

Agricultural Marketing Service, USDA

§ 29.2

(d) *Bona fide auction sale and auction sale* mean the buying and selling of tobacco offered by producers by the auction process which customarily and usually consists of an adequate set of buyers; an auctioneer who takes each buyer's bid; a sales starter who makes the opening bid on each lot; and a ticket marker who records the applicable sales data on each lot.

(e) *Designated market* means an auction market designated by the Secretary under section 5 of the Tobacco Inspection Act including the town or city which is the population center of the market and whose name the market bears and all of the geographical area within 5 road miles of the boundaries of said city or town as they are constituted on January 1, 1993. *Provided*, That any warehouse beyond those boundaries which received tobacco inspection and price support services during the 1992 marketing season shall continue to receive such services at the same location regardless of any prohibition contained herein: *And further provided*, That this geographical limitation may be waived by the Secretary after a hearing held pursuant to §§ 29.2 and 29.3.

(f) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(g) *Hearing Officer* means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved, or such other employee of the Department of Agriculture as the Secretary may designate to act as hearing officer at such hearing.

(h) *New market* means an auction market, other than a designated market, at which inspection service under the tobacco Inspection Act was not provided on a regular basis during the preceding marketing season.

(i) *Hearing Clerk* means the Hearing Clerk of the U.S. Department of Agriculture, Washington, DC 20250.

(j) *Kind of tobacco* means any one of the following: Flue-cured, Burley, Fire-

cured, Dark air-cured, Maryland or Virginia sun-cured.

[37 FR 7765, Apr. 20, 1972, as amended at 39 FR 3548, Jan. 28, 1974; 42 FR 17097, Mar. 31, 1977; 58 FR 21343, Apr. 21, 1993]

§ 29.2 Policy statement.

Inspection and price support services currently provided in auction marketing areas are adequate and the lack of these services is not a limiting factor to accelerated marketings or the extension of price support to producers. Consequently, the extension of inspection and price support services, without limitation even though the cost of such service is paid by the seller, would not contribute to the effectuation of the purposes of either of these services. The additional cost incident to the unlimited extension of these services would be unjustifiable and excessive in relation to the total quantity of tobacco available for market. Accordingly, inspection and price support services shall be made available on new markets at warehouses which are located beyond the geographical limitation for "designated markets" set forth in § 29.1(e), and additional sales for other than flue-cured tobacco only as hereinafter provided. With regard to flue-cured tobacco, allocation of inspection services is based on producer designation, as provided for in 7 CFR 1464.2(e)(2)(iii), see subpart G. Also, since these services shall be made available to new markets to warehouses which are located beyond the geographical limitation for "designated markets" set forth in § 29.1(e), and additional sales only as herein provided, referenda incident to market designations shall not be conducted until auction markets seeking designation have qualified for inspection and price support services as herein provided.

(a) *Reasonable inspection and price support services*. The extension of tobacco inspection and price support services to new markets to warehouses which are located beyond the geographical limitation for "designated markets" set forth in § 29.1(e), and additional sales will be conditioned upon the reasonableness of such services existing in the marketing area of the proposed new market or additional sale.

Transactions in tobacco as conducted at auction markets customarily involve the sale of tobacco at a bona fide auction sale. Determination with respect to reasonableness, and consequently with respect to granting or denying additional services, will be based on evidence (1) that the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale will function as a bona fide auction sale, and (2) that additional services are justifiable in relation to other market data, including the volume of tobacco produced in the area surrounding the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the roads and road distances involved in moving tobacco to the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale in relation to other tobacco marketing centers; the relative availability or congestion of all facilities for redrying and packing tobacco handled or to be handled in the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the location of other auction markets on which tobacco produced in the marketing area of the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale may be marketed; the number of tobacco growers to be affected by the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the volume of tobacco likely to be sold in the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale; the relationship of sales in the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale to sales in other auction markets in the producing area for that kind of tobacco; other economic fac-

tors affecting the marketing of tobacco, by growers, in the marketing area of the proposed new market, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), or additional sale and in the producing area for that kind of tobacco, including limitations on sales imposed by any marketing agreement and/or order, or by any other means; and also, as to flue-cured tobacco, data with regard to producer designations which shall include, but not be limited to, the markets and warehouses currently available for the producers, who would be eligible to designate the new market or, warehouse located beyond the geographical limitation for “designated markets” set forth in § 29.1(e), who already designate and who desire to designate the new market.

