

Rules and Regulations

Federal Register

Vol. 66, No. 205

Tuesday, October 23, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General)

CFR Correction

PART 550—[CORRECTED]

§ 550.342 [Removed]

In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2001, part 550 is corrected by removing § 550.342.

[FR Doc. 01-55532 Filed 10-22-01; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

7 CFR Parts 718, 723 and 1464

RIN 0560-AG 40

Amendments to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Agricultural Risk Protection Act of 2000 (ARPA) regarding transfers of tobacco allotments, the lease and transfer of burley tobacco quota and record keeping for burley tobacco quota and acreage. It also implements the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) regarding the Tobacco Loss Assistance Program 2000 (TLAP00).

Notice and Comment

Section 840 of Pub. L. 106-387 requires that the regulations necessary

to implement its provisions regarding TLAP00 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Section 263 of Pub. L. 106-224 requires that the regulations necessary to implement its provisions regarding quotas and allotments be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Lewis Jr., Agricultural Program Specialist, Tobacco and Peanuts Division, or Bob Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Staff, Farm Service Agency, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0514, Washington, DC 20250-0514, telephone (202) 720-0795, (202) 720-5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and was reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not 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 rule.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies is: Commodity Loans and Purchases—10.0514.

Environmental Evaluation

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.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require 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

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not 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 rule.

Small Business Regulatory Enforcement Act of 1996

Section 263 of Pub. L. 106-224 and Section 840 of Pub. L. 106-387 requires that these regulations be issued as soon as practicable after the date of enactment and without regard to the notice and comment provision 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 notice of proposed rulemaking and public participation in rulemaking. They also require the Secretary to use the provisions of 5 U.S.C. 808, the Small Business Regulatory Enforcement Act (SBREFA), which provide that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This final rule is considered major for the purposes of SBREFA. However, these regulations affect a large number of agricultural producers who have been significantly impacted by natural disasters and poor market conditions. Accordingly, and because § 263 explicitly sets out Congress' intent that the waiting period of SBREFA should not apply, it has been determined that it would be

contrary to the public interest and the relevant public laws to delay implementation of this rule. This rule is therefore made effective immediately.

Paperwork Reduction Act

Section 263 of Pub. L. 106–224 requires that the bulk of these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act and an equivalent provision is contained in the other legislation implemented herein, specifically in section 840 of the 2001 Act. This means that the information collections required by these rules and the burdens that may be imposed as a result do not have to be reviewed and/or approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period that may be applicable to some information collections.

Background

This final rule implements provisions of section 204 (b) (8)–(12) of the ARPA, enacted on June 20, 2000, which amended provisions of the Agricultural Adjustment Act of 1938 (1938 Act) pertaining to burley tobacco. In addition, as indicated below provisions of Pub. L. 106–387 relating to tobacco are also implemented in this rule.

Section 204(b)(8) of the ARPA revised section 318 (g) of the 1938 Act (7 U.S.C. 1314d), which deals with the transfer of allotments for fire-cured, dark air-cured and Virginia sun-cured tobacco. Prior to the amendment such transfers between farms could not exceed more than 10 acres of allotments and the total acreage allotted to any farm after the transfer could not exceed 50 percent of the acreage of cropland on the farm. The amendment retains the latter limitation but drops the 10 acre rule. This rule updates the program regulations accordingly.

Section 204(b)(9) of the ARPA deals with burley tobacco. It amends section 319(c)(3) of the 1938 Act which sets out the formula for setting the annual burley tobacco quota. Under that formula, the Secretary is allowed to make an adjustment in the calculated formula so that stocks of the tobacco reach a prescribed “reserve stock level.” Provisions of Section 319 have limited the amount in pounds that can be made using that authority; however, the new law provides that the limitation on the adjustment will not apply beginning with any year in which non-committed pool stocks of burly tobacco actually do reach a level equal to or less than the reserve stock level. This rule updates the program regulations accordingly.

