

*Congressional Review*

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804 and does not require review by Congress. This rulemaking is related to Department personnel.

*Executive Order 12866*

Since this rule relates to Personnel, it is exempt from the provision of Executive Order 12866.

*Regulatory Flexibility Act*

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

*Paperwork Reduction Act*

The Department has determined that the Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

*Environmental Impact*

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Dated: September 24, 1997.

**Dan Glickman,**

*Secretary of Agriculture.*

For the reasons set forth in the preamble, the Department is amending Title 7, Subtitle A, of the Code of Federal Regulations as follows:

**TITLE 7—[AMENDED]****SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE****PART 0—[REMOVED]**

Part 0 of 7 CFR Subtitle A is removed.

[FR Doc. 97-26216 Filed 10-2-97; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1422**

RIN 0560-AF04

**Standards for Approval of Cold Storage Warehouses for Peanuts**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule removes obsolete regulations pertaining to

approval of cold storage warehouses for peanuts under the peanut price support program. The Commodity Credit Corporation (CCC) no longer uses cold storage warehouses for peanuts owned by CCC or held by CCC as security for price support loans.

**EFFECTIVE DATE:** October 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** David Kincannon, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250-0514; or telephone (202) 720-7914.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This 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).

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final or proposed rulemaking with respect to the subject matter of these determinations.

**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 12988**

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

**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 to 7 CFR part 1422 set forth in this final rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

**Background**

This final rule removes 7 CFR part 1422 pertaining to the peanut price support program. CCC no longer stores peanut stocks it owns or controls in cold storage warehouses. Therefore, the regulations are obsolete. If cold storage becomes needed, such storage can be controlled by contract. Because this action involves the removal of obsolete regulations and does not affect the interests of any member of the public, this rule is being made effective immediately. Delaying the rule for comment is unnecessary and would be contrary to the public interest.

**List of Subjects in 7 CFR Part 1422**

Peanuts, Price support and purchase programs, Warehouses.

Accordingly, under the authority of 7 U.S.C. 2202 and 7 CFR 2.65(a)(14), 7 CFR Part 1422 is removed.

Signed at Washington, DC, on September 26, 1997.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 97-26301 Filed 10-2-97; 8:45 am]

BILLING CODE 3410-05-P

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****Executive Office for Immigration Review****8 CFR Part 240**

[EOIR No. 1181; AG Order No. 2118-97]

RIN: 1125-AA19

**Suspension of Deportation and Cancellation of Removal**

**AGENCY:** Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

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

**SUMMARY:** This rule amends the regulations of the Executive Office for Immigration Review (EOIR) and Immigration and Naturalization Service (Service) by establishing a procedure for processing suspension of deportation and cancellation of removal and adjustment of status cases. This rule is a partial and transitional measure to implement provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) relating to suspension of deportation and cancellation of removal. This transitional policy will be reevaluated after the Department determines how

best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA.

**DATES:** *Effective date:* This interim rule is effective October 1, 1997.

*Comment date:* Written comments must be submitted on or before December 1, 1997.

**ADDRESSES:** Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

**FOR FURTHER INFORMATION CONTACT:** For matters relating to the Executive Office for Immigration Review—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 527-0470. For matters relating to the Immigration and Naturalization Service—Marguerite N. Przybylski, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW, Washington, D.C. 20536, telephone (202) 514-2895.

**SUPPLEMENTARY INFORMATION:** This interim rule with request for comments amends 8 CFR part 240 by creating new § 240.21.

### Background

On September 30, 1996 Congress enacted IIRIRA. Under section 304(a)(3) of IIRIRA, the Attorney General may not cancel the removal and adjust the status under section 240A(b) of the Immigration and Nationality Act (Act), nor suspend the deportation and adjust the status under section 244(a) of the Act (as in effect before April 1, 1997) of a total of more than 4,000 aliens in any fiscal year. Section 309(c)(7) of IIRIRA provides that this numerical limitation applies regardless of when an alien has applied for the relief. The limitation is effective beginning with fiscal year 1997.

Because no implementing regulations were in place upon IIRIRA's enactment on September 30, 1996, suspension cases granted in the first five months of fiscal year 1997 were granted without condition and the statutory cap was nearly reached by mid-February. On February 13, 1997, EOIR issued directives to the immigration judges and the Board of Immigration Appeals (Board) to reserve grants of suspension until further notice. These directives provided a temporary mechanism to ensure that EOIR did not exceed the statutory cap in the remainder of fiscal year 1997 while the Department determined how to implement the cap. Over 3,000 decisions have been reserved since the issuance of these directives. In

order to prevent this backlog of cases from continuing to increase, it is necessary to provide a procedure that will allow for the entry of a substantive determination regarding the merits of these cases, while allowing the Department an opportunity to further investigate methods to implement the cap. Therefore, immediate direction is required for the processing of these cases in light of sections 304(a)(3) and 309(c)(7) of IIRIRA.

This regulation provides the necessary procedures for the processing of suspension of deportation and cancellation of removal cases while it is determined how the numerical limitation will be implemented. The rule provides that applications for suspension or cancellation that meet the statutory requirements and warrant a favorable exercise of discretion will be conditionally granted. This rule is a transitional measure in that conditional grants of suspension of deportation and cancellation of removal will be revisited after the Department determines how best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA. This rule provides a partial solution to the statutory cap in that it will provide a mechanism to eliminate the backlog of reserved cases. The Department intends to implement the statutory cap in a separate regulation within approximately six months.

