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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 737

RIN 0560-AD92

### Tobacco Warehouses

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule amends the regulations governing tobacco warehouses under the United States Warehouse Act (USWA). A proposed rule was published in the July 28, 1995, **Federal Register** (60 FR 38766). On June 20, 1997, a final rule covering only administrative changes to various commodity regulations was published in the **Federal Register** (62 FR 33539). Included in that final rule were two administrative changes which had been included in the tobacco warehouse proposed rule. Therefore, this final rule does not address those two administrative changes. In the proposed rule the Farm Service Agency (FSA) proposed excluding tobacco auction warehouses from USWA licensing requirements. This final rule adopts the position taken in the proposed rule and excludes those tobacco auction warehouses from licensure under the USWA. FSA has determined that it is not necessary to define "warehouse" as suggested in the proposed rule. The USWA, as amended (7 U.S.C. 241 *et seq.*), provides the Secretary of Agriculture with the discretion to establish a voluntary licensing program for public warehouses that store agricultural commodities under a bailment relationship with its depositors. Accordingly, the Secretary will exercise this discretion and through FSA will discontinue licensing tobacco auction warehouses under the USWA and all licenses issued to tobacco auction warehouses covered by this rule

will be administratively canceled by Secretarial determination on October 31, 1999. October 31, 1999, was selected as the effective date so as to allow the affected tobacco auction warehouses sufficient notice and time to seek a State license or changes in State law to the extent that this rule may have an effect on warehouse rates. In addition, this final rule makes some minor "housekeeping" amendments.

EFFECTIVE DATE: November 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Steve Gill, Director, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, S.W., Washington, DC 20250-0553; telephone 202-720-2121 or FAX 202-690-3123, e-mail: Steve\_Gill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

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

#### Executive Order 12988

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

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12612

It has been determined that this rule is consistent with the Federalism principles espoused in Executive Order 12612, and does not warrant the preparation of a Federalism Assessment.

#### 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 29115 (June 24, 1983).

### Paperwork Reduction Act

The amendments set forth in this final rule do not affect information collection or recordkeeping requirements.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

### Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates 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

The USWA, as amended (7 U.S.C. § 241 *et seq.*), provides that the Secretary of Agriculture may issue a license for the conduct of public warehouses that store agricultural commodities. The USWA is implemented, as it pertains to tobacco warehouses, by regulations at 7 CFR part 737 and is administered by FSA. Approximately, 1,500 entities hold licenses under the USWA to store one or more of eight different agricultural commodities. Presently, there are six tobacco auction warehouses licensed under the USWA.

### Summary of Comments

A proposed rule was published in the **Federal Register** (60 FR 38766) on July 28, 1995. The proposed rule excluded tobacco auction warehouse from licensure under the USWA. Comments from interested parties were due on or before August 28, 1995. A total of 3,242 comments were received from 14 different sectors as follows: 2 Cotton Associations; 1 Chamber of Commerce; 15 Farm Bureaus; 20 Grain Warehouse Associations; 1 High School (FFA Chapter); 60 Interested Parties; 1 Legal Counsel; 3 Law Makers (State or Federal); 3,113 Tobacco Producers; 7 State Agriculture Departments; 3 Stabilization Corporations; 4 Tobacco Producer Associations; 5 Tobacco Warehouse Associations; and 7 Tobacco

Warehouses. Of the above comments 2,964 were against the proposed rule, 275 were in favor of the proposed rule and 3 had no opinion. Of the comments received in opposition to the proposal, 2,236 were in the form of preprinted postcards that were submitted by tobacco producers in Virginia.

Producers not in favor of the proposed rule expressed confidence in the security offered by the USWA and therefore, asked that tobacco warehouses to which they deliver tobacco be allowed to remain licensed under the USWA. Producers in favor of the proposed rule expressed a common concern about the charges assessed by warehouses licensed under the USWA.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. Tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and FSA may sell producer-owned and dealer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be presented for sale and graded for sale. Further, AMS regulations include detailed recordkeeping requirements. Further, AMS has representatives on-site during all sales of tobacco.

In addition, the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, strictly regulate the sale of tobacco. The Commodity Credit Corporation (CCC) and FSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR part 723 and 1464. Under these regulations, CCC and FSA require that warehouse operators retain detailed records of all tobacco handled by them. The tobacco and the transactions associated with it must be tracked and recorded from the time the tobacco is brought into the warehouse by producers, to the time it leaves the warehouse.

The type and level of regulation by AMS, CCC, and FSA are unique to tobacco auction warehouses. Producers who believe they have not been treated fairly by the warehouse operator may seek relief directly from the on-site representatives of the various Government Agencies. If such allegations are confirmed, under the provisions of 7 CFR parts 723 and 1464, CCC or FSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are sufficiently regulated by other USDA regulations, and involve sales,

primarily, rather than storage, FSA will discontinue licensing tobacco auction warehouses under the USWA.

Additionally, those licenses currently held by tobacco auction warehouse operators will be administratively canceled by Secretarial determination effective October 31, 1999.

#### List of Subjects in 7 CFR Part 737

Administrative practice and procedure, Agricultural Commodities, Surety Bonds, Tobacco, Warehouses.

Accordingly, the provisions of 7 CFR part 737 are amended as follows:

#### PART 737—TOBACCO WAREHOUSES

1. The authority citation for part 737 continues to read as follows:

**Authority:** 7 U.S.C. 241 *et seq.*

2. Section 737.2 is amended by revising the introductory text and paragraph (j) to read as follows:

##### § 737.2 Terms defined.

For the purposes of this part, unless otherwise provided, the following terms shall mean:

\* \* \* \* \*

(j) **Warehouseman.** Any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

\* \* \* \* \*

3. Section 737.4 is revised to read as follows:

##### § 737.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license. Further, a license shall not be issued for any place to which tobacco is delivered by the producers or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. Section 737.34 is revised to read as follows:

##### § 737.34 Package arrangement.

(a) Each warehouseman shall arrange the packages of tobacco so that the identification number thereon as required by § 737.33 is visible, readily accessible, and arranged so as to permit an accurate check thereof, unless waived in writing by the Administrator.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of this warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with paragraph (a) of this section.

Signed at Washington, DC, on November 3, 1998.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Parts 911 and 915

[Docket No. FV98-911-2 FIR]

#### Limes and Avocados Grown in Florida; Relaxation of Container Dimension, Weight, and Marking Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the container requirements prescribed under the Florida lime and avocado marketing orders. The marketing orders regulate the handling of limes grown in Florida and avocados grown in South Florida and are administered locally by the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees). This rule continues in effect changes to simplify container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also continues in effect the removal of weight limits on lime and avocado containers packed within a master container, and the relaxation of certain minimum weight requirements on containers of avocados. In addition, this rule continues in effect the elimination of specific container dimension requirements for both limes and avocados, but maintains net weight requirements. These changes are needed to reduce handling costs and provide greater flexibility in lime and avocado packing operations.

**EFFECTIVE DATE:** December 9, 1998.