



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON
25305

Gus R. Douglass
Commissioner

NOTICE OF PUBLIC HEARING

AGENCY: West Virginia Department of Agriculture

RULE TYPE: Legislative

RULE TITLE: Tobacco Markets - SERIES XIe

A public hearing on the above proposed Rule will be held at 1:00 P.M., Friday, November 7, 1986, in the John T. Johnson Auditorium, Administration Building, Guthrie Agricultural Center, West Virginia Department of Agriculture, Charleston, West Virginia. Comments are not limited and may be written and oral. Please mail written comments to: Commissioner Gus R. Douglass, West Virginia Department of Agriculture, Charleston, WV 25305, on or before November 3, 1986. The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate a review of these comments.

The issues to be heard shall be limited to the proposed rule.


Gus R. Douglass
Agriculture Commissioner

FILED
1986 OCT -8 AM 10:51
SECRETARY OF STATE



Gus R. Douglass
Commissioner

NEWS RELEASE

West Virginia Department of Agriculture
Information Division
Charleston, WV 25305
Phone: 348-3708

For Immediate Release

October 6, 1986

PUBLIC HEARING SCHEDULED

CHARLESTON, W.VA. -- Agriculture Commissioner Gus R. Douglass announced today that a public hearing will be held November 7, 1986, at 1 p.m. in the John T. Johnson Conference Room, West Virginia Department of Agriculture, Administration Building, Guthrie Agricultural Center, Charleston, W. Va., for the purpose of bringing conformity to posted commission rates charged by the Huntington Pride in Tobacco Market, Inc. Market officials have requested a 50-cent per hundredweight increase above previously posted rates, for handling fees.

If you desire to protest the granting of this increase, you may appear in person, or you may express your objections in writing to Commissioner Gus R. Douglass, W.Va. Department of Agriculture, State Capitol, Charleston, WV 25305, on or before November 3, 1986.

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FISCAL NOTE FOR PROPOSED RULES

Rule Title: TOBACCO MARKETS

Type of Rule: XX Legislative Interpretive Procedural

Agency WV Department of Agriculture Address State Capitol Building
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other (See Below)	\$16,920.00				

2. Explanation of above estimates:
 3,384 million pounds of tobacco was produced in West Virginia in 1985.
 Assuming this year's production at the same level, the cost of the fee
 increase will be 50¢ per cwt.

3. Objectives of these rules:
 Huntington Pride In Tobacco Market, Inc. is requesting an increase in
 handling charges to offset anticipated incurred cost in providing the
 service.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

Would increase cost of those marketing tobacco at the Huntingdon
Pride In Tobacco Market, Inc.

Date: October 6, 1986

Signature of Agency Head or Authorized Representative



Gus R. Douglass
Agriculture Commissioner

PROPOSED

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-2 & 2a
SERIES XIe

TITLE: Tobacco Markets

STATE DEPARTMENT OF AGRICULTURE
STATE CAPITAL BUILDING
MARTINSBURG, W. VA.

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Section 1. General

1.1 Scope - These Legislative Regulations establish general operating rules and procedures in the Marketing Division.

1.2 Authority - W.Va. Code 19-2 & 2a.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Declaration of Policy

2.1 Articles 2 and 2a, Chapter 19, specifically set out certain duties, authorities and responsibilities of the Commissioner of Agriculture, it is my opinion that the Legislature intended that the activities engaged in by a public market were in the interest of the buyer and sellers of livestock and other agricultural and horticultural products and that the granting of a permit to a person, firm, corporation, partnership or association for the operation of a public market was and is for the purpose of performing a public service to the buyers and sellers of such agricultural commodities and to establish permanently a market place for that purpose. It is my interpretation that the act intended that reasonable, adequate and uniform service charges be made and collected by a public market to amply remunerate it for engaging in such activities and for providing adequate facilities to accommodate the patrons and the public. It is further my opinion that the acts did not intend to, or permit persons, firms, corporations, partnerships or associations or their management engage in the practice of buying, selling or otherwise trading in the market for profits, in addition to revenues to be derived from fixed service charges.

2.2 Section 2, Article 2a, Chapter 19, of the Code of West Virginia, provides that all public markets as defined in Section 1, are hereby declared to be affected with a public interest and subject to regulation by the State as in said Article provided.

2.3 Section 6 provides that all permittees shall pay to the Commissioner a fee of twenty dollars on or before the first day of July of each year.

2.4 Section 8, of said Article, provides that before the granting of any such permit, the applicant shall execute and deliver to the Commissioner a surety bond.

2.5 Section 10, of said Article, provides that it shall be unlawful for any person to serve in the capacity of weighman, grader, or auctioneer unless

licensed by the Commissioner, and further provides in Section 5, Article 2, that the Commissioner shall establish and publish a schedule of charges and collect same for grading services. Section 12, of Article 2a, provides that he shall grant licenses to weighmen, graders and auctioneers, suspend or revoke such licenses. Section 13, of said Article, provides that no weighman, grader or auctioneer licensed in accordance with the provisions of the law shall be permitted to engage in buying, trading in livestock or other agricultural products at any public market at which he is employed.

