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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-02-11]

#### Tobacco Inspection; Mandatory Grading

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

**ACTION:** Interim final rule with request for comments and notice of referenda results.

**SUMMARY:** Pursuant to the requirements of section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Appropriations Act), referenda were conducted during the periods of March 11-15, 2002, and March 18-22, 2002, among producers of each type of tobacco eligible for price support. A majority of producers favored 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. This interim final rule amends the regulations to provide mandatory grading for these types of tobacco. Producers of cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55 did not approve mandatory grading. This rule will also reduce the fee for mandatory inspection from \$0.01 per pound to \$0.009 per pound.

**DATES:** Effective May 24, 2002; comments received by July 22, 2002 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), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280. Comments will be available for public inspection at this location during regular business hours between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, 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.*).

In this interim final rule, AMS is amending 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 this interim rule only required grading of tobacco that was sold at auction on designated markets as set forth in § 29.8001. The regulations are 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 are 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 adds 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, prizeeries, 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 are 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 Department will reduce the user fee 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 existing 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the tobacco marketing season will begin on July 1 and this action is needed, as soon as possible, to fulfill the requirements of the statute to implement mandatory grading for the 2002 marketing season. Operators of receiving stations need to know as soon as possible what requirements they must meet so that orderly marketing is not disrupted. Billing systems and programs must be in place at receiving stations and auction markets to apply the reduced fees at the beginning of the

marketing season. This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

#### **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 29**

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**

#### **Subpart B—Regulations**

1. The authority citation for subpart B is revised to read as follows:

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

2. Section 29.40 is revised to read as follows:

##### **§ 29.40 Mandatory inspection.**

Inspection authorized or required under section 5 of the Act or Section 759 of the Appropriations Act.

3. A new § 29.41 is added under the undesignated centerheading "Definitions" to read as follows:

##### **§ 29.41 The Appropriations Act.**

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107-76).

4. A new § 29.42 is added under the undesignated centerheading "Definitions" to read as follows:

##### **§ 29.42 Receiving station.**

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.

5. Section 29.71 is revised to read as follows:

##### **§ 29.71 Mandatory inspection.**

Mandatory inspection consists of:

- (a) Inspecting and certifying tobacco under the Act on designated markets before it is offered for sale at auction; or
- (b) Inspecting and certifying tobacco at receiving stations under the Appropriations Act at the time the tobacco is delivered for sale.

6. Section 29.72 is revised to read as follows:

##### **§ 29.72 Where mandatory inspection is required.**

(a) *Auction.* All tobacco offered for sale at auction on a market designated in accordance with the Act and § 29.73 shall be inspected and certificated under the Act upon the date specified by the Secretary in public notice of such designation, and thereafter, except when

the requirement of such inspection and certification is temporarily suspended by the Deputy Administrator in accordance with the Act and the regulations in this subpart.

(b) *Other.* Tobacco of the kinds specified below offered for sale by the producers thereof at receiving stations shall be inspected and certificated under the Appropriations Act at the time of delivery and prior to change of ownership. The specified kinds are 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.

7. In § 29.75, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

**§ 29.75 Accessibility of tobacco.**

(a) All tobacco subject to mandatory inspection shall be made readily accessible for inspection.

\* \* \* \* \*

(e) Each receiving station operator shall make tobacco accessible to the inspector for proper examination including any necessary display in adequate light for determination of grade, class, type, or other characteristics.

8. A new § 29.75c is added to read as follows:

**§ 29.75c Display of tobacco at receiving stations.**

Each lot of tobacco delivered for sale at receiving stations and transferred to a conveyor system for unloading shall maintain a distance between adjacent lots of not less than 18 inches during the inspection process. The platform area used for examination with a conveyor system shall be a minimum of 4 × 4 feet. Any lots of tobacco displayed in a manner other than a conveyor system shall maintain a minimum clearance of 18 inches on all sides. If the tobacco is inspected or graded by the recipient, it shall be made available for mandatory inspection at the same time and location within the receiving station.

9. Section 29.81 is revised to read as follows:

**§ 29.81 Interference with inspectors.**

(a) *Auction.* (1) No person, including the owner, producer, warehouseman, purchaser, 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.

(2) In the event that the head grader or market supervisor grader determines that a person has violated any provision of this section, inspection ticket(s) if already issued on the lot(s) of unsold tobacco involved shall be null and void and no further inspection shall be performed on such lot(s) offered for sale by the warehouseman in whose premises the violation occurred until the next regularly-scheduled sale for such warehouse: Provided, That if violation consists of talking to the inspector while he/she is grading the tobacco, a warning shall be given on first offense and penalty provisions shall apply on any subsequent offense. A reduction in daily sales for any warehouse resulting from a violation of this section shall not prevent the maximum number of lots or pounds allotted per day per set of buyers from being sold in a designated market.

(b) *Other.* No person, including the owner, producer, receiving station operator, purchaser, 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.

(c) *Administrative Remedies.* The provisions of this section shall not preclude the application of other administrative remedies or the institution of criminal proceedings in appropriate cases as provided by the Act.

10. In § 29.123, paragraph (a) is revised to read as follows:

**§ 29.123 Fees and charges.**

\* \* \* \* \*

(a) *Mandatory inspection.* The inspection and certification fee is \$0.009 per pound. The fee shall be paid by sellers of tobacco and assessed against the warehouse or receiving station operator irrespective of ownership or interest in the tobacco. When the warehouse or receiving station operator pays the Department, it is presumed the fee was collected from the seller. Inspection and related services shall be suspended or denied if the warehouse or receiving station operator fails to pay the fees and charges imposed under this

section. The fee shall be based on total poundage of tobacco inspected and sold during each calendar month. The fee shall be due and payable on the first day of the immediately following month and on the day immediately following the last sale each marketing year.

Mandatory inspection and certification services shall take precedence over permissive inspections, other than reinspections.

\* \* \* \* \*

Dated: May 17, 2002.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02-12892 Filed 5-22-02; 3:21 pm]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000-NM-355-AD; Amendment 39-12756; AD 2002-10-10]**

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect cracks in various areas of the fuselage internal structure, and repair, if necessary. This amendment adds new repetitive inspections for cracking of certain areas of the upper chord of the upper deck floor beams, and repair, if necessary. This amendment is prompted by the results of fatigue testing that revealed severed upper chords of the upper deck floor beams due to fatigue cracking. The actions specified by this AD are intended to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

**DATES:** Effective June 27, 2002.

The incorporation by reference of Boeing Alert Service Bulletin 747-53A2349, Revision 1, dated October 12, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of June 27, 2002.

The incorporation by reference of Boeing Service Bulletin 747-53-2349, dated June 27, 1991, as listed in the regulations, was approved previously by