### The Interim Rule

This interim rule provides that neither the immigration judges nor the Board shall make an unconditional grant of any application for suspension of deportation pursuant to section 244(a) of the Act (as it existed prior to April 1, 1997) or cancellation of removal and adjustment of status pursuant to section 240A(b) of the Act. If the immigration judge or the Board finds that an alien is statutorily eligible for suspension of deportation or cancellation of removal and adjustment of status and that the case warrants a favorable exercise of discretion, the immigration judge or the Board shall enter a conditional grant of suspension or cancellation. The Board shall enter a conditional grant of suspension or cancellation even if the immigration judge granted that application without condition. A conditional grant of suspension or cancellation may be appealed to the Board pursuant to the rules and time frames specified in 8 CFR part 3.

The conditional grant of suspension of deportation or cancellation of removal and adjustment of status shall specify which paragraph of section 244(a) of the Act (as in effect before April 1, 1997) or section 240A(b) of the

Act applies, and shall include an alternate order of deportation, removal or voluntary departure. Thus the alien is conditionally granted suspension or cancellation and that conditional grant will be revised after the Department determines how best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA.

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedure or practice in 5 U.S.C. 553(b)(3)(A) and upon the "good cause" exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Immediate implementation is necessary because EOIR has directed that suspension of deportation grants be reserved until further notice and over 3,000 decisions have been so reserved over the last few months. These cases must be resolved on the merits while the Department determines how to implement the statutory cap on suspension and cancellation. The Department has provided a public comment period on this interim rule of 60 days.

### Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certified that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

#### Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

#### Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and States, or on the distribution or power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

#### List of Subjects in 8 CFR Part 140

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 240 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

#### PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

1. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

2. Section 240.21 is added to read as follows:

**§ 240.21 Suspension of deportation and adjustment under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment under section 240A(b) of the Act for certain nonpermanent residents.**

(a) Applications for suspension of deportation under section 244(a) of the Act (as in effect before April 1, 1997) or cancellation of removal and adjustment of status under section 240A(b) of the Act that meet the statutory requirements and warrant a favorable exercise of discretion may be granted only on a conditional basis. The order conditionally granting relief shall state which paragraph of section 244(a) of the Act (as in effect before April 1, 1997) or section 240A(b) of the Act applies. No application for suspension or

cancellation shall receive a favorable exercise of discretion where the applicant has been granted asylum or adjustment of status while the suspension or cancellation application is pending. A decision to deny as a matter of discretion an application for suspension or cancellation on this basis shall be reconsidered where an appeal of a decision granting asylum or adjustment is sustained by the Board of Immigration Appeals.

(b) An alternate order of voluntary departure, deportation, or removal must be entered when there is a conditional grant of suspension or cancellation. The alternate order shall take effect if the condition is not ultimately removed.

(c) An order conditionally granting an application for suspension or cancellation is appealable to the Board pursuant to the procedures set forth in this chapter, and the time for appeal by the Service of the conditional grant or for appeal by the alien of the finding of deportability or of any denial of other relief by the immigration judge shall run from the date of such order.

(d) If, on appeal, the Board determines that an application for suspension of deportation or cancellation of removal meets the statutory requirements and warrants a favorable exercise of discretion, such application shall be granted on a conditional basis, even if an immigration judge granted the application without condition.

Dated: October 1, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97-26385 Filed 10-1-97; 11:36 am]

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#### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 270

[Release No. IC-22835; File No. S7-24-96]

RIN 3235-AG72

#### Rule Amendments Relating to Multiple Class and Series Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits open-end management investment companies ("funds") to issue multiple classes of shares representing interests in the same portfolio. The amendments expand and

clarify the methods by which a multiple class fund may allocate among its classes income, gains and losses, and expenses not allocated to a particular class, and clarify the shareholder voting provisions of the rule. The Commission also is adopting a technical amendment that clarifies the application to series funds of the rule under the Investment Company Act that governs the use of fund assets to pay for the distribution of fund shares.

**EFFECTIVE DATE:** November 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. J. Kerwin, Senior Counsel, Office of Regulatory Policy, at (202) 942-0690, or, regarding accounting issues, John S. Capone, Assistant Chief Accountant, Office of the Chief Accountant, at (202) 942-0590, in the Division of Investment Management, Mail Stop 10-2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942-0659, Division of Investment Management, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to rules 18f-3 [17 CFR 270.18f-3] and 12b-1 [17 CFR 270.12b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

#### Executive Summary

The Commission is adopting amendments to rule 18f-3 under the Investment Company Act, the rule that permits a fund to issue multiple classes of shares representing interests in the same investment portfolio. The amendments expand the specified methods a multiple class fund may use to allocate among its classes income, gains and losses (including unrealized appreciation or depreciation), and expenses not allocated to a particular class. The amendments also permit a fund to use any other allocation method that the fund's board of directors determines is fair to the shareholders of each class. In addition, the amendments clarify the shareholder voting rights provision of the rule.

The Commission also is adopting a technical amendment to rule 12b-1 under the Investment Company Act, the rule that governs the use of fund assets to pay for the distribution of fund shares in accordance with a "rule 12b-1 plan." The amendment codifies existing interpretations of how various provisions of the rule apply to a "series"