

# Proposed Rules

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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 special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This would allow a distinction between lots that are opened for inspection and lots that are not opened for inspection. 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 June 11, 1999.

**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, PO 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, PO Box 96456, Washington, DC 20090-6456. Telephone (202) 205-0567.

**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 December 30, 1998, 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 special factor to the grademark to identify lots of flue-cured tobacco not opened for inspection, 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.

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 3 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.

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. Without the ability to examine the interior of the bale for such conditions as doubtful keeping order (high moisture level), damaged tobacco, or nesting (inferior quality tobacco), an accurate grade determination could not be assured.

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. However, USDA inspectors were present at the farm to observe tobacco being placed into a bale and the potential to conceal inferior quality tobacco was eliminated. Furthermore, the practice of nesting (concealing inferior quality tobacco) has been a problem in the past and it is expected that this problem will be present in the future. Without opening a bale and examining interiors, an accurate grade determination is not assured. Since flue-cured tobacco is and will continue to be marketed in both the sheeted and bale packages, we believe that a distinction needs to be made between lots that are not opened for inspection. Making such a distinction would contribute to grading accuracy and assist in maintaining program integrity. In the event that a problem exists regarding the quality or condition of the interior of the bale, a buyer would have to resolve the matter with the producer or the commissioned warehouse operator.

Accordingly, the Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it appears at the

marketplace. 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. Further, this proposal also provides that the inspection of unopened bales would be distinguished from opened bales by adding the special factor "B" to the grademark.

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 12 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 "not 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 12866, 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 provision 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. 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 special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This change would provide a distinction between lots that are opened for inspection and lots that are not opened for inspection. Accordingly, this change would more accurately describe tobacco as it appears in the marketplace 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, PO Box 96456, Washington, DC 20090-6456. A 30 day comment period is provided for comments. This period is deemed appropriate because the flue-cured tobacco marketing season is expected to begin in mid-July and these changes, if adopted, should be made effective as soon as possible.

#### 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, it is proposed that 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:

#### § 29.75 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 12 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. In § 29.1059, the words "and 29.1059)" are removed and the words "29.1059, and 30.1059)" are added in their place.

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 × 42 inches high × 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 treated as a special factor grade by placing the special factor "B" after the grademark.

8. In § 29.1181, the undesignated text immediately following table "1 Grade of Scrap", 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. The special factors "dirt" or "sand" may be applied to any grade in the Primings group, including first quality Nondescript from the Primings group. The special factor "B" may be applied to all bales to denote tobacco not opened for inspection. Tobacco not covered by the standard grades is designated "No-G," "No-G-F," or "No-G-Nested."

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

9. 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.

10. In § 29.9406, paragraphs (c)(1), (c)(2), (c)(3), and (d) are revised 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 10,000 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: May 6, 1999.

**Enrique E. Figueroa,**  
*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 400**

**RIN 0563-AB70**

**General Administrative Regulations; Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

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

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations, to allow approved insurance providers to apply to the Federal Crop Insurance Corporation (FCIC) for authority to reduce the premium charged producers

in accordance with section 508(e)(3) of the Federal Crop Insurance Act (Act), as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds, and payments to insured-owned and record-controlling entities.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business July 12, 1999 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before July 12, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, Stop 0804, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC. 20250-0804. A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information and a copy of the Cost-Benefit Analysis to the General Administrative Regulations, contact E. Heyward Baker, Director, Reinsurance Services Division, Risk Management Agency, at the Washington, DC, address listed above, telephone (202) 720-4286.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

**Cost-Benefit Analysis**

A cost-benefit analysis has been completed and is available to interested parties at the Washington, DC address listed above. In summary, the analysis found that: (1) The anti-rebating and record-controlling provisions will promote actuarial soundness of the crop insurance program; (2) premium reductions are more likely to be offered to large premium policy holders than small; (3) the proposed provisions authorize FCIC/RMA management to deny permission to implement premium reductions if there would be a reduction in the overall system's ability to serve all farmers; and (4) the authority and basic requirements for premium reductions are specified in the Act. In order to avoid any adverse impact on small farmers or on the crop insurance program itself, §§ 400.755(b)(1) to (10) provide grounds for FCIC/RMA management to reject premium