

because of snow and freezing conditions. For Disaster Reserve Assistance Program applications made after January 10, 1997, assistance may be made available with respect to livestock feed losses occurring because of snow and freezing conditions. Such assistance shall be made without regard to the livestock being commingled, stranded, or the identity of ownership of the livestock and may be either donated CCC-inventory, donated hay, or a direct payment. Accordingly, 7 CFR 1439.402(a) is amended by adding the following: "For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where an emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP".

4. Based on the determinations made in the Federal Register notice of October 29, 1996, the Disaster Reserve Assistance Program is authorized for 1996 crop year livestock feed losses or inaccessibility for livestock owners who are determined eligible. Program payments will be contingent on the availability of CCC funds.

Accordingly, 7 CFR part 1439 is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1427 and 1471j.

2. Section 1439.402(a) is revised to read as follows:

§ 1439.402 Assistance.

(a) Assistance is for eligible livestock that are commingled, stranded, and unidentified as to the livestock owner. For applications made in 1997, assistance for feed loss or inaccessibility may be made without respect to the livestock being commingled, stranded, and unidentified as to the livestock owner. Such losses must occur during the 1996 crop year because of snow or freezing conditions where an emergency declaration has been made by the President and while emergency snow conditions exist as determined by DAFP.

* * * * *

Signed at Washington, DC, on January 16, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97-1523 Filed 1-16-97; 3:15 pm]

BILLING CODE 3410-05-P

7 CFR Part 1464

RIN 0560-AD93

Tobacco—Tobacco Loan Program, Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On April 20, 1995, the Commodity Credit Corporation (CCC) published an interim rule in the Federal Register (60 FR 19665) which, in accord with contemporaneous legislation, conditionally provided for certain revisions of the budget deficit marketing assessment (BDMA) for imported tobacco in the event that the President should issue a proclamation establishing a tariff-rate-quota (TRQ) for imported tobacco. This final rule adopts the interim rule with modifications to reflect that the proclamation has now been issued. Also, modifications have been made to other sections to eliminate references to tobaccos for which price support is not available, to modify the penalty provisions of the rules to reflect the quota proclamation made by the President, and to make other technical changes.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Anderson, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0514, P. O. Box 2415, Washington, DC 20013-2415, telephone 202-690-2518.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 USC 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 is: 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 final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt state laws to the extent that such laws are inconsistent with the provisions of this final 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 and 7 CFR part 711, as applicable, 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.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background and Discussion

Since 1990 there has been a budget deficit marketing assessment (BDMA) collected on all price supported tobaccos. As reflected in an interim rule of April 20, 1995, 60 FR 19665, Congress, in legislation in 1993 extended the BDMA to all imports of tobacco. However, by legislation in 1994, the Congress imposed new limits on the BDMA and on the amount of the

BDMA, as it applied to imported tobacco, to take effect in the event that the President should issue a TRQ quota for tobacco. The interim rule, by amendment to 7 CFR part 1464, provided for these conditional modifications to take effect on the fulfillment of the condition. The proclamation was issued on September 13, 1995.

No comments were received in response to the interim rule and it is adopted in this notice as a final rule with modifications to reflect the issuance of the proclamation. In addition, this final rule makes technical changes to other sections of 7 CFR part 1446. Among these, the rule removes a reference to tobacco grown in Puerto Rico. The reference is not needed since that tobacco is no longer price supported. Also, the reference repeats, essentially, a condition which applies elsewhere under the rules applicable to all tobacco. In addition, this final rule: (1) conforms the penalty rate provisions of part 1464, as they apply to failures to remit the BDMA on imported tobacco, to the 1994 legislation (by tying the rate to that which would apply to the corresponding domestic tobacco); (2) provides a postmark rule for determining the remittance date of mailed payments; and (3) extends from 15 days to 30 days the time in which a request for reconsideration can be made in the event of a dispute. The latter amendment, regarding rehearing, conforms the rule to other appeal regulations for commodity matters. As these amendments are required by law and are matters of agency procedure or are merely technical in nature, it has been determined that further rule-making is not needed.

List of Subjects in 7 CFR Part 1464

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

For the reasons set forth, 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.

§ 1464.2 [Amended]

2. Section 1464.2(a) is amended by removing the following kinds of tobacco from the list of tobaccos for which price support is available.

"Maryland tobacco, type 32."

"Cigar filler tobacco, type 41."

"Puerto Rican tobacco, type 46."

"Cigar binder tobacco, types 51 and 52."

3. Section 1464.8 is amended by removing paragraph (h) and redesignating paragraph (i) as paragraph (h).

§ 1464.11 [Amended]

4. Section 1464.11 is amended by removing "1995" each time it appears in the section and adding "1998" in its place and by removing paragraph (f).

