

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-02-14]

RIN 0581-AC11

#### Flue-Cured Tobacco Advisory Committee; Amendment of Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is amending the regulations for the Flue-Cured Tobacco Advisory Committee (FCTAC) by removing the sections which specify composition of the committee. This will allow greater flexibility in responding to changing marketing conditions.

**DATES:** Effective October 2, 2002. Comments are due before December 2, 2002.

**ADDRESSES:** Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280. Comments will be available for public inspection at this location during regular business hours between 8 am and 4:30 pm, Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280; telephone number (202) 205-0567.

**SUPPLEMENTARY INFORMATION:** Since 1935, upon enactment of the Tobacco Inspection Act, the USDA has provided mandatory inspection services at

designated tobacco auction markets. In 2002, based on results of referenda conducted among producers eligible for price support, regulations were amended to provide mandatory inspection at places other than designated tobacco auction markets. The USDA has always sought the input of the industry in implementing legislative authority concerning marketing due to the large geographic areas involved and the different procedure in individual types of tobacco such as size and weight of packages used to display the product, the number of designated markets, the number of sets of buyers present, the number of sales days, and other matters that directly impact on the operation of the auction markets and, therefore, the Federal presence necessary to provide the level of service desired by producers and industry.

In 1974, at the request of the industry, the USDA established the Flue-Cured Tobacco Advisory Committee (FCTAC) to provide a mechanism for consultation with flue-cured producers, warehouse representatives, and buying interests on the problems peculiar to that type of tobacco with particular emphasis on the grower designation program. The composition of the committee was specified in regulations although it was not necessary and is not customary. At a recent meeting, the FCTAC recommended that the regulations referencing its composition and representation be removed. Removal of these regulations will not alter the FCTAC's purpose nor direction for an orderly marketing of tobacco but will allow the USDA more flexibility in making structural changes in its composition as a result of new marketing changes. Historically, almost all flue-cured tobacco was sold at auction. In recent years, most flue-cured tobacco has been sold under contract.

The USDA intends to decrease the FCTAC from 39 members, each with an alternate, to 21 members, each with an alternate. The entities currently represented on the FCTAC will not change. The Flue-Cured Stabilization Cooperation will be added with one member. The rest of the apportionment will change as follows: Georgia, South Carolina, and Virginia Farm Bureaus will decrease from two members each to one member each; North Carolina Farm Bureau will decrease from eight members to four members; North

Carolina State Grange will decrease from four members to two members; Tobacco Association of United States will decrease from five members to four members; Bright Belt Warehouse Association will decrease from 10 members to one member; Florida Farm Bureau, South Carolina State Grange, Tobacco Growers Association of North Carolina, Philip Morris USA, R. J. Reynolds Tobacco Company, and Lorillard Tobacco Company will all remain unchanged with one member each.

There are currently regulations at 7 CFR subpart G, §§ 29.9401–29.9407 covering the FCTAC. Section 29.9403 (b), (c), (d), and (e) would be removed.

#### Executive Order 12866 and 12988

This 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.

This rule has been reviewed under Executive order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State of local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act

In conformance with the provisions of the **Regulatory Flexibility Act** (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of 'small business' which are defined by the **Small Business Administration** (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are approximately 190 tobacco warehouses and approximately 450,000 tobacco producers and most warehouses and producers may be classified as small entities. The AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This interim final rule would not substantially affect the normal movement of the commodity into the marketplace. Compliance with this

interim final rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and would not alter the market share of competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. This rule merely removes section of the regulations that specify composition of the FCTAC.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and customary to the public interest to give preliminary notice prior to putting this rule in effect, and that good cause exists for not postponing the effective date of this rule until 60 days after publication in the **Federal Register** so that USDA can utilize the advice of a committee which reflects the current makeup of the tobacco industry during the current marketing season. This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

#### List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, the regulations at 7 CFR part 29 are amended as follows:

#### PART 29—TOBACCO INSPECTION

##### Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

1. The authority citation for part 29, subpart G continues to read as follows:

**Authority:** Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98-180, 97 Stat. 1149 (7 U.S.C. 1421; 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

##### § 29.9403 [Amended]

2. In § 29.9403, paragraphs (b), (c), (d), (e) and paragraph designation “(a)” are removed.

Dated: September 25, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-24905 Filed 9-30-02; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

##### Commodity Credit Corporation

##### 7 CFR Part 1400

##### RIN 0560-AG77

##### Payment Limits

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Farm Security and Rural Investment Act of 2002 regarding per person payment limitations on certain programs. This rule will limit the amount of payments that may be received by one person for direct and counter-cyclical payments, marketing loan and loan deficiency payments, and conservation and environmental programs.

**EFFECTIVE DATE:** September 27, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250-0517. Telephone: (202) 720-3463. Electronic mail: [Dan\\_McGlynn@wdc.usda.gov](mailto:Dan_McGlynn@wdc.usda.gov). Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

##### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) requires that the regulations needed to implement Title I of the 2002 Act, including those involved here, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

##### Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

##### Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal

Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

##### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

##### Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. It has been concluded that the rule will have no significant impacts upon the human environment as documented by an environmental evaluation. A copy of the environmental evaluation is available for inspection and review upon request. Therefore, the agency has determined that this rule is a categorical exclusion and no further environmental review is required.

##### Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

##### 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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.