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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD943

Tobacco; Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments:

SUMMARY: This rule provides, with respect to tobacco, authority to implement changes for the budget deficit marketing assessment (BDMA), sometimes referred to as a ''nonrefundable marketing assessment,'' which is provided for in 7 CFR 1464.11 and 7 CFR 1464.102. The rule is needed because of the enactment of Section 422 of the Uruguay Round Agreements Act (P.L. No. 103–465). That section provides for modifications to the BDMA in the event that the President should issue a proclamation establishing a tariff-rate quota (TRQ) pursuant to Article 28 of the General Agreement on Tariffs and Trade (GATT). As yet, no such quota has been issued. However, this rule will allow for rapid implementation of the Section 422 modifications if a TRQ is issued. The modifications provided for in Section 422 are, with respect to imported tobacco, a restriction of the BDMA to certain tobaccos and a change in the BDMA rate. For covered domestic tobaccos, Section 422 would extend the term of coverage through the 1998 crops; otherwise, Section 422 would not change the application of the BDMA to domestic tobacco.

DATES: *Effective Date:* April 20, 1995.

Comment Date: Comments must be received on or before May 22, 1995, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Tobacco and Peanuts Division, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, D.C. 20013–2415, telephone 202–720–7413. All written comments will be available for public inspection in room 5750, South Building, U.S. Department of Agriculture, 14th St. and Independence Avenue SW., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, CFSA, at the address listed above, telephone 202–720–7562.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) 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 Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

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

Executive Order 12372

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 2915 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and preempt state laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collection requirements contained in these regulations (7 CFR part 1464) have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0560–0148.

Background

A. Pre-1993 Coverage of Domestic Tobacco

The BDMAs for tobacco are also known as ''nonrefundable marketing assessment'' and are provided for in 7 CFR part 1464 and in particular in 7 CFR 1464.11 and 7 CFR 1464.102.

The BDMAs, for tobacco, are provided for in current law in Sections 106(g) and 106(h) of the Agricultural Act of 1949, as amended (1949 Act). Before 1993, only domestic tobacco was covered and only those domestic tobaccos for which price support was in effect by reason of the approval by producers of production controls.

The per pound BDMA rate that applies to domestic tobacco is the amount which equals 1% of the per pound national price support level for each kind of tobacco. For domestic tobacco, half of the BDMA is paid by the producer; the other half is paid by the first purchaser of the tobacco. The first purchaser either purchases the tobacco from the producer or obtains the tobacco by a purchase from the price support loan inventory.

Tobacco crops are divided into crop years based on the year of production. There is likewise assigned a marketing year for each crop. The marketing year for all but flue-cured tobacco runs from October 1 of the calendar year in which the crop is produced through September 30 of the following year. For flue-cured tobacco, the crop year runs for the 12-month period that begins on July 1 of the year of production.

B. 1993 Extension of BDMAs to Imported Tobacco

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (1993 Act). The 1993 Act extended the BDMA to all imported tobacco. Implementing rules were published in 7 CFR part 1464. Pursuant to the statute, the rules set the per pound BDMA rate on imported tobacco at a uniform amount equal to the average per pound total (producer and purchaser) BDMA for domestic burley and flue-cured tobacco applicable at the time of the entry of the imported tobacco into the commerce of the United States. The 1993 Act also extended ''no net cost assessments'' (NNCAs) to imported tobacco. However, the imported tobacco NNCAs apply only to imported flue-cured and imported burley tobacco.

C. Remittances of BDMAs

By law, BDMA payments are remitted to the CCC of USDA.

D. Coverage of Crop Years

But for new statutory law, described below, the term of the domestic BDMA ends with the 1995 crops. That for the imported tobacco ends with the 1998 crops.

E. Provisions of the Uruguay Round Agreements Act (URAA)

The 1993 Act measures described above and the other 1993 measures led to a challenge under GATT by countries that export tobacco to the United States. This led to on-going negotiations to establish a TRQ under Article 28 of GATT.

Countries have operated for many years under longstanding GATT provisions sometimes referred to as ''GATT 1947.'' However, recent negotiations among many nations on new, broad-based ''Uruguay Round Agreements'' were completed. The GATT, as so modified, is sometimes referred to as ''GATT 1994.'' This development led in turn to enactment by Congress of the ''Uruguay Round Agreements Act'' (URAA).