5. Section 1464.102 is revised to read as follows:

§ 1464.102 Budget deficit marketing assessment.

(a) *General.* Subject to the limits set out below, a budget deficit marketing assessment (BDMA) shall be remitted by all importers of tobacco for tobacco entered into the commerce of the United States.

(b) *Period of coverage.* Except as provided for in (h), this section shall only apply to tobacco imported after September 13, 1995, and through the 1998 calendar year.

(c) *Tobacco covered.* Except as provided in (g) and (h), this section shall only apply to unmanufactured tobacco entered for consumption into the commerce of the United States that is, as determined by the Director, the same kind or a like kind of tobacco for which a domestic price support program is in effect; provided further that, except as provided in (g) and (h), this section shall not apply to cigar kinds of tobacco.

(d) *Rate.* Except as provided in (h) and subject to provisions in this section dealing with mixed lots, the BDMA rate shall be the rate for the corresponding domestic tobacco for the marketing year for the domestic tobacco which is in progress when the imported tobacco becomes subject to the assessment. The BDMA rate shall be applied on a per kilogram basis to all quantities of such tobacco imported for consumption, except for *de minimis* special entries approved by the Director.

(e) *Mixed entries.* For entries of mixed kinds of tobacco, the importer shall certify the composition of the mixed lot and remit the amount of assessment due for the respective quantity of each applicable kind of tobacco in the mixture. If the importer is unable or unwilling to determine and certify the composition of the mixed lot, the entire lot shall be subject to the BDMA rate for the kind of tobacco with the highest rate.

(f) *Remittance of BDMA.* The BDMA amount due shall be remitted in accordance with § 1464.104 of this part. Failure to remit or timely remit BDMA shall subject the importer to a marketing penalty on the quantity for which such failure occurred. The penalty will be

assessed in accordance with § 1464.106 of this part.

(g) *Records and disputes.* It shall be the responsibility of all importers of tobacco to establish that their tobacco is not subject to any BDMA or is not subject to a higher BDMA than that claimed to be due by such importer. All importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995.* Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

6. Section 1464.104 is amended by revising paragraph (b) to read as follows:

§ 1464.104 Remittance of importer assessments.

* * * * *

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

* * * * *

7. Section 1464.106 is amended by revising subparagraph (a)(1) to read as follows:

§ 1464.106 Marketing penalties.

(a) * * *

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the

amount due for the BDMA itself, or any applicable late fees, charges, or interest.

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8. In § 1464.108, the second sentence is amended by removing "15" and adding "30" in its place.

Signed at Washington, D.C. on January 9, 1997.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97-1463 Filed 1-21-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 97-03]

RIN 1557-AB57

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Gutierrez, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090, or Carolyn Amundson, Senior Attorney, Enforcement and Compliance Division, (202) 874-4800; Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Inflation Adjustment Act (28 U.S.C. 2461 note) requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP provided by law within its jurisdiction to account for inflation. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires the initial

adjustments set out in this regulation, and requires subsequent adjustments at least once every four years hereafter.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act also provides rules for rounding off increases,¹ and provides that any increase in a CMP applies only to violations that occur after the date of the adjustment. Additionally, section (s)(2) of the Debt Collection Improvement Act limits the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to 10 percent of the amount set by statute.²

This final rule adjusts each CMP amount within the jurisdiction of the OCC in accordance with these statutory requirements. It does so by adding a new subpart O to part 19, entitled "Civil Money Penalty Inflation Adjustments." Section 19.240 of new subpart O contains a table that identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision. Section 19.241 states that the adjustments made in § 19.240 apply only to violations that occur after January 22, 1997.

The OCC intends to readjust these amounts in the year 2000 and every four years thereafter, assuming no further changes to the mandate imposed by the Inflation Adjustment Act.

Public Notice and Comment and Delayed Effective Date Not Required

The OCC has determined for good cause that public notice and comment is unnecessary and impracticable pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)(B)). The Debt Collection Improvement Act leaves the OCC with

¹ The statute's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; \$25,000 in the case of penalties greater than \$200,000.

² There is an ambiguity as to whether to apply the rounding rules before or after applying the 10 percent limitation. The OCC, in order to remain consistent with the other Federal banking agencies, has elected to apply the rounding rules before (and not after) applying the 10 percent limitation.

no discretion in calculating the adjustment, and requires the OCC to publish regulations within 180 days of its enactment. For these same reasons, the OCC for good cause is adopting an immediate effective date consistent with the Administrative Procedure Act (see 5 U.S.C. 553(d)).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (see 5 U.S.C. 601(2)). Because the OCC has determined for good cause that public notice and comment on this final rule is unnecessary and impracticable pursuant to 5 U.S.C. 553(b)(B), the OCC is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78 (h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78u-2, 78u-3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. A new subpart O is added to read as follows: