a person has in inventory on August 1, 1986, multiplied by the inventory protection payment rate. The basic payment rate shall be based upon the difference between (1) the national average price support loan rate for 1985-crop Strict Low Middling 1-1/16 inch upland cotton (micronaire 3.5 through 4.9) at average U.S. location, plus estimated carrying charges, and (2) the adjusted world price for upland cotton. The payment rate for eligible raw upland cotton other than baled upland cotton lint shall be based on a percentage of the basic payment rate.

Section 1427.78 of the interim rule defines eligible raw upland cotton to include all domestically produced 1985-crop and prior-crop raw upland cotton in free stocks as of 12:01 a.m. August 1, 1986, which is supported by documentation as prescribed by CCC.

Section 1427.79 of the interim rule sets forth the method of application for an inventory protection payment. All requests for inventory protection payments must be submitted to Kansas City Management Office (KCMO), Fiscal Division, P.O. Box 205, Kansas City, Missouri, 64141 no later than August 31, 1986, and must contain all information requested by CCC. Individual producers may submit their requests for payment to their local ASCS office which will forward such requests to KCMO. Section 1427.79 of the interim rule also provides for the submission of requests for early payment of the inventory protection payments. As previously announced by the Secretary of Agriculture, if a person submits a request for final payment by August 31, 1986, such person may submit a request for early payment no later than September 5, 1986, based on the

applicant's estimate of the amount of eligible raw upland cotton such person had in inventory as of August 1, 1986.

The commodity certificates issued in accordance with the rice marketing certificate program, the upland cotton first handler program, and the upland cotton inventory protection program shall be governed by the provisions of 7 CFR Part 770.

List of Subjects

7 CFR Part 1421

Grains, Loan programs—agriculture, Price support program, Rice, Surety bonds, Warehouses.

7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouses.

Interim Rule

Accordingly, 7 CFR Parts 1421 and 1427 are amended as follows:

1. 7 CFR part 1421 is amended by adding the following new Subpart—Rice Marketing Certificate Program:

PART 1421—[AMENDED]

Subpart—Rice Marketing Certificate Program

Sec.	
1421.320	General provisions.
1421.321	Eligible persons.
1421.322	Eligible rice.
1421.323	Rice marketing certificate agreements.
1421.324	Commodity certificates.
1421.325	Payment rate.

Subpart—Rice Marketing Certificate Program

Authority: Sec. 603 of the Food Security Act of 1985; 99 Stat. 1429 (7 U.S.C. 1441-1a).

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program in accordance with § 603 of the Food Security Act of 1985.

(b) If, beginning August 1, 1986, and ending July 31, 1991, CCC determines that the adjusted world price for a class of rice (determined in accordance with 7 CFR Part 26) is below the current loan repayment rate for that class of rice, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically

produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing

Associations which acquire the eligible rice production of their members and which have been approved (in accordance with 7 CFR Part 1425) to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1986 and subsequent crop rice (*Oryza Sativa* L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is of a class, variety, and grade eligible to be pledged as collateral for price support loan as provided in 7 CFR 1421.302, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with 7 CFR Part 770.

§ 1421.325 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be

based upon the difference between the adjusted world price for the class of rice and the loan repayment rate as specified in the Rice Marketing Certificate Agreement.

2. 7 CFR Part 1427 is amended by adding the following new Subpart, Payments to First Handlers of Upland Cotton:

PART 1427—[AMENDED]

Subpart—Payments to First Handlers of Upland Cotton

Sec.

1427.50 General provisions.

1427.51 Eligible upland cotton.

1427.52 Eligible first handlers.

1427.53 Upland cotton first handler agreements.

1427.54 Commodity certificates.

1427.55 Payment rate.

Subpart—Payments to First Handlers of Upland Cotton

Authority: Sec. 103A of the Agricultural Act of 1949, as amended; 99 Stat. 1407, as amended (7 U.S.C. 1444-1).

§ 1427.50 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler program, in accordance with section 103A(5) (D) of the Agricultural Act of 1949, as amended.

(b) If, beginning August 1, 1986, CCC determines that the adjusted world price for upland cotton (determined in accordance with 7 CFR Part 26) is less than the current loan repayment rate for a crop of upland cotton, and that the cotton loan program implemented under Plan A or Plan B (in accordance with 7 CFR 1427.8) has failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Such payment shall be based upon the quantity of eligible upland cotton which is purchased by eligible first handlers for either domestic consumption or export during a period in which the adjusted world price is below the announced loan repayment rate for a crop of upland cotton, multiplied by the payment rate determined in accordance with § 1427.55.

§ 1427.51 Eligible upland cotton.

(a) For the purpose of this subpart, eligible upland cotton is domestically produced upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) 1986-crop upland cotton baled lint which is not pledged as collateral for a price support loan,

(2) 1986-crop upland cotton baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Any prior crop upland cotton baled lint which was pledged as collateral for a price support loan and which was redeemed with cash (at the loan value plus accrued charges) on or after August 1, 1986;

(4) 1986-crop samples removed from bales of upland cotton for classification purposes which have been rebaled (hereinafter called "loose");

(5) 1986-crop upland cotton classified by USDA's Agricultural Marketing Service as Below Grade; or

(6) 1986-crop upland cotton reprocessed gin notes which have been cleaned with conventional seed cotton cleaning or saw lint cleaning devices that have removed a substantial volume of the non-lint content and which have been baled.

(c) Eligible upland cotton must not be:

(1) Upland cotton with respect to which an inventory protection payment has been or may be issued;

(2) Upland cotton with respect to which a payment in accordance with the provisions of this subpart has been made available;

(3) Upland cotton which was obtained with a commodity certificate in accordance with the provisions of Part 770 of this title; or

(4) Domestically produced upland cotton which has been exported.

§ 1427.52 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who is the first such person to apply for a payment in accordance with this subpart with respect to a bale of eligible upland cotton;

(2) A producer of upland cotton who sells upland cotton directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract; and

(3) A cooperative marketing association that acquires the upland cotton production of its members and

that has entered into a Cooperative Commodity Certificate Redemption Agreement with CCC.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.53 Upland cotton first handler agreements.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Upland Cotton First Handler Agreement.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, BCD, Kansas City Commodity Office (KCCO), P.O. Box 205, Kansas City, Missouri 64141. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.54 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.55 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton and the loan repayment rate, as specified in the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied as provided in 7 CFR Part 26 and the Upland Cotton First Handler Agreement. Payment rates for eligible cotton other than baled upland lint cotton shall be based on a percentage of the basic rate, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

3. 7 CFR Part 1427 is further amended by adding the following new Subpart, Inventory Protection Payments:

Subpart—Inventory Protection Payments

- Sec.
1427.75 General provisions.
1427.76 Eligible raw upland cotton.
1427.77 Payment rate.
1427.78 Commodity certificates.
1427.79 Application for payment.

Subpart—Inventory Protection Payments

Authority: Sec. 103A of the Agricultural Act of 1949, as amended; 99 Stat. 1407 (7 U.S.C. 1444-1).

§ 1427.75 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to persons who have raw upland cotton in inventory as of 12:01 a.m. August 1, 1986, in order to make such cotton available at competitive prices, in accordance with section 103A(5)(D) of the Agricultural Act of 1949, as amended.

(b) If, beginning August 1, 1986, CCC determines that the adjusted world price for upland cotton, determined in accordance with 7 CFR Part 26 (the "adjusted world price"), is less than the current loan repayment rate for a crop of upland cotton and that the cotton loan program implemented in accordance with 7 CFR 1427.8(e) has failed to make domestically produced upland cotton competitive in world markets, then CCC shall make payments in accordance with the provisions of this subpart to persons who have eligible raw upland cotton in inventory as of August 1, 1986.

(c) Such payments shall be based upon the quantity of eligible raw upland cotton a person has in inventory on August 1, 1986, multiplied by the payment rate determined in accordance with § 1427.77.

§ 1427.76 Eligible raw upland cotton.

For the purposes of this subpart, eligible raw upland cotton shall be all domestically produced 1985-crop and prior-crop raw upland cotton, including Below Grade, samples removed from bales of upland cotton for classification purposes which have been rebaled (hereinafter called "loose"), reprocessed notes which have been cleaned with conventional seed cotton cleaning or saw lint cleaning devices that have removed a substantial volume of the non-lint content and which have been baled, and reprocessed spinnable textile waste containing 85 percent or more upland cotton, in free stocks (not under price support loan or in CCC inventory) as of 12:01 a.m. August 1, 1986, which is supported by documentation, as prescribed by CCC.

