

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 12/14/65

December 10, 1965

Honorable Robert D. Bailey
Secretary of State
Capitol Building
Charleston, West Virginia

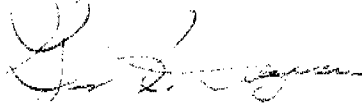
Dear Mr. Bailey:

You will please find two (2) copies of pages 5, 6 and 18 of the Tobacco Regulations, as amended by the West Virginia Department of Agriculture.

A hearing was held on these amendments on November 29, 1965, at 11:00 a.m., and public notice in excess of thirty days was given the public that the above mentioned hearing was to be held.

The amended pages in their new form to become effective November 29, 1965.

Very truly yours,



Gus R. Douglass
Commissioner of Agriculture

GRD:tc

Enclosures

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- (h) How financed.
- (i) Such other information as the Commissioner may require pertaining to location, construction, building and operation of such proposed public market.

THE APPLICATION SHALL BE ACCOMPANIED BY:

- (a) A surety bond payable to the State of West Virginia for the benefit of consignors who may be wronged or damaged by any fraud or fraudulent practices of the market.
- (b) A fee of ten dollars.
- (c) A map or blueprint showing the location, the amount of land, its accessibility to the public, showing elevations, its location in relation to highways or railroads, together with blueprints showing in detail the construction of all barns, buildings and other facilities required by law, or the Commissioner for the operation of said proposed public market.

4.03 Scales, Number and Locations. All persons, firms, partnerships, corporations or associations operating or applying to operate a public market shall install a sufficient number of scales of adequate capacity to take care of the maximum volume of business of the market during the marketing season. All scales shall be equipped with type registering device with an automatic printed ticket which records to the nearest two pound graduation, and tobacco consigned to a public market for sale shall not be weighed more than ten (10) days before sale date. All tobacco weighed ten (10) days or later consigned to the market before sold shall be accepted by the purchaser

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or agent representing himself as a buyer for another partnership, firm or corporation at the same weight recorded by the market on each basket purchased and for which the consignors are paid, except that the market may provide a two (2%) percent tolerance per hundred weight and the purchaser shall not charge back any light weight to the market under five (5) pounds to the basket. He may charge light weight in excess of five (5) pounds at the rate of two (2%) percent to the basket provided the purchaser has complied with the same law, rules and regulations as is required by the market in respect to having scales tested, and licensing of their weighman by the Department of Agriculture as required by law.

4.04 Platforms, Scales and Employees. All persons, firms, corporations, partnerships or associations operating a public market shall provide ample unloading platforms, sufficient and adequate number of scales to accommodate the consignors and shall have a sufficient number of employees to expedite the handling of tobacco on any market days. The unloading platforms shall contain sufficient space for sorting tobacco. The market shall furnish competent persons to sort and/or classify tobacco into established and proper grades and also shall provide sufficient packers to properly place tobacco on baskets.

4.05 Public Facilities. All persons, firms, partnerships, corporations or associations operating or applying to operate a public market shall provide the following facilities for the public, and maintain the same in a clean and sanitary condition in accordance with the requirements of the State Health Department.

- (a) Drinking water fountain for the employees and the public.
- (b) Adequate toilet facilities for the employees and the public.
- (c) A public market operating a restaurant, lunch room, sandwich or soft drink stand shall be responsible for the sanitary operation of said restaurant, lunch room, sandwich or soft drink stand.

4.06 Permit Renewal. All persons, firms, partnerships, corporations or associations operating a public market shall renew their permit annually for the operation of said market by filing application on blanks furnished by the Commissioner, on or before the 30th day of May of each year, accompanied by a surety bond executed and delivered to the Commissioner and payable to the State of West Virginia in an amount equal to the average weekly sales during the preceding calendar year, and check or money order in the amount of ten dollars.

(a) A public market not having operated one year previous to application, the Commissioner shall require bond in an amount fixed by him until such market has established a weekly average.

4.07 Ownership, Change Of. All persons, corporations, partnerships, or associations desiring to change their ownership, partnership, or the controlling interest therein or the management thereof by the sale of stock, interest or interests, shall make application to the Commissioner on blanks furnished by him, setting forth all information pertaining to said sale or transfer of such interest or interests, for his approval.

4.08 Scales, Maintenance. A public market shall maintain the scales used for weighing tobacco so as to insure accurate weights. A public market which weighs tobacco for the purpose of sale shall have the scale tested at least once every twelve months or oftener, as required by the State Commissioner of labor.

(a) No scale shall be used by any public market unless it has been found upon test and inspection to be in a condition to give accurate weights. If any repairs, adjustments, or replacements are made upon a scale, it shall not be placed in use until it has been tested, inspected and approved by the State Commissioner of Labor.

4.09 Weighman, Grader, Auctioneer, Employment Of. A public market shall employ and use a licensed weighman, a licensed grader, and a licensed auctioneer at each and every sale held at such market. Such employees shall not be permitted to weigh, grade and auction tobacco at any tobacco market without first having been licensed by the Commissioner.

4.10 Grades, Classifications, Standards. A public market representing or advertising that tobacco is being sold on grades, classifications or standards adaptable to such product, shall employ a licensed grader to grade and classify such tobacco. Such grades or standards shall conform to grades, classifications or standards established by the Commissioner.

4.11 Licenses, Weighman, Grader, Auctioneer. Application for auctioneer, weighman, or grader's license shall be filed with the Commissioner on forms provided by him accompanied by check or money order in the amount of \$2.50. Persons making application for auctioneer, weighman or grader

license are required to answer all questions and certify under oath that all statements made by him are true and correct.

4.12 Accounting to Purchaser. A public market shall, within a reasonable time following the sale of tobacco, transmit or deliver to the person for whose account such purchase was made or his duly authorized agent, a true written account of the purchase, showing the weight and price of each lot or basket the tobacco purchased, the date of the purchase, and such other facts as may be necessary to complete the account and show fully the true details of the transaction.

4.13 Agents, Order Buyers, Purchases By. When tobacco is purchased at a public market by a person representing himself as agent or order buyer for another person, firm, partnership or corporation, such tobacco market shall record on the manifest, invoice and other records the name of the agent or order buyer, and for what person, firm, partnership or corporation such was purchased.

4.14 Records and Accounts. A public market shall keep all accounts, records and memoranda which fully and correctly disclose all transactions involved in its business. The records shall show the true ownership of said business. When the Commissioner finds that the accounts, records and memoranda of a public market do not fully and correctly disclose all transactions involved in its business, he may prescribe the manner and form in which such accounts, records, and memoranda shall be kept by such market.

4.15 Reports, Statistical. A public market shall make and furnish daily, weekly, monthly, semi-annually, or annually reports or other statis-

tical information to the Commissioner on forms furnished by him, when requested.

4.16 Records, Disposition Of. A public market official shall not destroy or dispose of any books, records, documents or papers which contain or explain transactions in its business, without the consent in writing from the Commissioner.

4.17 Reports, False and Misleading. A public market shall not knowingly make, issue or circulate any false or misleading reports, records or representations concerning market conditions or the price or sale of tobacco.

4.18 Order Buying, Market Prohibited Buying on Commission Basis. A public market official, manager or employee of a public market is hereby prohibited from engaging in the business of order-buying on a commission basis.

4.19 Clerk Shall Record Price and Purchaser. A public market clerk shall record the name of the buyer and the price at which the tobacco is sold as announced by the auctioneer.

4.20 Rules and Practices Local, Establishment Of. Public markets shall have the right to establish rules and practices for the operation of their markets, providing such rules and practices are not in conflict with the articles providing for public markets and the rules and regulations promulgated by the Commissioner. A public market shall reduce their rules and practices for the operation of their market to writing, and file a copy of same or any subsequent changes thereof with the Commissioner.

4.21 Bonds, Public Market May Require from Purchaser. A public market shall use all reasonable precautions to protect its shareholders, partnerships, or consignors of tobacco against losses occasioned by bad checks or other methods used in payment for tobacco by buyers, traders, or persons otherwise engaged in buying and handling tobacco on its market; a public market may require such persons to register with the public market the names of the persons, partnerships, firms or corporations that they are purchasing for, and may require such purchasers to file with them a surety bond in an amount satisfactory to said public market, or provide for and establish a credit by certified check, negotiable note or other securities in an amount acceptable to said public market. Such monies, bonds, certified checks, negotiable notes or other securities are to be held by said public market in escrow for the payment of tobacco purchased. A public market may refuse to deliver tobacco to any person, partnership, firm or corporation which has defaulted in the payment of its account at any public market.

4.22 Weighman, Application and Duties. An applicant for weighman license shall be a person of good reputation, of high moral character, honest and dependable, learned, and efficient in weighing tobacco and shall be required to pass a satisfactory examination and show satisfactory ability as a weighman in the presence of an examiner designated by the Commissioner.

