

CONTROL OF TOBACCO AUCTION FLOORS (LICENSED AUCTION FLOORS) REGULATIONS

under s. 38

G N. 186/1971

92/1975

41/1986

1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Licensed Auction Floors) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“funked” used with reference to tobacco means that the tobacco has no visible sign of mould, but is known to have been mouldy or has an aroma characteristic of tobacco which has been or is about to become mouldy;

“licensed auction floor” means an auction floor licensed for the purpose of selling tobacco under section 18 of the Act;

“loose leaf” means sound leaf tobacco which is packed without being tied in hands;

“nest” with its grammatical variations means the packing of tobacco into bales in such a manner as to be calculated to deceive the buyer thereof as to the nature and quality of the contents thereof;

“sales supervisor” means the person authorized by the Commission to supervise sales of tobacco on licensed auction floors;

“starter” means the employee of an owner of a licensed auction floor who is authorized to place an approximate value on tobacco offered for sale on such auction floor.

3. Duties of owners

Every owner of a licensed auction floor shall ensure that—

(a) reasonable care is used in the handling and storing of tobacco at the licensed auction floor and that bales of tobacco are laid on the floor and placed in such a manner as the Commission may from time to time require;

(b) suitable storage facilities are available for tobacco awaiting sale at all times during the tobacco selling season and that such storage facilities are used exclusively for the storing of tobacco awaiting sale during that season;

(c) fertilizers, insecticides, fungicides and other substances which are liable to contaminate tobacco are not stored or kept in any place where tobacco is, or is to be stored or offered for sale;

(d) covered bays are provided for the loading and unloading of tobacco at the licensed auction floor to the satisfaction of the Commission;

(e) accounts in respect of purchases of tobacco at the licensed auction floor are presented to the buyers thereof not later than 9.30a.m. on the day following the sale of such tobacco at the licensed auction floor;

(f) bales of tobacco are properly sewn up after they have been put up for auction;

(g) coupon tickets are securely attached to each bale showing the amount bid per kilogram of tobacco in any bale, the weight thereof and the name of the buyer; all disputes concerning the weight of any bale of tobacco where the discrepancy amounts to three kilograms or more shall be referred to the Commission by the sales supervisor not later than two o'clock in the afternoon on the day next following the day on which the tobacco which is the subject of the dispute was sold;

(h) all tobacco is weighed not more than 72 hours before the day on which it is sold;

(i) any interest which the auctioneer, any employee of the auctioneer and any buyer (other than in his capacity as a buyer) has in any tobacco which is to be sold at the licensed auction floor is disclosed to every interested person prior to the time of the sale;

(j) such packing materials as the seller may specify are returned to him as soon as is practicable after the same shall have been returned to the owner of the licensed auction floor by the buyer under regulations 16 and 17;

(k) payment after the deduction of authorized charges is made to the seller of any tobacco not later than 24 hours after the same shall have been sold if the seller has previously delivered payment instructions in accordance with regulation 4 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971;

(l) no bid is accepted from a buyer who has failed to settle his amount in accordance with regulation 16 (1) (a) or has not made an arrangement for settlement satisfactory to the seller.

4. Records

(1) Every owner of a licensed auction floor shall keep a book in a form approved by the Commission in which shall be entered the number of bales of tobacco received in each day from each seller for sale on the auction floor together with the name of the seller and the registered number allocated to the seller under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971. Sub. leg. p. 27

(2) Every entry made in the book referred to in subregulation(1) shall be made in the order in which each bale of tobacco is received and such tobacco shall be sold in that order according to its type.

(3) No tobacco which is received at a licensed auction floor after 5 p.m. on the day preceding a sale shall be sold at the sale on the day next following its receipt except with the permission of the sales supervisor.

(4) No tobacco shall be withdrawn from sale by the seller from the sale to which it has been allocated by the owner of the licensed auction floor except with the permission of the sales supervisor.

5. Liability for loss

The owner of a licensed auction floor shall be liable for any loss occasioned to the seller or the buyer, as the case may be, of any tobacco auctioned by error by himself, his servants or agents and shall make good any loss occasioned thereby.

6. Packing

(1) Every bale of tobacco consigned to a licensed auction floor shall be packed with uncontaminated tobacco in good handling and keeping condition: G.N. 41/1986

Provided that a bale of tobacco may be packed with a majority of leaves of mouldy, carbonized or funky tobacco, if the bale is declared upon consignment and sale to be "mouldy", "carbonized" or "funky", as the case may be.

