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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-95-12]

Tobacco Inspection; Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations revise the Official Standard Grades for Flue-Cured Tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision will add a special factor to identify lots of tobacco that contain 25 percent or more of an adjacent stalk position.

EFFECTIVE DATE: July 13, 1995.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 205-0567.

SUPPLEMENTARY INFORMATION: Notice was given (60 FR 27912; Friday, May 26, 1995) that the Department proposed to revise the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11-14 and Foreign Type 92 to add a special factor (subgrade) to describe mixing of adjacent stalk positions. This proposal was based on recommendations by the Flue-Cured Tobacco Cooperative Stabilization Corporation and an Advisory Committee appointed by Congress to study the government tobacco program.

The revision would add a special factor (subgrade) to describe mixing of adjacent stalk positions. Stalk positions or groups as defined in the current standards are a division of a type covering closely related grades based on certain characteristics such as shape, body, or the general quality of tobacco. The traditional practice of sorting

tobacco in the flue-cured marketing area has changed dramatically during the past decade. Producers are combining adjacent stalk positions which makes grading more difficult and has made U.S. tobacco less desirable for certain customers in the world market. This new special factor would identify any lot of tobacco which contains 25 percent of an adjacent stalk position.

Interested parties were given an opportunity to comment on the proposed rule. A total of five comments were received; two comments—one from an individual and one from an auction warehouse recommending the “M” special factor only apply to the “B” and “H” groups, and three comments—two from producer associations and one from a tobacco company that supported the proposal. In considering the two comments recommending that the “M” special factor apply only to the B and H groups, the Department notes that the initial requests of the industry organizations for this amendment made no distinction between specific groups but referred only to adjacent stalk positions. Furthermore, in order to be consistent in the application of grade standards this special factor should be applied to all groups. Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

This final rule has been determined not significant for the 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 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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.

The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this rule would not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the regulation be effective at the beginning of the marketing season which begins in mid-July. Therefore, in order to treat all marketing areas on an equal basis, this final rule is made effective upon publication in the **Federal Register**.

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 C—Standards

1. The authority citation for part 29, subpart C is revised to read as follows:

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

2. Section 29.1059 is revised to read as follows:

§ 29.1059 Special factor.

A symbol or term authorized to be used with specified grades. Tobacco to which a special factor is applied may meet the general specifications but which has a peculiar side or characteristic which tends to modify the grade. (See Rules 10, 21, 22, 26, 28, and 29.)

3. A new § 29.1135 is added to read as follows:

§ 29.1135 Rule 29.

Any lot of tobacco containing 25 percent or more of an adjacent group, which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "M" preceding the grademark.

4. In § 29.1181, the first sentence in the paragraph immediately following table "13 Grades on Nondescript", is revised to read as follows:

§ 29.1181 Summary of standard grades.

* * * * *

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. * * *

Dated: July 6, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95-17197 Filed 7-12-95; 8:45 am]

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Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580-AA27

Fees for Beltsville Commodity Testing Laboratory Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is increasing service fees charged by the FGIS Commodity Testing Laboratory at Beltsville, Maryland, under authority of the Agricultural Marketing Act (AMA) of 1946. FGIS is also establishing a test and unit fee for vomitoxin testing at the Laboratory

These revisions are necessary to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity laboratory testing services.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT:

George Wollam, USDA-GIPSA, Room 0623-South Building, 1400 Independence Avenue, SW, Washington, DC 20090-6454, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This increase in the service fees is necessary to recover operating losses at the Beltsville Commodity Testing Laboratory. These fees were increased on August 1, 1984, (49 FR 26547) and due to increases in the operating costs, it is not being covered by revenue. The overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percent. This cost increase occurred simultaneously with a more than 17 percent downturn in revenue due to fewer service requests. Revenue of \$1,035,411 did not cover the operating cost of \$1,190,700 for FY 93, resulting in a 1-year operating loss of \$155,289. Given FY 93 volume, the fee increase will generate revenue of \$1,394,577 or an increase of \$359,166.

James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not pre-empt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements concerning applications for inspection services, including official commodity laboratory testing services, have been approved by the Office of Management and Budget under control number 0580-0013.

Background

On November 3, 1994, FGIS proposed in the **Federal Register** (59 FR 55067) to increase fees charged for Beltsville Commodity Testing Laboratory Services and establish a test and unit fee for vomitoxin testing at the Laboratory.

The fees for commodity laboratory testing services were last increased August 1, 1984, (49 FR 26547). Subsequent adjustments were made on April 17, 1991, (56 FR 15483), adding several new laboratory test services and consolidating others for clarity and efficiency. Currently, these fees appear in section 868.90, Table 4 of the regulations (7 CFR 868.90, Table 4).

FGIS is adding a vomitoxin laboratory testing service to the current list of fees, 7 CFR 868.90, Table 4. The new test is required to accommodate frequent grain and food industry requests. In addition, changes are made to Table 4 concerning the *Tilletia controversa kuhn* (TCK) laboratory test services. Currently, section 868.90, Table 4 provides for a *Tilletia controversa kuhn* (TCK) test for \$25.20. While the proposed rule effected this test and fee in Table 4, it did not separate the TCK testing service to specify quantitative and qualitative testing. This final rule changes Table 4 to specify both a qualitative and quantitative TCK testing service. The qualitative test remains at \$25.20 while the quantitative test fee will be \$76.00. This will recover, as nearly as practicable, projected operating costs.

FGIS continually strives to contain operating costs through program efficiencies and streamlining. In fiscal year 1992, FGIS took specific action to reduce chemical disposal costs by implementing new technology. FGIS further enhanced laboratory procedures to improve overall efficiency. While these changes proved successful in reducing certain costs, the overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percentum. This cost increase occurred simultaneously with a more than 17 percentum downturn in revenue due to fewer service requests. Revenue of \$1,035,441 did not cover the operating cost of \$1,190,700 for fiscal year 1993, resulting in a 1-year operating loss of \$155,289.

Given fiscal year 1993 volume, the proposed fee increase will generate revenue of \$1,394,577 or an increase of \$359,166.

Comment Review

FGIS received one comment during the 30-day comment period. That comment was from a grain processing trade association. It recognized the need for a fee increase after 10 years without an increase and applauded initiatives taken to contain operating costs through program efficiencies and streamlining. It further suggested that the Beltsville Commodity Testing Laboratory be consolidated with and moved to the FGIS Technical Center (QARD) in