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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-99-07]

#### Tobacco Inspection; Subpart B—Regulations

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

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

**SUMMARY:** The Agricultural Marketing Service is amending the regulations governing the mandatory inspection of tobacco by adding the term “purchaser” to specifically include in the regulatory text this segment of the industry from attempting to influence, impeding, or discussing any matter relating to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor, and removing the language allowing the producer to discuss the grading of their tobacco with the inspector at the time grading is being performed. This rule will incorporate recommendations made by the Flue-Cured Tobacco Advisory Committee, the Five-State Flue-Cured Tobacco Committee, and industry representatives that clarification of this regulation is necessary to eliminate interference, distraction, and outside influence on the grading of tobacco. These amendments will revise the regulation to better eliminate interference, distraction, and outside influence on the grading of tobacco.

**DATES:** Effective September 28, 1999; comments received by November 26, 1999 will be considered prior to issuance of a final rule.

**ADDRESSES:** Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box

96456, Washington, DC 20090-6456; or Fax: (202) 205-0235. Comments will be made available for public inspection at this location during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-0567, Fax: (202) 205-0235.

**SUPPLEMENTARY INFORMATION:** This rule is amending the regulations governing the mandatory inspection of tobacco pursuant to the provisions of the Tobacco Inspection Act (49 Stat. 741, 7 U.S.C. 511 *et seq.*).

The Department has received recommendations from all segments of the tobacco industry, the Flue-Cured Tobacco Advisory Committee, and the Five-State Flue-Cured Tobacco Committee that changes to the regulation in subpart B, section 29.81(a), Interference with inspectors, is necessary to better eliminate interference, distraction, and outside influence on the grading of tobacco.

The current regulation specifies that, no person, including the owner, producer, warehouseman, agent, or employee thereof shall attempt to influence, impede, or discuss any matter relating to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. The regulatory change will not allow any member of the industry, including tobacco purchasers, to discuss any matter pertaining to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. This action also will remove language allowing a producer to discuss the grading of their tobacco with the inspector at the time grading is performed. While producers will be allowed to be present when their tobacco is being graded, they cannot discuss the grade or attempt to influence or intimidate the inspector during the performance of grading duties. This will not preclude the producer from appealing the decision of the inspector after a grade has been assigned.

Accordingly, this rule will add the term “purchaser” to include this segment of the industry from attempting to influence, impeding, or discussing any matter relating to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor, and the language allowing the producer to

discuss the grading of their tobacco with the inspector at the time grading is being performed will be removed. This action will incorporate recommendations made by industry representatives, the Flue-Cured Tobacco Advisory Committee, and the Five-State Flue-Cured Tobacco Committee that no one be allowed to discuss any matter while tobacco grading activities are being performed on the auction warehouse floor.

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 12866, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt 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.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full 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 121.601) 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 approximately 190 tobacco warehouses and approximately 30,000 producers and most warehouses and producers may be classified as small entities. The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule amends the regulations governing the mandatory inspection of tobacco by (1) Adding to the terms “purchaser” to specifically include in the regulatory text this segment of the industry from attempting to influence, impeding, or discussing any matter relating to grading while tobacco inspectors are grading tobacco on the auction floor and (2) removing language allowing a producer from discussing grading of their tobacco with the

inspector at the time grading is being performed. Specifying the term "purchaser" in the text of the regulation merely identifies a segment of the industry already prohibited from these actions. Further, removal of language allowing producers to discuss with inspectors their tobacco, would have minimal impact on producers since producers would not be precluded from appealing the decision of an inspector after a grade had been assigned.

It is hereby found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999 flue-cured marketing season is currently underway and this action is needed, as soon as possible, to provide clarification when it is allowable for someone to communicate with the grading personnel while they are performing their duties; and (2) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### **Lists of Subject in 7 CFR Part 29**

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

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

### **PART 29—TOBACCO INSPECTION**

#### **Subpart B—Regulations**

1. The authority citation for Part 29, subpart B continues to read as follows:

**Authority:** 7 U.S.C. 511m and 511r.

2. In § 29.81, paragraph (a) is revised to read as follows:

#### **§ 29.81 Interference with inspectors.**

(a) No person, including the owner, producer, warehouseman, agent, or employee thereof shall attempt, in any manner, to influence an inspector with respect to the grade designation of tobacco, or impede, in any manner, an inspector while the inspector is in the process of grading tobacco on the warehouse auction floor, or ask any question or discuss any matter pertaining to the grading of tobacco while the inspector is grading any tobacco on the warehouse auction floor. While inspectors are engaged in grading the day's sale, all requests for

information concerning the grade designation on or requests to review the grade of any lot of tobacco shall be made only to the head grader or to the market supervisor grader.

\* \* \* \* \*

Dated: September 17, 1999.

**Kathleen A. Merrigan,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 99-24772 Filed 9-24-99; 8:45 am]

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### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 905**

[Docket No. FV99-905-4 IFR]

#### **Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modification of Procedures for Limiting the Volume of Small Red Seedless Grapefruit**

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

**ACTION:** Interim final rule and request for written comments.

**SUMMARY:** This interim final rule modifies procedures used in limiting the volume of small red seedless grapefruit currently prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). The changes will help the committee better monitor handler compliance with any percentage size regulations in effect. The rule changes handler reporting requirements on shipments of size 48 and/or 56 red seedless grapefruit to standardize and assure continuity of reporting. Provisions on new handlers also are added to assure equitable application of the percentage size regulation to new and established handlers. These modifications are expected to help the committee better administer the percentage size regulations, when such regulations are effective.

**DATES:** Effective September 28, 1999; comments received by October 27, 1999 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698 or E-mail: moab.docketclerk@usda.gov. All

comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698 or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect, and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the