(2) Every bale of tobacco shall be properly packed so as to facilitate the inspection and storage thereof and, in particular, shall be—

(a) wrapped in hessian or such other material as the Commission may from time to time approve;

(b) sewn with cotton twine or such other material as the Commission may from time to time approve, so that no single stitch exceeds 0.08 metre in length and that no gap between stitches exceeds 0.08 metre in length, which stitches shall be locked on the sides of the bale as near to the corners as is practicable.

7. Specifications

(1) Except with the permission of the sales supervisor all tobacco which is intended for sale at a licensed auction floor shall be packed in bales of a size of 0.91 metre by 0.61 metre or 0.76 metre by 0.76 metre with a depth not exceeding 0.61 metre. G.N. 92/1975, 41/1986

(2) No bale of tobacco intended for sale at a licensed auction floor shall weigh more than 108 kilograms or less than 22.5 kilograms.

(3) The size of hands of graded tobacco intended for sale at a licensed auction floor shall be not less than 0.03 metre and not more than 0.04 metre across the butt and the depth of the tie shall be not less than 0.04 metre and not more than 0.05 metre.

(4) The tobacco leaf used in tying a hand of graded tobacco shall be leaf of the same grade as the tobacco contained in the hand.

(5) Sound leaf tobacco of or exceeding 0.20 metre in length shall not be baled as loose leaf tobacco.

(6) Tobacco packed as tied leaf, loose leaf or as tobacco strip shall be straight laid in packing.

(7) Every seller shall cause the registered number allocated to him under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations 1971 to be stencilled on two sides and on one side end of each bale of tobacco which he delivers for sale to a licensed auction floor in characters not less than 0.08 metre in height. Sub. leg. p. 27

(8) Split bales of tobacco containing not more than two different grades of tobacco may be offered for sale if the minimum weight thereof is not less than 22.50 kilograms and not more than 108 kilograms and the word "split" is clearly printed and prominently displayed on any such bale and it is declared as being a "split" bale at the time it is put up for auction.

(9) "Mixed" bales of tobacco which contain only one type of tobacco may be offered for sale if they do not exceed 67.50 kilograms and not less than 22.50 kilograms net weight and the word "mixed" is clearly printed on the bale and it is declared as "mixed" at the time that it is put up for auction.

(10) In this regulation "split" bales and "mixed" bales shall have the meanings assigned thereto under the Control of Tobacco Auction Floors (Grading) Regulations, 1971. Sub. leg. p. 27

8. Notification of intention to sell to Permanent Secretary

(1) Every seller who intends to offer for sale at a licensed auction floor any tobacco grown in a year other than the year in which it is intended to be sold shall notify the Permanent Secretary of his intention so to do not later than the 1st March in the year in which it is intended to offer such tobacco for sale.

(2) No tobacco referred to in subregulation (1) shall be sent to a licensed auction floor for sale unless it is accompanied by a certificate issued by the Permanent Secretary stating that that tobacco has been inspected within 30 days of the day on which that tobacco is intended to be sold and that there is no evidence that the tobacco is infested with stored tobacco beetle (*lasioderma serricorne* F.) or stored tobacco worm (*ephestia elutella* Hb) or any other pest of stored tobacco declared as such under section 2 of the Plant Protection Act. Cap. 64:01

9. Refusal to sell and repudiation of purchase

(1) A seller may refuse to accept the price bid for any tobacco which he has offered for sale by tearing the coupon attached to a bale containing any such tobacco before accounting data has been extracted from such bale.

(2) A buyer whose bid has not been accepted under subregulation (1) may repudiate the purchase by him of a number of bales of tobacco equivalent to the number in respect of which such bid has been refused in respect of the same registered number or market as that of the tobacco in respect of which his bid has been so refused:

Provided that the accounting data shall not be entered up nearer than four rows behind the tobacco being currently sold.

(3) No seller who has made a bid for any tobacco being sold by him may refuse to accept the final price bid for such tobacco.

10. Discovery of damaged tobacco

When, before the accounting data has passed such tobacco, the buyer thereof discovers that it is badly handled, mixed, funky, damaged or wet he may notify the sales supervisor of his desire to repudiate the purchase of such tobacco.

11. Discovery of nested bale

Where a buyer discovers that a bale of tobacco which has been purchased by him is nested he may report that fact to the sales supervisor, who shall inspect the bale and report his findings to the Commission, and if the Commission is satisfied that such bale is nested it may—

(a) cancel the sale of such bale; and

(b) confiscate the bale; and

(c) order the seller of such bale to make good any loss which has been occasioned to the buyer as a result of the sale of such bale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

12. Discovery of mouldy tobacco

Where a buyer discovers that a bale of tobacco purchased by him contains mouldy tobacco, the presence of which was not apparent at the time of the sale thereof, he may report such fact to the sales supervisor, who shall forthwith inspect the bale and report his findings to the Commission, and the Commission may, if it is satisfied that the bale contained mouldy tobacco, cancel the sale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

13. Dispute over ownership

Where two or more buyers claim to be the purchaser of the same bale of tobacco such tobacco shall, if every one of such buyers save one does not abandon his claim, be re-offered for sale.

