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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-99-02]

RIN 0581-AB75

#### Tobacco Inspection

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision will 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 be graded by the exterior only. Additional bale dimensions and space requirements will be established for uniform marketing display in the warehouses, and a revision will be made in the poundage adjustment for a warehouse selling in excess of the sales schedule for designated and undesignated producer tobacco.

**EFFECTIVE DATE:** July 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Telephone (202) 205-0567.

**SUPPLEMENTARY INFORMATION:** The Department published in the **Federal Register** on March 15, 2000 (65 FR 13915) a proposed rule amending the regulations at 7 CFR part 29, 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. The Department requested comments on the regulations. The comment period expired on May 15, 2000, and AMS received no comments on the amendments.

The final rule will add a new provision to the grade standards for baled flue-cured tobacco, establish bale dimensions and spacing requirements, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule for designated and undesignated tobacco, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat.731; 7 U.S.C. 511 *et seq.*).

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 final rule for regulatory action. The revisions will 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 will 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. The FCTAC advised that the rule be published promptly, and we agree that the issues have already been considered within the industry. Accordingly, we published in the **Federal Register** a proposed rule on March 15, 2000.

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 will be ineligible for a standard grade and 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 rule will 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 will promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This will also provide accessibility for inspection of the bales.

An additional revision will 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 will become 5,000 pounds and 5,000 pounds will become 10,000 pounds. The same will 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 adopted because the bale weight is approximately three times as much as tobacco marketed in sheets. This will give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This rule 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 final rule has 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 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 businesses. 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. A new rule will be added to the official standards for flue-cured tobacco to denote that any lot of baled tobacco that has not been opened for inspection will be graded by the exterior only. Accordingly, this change will allow grading of a closed package from the exterior only, and will assist in maintaining program integrity. Additional bale dimensions and space requirements will be established for uniform marketing display in the warehouses and will provide accessibility for inspection of the bales. A revision will 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 will apply equally to both small and large entities and they will take into account the marketing of flue-cured tobacco as it presently appears in the marketplace. Pursuant to 5 U.S.C. 553, it is determined 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 flue-cured tobacco marketing season will begin in July and it is essential that the requirements be uniform for the entire marketing season, and (2) a 60-day comment period was provided for the proposed rule and no comments were received.

#### List of Subjects 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. 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 rows with the 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 adding in their place there 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 scheduled 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 sale 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: July 20, 2000.

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

[FR Doc. 00-18963 Filed 7-26-00; 8:45 am]

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 622

RIN 3052-AC01

#### Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Final rule.

**SUMMARY:** This regulation contains cost-of-living adjustments for all civil money penalties (CMPs) under our jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990 requires us to adjust our CMPs at least once every 4 years for inflation to ensure that the penalties deter future violations. The new penalties are \$1,170 per day for violation of an order that has become final and \$580 per day for violation of the law or regulations.

**EFFECTIVE DATE:** The regulation will become effective on October 23, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or  
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

#### SUPPLEMENTARY INFORMATION:

##### I. Objective

The objective of this regulation is to comply with Congress' mandate to adjust CMP amounts for inflation.

##### II. Cost-of-Living Adjustment

The Federal Civil Penalties Inflation Adjustment Act of 1990<sup>1</sup> (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (DCIA),<sup>2</sup> requires each agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every 4 years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. We made our last adjustment in October 1996. Section 6 of the FCPIA Act states that any increase must apply only to violations that occur after the date the increase takes effect.

This adjustment requirement affects two provisions of section 5.32(a)<sup>3</sup> of the

Farm Credit Act of 1971, as amended (1971 Act), which allows the FCA to impose CMPs on Farm Credit System (FCS) institutions and their related parties. Section 5.32(a) specifies that any FCS institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an FCS institution who violates the terms of an order that has become final and was issued under section 5.25 or 5.26 of the 1971 Act must pay up to \$1,000 per day for each day during which such violation continues. Orders issued under section 5.25 or 5.26 include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) provides for the FCA to treat a directive issued under section 4.3(b)(2), 4.3A(e), or 4.14A(i) of the 1971 Act as a final order issued under section 5.25 for purposes of assessing a CMP. Section 5.32(a) also states that "[a]ny such institution or person who violates any provision of the [1971] Act or any regulation issued under this [1971] Act shall forfeit and pay a civil penalty of not more than \$500 per day for each day during which such violation continues." Since the 1996 adjustment, our regulations have required penalty levels of \$1,100 and \$550, respectively.

The prescribed cost-of-living adjustment formula or inflation factor is based on the difference between the Consumer Price Index (CPI) for June of the preceding year of the adjustment (June 1999) and the CPI for June of the year the CMP was last set (June 1996).<sup>4</sup> We used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982-84 was equal to 100, to get the CPI numbers. In this case, the CPI value was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an inflation factor of 1.06 (*i.e.*, a 6-percent increase). The prrounding adjustments are \$1,166.69 from \$1,100 for violations of final orders and \$583.34 from \$550 for violations of the 1971 Act and FCA regulations.

Section 5 of the FCPIA Act prescribes a rounding method based on the amount of the calculated increase. In our case, the applicable rounding method is to the nearest \$10 for increases less than or equal to \$100. Therefore, the resulting penalties are \$1,170 for violations of a final order and \$580 for violations of the 1971 Act and FCA regulations. The existing penalty amounts will continue to apply to violations that occurred

<sup>1</sup> 28 U.S.C. 2461 note.

<sup>2</sup> Pub. L. 104-134, sec. 31001(s), 110 Stat. 1321-373 (April 26, 1996).

<sup>3</sup> 12 U.S.C. 2268(a).

<sup>4</sup> We note that the 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999.