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## **Agricultural Marketing Service**

### **7 CFR Part 29**

**[Doc. No. AMS-CN-25-0027]**

**RIN 0581-AE39**

## **Tobacco Grading and Inspections Services - Rescission of Regulations Establishing Tobacco Price Support Provisions**

**AGENCY:** Agricultural Marketing Service (AMS), Department of Agriculture (USDA).

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends regulations that govern tobacco price support services established under the Agricultural Act of 1949. The Fair and Equitable Tobacco Reform Act of 2004 eliminated the price support and quota system for tobacco produced in the United States. In alignment with Executive Order 14192, AMS is removing and, where appropriate, amending regulations that have expired authorizing statutes and govern non-operational programs.

**DATES:** This direct final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action or notice, unless a significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If a significant adverse comment is received, AMS will publish in the *Federal Register* a withdrawal of this direct final rule prior to the effective date.

**ADDRESSES:** Comments can be submitted electronically at <https://www.regulations.gov> by searching the docket number listed above. Interested persons are invited to submit written comments concerning this direct final rule.

Comments may also be submitted by mail or hand delivery to USDA AMS Cotton and Tobacco Program, 3275 Appling Road, Memphis, TN 38133. All comments should

reference the docket number and the date and page number of this issue of the *Federal Register*. All comments submitted in response to this direct final rule will be included in the record and will be made available to the public at: <https://www.regulations.gov>. Public comments are posted without change. Any identifying information submitted with these comments will also be publicly available.

**FOR FURTHER INFORMATION CONTACT:** Angie Snyder, Deputy Administrator, USDA AMS Cotton and Tobacco Program, 3275 Appling Road, Memphis, TN 38133; Telephone: (901) 384-3000; E-mail: [angie.snyder@usda.gov](mailto:angie.snyder@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Agricultural Act of 1949 (7 U.S.C. 1441, 1421, 1423) authorized the establishment of a price support system for tobacco and other commodities. The Fair and Equitable Tobacco Reform Act of 2004 (Pub. L. 108-357, title VI, §611(b), Oct. 22, 2004, 118 Stat. 1522) eliminated the price support and quota system for tobacco produced in the United States as well as mandatory grading of types of tobacco eligible for price support.

AMS's regulations governing tobacco inspection requirements as they relate to the tobacco price support system are contained in 7 CFR part 29. Upon reviewing these regulations in light of the relevant statutory changes and in alignment with Executive Order 14192, AMS has determined that regulations in 7 CFR part 29 with expired authorizing statutes and that govern non-operational programs should be removed and, where appropriate, amended.

AMS is amending language in the subpart A heading and removing obsolete and repetitive statutory authorities listed under this subpart heading. References to price support services are removed from defined terms listed under § 29.1(e) and making a conforming amendment of the definition of "Hearing Clerk." References to obsolete price support services are removed from the policy statement in § 29.2 by revising the introductory paragraph and paragraphs (a) and (b) and removing paragraph (c).

Furthermore, AMS is amending § 29.3(a) by removing references to obsolete price support services and updating contact information for the Office of the Hearing Clerk.

The language in the heading of subpart G is being amended to remove references to obsolete price support services, and obsolete and repetitive statutory authorities listed under this subpart heading are being removed. Lastly, §§ 29.9402 and 29.9406 are amended, removing references to obsolete price support services.

Given that AMS has not provided services related to tobacco price support programs in twenty years, since 2005, there are no known costs or benefits associated with removing regulations governing the tobacco price support program that was eliminated by statute. Even prior to passage of the Fair and Equitable Tobacco Reform Act of 2004, price support services were incorporated into the reporting requirements associated with mandatory tobacco inspection and grading services, which are services paid for by the industry through fees. Fee rates for tobacco inspection and grading services were set such that all costs associated with these services were covered by revenues generated from providing these services. To the extent there is any uncertainty about the costs and benefits of these regulations, it is the policy of USDA to err on the side of deregulation and focus resources on fairly and rationally enforcing a discrete and manageable number of regulations.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.) authorizes agencies to dispense with prior notice and comment for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without first publishing a proposed rule. Removing regulations pertaining to tobacco price support services and making conforming amendments will provide transparency and may reduce confusion for tobacco producers and other stakeholders. Further, AMS views this action as noncontroversial and anticipates no

adverse public comment. This rule will become effective, as published in this document, [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comments are received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Adverse comments are considered to be those comments that suggest the rule should not be adopted or suggest the rule should be changed.