2.6 Section 16, of said Article, provides that it shall be the duty of, and the officers of a public market are hereby required to keep complete and accurate records of all transactions at public markets.

2.7 Section 17, of said Article, provides that the Commissioner shall be charged with the enforcement of this Article. He shall have full authority and power to make and enforce rules and regulations necessary to carry out the provisions of this Article for the proper enforcement of the same.

Section 3. Definitions of Words and Terms - When Used In These Regulations

3.1 Public Market - A public market is any place of business where livestock, poultry and other agricultural products are assembled for sale or distribution, as provided in Article 2 and 2a, Chapter 19, of the Code of West Virginia.

3.2 Commissioner - The Commissioner of Agriculture of the State of West Virginia and his authorized agents.

Section 4. Tobacco Regulations

4.1 Permit required - All persons, firms, corporations, partnerships or associations desiring to operate a public market are hereby required to obtain a permit from the Commissioner for the operation of same.

4.2 Permit, Applications - All persons, firms, corporations, partnerships, or associations applying for a permit to operate a public market shall make application to the Commissioner on forms furnished by him. The application shall set forth:

- 4.2.1 The proposed location of such market.
- 4.2.2 The need for such market.
- 4.2.3 The approximate pounds of tobacco in the area.
- 4.2.4 The present methods of marketing in the proposed area.

4.2.5 Style of ownership, individual form, partnership, corporation or association.

4.2.6 Principal owners and their addresses.

4.2.7 Business of operation, methods to be used.

4.2.8 How financed.

4.2.9 Such other information as the Commissioner may require pertaining to location, construction, building and operation of such proposed public market.

4.2.10 The application shall be accompanied by:

4.2.10.1 A surety bond payable to the State of West Virginia for benefit of consignors who may be wronged or damaged by any fraud or fraudulent practices of the market.

4.2.10.2 A fee of ten dollars.

4.2.10.3 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.

4.3 Scales, Number and Location - 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 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.

4.4 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.

4.5 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.

4.5.1 Drinking water fountain for the employees and the public.

4.5.2 Adequate toilet facilities for the employees and the public.

4.5.3 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.

4.6 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.

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

4.7 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.

4.8 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.

4.8.1 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.

4.9 Employment of Weighman, Grader, Auctioneer - 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 Weighman, Grader, Auctioneer Licenses - 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 of 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 Purchases by Agents, Order Buyers - 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 statistical information to the Commissioner on forms furnished by him, when requested.

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

4.18 Order Buying, Market Prohibited Buying on Commission Basis - A public market official, manager or employee of the 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 Establishment of Rules and Practices Local - 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 Application and Duties - Weighman - 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.

4.22.1 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 unmolested charge of the scale at all times he is engaged in weighing.

4.22.2 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.

4.22.3 He shall be responsible to the Commissioner for making and recording the true and accurate weights of all tobacco weighed.

4.22.4 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.

4.23.1 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.

4.23.2 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.

4.23.3 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.

4.24.1 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.

4.24.2 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: (See Appendix No. I.)

4.27.1 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.)

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

4.27.3 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.

4.28.1 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.

4.28.2 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 market at which they are employed as weighman, graders, or auctioneers.

4.28.3 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.

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

4.29 Schedule and Posting of Commission, Service, Other charges - 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.

4.29.1 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 market, is hereby amended to read as follows:

Scales, Daily Inspection and Tare - It shall be the duty of a public market to:

4.31.1 Check, inspect, and balance each scale used by the market Daily, when such scales are being used or market is in operation.

4.31.2 Correct back balance to read zero with empty basket and truck on scales.

4.31.3 Post on scale room window the tare weight of truck and basket.

4.31.4 Discard baskets and trucks varying from established tare rate of more than one pound.

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

4.31.6 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 (12/16/65) 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:

4.32.1 Baskets to be placed in rows so they do not touch.

4.32.2 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.

4.32.3 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 -

4.33.1 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.

4.33.2 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.

4.33.3 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:

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

4.33.3.2 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 -

4.34.1 To supervise the packing of tobacco delivered by growers and owners to the warehouse.

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

4.34.3 When nested baskets of tobacco are reported by the graders to the public market, said market shall remove same from the floor and repack 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.

4.35.1 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.

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

4.35.3 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.

4.35.4 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 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 Regulations No. 21, Market Laws, State of West Virginia, Article 2a, May, 1946.)

4.35.5 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.

4.35.6 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.

4.35.7 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.

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

4.35.9 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 -

4.36.1 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.

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

4.37 Commingling or Tobacco - No person shall comingle 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 the 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 alterations on tobacco sales ticket shall be permitted.

4.38.1 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.

4.38.2 It shall be the duty of a public market to repack and reweigh all rejected baskets of tobacco and place the same on the floor for sale at the next sale to be held on that floor. Such baskets of tobacco shall be accompanied by the original tickets and shall remain on the baskets until re-graded, weighed and set in line for sale. The new floor sheet shall identify the rejected baskets and the number of times the same has been offered for sale and rejected (i.e. First, Second, Third, etc.).