Section 204(b)(10)(A) of the ARPA also deals with burley tobacco. It also amends section 319. It limit the total amount of under marketings that can be “carried over” as quota additions to farms, nationwide, in total, to 10 percent of the national basic quota for the preceding year. Hence, if individual farms under marketings will, in total, exceed that level, some form of factoring will have to be used to determine the amount of under marketings that can be carried forward by the individual farm. In this rule, the program regulations are updated accordingly. Further, in other legislation, Pub. L. 106–472, enacted after ARPA, Congress provided that the amendments made by Section 204(b)(10)(A) of the ARPA would only apply beginning with under marketings of the 2001 crop of burley tobacco and with marketings of the 2002 crops of burley tobacco. Further, in Pub. L. 106–554, it was provided that section 204(b)(10)(B) would not be effective until July 1, 2002. Hence, this limitation on the amount of under marketings that can be added to a farm’s quota will not be applied until beginning with 2002 crop (at which time the quota calculations will take into account the 2001 crop under marketings).

Other provisions in this rule, however, are effective beginning with the 2001 crops. Section 204(b)(10)(B) of the ARPA deals with burley tobacco. It changes 319(k) of the 1938 Act to limit “fall transfers” of burley tobacco quota (those essentially being disaster transfers of quota made after the normal planting season). Under the statutory amendment, the total quantity of tobacco that can be leased or transferred to a farm during a crop year is limited to 15 percent of the effective quota on that farm that existed prior to the lease or transfer for leases filed after July 1 of the crop year. The program rules have been updated accordingly.

Section 204(b)(11) of the ARPA deals with burley tobacco. It revises section 319(l) of the 1938 Act by making a technical change in the language dealing with allowing cross-county leasing of burley tobacco, but in certain states only and then only if, in those states, producers approve of the measure in a state-wide referendum. Previous language in Section 319 produced litigation and following the statutory revisions new votes were held in those states in which the Department had previously considered the measure for cross-county leasing to have been approved. After that new vote in those four states, three approved the measure—Tennessee, Indiana, and Ohio. Kentucky producers, which had previously approved the measure, voted

against it. In this rule, the regulations are updated to reflect the new votes.

Section 204(b)(12) of the ARPA deals with burley tobacco. It amends section 319 of the 1938 Act by adding a requirement that owners of farms for which a burley tobacco quota is established must report acreage planted to burley tobacco annually. This final rule revises the tobacco regulations at 7 CFR part 1464 accordingly and makes a corresponding change in 7 CFR 718.102(b)(4).

This final rule also implements provisions of Pub. L. 106–387 related to the TLAP 2000. TLAP 2000 unlike the previous “TLAP” program involved direct federal payments to farmers. In the previous TLAP, program the payments were made to States which then paid farmers. TLAP 2000 was provided for under Pub. L. 106–224 and a rule implementing that program was published in the **Federal Register** on November 2, 2000 (65 FR 65718). By the provisions of that statute actual production of the quota was required for anyone associated with the quota to be paid. However, Section 841 of Pub. L. 106–387 directs the Secretary to make payments to otherwise eligible persons who would have been paid but for the quota not being produced. Payments are to be made under the same rules, and in the same amounts, that otherwise applied to other payments but these payments are not subject to the same overall funding limit that applied to the program. Hence, the TLAP rules are amended accordingly and they are clarified, too, in accord with the circumstances under which the payment was made with respect to quota lessees. Other than the change in eligibility compelled by Pub. L. 106–387, there has been no change in payment eligibility and no additional payments will be made.

Changes made in this rule are prospective only and do not effect previous program actions and determinations.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reconstitutions.

7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas Penalties, Reconstitutions, Tobacco.

7 CFR Part 1464

Tobacco, Loans, Importer assessments.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b, Pub. L. 106–224.

2. Revise § 718.102(b)(4) to read as follows:

§ 718.102 Acreage reports.