If AMS receives adverse comments, we will publish a document in the *Federal Register*, withdrawing this rule before the effective date. AMS will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), AMS certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. AMS has not provided tobacco price support services in twenty years. The amendments made by the direct final rule will merely conform the CFR with AMS' current operating practices. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB. There are no current information collections associated with the regulations related to the tobacco price support services.

USDA has determined that there is no reliance interest in obsolete regulations. Moreover, regardless of the lawfulness, USDA has no interest in maintaining regulations that have expired authorizing statutes or govern non-operational programs. Maintaining regulations pertaining to the obsolete tobacco price support program in 7 CFR part 29 are not a priority. Therefore, AMS is removing and, where appropriate, amending regulations in 7 CFR part 29 pertaining to obsolete price support services.

#### **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, AMS amends 7 CFR part 29 as follows:

**PART 29—TOBACCO INSPECTION**

1. The authority citation for part 29 continues to read as follows:

Authority: 7 U.S.C. 511-511s.

**Subpart A—Policy Statement and Provisions Governing the Extension of Tobacco Inspection Services**

2. Revise the heading to subpart A to read as set forth above.

3. Remove the authority citation to subpart A.

4. Amend § 29.1 by revising paragraphs (e) and (i) to read as follows:

**§ 29.1 Definitions.**

\* \* \* \* \*

(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 whose name the market bears and all of the geographical area within 5 road miles of the boundaries of said city or town. *And further provided,* That this geographical limitation may be waived by the Secretary after a hearing held pursuant to §§ 29.2 and 29.3.

\* \* \* \* \*

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

\* \* \* \* \*

5. Amend § 29.2 by revising the introductory paragraph and paragraphs (a) and (b) and removing paragraph (c) to read as follows:

## § 29.2 Policy statement.

Inspection services currently provided in auction marketing areas are adequate and the lack of these services is not a limiting factor to accelerated marketings.

Consequently, the extension of inspection 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 services shall be made available on new markets, and additional sales for other than flue-cured tobacco only as hereinafter provided.

(a) *Reasonable inspection services.* The extension of tobacco inspection services to new markets 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 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 or additional sale; the roads and road distances involved in moving tobacco to the proposed new market 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 or additional sale; the location of other auction markets on which tobacco produced in the marketing area of

the proposed new market or additional sale may be marketed; the number of tobacco growers to be affected by the proposed new market-or additional sale; the volume of tobacco likely to be sold in the proposed new market or additional sale; the relationship of sales in the proposed new market or additional sale to sales in other auction markets in the producing area for that kind of tobacco; other economic factors affecting the marketing of tobacco, by growers, in the marketing area of the proposed new market 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, 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 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.

6. Amend § 29.3 by revising paragraphs (a) and (c) to read as follows:

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

(a) *Time and place of filing.* Applications for the extension of tobacco inspection to new markets and to additional sales on designated markets shall be filed 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 Office of the Hearing Clerk, United States Department of Agriculture, 1400 Independence Ave., SW, Stop 9203, Room 1031, South Building, Washington, DC 20250-9203. 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 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.

\* \* \* \* \*

(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 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.

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**Subpart G—Policy Statement and Provisions Governing the Availability of Tobacco  
Inspection Services to Flue-Cured Tobacco**

7. Revise the heading to subpart G to read as set forth above.
8. Remove the authority citation to subpart G.

**§ 29.9402 [Amended]**

9. Amend § 29.9402 by removing the phrase “or the extension of price support to producers” in the first sentence.

**§ 29.9406 [Amended]**

10. Amend § 29.9406, in paragraph (b), by removing the phrase “or price support services” in the first sentence.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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