(b) *Order of priority.* If the Secretary finds that there are insufficient qualified tobacco inspectors available to service adequately all applicants otherwise found to be qualified for additional inspection service pursuant to this subpart for a kind of tobacco, those applicants found to be eligible for additional services on auction markets designated for mandatory inspection shall be given priority over applicants for additional inspection service on other auction markets. If it becomes necessary to determine which of several qualified applicants having an equal order of priority under the preceding sentence shall receive additional inspection and price support services, those auction sales or auction markets where the greatest number of growers needing such service may be served with the qualified inspectors shall have priority. If an application for an additional sale on a designated market is denied for lack of qualified inspectors, the Secretary, on application from such market, may temporarily suspend the requirement of inspection and certification on such market pursuant to section 5 of the Tobacco Inspection Act.

(c) *Price support services to be through warehouses.* Price support services on any auction market will be offered through tobacco auction warehouses

operating in such market, and, notwithstanding any provision of this subpart, the offering of price support services through any auction warehouse located on any auction market will be conditioned upon a qualified, responsible warehouseman entering into an approved auction warehouse contract under the provisions of the applicable tobacco price support program, published at part 1464 of this title.

[37 FR 7765, Aug. 20, 1972, as amended at 42 FR 17097, Mar. 31, 1977; 46 FR 62393, Dec. 24, 1981]

§ 29.3 Procedures for filing, hearing, and determination of applications.

(a) *Time and place of filing.* Applications for the extension of tobacco inspection and price support services to new markets, to warehouses located beyond the geographical limitation for "designated markets" set forth in § 29.1(e) and to additional sales on designated markets shall be filed, in triplicate, with the Hearing Clerk not later than September 15 in the case of flue-cured tobacco, December 1 in the case of Maryland tobacco, and July 15 in the case of burley and all other kinds of tobacco. Applications should be addressed to the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250. Applications which are not received by the Hearing Clerk on or before the foregoing cutoff date for the kind of tobacco shall be rejected as untimely filed. After denial of an application for additional inspection and price support services for a marketing season, no application from the same auction market or proposed new market shall be considered for the next consecutive marketing season, unless the application contains a statement by the applicant setting forth new facts that constitute evidence of such a substantial change in conditions since the previous hearing as the review committee as specified in paragraph (h) of this section deems would warrant such further hearing.

(b) *Form and content of application.* The application shall be in writing, shall set forth the grounds for the application and shall be signed by the applicant or applicants. If an applicant is a corporation, the application shall be executed by a responsible officer of

such corporation. The application shall include a statement of the name, address and form of business organization of each party to the application and the location of the proposed new market or additional sale.

(c) *Hearings on applications.* Following the closing date for filing applications for each kind of tobacco, a hearing or hearings shall be held on the applications, if any, filed for additional inspection and price support services for the kind of tobacco in question. Such hearing or hearings shall be scheduled to begin within 60 days following the closing date for such applications. Notice of hearing shall be issued by the Secretary, filed with the Hearing Clerk, and published in the FEDERAL REGISTER, and a copy shall be mailed by the Hearing Clerk to each applicant. Such publication and mailing shall be not less than 5 days prior to the opening of the hearing.

(d) *Hearing officer.* A hearing officer shall preside over each such hearing. The hearing officer shall determine the order of procedure at the hearing, shall have power to administer oaths and affirmations, to rule on and admit evidence, and, following the opening of the hearing, to recess the hearing to such other times and places as he deems desirable or necessary.

(e) *Scope of hearing and burden of proof.* Each applicant shall have the burden of presenting evidence relative to the factors specified in § 29.2(a).

(f) *Record and evidence.* The proceedings at each such hearing shall be transcribed verbatim. All oral testimony shall be under oath or affirmation. All documentary exhibits shall be submitted in triplicate by the person offering the same. The Hearing Officer shall, insofar as possible, exclude testimony and exhibits which are irrelevant, immaterial, or not of the sort upon which responsible persons are accustomed to rely. Cross-examination shall be allowed only to the extent that the Hearing Officer in his discretion deems it desirable or necessary to develop the material facts.

(g) *Briefs.* If requested at the hearing, the presiding officer shall fix a time, not to exceed 20 days from the close of the hearing, within which interested