* * * * *

(b) * * *

(4) Participants in the programs authorized by parts 723 and 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero; provided further that for burley tobacco each person who owns a farm for which a burley quota is established must report the acreage planted to burley tobacco, including instances in which the acres planted are zero acres; and

* * * * *

PART 723—TOBACCO

4. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

5. Revise § 723.206(c)(1) to read as follows:

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

* * * * *

(c) * * *

(1) Upward adjustments. Adding the:
(i) Effective under marketings from the preceding marketing year, but effective for the 2002 and subsequent marketing years, the aggregate amount for all farms of under marketings of burley tobacco for all farms that can be carried over shall be limited to 10 percent of the national basic quota of the preceding year. If needed, factoring will be undertaken to insure that the limit of the preceding sentence is not exceeded.

* * * * *

6–8. Revise §§ 723.216(e)(5)(iv), (e)(6)(ii)(B) and (i)(6) to read as follows:

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

* * * * *

(e) * * *

(5) * * *

(iv) Filed on or before July 1. Unless the receiving farm is administratively located in the same county as the

transferring farm. However, burley tobacco producers in the States of Tennessee, Ohio and Indiana shall, irrespective of the preceding sentence, be permitted to lease and transfer burley tobacco quota from one farm in a State to any other farm in the State if other conditions for the transfer are met.

* * * * *

(e) * * *

(6) * * *

(ii) * * *

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year. However, the total quantity of tobacco that can be leased or transferred to a farm during a crop year may not exceed that quantity which equals 15 percent of the effective quota on the farm prior to any leases or transfers filed after July 1 of the crop year.

* * * * *

(i) * * *

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 718 of this chapter.

* * * * *

9. Revise § 723.503(a)(3) to read as follows:

§ 723.503 Establishing the quotas.

* * * * *

(a) * * *

(3) *Reserve stock level adjustment.* The Director may then adjust the total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion, determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent

of the previous year's national market quota. Any adjustment under this clause shall be discretionary taking into account supply conditions: provided that for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level. However, if for any of the 2001 and subsequent crops the uncommitted pool stocks of burley tobacco become equal to or less than the reserve stock level, then for that year and any subsequent year the limitation contained in the previous sentence on the amount of the downward adjustment in quota that may be made based on the reserve stock level, for that kind of tobacco, shall not apply.

* * * * *

PART 1464—TOBACCO

10. The authority citation for part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, Pub. L. 106–113, Stat. 1135 and Pub. L. 106–224.

11. Revise § 1464.8(d)(1) to read as follows:

§ 1464.8 Eligible tobacco.

* * * * *

(d) * * *

(1) The farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with part 718 of this title.

* * * * *

12. Revise § 1464.401(a) to read as follows:

§ 1464.401 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program 2000 (TLAP00) authorized by Section 204(b) of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224). That section provides that \$340 million of funds of the Commodity Credit Corporation (CCC) shall be made available to make direct payments to eligible persons, on a farm for which the quantity of quota of eligible tobacco allotted to the farm was reduced from the 1999 crop year to the 2000 crop year.

* * * * *

13. Revise § 1464.403 to read as follows:

§ 1464.403 Eligibility.

For a person to be considered an “eligible person” for purposes of this

part, such person must own, operate or produce eligible tobacco on a farm for which a quota reduction from the 1999 crop year to the 2000 crop year occurred and that was used for the production of tobacco during the 2000 crop year. Leased quotas may, as determined appropriate by the Deputy Administrator in making the payments prior to January 1, 2001, may qualify operators or controllers and growers by reference by back, as needed, to the leasing farm. Also, to the extent allowed by Pub. L. 106-387 payments may be made to person without regard to whether the quota was used for the production of eligible tobacco during the 2000 crop year. Payments that are made by virtue of the preceding sentence may be made, to the extent authorized by law, from funds of the Commodity Credit Corporation and without regard to the overall limitation for payment that otherwise apply to this program.