(a) A weighman licensed and employed under the provisions of the law, shall be an agent of the Commissioner on all matters pertaining to weighing and recording weights of tobacco by a public market at which he is

employed. It shall be his duty and he is hereby required to have complete and unobscured charge of the scale at all times he is engaged in weighing.

(b) He shall permit no person to be in the scale room while tobacco is being weighed, provided the Commissioner or his authorized agents may enter the scale room at any time for the purpose of observing the manner of the weighman, records and weights.

(c) He shall be responsible to the Commissioner for making and recording the true and accurate weight of all tobacco weighed.

(d) By reason of having been licensed as provided by law, a weighman shall be an agent of the Commissioner in the performance of his duties as such, as well as an employee of the public market and will be held responsible for his conduct at any public market at which he is employed. A weighman is authorized to settle disputes on weights and scale records or other matters pertaining to weights, and his decision shall be final, provided the Commissioner or his agents may enter into such disputes and reweigh tobacco, or require the market to have tobacco reweighed as may be required to settle disputes. This section also applies to any purchaser or agent with reference to any questionable weights as applied to this section.

4.23 Grader, Application and Duties. An applicant for grader license shall be a person of good reputation, high moral character, honest, dependable, learned and efficient in grading tobacco. He is required to qualify in accordance with the standard rules for grading tobacco.

(a) A public market advertising and selling tobacco on grades and classifications shall employ a grader licensed by the Commissioner. He shall classify or grade all tobacco in conformity with the grades, standards and classifications of tobacco promulgated by the United States Department of Agriculture, Tobacco Branch, and shall record the grade on the sales ticket. The grades, standards and specifications of tobacco established and promulgated by the U.S. Department of Agriculture, Tobacco Branch, are hereby adopted by the Commissioner and shall be the grades, standards, classifications and specifications to govern graders in determining the grade of tobacco.

(b) The license of a public market grader may be suspended or revoked by the Commissioner for his failure to conform to the grades and classifications as established by the Commissioner.

(c) By reason of having been licensed as provided by law, a grader shall be an agent of the Commissioner in the performance of his duties as such, as well as an employee of the public market where he is employed. A grader is authorized to settle disputes on grades and classifications or other matters pertaining to grades and classification, and his decision shall be final. In case of disagreement between two or more graders on a market, the head grader shall decide what the grade is, and his decision shall be final.

4.24 Auctioneer, Application and Duties. An applicant for an auctioneer license shall be a person of good reputation, high moral character, honest and dependable, and shall be learned and efficient in the business of auctioneering.

(a) By reason of having been licensed as provided by law, an auctioneer shall be an agent of the Commissioner in the performance of his duties as such, as well as an employee of the public market where he is employed. He shall not engage in the use of profanity, immoral or vulgar language or any other misconduct during the sale of any tobacco at the public market at which he is employed.

(b) An auctioneer at any public market shall be considered a public official. In case of a dispute between bidders, the auctioneer is authorized to settle such dispute by re-opening the bid and re-selling to the highest bidder.

4.25 License Renewal, Auctioneer, Weighman, Grader. Auctioneer, weighman or grader desiring to renew his license shall make application to the Commissioner for July of each year. Such application shall be accompanied by a check or post office money order made payable to the Commissioner in the sum of \$2.50.

4.26 Proceeds of Sale, Prompt Accounting. All monies received from the sale of tobacco by a public market are hereby declared to be the property of the consignor. A public market shall, before the close of the next day following the sale of any tobacco consigned to it for sale, transmit or deliver by check to the consignor of the tobacco or his duly authorized agent in person or by mail, the net proceeds received from the sale, and a true written account of such sale, showing the basket number, weight and price of each lot sold, the name of the purchaser, the purchaser's agent or order buyer, if any, the date of sale, the commission, handling

charges, and other lawful charges, and such other facts as may be necessary to complete the account.

4.27 Scale Tickets. A tobacco market shall use an Approved Type scale ticket. Such tickets to be made in quadruplicate with carbon, and shall contain the following information:

HUNTINGTON TOBACCO WAREHOUSE		Tobacco Inspection Certificate TYPE 31 Grade <u>CRL</u> <u>11-29-48</u> By <u>OH</u> (Inspector)
Huntington, West Virginia		
No. <u>1080</u>		
Basket No. <u>N5510</u>		
Date <u>11-29-48</u>	Grower _____ <u>690</u> _____ Lbs. Price \$ _____	Buyer and Grade <u>L O</u> Buyer's Receipt

(a) A public market shall record in spaces provided on the scale ticket all information except the true and actual weight of tobacco entered and recorded for sale by the pound and the grade. (Licensed weighman shall record the weights. Licensed grader shall record the grade.)