§ 1427.77 Payment rate.

(a) For the purposes of this subpart, the payment rate for baled upland cotton lint (basic rate) shall be based upon the difference between:

(1) The national average price support loan rate for 1985-crop Strict Low

Middling 1 $\frac{1}{16}$ inch (micronaire 3.5 through 4.9) upland cotton at average U.S. location, plus estimated average carrying charges (storage charges plus CCC price support loan interest charges), as determined by CCC; and

(2) The adjusted world price for upland cotton in effect on August 1, 1986, plus the additional adjustment for coarse count cotton for bales eligible for this adjustment, as provided in 7 CFR Part 26.

(b) For the purposes of paragraph (a) of this section, estimated average carrying charges shall be applied on a regional basis depending on the origin of growth of the cotton, as follows:

(1) Texas Plains, Western Oklahoma, Eastern New Mexico counties bordering the Texas Plains, and Kansas—4.25 cents per pound.

(2) Texas counties served by the Harlingen and Corpus Christi, Agricultural Marketing Service (AMS) Marketing Service Offices (MSO) and Texas and Eastern Oklahoma counties served by the Waco, Texas AMS—MSO—6.50 cents per pound.

(3) Southeast, Mid-South, West Texas (El Paso), remainder of New Mexico, Arizona, and California—5.80 cents per pound.

(c) If the origin of eligible raw upland cotton upon which a request for payment is made cannot be established to the satisfaction of CCC, the lowest regional estimated average carrying charge shall be used in the computation of the payment rate applicable to such cotton.

(d) The payment rates for eligible raw upland cotton, other than baled upland cotton lint, will be based on a percentage of the basic payment rate determined in accordance with paragraphs (a), (b) and (c) of this section, as follows:

(1) With respect to loose upland cotton, the payment rate will equal 85 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the loose cotton was produced;

(2) With respect to Below Grade upland cotton, the payment rate will equal 70 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which such cotton was produced;

(3) With respect to reprocessed notes, the payment rate will equal 35 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which such cotton was produced;

(4) With respect to spinnable textile waste the payment rate will equal:

(i) With respect to comber noils, 60 percent of the basic rate (exclusive of

any coarse count adjustment) for the region in which the mill requesting a payment is located; and

(ii) With respect to spinnable textile waste that has been reprocessed through lint cleaning equipment, if reprocessing is necessary to make it spinnable, including Card Waste, Card Strips, and Soft, Reworkable Waste (for example, pneumafil, laps, roving, sliver):

(A) If such waste contains 100 percent upland cotton, 25 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located; or

(B) If such waste contains at least 85 but less than 100 percent upland cotton, 20 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located.

§ 1427.78 Commodity certificates.

Payments in accordance with provisions of this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.79 Application for payment.

(a) All requests for an inventory protection payment must be submitted to Kansas City Management Office (KCMO), Fiscal Division, P.O. Box 205, Kansas City, Missouri 64141 no later than August 31, 1986, and must contain all information requested by CCC. Individual producers may submit their requests for payment to their local Agricultural Stabilization and Conservation Service office which will forward such requests to KCMO.

(b) *Request for early payment.* (1) As announced by CCC, if a person submits a request for final payment by August 31, 1986, such person may submit a request for early payment no later than September 5, 1986, based upon the person's estimate of the amount of eligible upland cotton such person had in inventory as of August 1, 1986. Such a request must be accompanied by a cash deposit, bond, letter of credit, or other security acceptable to CCC in an amount equal in value to the estimated quantity of eligible upland cotton multiplied by 40 cents per pound.

(2) If such request is supported by documentation acceptable to CCC, CCC shall make payments available, in accordance with the provisions of this subpart, to the person at a rate of 80 percent of the payment rate estimated by CCC to be in effect on August 1, 1986, as determined in accordance with § 1427.77.

(3) All persons who submit a request for early payment must submit a final request for payment not later than August 31, 1986. Such final request for

payment shall set forth the actual quantity of eligible raw upland cotton such person had in inventory on August 1, 1986. CCC shall determine the total payment to be made available to such person based upon the final request for payment less any payment previously made available to such persons in accordance with the provisions of this subpart. Any excess payment made available by CCC to such person must be refunded to CCC. CCC shall assess liquidated damages equal to 25 percent of the excess estimated quantity of cotton claimed for payment multiplied by the early payment rate. CCC may look either to the person, or to the security furnished by such person, or both, for payment of such liquidated damages.

