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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-02-11]

RIN 0581-AC20

Tobacco Inspection; Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that amended the regulations to provide mandatory grading for kinds of tobacco approved by a majority of producers voting in the mandatory grading referenda and to reduce the fee for mandatory grading from \$.01 per pound to \$.009 per pound.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280; telephone number (202) 205-0567.

SUPPLEMENTARY INFORMATION: In accordance with section 759 of the Appropriations Act (Pub. L. 107-76; 7 U.S.C. 511s), USDA conducted referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favored the mandatory grading of that kind of tobacco.

A notice of referenda was published in the **Federal Register** on March 5, 2002 (67 FR 9895) together with a final

rule establishing procedures for the referenda. The USDA's Farm Service Agency (FSA) certified the results of the referenda on March 27, 2002, and April 3, 2002.

A majority of producers voting in the referenda favored the mandatory grading of flue-cured tobacco, types 11, 12, 13, and 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; and dark air-cured tobacco, types 35 and 36.

Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading.

The Appropriations Act provided that, if a majority of the producers voting in the referenda favored the mandatory grading of that kind, USDA was directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA was also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees must be established, collected, and used in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

The USDA published in the **Federal Register** on May 23, 2002 (67 FR 36079) an interim final rule and notice of referenda results to amend the regulations to provide mandatory grading for flue-cured tobacco, types 11, 12, 13, 14; burley tobacco, type 31; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37, and dark air-cured tobacco, types 35 and 36. The interim final rule also reduced the fee for mandatory inspection from \$.01 per pound to \$.009 per pound. The USDA requested comments on the interim final rule and the comment period expired on July 22, 2002. One comment was received from a tobacco purchasing company. The respondent stated that the purchasing companies should be allowed to establish their own operating hours to properly serve the growers, requested that all USDA employees be required to sign in at the receiving station's main office prior to beginning work, and all USDA employees be required to wear identification at all times. The USDA has flexible work

schedules that can ordinarily accommodate purchasing companies establishing their own operating hours. Any grading services required to be performed outside of a regular work schedule, such as overtime and holidays, would be assessed to the purchasing company. The USDA implemented a program for the 2002 marketing season that requires grading personnel to wear picture identification cards and safety vests while performing grading services at receiving stations, and USDA personnel will notify any receiving station's main office of their arrival whenever this is requested.

This rule amended 7 CFR part 29, subpart B, regulations, to provide for mandatory grading at places other than designated tobacco auction markets. The regulations prior to the effective date of the interim rule only required grading of tobacco that was sold at auction on designated markets as set forth in § 29.8001. The regulations were amended in this rule to include producer tobacco sold at locations (receiving stations) where tobacco is offered for marketing or shipment into commerce, other than at designated auction markets. Additionally, the regulations were amended, at subpart B, to reference the implementing authority contained in the Appropriations Act. The Tobacco Inspection Act will continue to be referenced for kinds of tobacco sold at auction on designated markets not required under the Appropriations Act.

In the past, producers sold almost all of their tobacco at auction on designated markets. Last year, most producer tobacco was sold under contract and was delivered to receiving stations operated by buying concerns. Some of this tobacco was graded under the permissive grading program.

This rule added a definition of "receiving station" as meaning "Points at which producer tobacco is offered for marketing (other than sale at auction on a designated market), including tobacco auction warehouses, packing houses, prizeries, or places where tobacco is handled or stored." This definition is intended to be flexible enough to cover the circumstances in which producer tobacco may be marketed.

Also, the regulations were amended to provide for proper display of tobacco, adequate space to perform inspections at receiving stations and the issuance of

an inspection certificate. The requirements are similar to those at auction markets but are flexible because conditions will differ at the receiving stations. When the tobacco is inspected or graded by the receiver, the tobacco must be made available for mandatory inspection at the same time and at the same location within the receiving station. In order to provide a meaningful service to growers, who are paying for the inspection service, it is necessary to require the proper display of the tobacco and to require that the mandatory inspection be conducted at the same time and under the same conditions as any other inspections, and that the results be readily available to the producer. It is also necessary to provide that, as at auction markets, no one may interfere with the inspector in the process of grading tobacco.

The user fee for mandatory inspection of tobacco was increased from \$.0083 to \$.0100 per pound in 2001 to cover the costs of performing grading services and to maintain an adequate reserve to cover program financial responsibilities. During the 2001 crop-year, the Department only graded 31 percent of the total amount of tobacco marketed. However, with the adoption of mandatory grading of all tobacco, except cigar types, approximately 98 percent of tobacco marketed will require federal grading for the 2002 and subsequent crop years.

As a result of resources being more efficiently utilized over a larger geographical area and the additional revenue generated, the fee is reduced from \$.010 to \$.009 per pound. The reduced fee was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 16, 2002.

The AMS reviews its user fee programs annually to determine if fees are adequate. The most recent review determined that the previous fee schedule was more than adequate for the 2002 crop-year and would exceed the target level for the operating reserve balances.

Due to an estimated 69 percent increase in tobacco to be inspected for the 2002 crop-year, obligations are estimated at \$10,152,000 and revenues are expected to be \$8,503,000 for a loss of \$1,649,000. An analysis of available data indicates that a fee of \$.009 per pound would result in maintaining the operating reserve balance at \$6,279,000 for the 2002 crop-year and \$4,357,000 for the 2003 crop-year which is adequate to meet financial obligations.

Executive Order 12866 and 12988

This 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 12.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are about 190 tobacco warehouses and about 450,000 tobacco producers. There will also be about 35 receiving stations, most of which will be operated under contract at former tobacco auction warehouses and a few of which will be operated at tobacco auction warehouses. These would also be small businesses. It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule are the minimum necessary for the implementation of the requirements of the Appropriations Act for the mandatory inspection of tobacco. The provisions are similar, but somewhat more flexible, that the requirements for the inspection and certification of tobacco sold at auction on designated markets, which have previously been determined not to have a significant economic impact on a substantial number of small entities.

The information collection requirements that appear in part 29 have been previously approved by the Office of Management and Budget under OMB Control No. 0581-0056.

List of Subjects in 7 CFR Part 51

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 36079 on May 23, 2002, is adopted as a final rule without change.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-29031 Filed 11-18-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-98-303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The rule will provide for the mixed varieties and change the color requirements for apples by reducing the number of apple varieties required to meet specific minimum color requirements. It also deletes the provision that apples be "carefully hand-picked." The "U.S. No. 1 Early grade" and the "Unclassified" section will be deleted. Size specifications will be changed to allow Red Delicious and Golden Delicious varieties to meet either a minimum diameter or a minimum weight (currently these varieties must meet a minimum diameter designation). Changes will also be made to the application of tolerances for the purpose of allowing greater tolerances for defects in individual packages which contain 10 pounds or less, provided that the averages for the lot as a whole are met. The marking requirements will be changed by adding variety and grade to required markings on containers. The term "brown surface discoloration" will be added to the provisions which contain the requirements for the various grades of apples. The classification of "Bitter pit" and "Jonathan spot" will be clarified. The definition of "fairly tight" will be revised. Also, the U.S. Condition Standards for Export will be revised by removing the tolerance for slight scald