

# Rules and Regulations

Federal Register

Vol. 63, No. 202

Tuesday, October 20, 1998

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.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 723

### Commodity Credit Corporation

#### 7 CFR Part 1464

RIN 0560-AF19

### 1998 Marketing Quota and Price Support for Flue-Cured Tobacco

**AGENCIES:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1998 crop of flue-cured tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 1998 marketing quota for flue-cured tobacco to be 807.6 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 1998 price support level to be 162.8 cents per pound.

**EFFECTIVE DATE:** December 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250-0514, telephone 202-720-5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB under Executive Order 12866.

#### 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.

#### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since FSA 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.

#### Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

#### 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.

#### Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99-272 provides that the determinations made in this rule are not subject to the provisions for public participation in rule making contained in 5 U.S.C. 553 or in any directive of the Secretary. Further, since this rule affirms existing determinations which are time-sensitive, the rule is made effective as of the date the underlying determinations were made.

#### Proclamation

On December 15, 1997, the Secretary announced the national marketing quota and the price support level for the 1998

crop of flue-cured tobacco. A number of related determinations were made at the same time, which this final rule affirms. The Secretary also announced that a referendum would be conducted by mail ballot with respect to flue-cured tobacco.

During January 12-15, 1998, eligible flue-cured tobacco producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1998, 1999, and 2000 marketing years (MY) for this kind of tobacco. Of the producers voting, 98.5 percent favored marketing quotas for flue-cured tobacco. Accordingly, quotas and price support are in effect for the 1998 MY.

#### Marketing Quota

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1998 crop of flue-cured tobacco by December 1, 1997. Five such manufacturers were required to submit such a statement for the 1998 crop and the total of their intended purchases for the 1998 crop is 454.6 million pounds. The 3-year average of exports is 371.9 million pounds.

The national marketing quota for the 1997 crop year was 973.8 million pounds (62 FR 24799). Thus, in

accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level for use in determining the 1998 marketing quota for flue-cured tobacco is 146.1 million pounds.

Due to short crops in 1995 and 1996, all pre-1997 loan stocks held by the Flue-Cured Tobacco Cooperative Stabilization Corporation have been sold. Loans from the 1997 crop total 188.5 million pounds. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 42.4 million pounds.

The total of the three marketing quota components for the 1998–99 MY is 784.1 million pounds. In addition, the discretionary authority to increase the three-component total by 3 percent was used due to the adverse impact on small farmers of the large reduction (still 16.5 percent) in the 1998 marketing quota. Accordingly, the national marketing quota for the MY beginning July 1, 1998, for flue-cured tobacco is 807.6 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level that the Secretary determines will improve or ensure the useability of the tobacco and increase the net return per pound to the producers. Since average yields have not changed significantly in recent years, the national average yield goal for the 1998–99 MY will be 2,088 pounds per acre, the same as last year's level.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1998 crop of flue-cured tobacco is determined to be 386,781.61 acres, derived from dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1998 crop of flue-cured tobacco of 1,890 acres is adequate for these purposes.

In accordance with section 317(a)(4) of the 1938 Act, the national acreage factor for the 1998 crop of flue-cured tobacco for uniformly adjusting the acreage allotment of each farm is determined to be 0.835, which is the result of dividing the 1998 national allotment (386,781.61 acres) minus the national reserve (1,890 acres) by the total of allotments established for flue-

cured tobacco farms in 1997 (460,942.49 acres).

In accordance with section 317(a)(7) of the 1938 Act, the national yield factor for the 1998 crop of flue-cured tobacco is determined to be 0.9268, which is the result of dividing the national average yield goal (2,088 pounds) by a weighted national average yield (2,253 pounds).

#### Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1998 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1998 crop of flue-cured tobacco shall be:

(1) The level, in cents per pound, at which the 1997 crop of flue-cured tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MYs immediately preceding the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for flue-cured tobacco on the U.S. auction markets, as determined by the Secretary, during the 5 MY immediately preceding the MY prior to the MY for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year for which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A) (I) and (A) (II)) is 0.0 cent per pound. The difference in the cost index from

January 1, 1997, to December 31, 1997, is 2.2 cents per pound. Applying these components to the price support formula (0.0 cent per pound, two-thirds weight; 2.2 cents per pound, one-third weight) results in a weighted total of 0.7 cent per pound. As indicated, section 106 of the 1949 Act provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. However, because the formula increase is significantly less than the increase in the cost of production, this discretion was not used for 1998. Accordingly, the 1998 crop of flue-cured tobacco will be supported at 162.8 cents per pound, 0.7 cent higher than the 1997 crop.

#### List of Subjects

##### 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

##### 7 CFR Part 1464

Loan programs-agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

#### PART 723—TOBACCO

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

**Authority:** 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.111 is amended by adding paragraph (f) to read as follows:

##### § 723.111 Flue-cured (types 11–14) tobacco.

\* \* \* \* \*

(f) The 1998 crop national marketing quota is 807.6 million pounds.

#### PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

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

4. Section 1464.12 is amended by adding paragraph (f) to read as follows:

##### § 1464.12 Flue-cured (types 11–14) tobacco.

\* \* \* \* \*

(f) The 1998 crop national price support level is 162.8 cents per pound.

Signed at Washington, DC, on October 9, 1998.

**Keith Kelly,**

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

[FR Doc. 98-28018 Filed 10-19-98; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 723

### Commodity Credit Corporation

#### 7 CFR Part 1464

RIN 0560-AF18

### 1998 Marketing Quota and Price Support for Burley Tobacco

**AGENCIES:** Farm Service Agency and  
Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1998 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended, (1938 Act), the Secretary determined the 1998 marketing quota for burley tobacco to be 637.8 million pounds. In accordance with the Agricultural Act of 1949, as amended, (1949 Act), the Secretary determined the 1998 price support level to be 177.8 cents per pound.

**EFFECTIVE DATE:** January 30, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Robert L. Tarczy, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250-0514, telephone 202-720-5346. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Tarczy.

#### SUPPLEMENTARY INFORMATION:

### Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB under Executive Order 12866.

### 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.

### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since Farm Service Agency (FSA) nor the Commodity Credit Corporation (CCC) is 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 of these determinations.

### Paperwork Reduction Act

These final amendments do not contain information collection that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

### 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.

### Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Pub. L. 99-272 provides that the determinations made in this rule are not subject to the provisions for public participation in rule making contained in 5 U.S.C. 553 or in any directive of the Secretary. Further, since this rule affirms existing determinations which are time-sensitive, the rule is made effective as of the date of the underlying determinations.

### Proclamation

On January 30, 1998, the Secretary announced the national marketing quota and the price support level for the 1998 crop of burley tobacco. A number of related determinations were made at the same time, which this final rule affirms. The Secretary also announced that a referendum would be conducted by mail ballot with respect to burley tobacco.

During February 23-27, 1998, eligible burley tobacco producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1998, 1999, and 2000 marketing years (MYs) for this kind of tobacco. Of the producers voting, 97.5 percent

avored marketing quotas for burley tobacco. Accordingly, quotas and price support are in effect for the 1998 MY.

### Marketing Quota

Section 319(c)(3) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the 3 marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level.

The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1998 crop of burley tobacco by January 15, 1998. Five such manufacturers were required to submit such a statement for the 1998 crop and the total of their intended purchases for the 1998 crop is 421.1 million pounds. The 3-year average of exports is 188.1 million pounds.

The national marketing quota for the 1997 crop year was 704.5 million pounds (62 FR 30229). Thus, in accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level for use in determining the 1998 marketing quota for burley tobacco is 105.7 million pounds.

As of January 24, 1998, the Burley Tobacco Growers Cooperative Association and Burley Stabilization Corporation had in their inventories 27.1 million pounds of burley tobacco (excluding pre-1994 stocks committed to be purchased by manufacturers and covered by deferred sales). The 1997-crop receipts are expected to total about 50 million pounds. Accordingly, the adjustment necessary to maintain loan stocks at the reserve supply level is an increase of 28.6 million pounds.

The total of the three marketing quota components for the 1997-98 marketing