(c) Any excess payment made available by CCC under the provisions of this subpart must be refunded to CCC.

Signed at Washington, this 26th day of August 1986.

Earle J. Bedenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20489 Filed 9-10-86; 8:45 am]

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Food Safety and Inspection Service

9 CFR Parts 307, 318 and 381

[Docket No. 83-020F]

Meat and Poultry Inspection; Expansion of Operating Schedules for Total Quality Control Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations to permit meat and poultry establishments under a USDA approved Total Quality Control (TQC) system to expand their approved operating schedule to up to 12 hours. TQC establishments are currently approved for an 8-hour operating schedule which prohibits the shipping of product that is produced after that 8-hour period. Establishments must either retain product produced after the 8-hour schedule in storage until the following shift when the inspector is on duty or request that overtime inspection services be provided and reimburse the Department for those additional services. This rule allows establishments that have satisfactorily operated under an approved TQC system for 1 year to expand their approved operating schedule, under certain terms and conditions and in

accordance with appropriate monitoring by inspectors as deemed necessary.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows, under certain conditions, TQC establishments to expand their operating schedules to up to 12 hours. At this time, there are approximately 500 USDA approved TQC establishments. This rule is applicable to establishments that have satisfactorily operated under a TQC system for 1 year.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

At present, there are approximately 500 USDA approved TQC establishments. These establishments range from one-person operations to those operated by some of the Nation's largest processors.

TQC establishments are presently prohibited from shipping product produced after their approved 8-hour operating schedules. They must either retain such product in storage until the following day or request overtime services.

The rule allows TQC establishments, under certain conditions, to expand their operating schedules to up to 12 hours a day. This is particularly beneficial for small TQC establishments that may not have the space available to store the product produced after the 8-hour operating schedule and, therefore, have

no option but to pay for overtime services.

The rule does not have a significant impact on TQC establishments, whether large or small. It offers an alternative schedule for all TQC establishments on a voluntary basis. Although TQC establishments are required to submit a plan to the Department for implementing certain provisions required of TQC establishments operating under expanded schedules, this paperwork burden would be a one-time exercise. Otherwise, the rule provides a positive impact upon TQC establishments qualifying for the expanded operating schedule.

Background

On August 15, 1980, the Department published a final rule in the *Federal Register* (45 FR 54310) that, in part, permits an official establishment to be eligible for a program of inspection that places more responsibility on the establishment to control its own production through a quality control program. Under that rule, an establishment can submit a proposed Total Quality Control (TQC) System to the Administrator for approval. If the Administrator finds the proposed system adequate to assure the preparation of meat and poultry products in accordance with the Federal Meat Inspection Act (FMIA) and/or the Poultry Products Inspection Act (PPIA), the establishment can participate in TQC inspection. At this time, there are approximately 500 establishments approved to operate under a TQC system.

A TQC system identifies the critical control points in an establishment's production process where compliance with Food Safety and Inspection Service (FSIS) regulations could be affected. This system specifies how the critical control points will be checked by establishment management and what actions will be taken by the establishment to verify compliance. The establishment is required to keep records showing the results of checking the critical points. An approved TQC system is an agreement between the processor and the Department which identifies how that establishment will control its production process to insure that all products are produced in accordance with the applicable regulations.

The Department verifies that the TQC system is operating in accordance with the approved plan through the review and evaluation of the records kept by the establishment. In addition, verification samples are taken to insure products are in compliance. If an

establishment fails to comply with the provisions outlined in the approved TQC plan or if its products are found to be adulterated or misbranded, the TQC plan will be terminated and the establishment will be inspected under traditional methods.

Establishments under an approved TQC system can produce and ship product any time during their approved 8-hour operating schedule. The Department provides inspection services, without charge, up to 8 consecutive hours per shift during their approved operating schedule. A TQC establishment may continue to produce product beyond its operating schedule but may not ship that product until the start of the establishment's next production shift, at which time the product is subject to inspection. Although an establishment can hold such product produced until the inspector resumes duty and has an opportunity to inspect the product, some establishments do not have adequate storage facilities to hold product. Overtime inspection is authorized when the TQC establishment requests to ship product after 8 hours of inspection service without holding it for the next regular scheduled shift of the inspector.

The Proposal

The Department determined a need exists to address the manner of inspection for a TQC establishment desiring to produce and ship product after its approved operating schedule. The basic philosophy underlying the TQC system at federally inspected establishments is that the Department is responsible for monitoring the TQC system and determining that the products prepared at the establishment are not adulterated and are otherwise in compliance with the FMIA and PPIA before they are passed and distributed from the establishment. This activity does not require the continued presence of the inspector at the establishments in all instances. Those establishments with an approved TQC system continue to operate under their TQC system and under Federal inspection regardless of the inspector's presence or absence. Thus, it appears to be unjustifiably burdensome to have separate requirements in all instances for shipping product after the establishment's 8-hour operating schedule. After evaluating this matter, the Department published a proposal on August 19, 1985 (50 FR 33348), to allow eligible TQC establishments to expand their approved operating schedule to up to 12 consecutive hours per shift, under certain conditions.

Under the proposal, the Department would inspect TQC establishments approved for a 12-hour operating schedule by a variety of methods. If an establishment were to request to change its operating schedule to up to 12 hours, the Department would verify that the establishment was operating according to its TQC plan after 8 hours of inspection service. Overtime inspection would be authorized for this purpose. The amount of overtime an establishment incurs would be determined by the circuit supervisor and by the nature of the operation and the volume of product being shipped during its expanded hours.

Another provision of the proposal was that establishments would be required to provide a plan for random sampling products that are shipped after 8 hours of operation and a plan for holding the samples until the inspector's next scheduled tour of duty. These verification samples would be required to further assure the establishment was operating according to its TQC plan and preparing products in compliance with the FMIA and PPIA.

Furthermore, immediate containers of products would be required to be coded to indicate when products were produced during the production shift. This would allow the Department to ascertain when any noncompliant product was produced.

In addition to these provisions, the Department would determine the level and intensity of inspection coverage for those establishments approved for expanding their operating schedules.

Establishments operating to up to 12 hours would be required to comply with all provisions of the rule. Those found not to be in compliance would be subject to, at the minimum, the termination provisions found in 9 CFR 318.4(g) and 381.145(g).

Comments Received on Proposal

The comment period on the proposal was scheduled to close on November 14, 1985. However, in response to several requests, FSIS extended the comment period an additional 60 days (50 FR 47060) until January 13, 1986.

The Department received 143 comments in response to the proposal—130 from consumers, 5 from official establishments, 4 from FSIS inspectors, 3 from trade associations, and 1 from an inspectors' union. Of the comments received, 137 opposed the proposal, 5 supported the proposal, and 1 did not voice an opinion.

Of the 130 comments from consumers, 129 were form letters from the same geographic area expressing general

opposition to the proposal because, in their judgment, TQC programs do not offer sufficient inspection of food products. They did not present any evidence or data to support their views or offer any alternative proposal. The other consumer expressed opposition on the grounds that meat and poultry products would not be inspected after the regular 8-hour period.

The comments from FSIS inspectors and the inspectors' union opposed the proposal. Their grounds for opposition were that the proposal: (1) Is unfair to allow TQC establishments to operate without inspection and not afford the same opportunity to non-TQC establishments; (2) encourages establishments to operate up to 12 hours rather than start a new shift; and (3) encourages quality control through reduced overtime charges instead of through the merits of TQC. One inspector suggested that establishments be required to identify the products being produced every 4 hours.

FSIS disagrees with the inspectors' comments. A TQC establishment which has expanded its hours of operation will be inspected. This is analogous to establishments under a patrol assignment where the inspector inspects each of the establishments some time during his/her tour of duty. These establishments continue to operate whether or not the inspector is present. FSIS published this proposal to establish consistent inspection policy for TQC establishments desiring to produce and ship product after their approved operating schedule. An approved TQC system is an agreement between the processor and the Agency which specifies how the production process will be controlled to insure all products are produced in accordance with the regulations. Non-TQC establishments do not enter into such agreement. Therefore, FSIS inspects them under traditional methods which require an inspector's presence when products are produced after 8 hours of inspection.

Several issues were raised by those in support of the proposal as well as those in opposition. The following is a summary of the issues and FSIS's response to each.