14. In § 1464.404 revise the definition of "Eligible person" to read as follows:

§ 1464.404 Definitions.

* * * * *

Eligible person means, with respect to payments under this part and subject to the provisions of section 1464.403 and other provisions of this part, a person who owns or operates, or produces eligible tobacco on a farm for which the quantity of quota of eligible tobacco allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 was reduced from the 1999 crop year to the 2000 crop year. Actual production of the crop may be required to the extent otherwise provided in these rules. For purposes of this subpart, further, an eligible person's status, as owner or controller or producer of the tobacco, will be determined as of July 3, 2000.

* * * * *

Signed at Washington, DC, on October 16, 2001.

James R. Little,

Acting Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 01-26543 Filed 10-22-01; 8:45 am]

BILLING CODE 3410-05-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140 and 155

RIN 3038-AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: Following the enactment of the Commodity Futures Modernization Act of 2000 (CFMA) and the resulting revisions to the Commodity Exchange Act (CEA or Act), the Commodity Futures Trading Commission (CFTC or Commission) is adopting rules relating to intermediation of commodity futures and commodity options (commodity interest) transactions. These new rules and rule amendments provide greater flexibility in several areas, and addresses, among other things, the definition of the term "principal," certified financial reports, ethics training, disclosure, account opening procedures, trading standards, reporting requirements, and offsetting positions. The Commission is also adopting changes to allow a registrant to notify the Commission when a new natural person is added as a principal promptly after the change occurs.

These rules are consistent with the mandate of the CFMA to streamline regulation of entities registered under the Act. Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release). Upon reviewing the rules in light of the CFMA, the Commission has determined that the rules being adopted herein are consistent with the CFMA.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Michael A. Piracci, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5450.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Overview of Comments

III. New Rules and Rule Amendments

A. Registration

1. Definition of the Term "Principal"
2. Application Procedures for IBs and FCMs
- B. Fitness and Supervision
- C. Financial Requirements
1. Trading by Non-Institutional Customers on DTFs
2. Investment of Customer Funds
- D. Risk Disclosure and Account Statements
- E. Trading Standards
- F. Recordkeeping
1. Customer Account Statements
2. Close-Out of Offsetting Positions

IV. Section 4(c) Findings

V. Cost-Benefit Analysis

VI. Related Matters

- A. Regulatory Flexibility Act
- B. Paperwork Reduction Act
- C. Administrative Procedure Act

I. Background

Section 2 of the CFMA sets forth the purposes of the CFMA, which include streamlining and eliminating unnecessary regulation for the commodity futures exchanges and other entities regulated under the Act. Section 125 of the CFMA directs the Commission to complete a study of its rules, regulations, and interpretations governing the conduct of persons registered under the Act by December 21, 2001. The rules adopted herein are designed to be an initial step in fulfilling the mandates of Section 2 and Section 125.

Most of the new rules and rule amendments were part of the Commission's final rules relating to intermediaries that were adopted in December 2000, and subsequently withdrawn following the CFMA's enactment in order to determine their consistency with the CFMA (December Release).¹ On August 20, 2001, after reviewing the rules in light of the CFMA and determining that the rules are consistent with the CFMA, the Commission proposed the new rules and rule amendments being adopted herein.²

II. Overview of Comments

The Commission received five comment letters on the proposals. The commenters included Fimat USA Inc. (Fimat), a registered futures commission merchant (FCM) and securities broker-dealer (BD); the Chicago Board of Trade (CBT), a designated contract market; Exchange Analytics Inc. (EA), an ethics

¹ See Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 39008 (June 22, 2000) (proposed rules); "Rules Relating to Intermediaries of Commodity Interest Transactions," 65 FR 77993 (Dec. 13, 2000) (final rules); 65 FR 82272 (Dec. 28, 2000) (final rules; partial withdrawal).

² See 66 FR 45221 (Aug. 28, 2001).