URAA Sections 421–423 contain tobacco provisions. Section 422 contains provisions dealing with the BDMA. However, those provisions are not effective unless and until a tobacco TRQ should be proclaimed by the President.

Specifically, Section 422 would revise Section 106 of the 1949 Act to provide that effective for each of the 1994 through 1998 crops of tobacco for which price support is made available under the 1949 Act, each producer and purchaser of such tobacco, and each importer of the same kind of tobacco shall remit to the CCC a non-refundable marketing assessment (BDMA). Section 106(g), as it would be revised by Section 422, provides further that the non-refundable marketing assessment (that is, the BDMA) would be an amount equal to:

(1) in the case of a producer or purchaser of domestic tobacco, .5% of the national price support level for each such crop; and

(2) in the case of an importer of tobacco, 1 percent of the national price support level for the same kind of tobacco.

Accordingly, Section 422, if and when it becomes effective, would limit the imported BDMA to imports with the same or similar characteristics as a price-supported (and BDMA-subject) domestic kind. Also, the rate for imported tobacco would change to that equal to the full amount of the BDMA for the corresponding domestic kind rather than be equal to a burley and flue-cured average.

Further, Section 422(c) allows the President to waive the application to imported tobacco of the BDMA or the NNCA if the President determines that the waiver is necessary or appropriate pursuant to an international agreement entered into by the United States.

As indicated, however, the provisions of Section 422 are not yet effective. That lack of current effectiveness is set out in Section 422(e). That section provides that Section 422 and the amendments made by it will be effective only beginning on the effective date of the Presidential proclamation establishing a TRQ pursuant to Article 28 of the GATT 1947 or the GATT 1994 with respect to tobacco. There is no such TRQ at this time.

F. Need for a Currently Effective Rule

It has been determined that an interim rule should be issued at this time so that there may be an immediate effectiveness under 7 CFR part 1464 of the BDMA modifications upon the proclamation by the President of a triggering TRQ.

G. Current Coverage of the Domestic BDMA

As indicated, Section 422 would tie the imported tobacco BDMA to domestic kinds that pay a BDMA. Those domestic kinds are those that are subject to price support. They are listed below. In the parentheses following each kind are three figures separated by slashes. The first figure is the current per pound national price support level. The second is the amount which would constitute 1% of the support level and thus the full per pound imported BDMA rate for the same kind or that having similar characteristics of a domestic quota kind. The third figure is the second figure expressed as an amount per kilogram. The list of price supported domestic tobaccos, with those three figures for each, is as follows:

(1) flue-cured tobacco ($1.583/$0.015830/$0.034899);
(2) burley ($1.714/$0.017140/$0.037787);
(3) Virginia fire-cured ($1.407/$0.014070/$0.031019);
(4) Kentucky-Tennessee fire-cured ($1.483/$0.014830/$0.032694);
(5) dark air-cured ($1.273/$0.012730/$0.028065);
(6) Virginia sun-cured ($1.245/$0.012450/$0.027447);
(7) cigar filler and binder ($1.084/$0.010840/$0.023899); and
(8) Puerto Rico cigar filler ($0.844/$0.008440/$0.018607).

H. Description of Provisions and Effect of The Interim Rule

Under the interim rule:

(1) *Effectiveness of the new regime.* The new BDMA provisions would be effective only upon: (i) the proclamation by the President of a triggering TRQ and (ii) a determination and announcement by the Executive Vice President of CCC (Executive Vice President) that the TRQ had been proclaimed and that the new BDMA provisions are in effect.

(2) *Timing of calculation of amount due.* The amount due under the new regime would be determined based on the date of entry of the tobacco into the commerce of the United States as determined in accordance with existing rules.

(3) *Effect on prior importations.* Any tobacco entered prior to the effective date of the new regime would be subject to the old regime. The inauguration of the new regime will not effect liabilities under the old regime.

(4) *Waivers.* The rule allows adjustments to be made as might be required due to an exercise of the President's Section 422(c) waiver authority.