(b) A public market shall deliver one copy of a sales record to the consignor and retain one copy for permanent record.

(c) A public market or its employees shall re-weigh tobacco on request of the Commissioner or his authorized agents.

4.28 Market Employees Prohibited from Buying, Selling or Trading in Tobacco. Persons, firms, corporations, partnerships or associations operating a public market shall not engage or permit its manager or any of its employees or officers to engage in buying, selling or otherwise trading in tobacco for themselves, their agents or partners at said market.

(a) Any employee of a public market may enter for sale at said market, tobacco owned or produced by him on his farm, but is prohibited from purchasing tobacco for himself, an agent or a partner.

(b) Licensed weighmen, graders or auctioneers employed as such at a public market are prohibited by law from buying or trading in tobacco at the public at which they are employed as weighmen, graders, or auctioneers.

(c) When it appears to the manager of a public market that tobacco being offered for sale is selling below a reasonable market price, the manager may, for the purpose of protecting the consignor against loss, buy only for and in the name of the public market at which he is employed. He shall have the right to sell such tobacco purchased by him for and in the name of the public market at which he is employed. If any profits accrue from the sale of such tobacco, the same shall go into the treasury of the public market at which he is employed, and if there be a loss on the sale of such tobacco, the public market shall absorb such loss. On such purchases and sales, the public market shall set up a special account on which all such transactions are to be recorded, and shall make an itemized report to the Commissioner on forms furnished by him, when requested.

(d) All purchases by the warehouse must show on sale ticket that the buyer is the House (Hse.)

4.29 Commission, Service, Other Charges, Schedule and Posting Of.

On or before the 22nd day of November, a public market shall file with the Commissioner its schedule of commissions, service fees and/or other charges for selling and/or handling tobacco. Schedules of commissions, service fees and other charges filed with the Commissioner for approval on the 22nd day of November shall be the amount of commission and other charges to be charged and collected at such public market, until a revised schedule of commission, service fees and other charges has been approved by the Commissioner.

(a) A public market shall post in at least five conspicuous places accessible to the public, a tariff sheet or list of charges, fees, etc., for handling tobacco received, entered for sale or sold by such public market.

4.30 Inspection Fees to be Collected. A public market shall pay to the Commissioner for inspection supervision service, three cents for each 100 pounds handled by the market. A public market shall forward all fees to the Commissioner not later than the tenth day of each month following the month for which said supervision was performed.

4.31 Scales, Daily Inspection and Tare. Tobacco Regulation No. 4.31 of the Regulations governing tobacco markets as promulgated and adopted by the Commissioner of Agriculture of West Virginia, as related to charges to be made by said markets, is hereby amended to read as follows:

Scales, Daily Inspection and Tare

It shall be the duty of a public market to:

(a) Check, inspect, and balance each scale used by the market

daily, when such scales are being used or market is in operation.

(b) Correct back balance to read zero with empty basket and truck on scales.

(c) Post on scale room window the tare weight of truck and basket.

(d) Discard baskets and trucks varying from established tare rate of more than one pound.

(e) Record the weight of the tobacco with a two pound break, to the nearest even weight, up or down, while truck and basket remain on the scales.

(f) Refrain from weighing baskets of tobacco in excess of 700 pounds or over 5 feet high.

On and after the effective date of this amendment, the owners and operators of said tobacco markets are authorized to make the aforesaid charges.

4.32 Spacing Baskets on Floor for Sale. A public market shall space the baskets as follows:

(a) Baskets to be placed in rows so they do not touch.

(b) Rows to be arranged so at least 18 inches of space prevails between tobacco in rows. These measurements are to be made from the butt end of the hands of tobacco located on the baskets.

(c) Sufficient space to be left at the end of rows to permit passage of buyers and others without injury to the tobacco.

4.33 Basket Sales Per Hour.

(a) The maximum sale of baskets of tobacco on warehouse floors shall not exceed 360 baskets per hour, nor shall the rate of sale exceed

6 baskets per minute.

(b) The day's operation at a tobacco market shall not be greater than five actual selling hours, and the operating week of any tobacco warehouse shall not be in excess of five actual selling days.