1. Overtime Charges

Comment: Three trade associations and one establishment opposed establishments' bearing the cost of overtime for monitoring operations after the inspector's tour of duty. Several proposed that the savings generated by this proposal be used to cover overtime costs. Another suggested that the inspector vary starting times to monitor all phases of the operation or

supplement compliance activities for overtime inspection. It was also suggested that the costs and criteria for overtime charges should be made known.

Response: Since an establishment may be approved to operate up to 12 hours, FSIS believes it is necessary to verify how well an establishment is adhering to its QC program at any point during its hours of operation, including the expanded schedule of operations. Therefore, establishments approved to expand their operating schedule may be subject to some overtime charges.

The rule will establish a consistent policy of inspection for establishments under an approved QC program. This will not reduce the Agency's inspection costs. FSIS alternates the inspectors' starting times so that all phases of the operation can be monitored on a random basis. This will be used more frequently. However, FSIS believes the overtime requirement is a necessary regulatory tool that must be available to the Agency and reserves the right to visit an establishment outside normal duty hours.

FSIS initially considered specifying the amount of overtime charges that an establishment could incur. However, by doing so or by establishing overtime criteria, circuit supervisors would be limited in exercising inspection responsibilities since the circuit supervisor determines the need for overtime inspection. Therefore, the rule does not include these types of provisions.

2. Production of Products

Comment: Two trade associations opposed the provision that products produced after 8 hours of inspection must be a continuation of the processing during the last hour of inspection. They contended that such a requirement would be burdensome and would restrict flexibility of small firms.

Response: FSIS is required by law to assure that products produced are wholesome and not adulterated. During an inspector's tour of duty, FSIS has the opportunity to inspect raw ingredients and monitor the production process. If a new process were allowed to be initiated after the inspector's tour of duty, FSIS could not legally assure the safety and wholesomeness of the products produced and shipped. Therefore, the Agency would not meet its legal requirements. FSIS realizes this may restrict the operations of official establishments. However, the establishment could alleviate this through appropriate planning of its production schedules. For these reasons, the requirement remains as a condition

for an establishment to expand its operating schedule.

3. Sampling Plan

Comment: Two trade associations and one establishment opposed a separate sampling plan for products shipped after 8 hours of inspection. They stated that since TQC programs require finished product sampling, additional sampling should not be needed, and that this should be the inspectors' responsibility rather than that of the establishment.

Response: FSIS agrees with the comments. Where appropriate, sampling plans are an integral part of a QC program. A sampling plan will include finished product sampling. Therefore, an establishment under TQC with an expanded operating schedule will sample products produced after the inspectors' tour of duty. FSIS does not believe it is necessary for an establishment to hold for subsequent examination samples of products produced after 8 hours of inspection. However, the inspector may take verification samples as he/she deems necessary.

FSIS has other methods in place to sample and inspect products produced after the hours of inspection. The Compliance Program, Meat and Poultry Inspection Operations, routinely takes retail market samples to insure product is in compliance. Also, the TQC program requires finished product sampling as well as verification sampling by the inspector. In addition, this rule makes provisions for the inspector to revisit an establishment on an overtime basis.

FSIS believes the sampling requirements would be burdensome to establishments and does not provide assurances that the TQC program is functioning properly. Thus, FSIS is deleting this requirement from the final rule.

4. One Year Requirement Prior to Expanding Schedule

Comment: Two trade associations voiced opposition to the requirement that only those establishments operating under an approved QC program for at least 1 year may be eligible for extended hours of operation. They contend that, since an establishment must comply with the QC program immediately, there should not be a waiting period. One commenter suggested that the timeframe be reduced to 3 months.

Response: FSIS believes that the establishment, as well as the Agency, needs time to ensure the QC program is operating satisfactorily. Since FSIS cannot prescreen applicants for TQC, except in cases where there are

convictions or perhaps pending indictments, the Agency must have an opportunity to evaluate the establishment's commitment to TQC and the actual operation of the system. Therefore, FSIS will require an establishment to successfully operate under an approved QC program for at least 1 year prior to becoming eligible to expand its operating schedule.

5. Coding of Products

Comment: Two trade associations and one establishment were opposed to the requirement that products produced during expanded hours of operation bear a special code. One commenter suggested that the coding of products should identify products produced every 4 hours rather than after 8 hours of inspection.

