

# Proposed Rules

Federal Register

Vol. 65, No. 51

Wednesday, March 15, 2000

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

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-99-02]

#### Tobacco Inspection

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision would add a new provision to the official grade standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses. To take into account the marketing of bales, a revision would also be necessary in the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco.

**DATES:** Comments are due on or before May 15, 2000.

**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. 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:** Notice is hereby given that the Department proposes to amend regulations under

Subpart B, Regulations; Subpart C, Standards, and Subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal was based on a research project conducted by AMS and recommendations made by the industry to revise the regulations to better adapt flue-cured bale inspection into the current marketing system. On January 20, 2000, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this proposal for regulatory action. The proposed revision would add a new provision to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule. An earlier proposed rule concerning bale inspection was issued on May 12, 1999 (64 FR 25462) and was withdrawn on July 22, 1999 (64 FR 39432). The notice of the withdrawal stated that we intended to publish an advance notice of proposed rulemaking to solicit additional input. However, the FCTAC advised that the proposal be published promptly, and we agree that the issues have already been considered within the industry. Therefore, an advance notice of proposed rulemaking would no longer be necessary.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for

marketing flue-cured tobacco during the past 4 years. This alternative package is a 42-inch wide x 42-inch high x 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches x 42 inches x 40 inches. Because uniformity in the size of bales is an important aspect of the acceptability of baled tobacco, bales which are not approximately these dimensions would be designated "No-G."

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed.

Accordingly, this proposal would revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the

bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 18 inches between immediately adjacent lots was recommended. These two spacing proposals would promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This would also provide accessibility for inspection of the bales.

An additional proposed revision would increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds would become 5,000 pounds and 5,000 pounds would become 10,000 pounds. The same would be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being proposed because the bale weight is approximately three times as much as tobacco marketed in sheets. This would give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This proposal should meet industry needs for marketing tobacco in bales.

This rule has been determined to be "non significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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 121.201) 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 approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on

a substantial number of small entities. This proposal would add a new rule to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection would be graded by the exterior only. Accordingly, this change would allow grading of a closed package from the exterior only, and would assist in maintaining program integrity. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses and would provide accessibility for inspection of the bales. A revision would also be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes would apply equally to both small and large entities and they would take into account the marketing of flue-cured tobacco as it presently appears in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P. O. Box 96456, Washington, DC 20090-6456. A 60 day comment period is provided for comments.

#### List of Subjects 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, it is proposed that the regulations at 7 CFR Part 29 be 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. A new § 29.75b is added to read as follows:

#### **§ 29.75b Display of baled flue-cured tobacco on auction warehouse floors in designated markets.**

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between the rows with open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 18 inches between immediately adjacent lots.

#### Subpart C—Standards

3. The authority citation for Part 29, Subpart C continues to read as follows:

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

#### **§ 29.1059 [Amended]**

4. Section 29.1059 is amended by removing the words "and 29.)" and add in the place thereof the words "29, and 30.)"

5. Section 29.1109 is revised to read as follows:

#### **§ 29.1109 Rule 3.**

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

#### **§ 29.1129 Rule 23.**

Tobacco shall be designated by the grademark "No-G," when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are not approximately 42 inches wide x 42 inches high x 40 inches long.

7. A new § 29.1136 is added to read as follows:

#### **§ 29.1136 Rule 30.**

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be graded by the exterior only.

#### **Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets**

8. The authority citation for part 29, subpart G continues to read as follows:

**Authority:** Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 98-180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

9. Section 29.9406 is amended by revising paragraphs (c)(1), (c)(2), (c)(3) and (d) to read as follows:

**§ 29.9406 Failure of warehouse to comply with opening and selling schedule.**

\* \* \* \* \*

(c) \* \* \*

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 15,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: March 8, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00-6318 Filed 3-14-00; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR PART 97

[Docket Number: ST 99-006]

RIN 0581-AB71

#### Revision of Plant Variety Protection Office Fees

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

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

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase Plant Variety Protection Office application, search, and certificate issuance fees by approximately 10 percent. Due to operating cost increases, the last fee increase in 1995 is no longer adequate to cover costs for this fully user-fee funded program. Also, the information symbol used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection is added to the USDA/AMS inventory of symbols and would appear in the regulations.

**DATES:** Comments must be received on or before April 14, 2000.

**ADDRESSES:** Interested persons are invited to submit comments concerning this proposed rule. Comments should be sent in triplicate to Commissioner, Plant Variety Protection Office (PVPO), Rm. 500 N.A.L. Building, 10301 Baltimore Blvd. Beltsville MD 20705, telephone 1-301-504-7475; fax 1-301-504-5291, and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection at the same location, between the hours of 10 am and 4 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ann Marie Thro, Commissioner, PVPO; telephone 1-301-504-7475 or fax 1-301-504-5291.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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).

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of

AMS has considered the economic impact of this action on small entities. There are more than 800 users of the PVPO's variety protection service, of whom about 100 may file applications in a given year. Some of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). The Administrator of AMS determined that this action would not have a significant economic impact on a substantial number of these small entities.

This rule has also been reviewed under Executive Order 12988, 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 provision of this rule.

The Plant Variety Protection Office (PVPO) administers the Plant Variety Protection Act by issuing Certificates of Protection which provide legal intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after an examination shows that it is new, distinct from other varieties, and genetically uniform and stable through successive generations.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover programs costs while maintain an adequate reserve balance. Without a fee increase, fiscal year (FY) 2000 revenues are projected at \$1,100,000; costs are projected at \$1,300,000, and trust fund balances would be \$1,500,000. With a fee increase, FY 2000 revenues are projected at \$1,200,000 and costs are projected at \$1,300,000. With the increase in revenue, the trust fund balance would be maintained at \$1,600,000, its level at the end of FY1999.

This action would raise the fee charged to users of plant variety protection. The AMS estimates that this proposed rule would yield an additional \$100,000 during FY 2000. The fee for plant variety protection would increase by approximately 10 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual users would be approximately \$275.00 per Plant Variety Protection Certificate issued. Plant Variety Protection is