A public tobacco market shall indicate by markers the position as to the number of baskets and rate of sale per hour. The markers shall be located 360 baskets from the start of the sale and indicate that the sale will reach that point in one hour, and at each succeeding 360 baskets to the end of sale day when sold on a basket basis. A public tobacco market may at its election, by declaration before, or on, the opening day of the market of each year, conduct the sale for that year on either of the following plans:

(1) Sales to be at the rate of not more than 360 baskets per hour, per set of buyers, or

(2) Sales to be at the rate of not more than 86,400 pounds per hour, per set of buyers. (360,000 pounds per day.)

4.34 Packing Tobacco.

(a) To supervise the packing of tobacco delivered by growers and owners to the warehouse.

(b) Baskets packed outside the warehouse may be received, but shall not be offered for sale until repacked.

(c) When nested baskets of tobacco are reported by the graders to the public market, said market shall remove same from the floor and re-pack such baskets before being offered for sale.

4.35 Discrimination Prohibited. No tobacco market shall discriminate against any grower of tobacco by failing to accord to that grower all privileges and services extended to any other grower, nor shall any tobacco market refuse to admit any tobacco to the warehouse floor so long as there is unused space available for the placing of tobacco upon the floor for the purpose of sale.

No dealer in leaf tobacco registered under the U.S. Treasury Department Regulations may be denied access to purchase on any public auction market.

(a) No transactions shall be consummated by any Registered Dealer or his agents on the premises of a tobacco company except in the line of public auction. Every Registered Dealer shall have the right to follow the regular auction sales and to purchase any and all tobacco desired, provided his bid in the auction is higher than any other bidder.

(b) Purchasers of tobacco on the warehouse floors from producers, prior to sale at auction or on the premises of a tobacco company is prohibited.

(c) No agent of a Registered Dealer shall operate unless the name of the agent is on file with the tobacco company and financial obligations guaranteed by the Registered Dealer and his operations are in the Regular Auction.

(d) Bonds, Public Market May Require From Purchaser: A public market shall use all reasonable precautions to protect its shareholders, partnerships, or consignors of tobacco against losses occasioned by bad checks or other methods used in payment for tobacco on its market. A public market shall require such persons to register with the Public Market

the names of persons, partnerships, firms or corporations that they are purchasing for, and may require such purchasers to file with them a surety bond in any amount satisfactory to the Public Market or provide for and establish a credit by certified check. Negotiable note or other securities are to be held by said Public Market in escrow for the payment of any tobacco purchased. A public market may refuse to deliver tobacco to any person, partnership, firm or corporation which has defaulted in payment of its account to any public market. (Tobacco Regulation No. 21, Market Laws, State of West Virginia, Article 2a, May, 1948.)

(e) Purchases of tobacco in the line of auction by Registered Dealers must be paid for by the purchaser and removed from the premises on the same day of sale.

(f) Resale of tobacco purchased on the market must be on the same basis as farm crops and at the same terms and under the exact same conditions.

(g) Any person, firm, corporation or association violating the rules herein contained shall be ordered to vacate the premises of the tobacco company and upon refusal will be declared public nuisances and will be subject to prosecution under the laws of the State of West Virginia.

(h) Trading, pinhooking, buying or selling in any form on the premises of a public tobacco market is hereby prohibited.

(i) All Registered Dealers must file in the office of the tobacco company on whose premises they propose to operate, copies of their registration certificates issued by the U.S. Internal Revenue Bureau.

4.36 Rebates, Special Privileges and Services by Warehouses Prohibited.

(a) No tobacco market shall give a rebate of any part of the warehouse charges or commission to any person as an inducement for the purpose of influencing the sale of tobacco on the warehouse floor and thereby discriminate against any other grower, nor shall any warehouseman pay or offer anything of value directly or indirectly for the delivery of tobacco to any warehouse.

(b) No tobacco market shall extend to any customer any special privilege or service not extended all customers on like terms and consideration.

4.37 Commingle of Tobacco. No person shall commingle crops of tobacco on the warehouse floor while that tobacco is still the property of the grower, unless express permission for the commingling is obtained from the grower.

4.38 Rejection and Resale of Tobacco. All tobacco delivered to a public tobacco market shall be sold at public auction. The buyer and price of the tobacco must be recorded at the time of sale. The consignor shall have the right and shall have thirty minutes to reject any sale of any basket or lot of tobacco. The public market shall be responsible for and see to it that the consignor's name and address, the buyer's name and the price at which it's sold be recorded at the time of the sale. No alteration on tobacco sales ticket shall be permitted.

(a) Any basket, pile or crop of tobacco that has been rejected by the owner shall be removed from the floor and offered for sale at another date. The original ticket shall accompany the basket.