Response: The final rule will not require the sampling and holding of samples for examination by the inspector. Since this requirement is being deleted, FSIS needs a mechanism to verify the compliance of products produced and shipped after 8 hours of inspection.

The coding of products allows FSIS to sample, on occasion, products at the retail market and compare those products being produced during 8 hours of inspection with those produced during the expanded hours of operation. The Agency does not plan for this to be a routine monitoring method. Therefore, the coding requirement remains as proposed in the final rule.

Miscellaneous Amendments

FSIS has made several minor amendments in the final rule for clarity purposes.

Final Rule

After careful consideration of the comments received on the proposal, FSIS is adopting the proposed rule, except for the changes previously discussed herein.

List of Subjects

9 CFR Part 307

Meat inspection, Quality control, Facilities, Overtime.

9 CFR Part 318

Meat inspection, Quality control, Reporting requirements, Preparation of products.

9 CFR Part 381

Poultry products inspection, Quality control, Reporting requirements.

The Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 215(a), 2.92.

2. Section 307.4(c) of the Federal meat inspection regulations (9 CFR 307.4(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 318.4(h) of this subchapter.

* * * * *

PART 318—[AMENDED]

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Section 318.4 of the Federal meat inspection regulations (9 CFR 318.4) is amended by adding a new paragraph (h) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and

shall specify how the conditions in § 318.4(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirements set forth in this section were approved by the Office of Management and Budget under control number 0583-0015.)

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

6. Section 381.37(c) of the poultry products inspection regulations (9 CFR 381.37(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 381.145(h) of this subchapter.

* * * * *

7. Section 381.145 of the Federal poultry products inspection regulations (9 CFR 381.145) is amended by redesignating the present paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishment; examination and other requirements.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permissions will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being

conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 381.145(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirements set forth in this section were approved by the Office of Management and Budget under control number 0583-0015).

Done at Washington, DC., on: August 26, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20493 Filed 9-10-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 18-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, hereby exempts a new system of records entitled "Records and Management Information System, JUSTICE/EOIR-001," from the access and amendment provisions of the Privacy Act, 5 U.S.C. 552a(d). This exemption is needed to preclude access to any information in the system which has been properly classified under an Executive Order for national security reasons. It is also needed to preclude unauthorized access to certain confidential investigatory materials compiled for the purposes of enforcing immigration laws. In addition, the exemption is needed to preclude the amendment of the record of proceeding

which constitutes the official record of quasi-judicial administrative proceedings. The records may include transcripts of the proceedings, charging documents, investigatory reports, decisional memoranda, and evidentiary materials such as exhibits and other case-related papers concerning aliens brought into the administrative adjudication process. These records are compiled during the course of proper hearings, established due process procedures, and any relevant investigations. If the individual who is the subject of the record could make ex parte "correction" of the material, administrative due process could not be achieved.

EFFECTIVE DATE: This rule will be effective September 11, 1986.

ADDRESS: J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202-272-6474).

SUPPLEMENTARY INFORMATION: This rule was first published as a proposed rule at 51 FR 16724, May 6, 1986. At that time, comments were invited until June 5, 1986. One comment was received and considered. A commentator objected to the rule on the grounds that the rule would unduly bar disclosures of most materials contained in the system of records and contended that the regulation to exempt the system was unnecessary because of current Privacy Act limitations on disclosure of confidential information. As stated in the May 6 proposed rule, the exemption applies only to the extent that information in the system is subject to exemption. That is, any information in the system which cannot be defined as (k)(1) or (k)(2) information will not be withheld pursuant thereto simply because "the system" has been exempted. For practical reasons, non-exempt information in the system cannot be segregated and maintained apart from that information which is exempt. Therefore, the exemption is promulgated to protect the (k)(1) and (k)(2) information within the system of records. The exemption is promulgated in accordance with 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e), as required by the Privacy Act, 5 U.S.C. 552a (j) and (k). The exemption will not prevent proper access to the vast majority of information contained in the system.

A description of the "Records and Management Information System" has been published in the Notice section of the *Federal Register* of May 6, 1986 (51 FR 16753).

This order relates to individuals, rather than to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General No. 793-78, 28 CFR Part 16 is amended to add § 16.83 as set forth below.

Dated: August 6, 1986.

Robert N. Ford,

Acting Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR Part 16 is amended by adding § 16.83 to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—Limited Access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related