DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–95–08]

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services and also maintain a reserve sufficient to cover at least 4 months of operation. The present fee of $.0070 per pound has been in effect since July 11, 1991, and is no longer sufficient to recover the costs of operating this activity. This final rule increases the fee to $.0083 per pound to reflect increased program costs and replenish the operating reserve. This increase does not affect the fees for import, export, or permissive inspection.

EFFECTIVE DATE: June 27, 1995.

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

SUPPLEMENTARY INFORMATION: Notice was given (60 FR 25624–25625, Friday, May 12, 1995) that the Department proposed to amend the regulations governing the fee charged for mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of tobacco at designated auction markets, establishment of standards, and other services. The new fee would cover the increased cost of operating the program, including administrative and supervisory cost, and replenish the operating reserve which has been drawn down for several years to cover the difference between revenue and obligations and is now below the required level of 4 months. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511–511q). Interested parties were given an opportunity to comment on the proposed rule.

A total of 21 comments was received; 17 comments—the majority of which came from individual producers supported the increase; 2 comments from organizations representing producers opposed the increase, and 2 comments—1 from an organization representing producers and 1 from an individual who expressed concern over increasing costs to producers and recommended the Department look for ways to operate more efficiently.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. At the end of the 1994–95 marketing season, obligations are estimated at $12,969,000 but revenues are expected to reach only $11,647,000 resulting in a loss of $1,322,000 and reducing the operating reserve to 3.8 months. At the current level of service and fee structure, obligations for the 1995–96 marketing season are estimated at $13,754,000 with revenue of $12,155,000 for a loss of $1,599,000 and a further reduction in the operating reserve to 2.2 months. If the same level of service and fee structure continues for the 1996–97 season, the estimated loss would exceed $2,000,000 and the operating reserve would fall below 1 month.

The major items affecting obligations are increases in salaries, benefits, travel cost and overall administrative costs in each year since 1991. Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for flue-cured and burley were relatively stable for the 1992 and 1993 crops; fell sharply in 1994 and were unchanged for burley for 1995 but increased 16 percent for flue-cured. However, the cost of providing the service has continued to rise.

An analysis of available data indicated that a fee of $.0083 per pound effective for the 1995 crop would provide sufficient revenue to exceed obligations by $560,000 for the 1995–96 marketing season and bring the operating reserve up to 4 months.

Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at a meeting on January 19, 1995, in Lexington, Kentucky, and again on April 6, 1995, in Raleigh, North Carolina. The National Advisory Committee, consisting of 14 members representing tobacco producers, and appointed by the Secretary of Agriculture, was established by law in 1981 to advise the Secretary on the level of services needed and the fees necessary to cover those services. The Committee recommended that the level of services remain unchanged and that the fee be increased to $.0075 per pound.

In considering the Committee's recommendation and the comments opposing the increase, the Department notes that while a fee of $.0075 per pound will result in smaller losses for the 1995 and 1996 marketing years, the operating reserve will continue to fall and would be below 2 months at the end of the 1996 season.

In view of the comments received, and since neither the current fee of $.0070 or the recommended fee of $.0075 per pound will cover the cost of providing the requested service and provide an adequate reserve, the Department is implementing a fee of $.0083 per pound beginning with the 1995 marketing season.

This rule has been determined 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 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This 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. Most of the firms which would be affected by the rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having gross annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this rule would not impose substantial direct economic costs, 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