

Agricultural Marketing Service, USDA

§ 29.2

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 factors 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 appli-

cants 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