4.38.3 In the case of a corrected or mismarked sales ticket found on a basket, said basket shall be removed from the floor, re-weighed and a new sales ticket shall be attached to the original and placed on sale basket. The original ticket shall be marked void and initialed by the weighman. The void sales ticket shall be collected by the ticket collector and at the end of the business day delivered to the office of the public market.

4.38.4 Charges to be made by said markets:

4.38.4.1 Ninety cents (90¢) per 100 pounds handling charge.

4.38.4.2 Five per cent (5%) commission on gross sales.

4.38.4.3 Sixty cents (60¢) per basket under 100 pounds.

4.38.4.4 One dollar (\$1.00) per 100 pounds additional charge for loose tobacco or tobacco delivered on baskets.

4.38.4.5 First resale of rejected tobacco, no additional charge.

4.38.4.6 Second resale of rejected tobacco, one dollar and five cents (\$1.05) per 100 pounds handling charge, ten and one-half per cent (10½%) commission on gross sales, one dollar and five cents (\$1.05) per 100 pounds additional charge for loose tobacco or tobacco delivered on baskets.

4.38.4.7 Third resale of rejected tobacco, two dollars and

ten cents (\$2.10) per 100 pounds handling charge, Twenty-one per cent (21%) commission on gross sales, Two dollars and ten cents (\$2.10) per 100 pounds, and six dollars (\$6.00) per 100 pounds additional charge for loose tobacco and tobacco delivered on baskets.

4.38.4.8 Fifty cents (50¢) per 100 pounds for grading tobacco not properly stick graded by the grower prior to delivery at the warehouse

4.39 A public market shall receive and sell the tobacco in the order it is delivered to the market, unless permission or agreement is granted by the grower or owner, prior to the sale, that such tobacco be sold at a later date.

4.40 A public market shall provide a bulletin board located near the office in a convenient and conspicuous place for the public on which shall be posted the following:

4.40.1 A notice stating the number of pounds of tobacco sold and the average price per pound received on each previous day's sale. The public market shall post such notice not later than 9:00 A.M. on the date following the sale.

4.40.2 A typewritten or printed list showing the names and post office addresses of each crop of tobacco of the grower or owner. Such list shall be posted at least 30 minutes before the sale starts for that day.

4.41 A public market shall not receive any tobacco for sale unless the name and post office address of the producer or owner of the tobacco is furnished by the person delivering said tobacco.

4.42 A public market shall furnish to the Commissioner, daily at the close of each sale, a sworn statement showing the total number of pounds of tobacco sold, the total amount paid for said tobacco, and the average price for the day's sale. Any information to the public or press concerning the pounds, price, and average of tobacco sold shall be based upon the sworn statements.

4.43 Mixed or Nested Tobacco Rejected By Purchaser -

4.43.1 When a buyer finds tobacco purchased to be mixed and rejects such, tobacco may be regraded as mixed and resold at auction if mixed grade can be determined under grading specifications by inspector.

4.43.2 Tobacco found to be nested must be removed from the sale, sorted, repacked and reweighed and offered on later sale.

4.44 As provided in Section 17, Article 2a, Chapter 19, of the Code of West Virginia, the Commissioner is hereby authorized to revoke, suspend, rescind or amend the rules and regulations of all public markets, and the rules and regulations hereinbefore set forth for public markets covering the sale of tobacco.

Dept. of Agri.
Leg. Regs., 19-2 & 2a
SERIES XIe, Sec. Appendix

APPENDIX NUMBER I

SCALE TICKETS

HUNTINGTON TOBACCO WAREHOUSE Huntington, West Virginia No. <u>1080</u> Basket No. <u>H5510</u>	Tobacco Inspection Certificate Type 31 Grade <u>C2L</u> <u>11-29-48</u> by <u>OH</u> (Inspector)
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Date 11/29/48

GROWER _____	Buyer and Grade
<u>690</u> Lbs.	<u>LO</u>
Price \$ _____	Buyer's Receipt

1906 OCT - 8 AM 10: 51
DEPT. OF AGRICULTURE
WEST VIRGINIA
RECORDS STATE

FILED



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS
COMMISSIONER

JOHN D. PERDUE
ASSISTANT COMMISSIONER

August 4, 1988

Mr. Rich O. Hartman, Director
W.Va. Secretary of State's Office
Administrative Law Division
State Capitol
Charleston, WV 25305

Dear Mr. Hartman:

Please consider this our formal request to have the following rules removed from the Rule Monitor of the West Virginia Register:

- 1) Wood Infestation Reports
- 2) Pesticide Use & Application Act -
Enforcement Procedures
- 3) Tobacco Markets

No further action is planned at this time to revive any of the above listed rules.

Sincerely,

John D. Perdue
Assistant Commissioner

JDP:jlf

FILED

1988 AUG -9 AM 8:58

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE