

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1464

RIN 0560-AE41

#### Tobacco—Tobacco Loan Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies the regulations for price support loans for tobacco to specify that a refund will be due on "nested" tobacco whether or not the producer knew the tobacco was nested. This modification is intended to insure that producers take responsibility for, and are the insurers of, the quality of the tobacco placed for price support and that price support is limited to normal, non-adulterated lots based on true weights. This final rule adopts, the proposed rule published in the Federal Register on February 12, 1996.

**EFFECTIVE DATE:** June 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** David W. Anderson, Assistant to the Director, Tobacco and Peanuts Division, Farm Services Agency (FSA), United States Department of Agriculture (USDA) AG Code 0514, PO Box 2415, Washington, DC., 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 Commodity Credit Corporation (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 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 the quality of the human environment. Therefore, neither an environmental assessment nor environment 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 provision of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

##### Paperwork Reduction Act

This final rule does not change the information collection requirements that have been approved by OMB and assigned control number 0560-0058.

##### Background

Nested tobacco is tobacco in a lot containing a "nest" of inferior tobacco or foreign material, presumably, to increase the payment or loan weight of the lot. A formal definition of nesting is found in regulations codified at 7 CFR part 29 and that definition is incorporated in the rules for the tobacco price support program found at 7 CFR part 1464.

In a proposed rule published on February 12, 1996, it was proposed that the regulations in part 1464 be clarified to make explicit that a refund will be due from support loan recipients on individual nested lot in all cases of nesting, whether the nesting was "knowingly" done or not by the loan recipient. However, the proposal would have allowed the FSA county committee, with the concurrence of the FSA State committee, to reduce the amount of the refund demanded, in accordance with guidelines of the FSA's Deputy Administrator for Farm Programs. This allowance was proposed to permit adjustments to avoid undue hardship to producers. The proposal did not adjust the terms under which a producer could lose eligibility for loans for an entire crop year due to nesting. That loss could still require that a violation be "knowingly" committed by a loan recipient.

##### Discussion of Comments

Five public comments were received, three in favor of the proposed rule and two opposed. One of the negative comments suggested that the grading of tobacco was a subjective matter and that a mistake on the part of the producer could be construed to be nesting. The other negative comment indicated that with increased size of operations that laborers might mix some tobacco, thus causing nesting to take place and that producers should be forgiven and not be held as being the responsible party. The other comments received supported the proposed rule as written, with one respondent suggesting that a penalty be established only on the nest and that the rate of penalty be higher than set out in current regulations.

After consideration of all comments received, CCC has determined that the proposed rule which was published at 7 CFR part 1464 on February 12, 1996, should be adopted as a final rule without change. While some producers may have more difficulty than others in controlling their operations, it still is the responsibility of the producer to make grade on tobacco offered for price support. The price support program is not an insurance program. If a full refund is not warranted, then an accommodation can be considered under the relief provisions of the rule. The rule is not intended to serve as a penalty, but only to insure that only

marketable tobacco is offered for price support and to insure that the amount of support made available is not excessive.

#### List of Subjects in 7 CFR Part 1464

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

Accordingly, 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 1464.8 is amended by revising the introductory text to read as follows:

#### § 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in § 1464.2, that is in sound and merchantable condition, is not nested as defined in 7 CFR part 29, and:

\* \* \* \* \*

3. Section 1464.9 is amended by revising paragraph (a) to read as follows:

#### § 1464.9 Refund of price support advance.

\* \* \* \* \*

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State Committee Representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator.

\* \* \* \* \*

Signed at Washington, DC on June 20, 1996.

Bruce R. Weber,

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 96-16355 Filed 6-26-96; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 204

[INS No. 1647-95]

RIN 1115-AE24

#### Priority Dates for Employment-Based Petitions

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This interim rule amends the Immigration and Naturalization Service (Service) regulations by eliminating the requirement that an application for labor certification filed with a state employment office before October 1, 1991, must be filed with the Service in connection with a petition filed under section 203(b) of the Immigration and Nationality Act (Act) before October 1, 1993, in order to maintain a pre-October 1, 1991, priority date. This rule implements section 218 of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), which amended section 161(c)(1) of the Immigration Act of 1990 (IMMACT). This rule is necessary to implement a statutory change.

**EFFECTIVE DATE:** June 27, 1996. Written comments must be submitted on or before August 26, 1996.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling please reference INS No. 1647-95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Michael W. Straus, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-3228.

**SUPPLEMENTARY INFORMATION:** On November 29, 1991, the Service published a final rule implementing the new employment-based immigrant categories created by the Immigration Act of 1990 (IMMACT), Pub. L. 101-649. See 56 FR 60897-913. The final rule provided that the priority date for an employment-based petition accompanied by a labor certification shall be the date on which any office

within the employment service system of the Department of Labor accepted the request for labor certification. See 8 CFR 204.5(d). A priority date determines when an alien, who has had an immigrant visa petition approved on his or her behalf, may submit his or her application for permanent resident status or an immigrant visa.

Subsequent to the promulgation of the November 29, 1991, regulation, the President signed into law the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232, dated December 12, 1991. Section 302(e)(2) of the MTINA, which amended section 161(c)(1) of IMMACT addressed, among other things, the transition of labor certifications filed before October 1, 1991, into the new employment-based immigrant visa categories created by IMMACT. In this regard, section 302(e)(2) of MTINA provides that, in order to maintain the priority date of a labor certification application filed in connection with an employment-based petition which was submitted to a state employment office before October 1, 1991, the employer must file an employment-based petition before October 1, 1993. Section 302(e)(2) of MTINA further provides that if the Department of Labor approves a pre-October 1, 1991, labor certification application subsequent to October 1, 1993, the employer must file a petition under section 203(b) of the Act within 60 days of the date of certification to maintain the pre-October 1, 1991, priority date.

To implement section 302(e)(2) of MTINA, the Service issued an interim rule with request for comments on January 5, 1994, at 59 FR 501-502. This interim rule provided that in the case of labor certifications accepted for processing by any office within the employment service system of the Department of Labor before October 1, 1991, the sponsoring employer must file a petition under section 203(b) of the Act before October 1, 1993, or within 60 days after the date of certification by the Department of Labor, whichever is later, in order to maintain the pre-October 1, 1991, priority date. On October 11, 1994, the Service issued a final rule which adopted the interim rule as final. See 59 FR 51358-60.

On October 25, 1994, the President signed into law the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Pub. L. 103-416. Section 218 of INTCA further amends section 161(c)(1) of IMMACT by removing the reference to priority dates for pre-October 1, 1991, labor certifications. This section effectively repealed section