(5) *Mixed lots.* Mixed lots (containing differing kinds of tobacco) would be handled as they are for the NNCA. The importer would be responsible for establishing and certifying to the composition of the lot. To the extent that the lot's composition could not be determined, the lot would be considered to be assessable in its entirety at the highest applicable rate.

(6) *Exemption of certain tobaccos.* Tobaccos which have distinct characteristics such as oriental tobacco and are commonly treated in the trade as a different ''kind'' of tobacco would

be, in the new regime, free of the BDMA.

(7) *Burden of proof.* Unlike the old regime, the new regime does not cover all imported tobacco. The importer would have the burden of establishing that the tobacco was not subject to the BDMA or is subject to a lower rate. Importers of all kinds of tobacco, including exempt tobaccos, would be required to maintain all records relevant to the application of the assessments and its exemptions. Such records would be subject to inspection as under the old regime. As under the old regime, failures to keep proper records could be considered as evidence of a failure to make proper payments.

(8) *Authority of the Director of the Tobacco and Peanuts Division.* The Director of the Tobacco and Peanuts Division (Director), CFSA, would have the authority to resolve disputes, request information, and establish additional accounting procedures if needed.

(9) *Rate on imported tobacco.* In accordance with the Section 422, the BDMA rate on imported tobacco would be the lowest rate for a domestic tobacco which is the same kind.

(10) *Kinds of tobacco.* Tobacco could be considered the same kind if, discounting for the place of production, it is classified as the same kind for customs purposes, has similar characteristics, or is treated as the same kind of tobacco in the industry.

(11) *Extension of the domestic BDMA.* The domestic BDMA would be extended through the 1998 crops if a TRQ is issued.

(12) *Changes in coverage of the imported BDMA.* If the list of domestic tobaccos subject to the BDMA changes, the coverage of the imported BDMA would also change accordingly. In any case, the BDMA rate for imported tobacco will change based on changes in the price support level for relevant domestic tobaccos. The applicable rate will, as indicated above, be based on the time of the entry of the tobacco into the commerce of the United States.

(13) *Additional rule changes.* It is anticipated that if and when a TRQ is issued, the rules would be revised to reflect the new regime only. However, as indicated, this will not affect liabilities under the old regime.

I. Current Effectiveness and Comments

This rule is being issued as an interim rule without prior public comment as the change in the BDMA is mandated by law and a delay in implementation would be contrary to the public interest, including the public interest in the administration of foreign trade policy.

Comments both favorable and unfavorable to the rule are solicited. Further consideration of the rule, upon the receipt of the comments, could lead to modifications in the rule.

List of Subjects in 7 CFR Part 1464

Assessments, Loan program, Agriculture, Price support program, Tobacco, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, and 1445–2; 15 U.S.C. 714b, 714c.

2. Section 1464.11 is amended by adding a new paragraph (f) to read as follows:

§ 1464.11 Nonrefundable marketing assessment.

* * * * *

(f) The term for the application of the assessment provided for in this section shall be extended through the 1998 crops if the President issues a Presidential proclamation establishing a tariff-rate quota pursuant to Article XXVIII of the GATT 1947 or GATT 1994 with respect to tobacco. Accordingly, in the event that such a proclamation is issued all obligations which otherwise would terminate with the 1995 crop under this section shall apply equally for subsequent crops through the 1998 crops.

3. Section 1464.102 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 1464.102 Budget deficit marketing assessment.

* * * * *

(c) *Modification of the coverage and rate for imported tobacco.* (1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the coverage, rates and obligations applicable to imported tobacco under this section shall be as provided in paragraph (d) of this section if:

(i) the President establishes a tariff-rate quota for tobacco; and

(ii) it is determined and announced by the Executive Vice President that a modification of the assessments is being made accordingly pursuant to Section 422 of Pub. L. 103–465.

(2) The effective date of the modification provided for in paragraph (c)(1) of this section shall be the date announced by the Executive Vice President consistent with the provisions of Pub. L. 103–465.

(3) (i) For entries of imported tobacco into the United States prior to the effective date for assessment modifications announced by the Executive Vice President under this paragraph, the rates and coverage of the assessment shall be as provided for in paragraphs (a) and (b) of this section.

(ii) For entries of imported tobacco into the United States after the effective date for assessment modifications announced by the Executive Vice President under this paragraph, the rates and coverage of the assessment shall be as provided for in paragraph (d) of this section.

(d) *Rates and coverage of the modified assessment.* If a modification of the assessments otherwise provided for in this section is announced by the Executive Vice President as provided for in paragraph (c) of this section then:

(1) Imports of tobacco under this section shall apply only to the same kind or tobacco having similar characteristics to a price-supported domestic kind, or considered in the trade to be the same or similar ''kind'', as a domestic tobacco which is, at the time the tobacco is entered into the commerce of the United States, currently subject to an assessment under § 1464.11.

(2) If the tobacco is subject to an assessment under paragraph (d)(1) of this section, then the assessment shall be paid by the importer and remitted to CCC. The amount due for each pound of subject tobacco, shall be the amount equal to 1% of the national price support level that applies for the current marketing year for the corresponding domestic kind of tobacco.

(3) It shall be the responsibility of all importers to establish that imported tobacco is not covered by the BDMA or not subject to a higher BDMA rate than that which is assessed or paid.

(4) In the case of the entry of mixed lots (containing tobacco of different kinds) the importer shall be required to certify to the composition of the lot. In the absence of such certification or in the absence of sufficient evidence to indicate the relevant kind of tobacco for purposes of administration of this section, then the importer shall be liable for the assessment as the highest possible relevant rate for all such tobacco.

(5) Importers of all tobacco, including those which are not subject to the modified BDMA, shall maintain sufficient records to demonstrate compliance with the obligations of this section.

(6) Disputes involving the application of the assessment shall be resolved by the Director.

Signed at Washington, D.C. on April 10, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–9454 Filed 4–19–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–117, Amendment Number 94–2]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of miscellaneous revisions to Indiana's Surface Coal Mining and Reclamation Rules. The amendment is intended to revise the Indiana program to eliminate typographical, clerical, and spelling errors and to amend those instances where the word ''commission'' should be changed to ''director'' in accordance with Indiana Senate Enrolled Act (SEA) 362.

EFFECTIVE DATE: April 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated August 25, 1994 (Administrative Record No. IND–1394), Indiana submitted program amendment #94–2 concerning miscellaneous revisions to the Indiana rules to eliminate typographical, clerical, and spelling errors and to amend those instances where the word ''commission'' should be changed to ''director'' in accordance with Indiana SEA 362. OSM approved SEA 362 as a program amendment on August 2, 1991 (56 FR 37016). By letter dated August 30, 1994 (Administrative Record No. IND–1395), Indiana submitted a supplement to the August 25, 1994, submittal which consists of a hard copy of the rules being amended in those instances where ''commission'' should be changed to ''director'' as a response to SEA 362 along with miscellaneous revisions.

OSM announced receipt of the proposed amendment in the September 16, 1994, **Federal Register** (59 FR 47571), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 17, 1994. By letter dated March 20, 1995 (Administrative Record No. IND–1438), Indiana submitted additional typographical and clerical corrections to the proposed amendment in response to comments provided by OSM on February 14, 1995 (Administrative Record No. IND–1437). In addition, Indiana withdrew its proposed change to 310 IAC 12–7–1(c) and reinstated the word ''commissions,'' to this subsection. Therefore, 310 IAC 12–7–1(c) is not part of this amendment.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

In amendment #94–2, Indiana corrected numerous typographical, clerical, or spelling errors and made numerous changes from the word ''commission'' to ''director.'' The Director finds that the numerous typographical, clerical, and spelling changes are nonsubstantive changes or changes which improve the clarity or accuracy of the Indiana rules.

The Director finds that the changes from ''commission'' to ''director'' more accurately reflect the responsibilities within the Indiana program as provided by SEA 362 which was approved by OSM on August 2, 1991 (56 FR 37016), and that the changes do not render the Indian program less effective than Federal regulations.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No comments were received.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the September 16, 1995, **Federal Register** (59 FR 47571). The comment period closed on October 17, 1995. No one commented and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1403). EPA responded on September 27, 1994 (Administrative Record No. IND–1402) and stated that EPA had no comments.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment #94–2, concerning miscellaneous revisions to the Indiana rules as submitted by Indiana on August 25, 1994, supplemented on August 30, 1994, and amended on March 20, 1995.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards