

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Consolidated Farm Service Agency

#### 7 CFR Part 737

#### RIN 0560-AD92

#### Tobacco Warehouses

**AGENCY:** Consolidated Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Consolidated Farm Service Agency (CDSA) is proposing to amend its regulations pertaining to licensed tobacco warehouses under the United States Warehouse Act (USWA). The proposed rule would define warehouse to exclude places which have contracted with a cooperative marketing association (association) to make Commodity Credit Corporation (CCC) price support advances to producers on behalf of the association and to which producers will deliver their tobacco for display and auction (hereinafter auction warehouses). Accordingly, the proposed rule removes such places from the jurisdiction of the USWA Tobacco Warehouse Regulations as provided for under 7 CFR part 737. The proposed rule also makes changes with respect to package arrangement and some clerical corrections.

**DATES:** Comments must be received by August 28, 1995 to be assured of consideration.

**ADDRESSES:** Comments must be submitted to Acting Director, Warehouse and Inventory Division (WID), CDSA, P.O. Box 2415, Washington, DC 20013-2415, FAX 202-690-0014.

All submissions will be available for public inspection in room 5962, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Mikkelsen, Licensing Authority Branch, WID, CDSA, P.O. Box 2415,

Washington, DC 20013-2415; telephone 202-720-7433 or FAX 202-690-3123.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

##### 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).

##### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

##### Paperwork Reduction Act

The amendments set forth in this proposed rule do not generate any new or revised information collection or recordkeeping requirements on the public.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule, because it has been determined that 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.

##### Environmental Evaluation

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

##### Background

The purpose of this proposed rule is to remove tobacco auction warehouses from coverage under the USWA and the regulations issued thereunder (7 CFR part 737). The USWA, as amended (7 U.S.C. 241 et seq.), provides that the

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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 CDSA. Approximately, 1,500 entities hold licenses for storing eight different agricultural commodities. Presently, there are six tobacco auction warehouses licensed under the USWA.

In the tobacco industry, there are generally two types of tobacco warehouses: (1) Long term storage warehouses and (2) tobacco auction warehouses. The first type usually stores processed tobacco or raw tobacco that has been chopped, placed in containers, and otherwise prepared for long term storage. The second type receives raw tobacco from producers and retains it for a limited period of time, generally less than 30 days, until the tobacco is sold in an auction or transferred to a tobacco association for placement under the CCC price support program. Unlike a warehouse whose primary purpose is to store processed tobacco for a long period of time, the primary purpose of an auction warehouse is to market producer-owned tobacco. Presently, there are approximately 400 tobacco auction warehouses.

The primary objectives of the USWA are to protect those who store commodities in public warehouses; assure the integrity of warehouse receipts as documents of title to be used as collateral; and set, regulate, and maintain superior standards for said warehouse operators. Because the auctioning of tobacco is a merchandising function, a function which is not regulated by the USWA, the USWA and its regulations, thereunder, were not intended to cover tobacco auction warehouses. This proposed rule, however, does not affect the U.S. Department of Agriculture's (USDA) other regulatory activity as it applies to tobacco auction warehouses.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. For example, tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and CDSA may sell producer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be stored, handled,

presented for sale, and graded for sale. See, 7 CFR part 29. Further, the 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. CCC and CDSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR parts 723 and 1464. Under these regulations, CCC and CDSA require that warehousemen 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 CDSA are unique to auction warehouses. Producers who believe they have not been treated fairly by the warehouseman 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 CDSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are (1) more involved with merchandising (which is a non-USWA function) as opposed to the long term storage of tobacco and (2) sufficiently regulated by other USDA regulations, CDSA proposes to eliminate the application of the USWA and its regulations to tobacco auction warehouses. This action further reduces the amount of federal regulation.

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

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

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

#### PART 737—TOBACCO WAREHOUSES

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

**Authority:** 7 U.S.C. 268.

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

#### § 737.2 Terms defined.

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

\* \* \* \* \*

(f) **Service.** The Consolidated Farm Service Agency of the U.S. Department of Agriculture.

\* \* \* \* \*

(i) **Warehouse.** Any suitable building, structure, or other protected enclosure in which tobacco is, or may be, stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which tobacco is, or may be, stored and for which a license has been issued under the act except for any place, including any suitable building, structure, or other protected enclosure to which tobacco is delivered by the producers thereof, or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

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

\* \* \* \* \*

3. Section 737.4 is amended by adding the following sentence at the end of the paragraph:

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

\* \* \* Further, a license shall not be issued to any place to which tobacco is delivered by the producers thereof, or their agents, for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. In § 737.34 paragraph (a) is revised and paragraph (b) is amended by adding a period after the word "section" and removing the remainder of the paragraph.

#### § 737.34 Package arrangement.

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

\* \* \* \* \*

#### § 737.50 [Amended]

5. Section 737.50 is amended by removing "order of Agricultural Marketing Service, USDA", and by adding "Service."

Signed at Washington, DC, on July 24, 1995.

**Bruce R. Weber,**

*Acting Administrator, Consolidated Farm Service Agency.*

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#### Agricultural Marketing Service

#### 7 CFR Part 1137

[DA-95-21]

#### Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension was requested to prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the order.

**DATES:** Comments are due no later than August 17, 1995.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.