14. Suspicion of tobacco beetle

The sales supervisor or any employee of an owner of a licensed auction floor may cause any tobacco sent for sale to a licensed auction floor which he suspects of being infested with stored tobacco

beetle (*Iasioderma serricornis* F.) to be removed from the licensed auction floor at the expense of the seller and shall forthwith report the matter to the Commission and to the Permanent Secretary.

15. Rejection by sales supervisor

(1) The sales supervisor may reject any bale of tobacco which does not conform to the standards laid down by the Minister under these Regulations, or under any other regulations in that behalf made by the Minister, and any bale of tobacco so rejected shall, unless re-offered, be returned to the seller at the expense of the seller.

(2) The decision of the sales supervisor shall be final and not subject to appeal where there is any dispute as to—

- (a) the grade of any tobacco in any bale;
- (b) whether tobacco in any particular bale is of different grades in sufficient proportion to justify the rejection of any such bale;
- (c) whether tobacco in any particular bale is nested or composed of loose leaf.

16. Duties of buyer

(1) Every buyer shall—

(a) settle his account in respect of all tobacco purchased by him within half an hour of the close of banking hours on the normal business day next following the day of the sale;

(b) remove all tobacco purchased by him from the licensed auction floor within 5 hours of the close of the sale thereof, after which time the owner of the licensed auction floor shall be under no responsibility or liability whatsoever in respect of the custody, storage or safe keeping of such tobacco;

(c) give a receipt which shall be clipped with his distinctive mark in respect of all tobacco purchased by him at and removed by him from a licensed auction floor;

(d) make into bundles, containing not more than 25 pieces, the hessian or other specified material in which tobacco purchased by him was wrapped, and return such hessian or other specified material, or an equivalent amount of the same quality and size, to the owner of the licensed auction floor;

(e) mark each bundle made up under paragraph (d) with the registered number or mark, if any, of the seller of the tobacco which was wrapped in the material contained in such bundle together with the number of pieces contained therein:

Provided that a buyer shall not be required to comply with paragraphs (d) and (e) in respect of any hessian or other specified material which is the subject of a special arrangement as to their return made between the buyer and the seller of the tobacco which was wrapped in such hessian or other material.

(2) If any tobacco is not removed from a licensed floor in accordance with subregulation (1) (b) the Minister may suspend the auction floor buyer's licence of the buyer so failing to comply until such time as he is satisfied that proper arrangements have been made by such buyer for the removal of all tobacco purchased by him.

(3) All tobacco shall be cleared within the time fixed by the Minister, commencing with the first row of bales and thereafter in rotation until the last row is cleared.

17. Failure to return wrapping

A buyer who has not made a special arrangement with the seller for the return to the seller of the hessian or other specified material in which the tobacco purchased by him was wrapped, and who fails to comply with regulation 16 (1) (d) shall pay to the owner of the licensed auction floor for and on behalf of the seller the sum of 50 tambala in respect of each piece of hessian or other specified material not returned by him to the seller by the 31st January in the year next following the year of the sale, and in default of so doing he may be sued therefor by the owner of the licensed auction floor in the name, and at the suit, of such owner.

18. Position of buyer

No buyer shall take up his position in the line between the starter, auctioneer or ticket marker.

19. Dispute

In the event of any dispute arising under or as to any of these Regulations, except a dispute as is referred to in regulation 15 (a), the same shall be referred to the Minister through the Commission, whose decision in such matter shall be final and not subject to appeal.

20. Alteration of particulars

No alteration of any particulars recorded on any bale of tobacco shall be made except by a person authorized in that behalf by the Commission:

Provided that—

(i) a buyer of any bale of tobacco may make an alteration in respect of his own grade classification of such bale;

(ii) a buyer who takes over a bale of tobacco from either the house account or from another buyer may make any necessary alteration as to that fact on the bale ticket of such bale.

21. Initialling of alterations

Any person who makes an alteration under regulation 20 shall initial the same and, in the case of an alteration made under proviso (ii) to that regulation, the alteration shall also be initialled by every previous buyer of the bale.

22. Sale of rejected bales

Any bale of tobacco which has been rejected in accordance with regulation 15 (1) at a previous sale may be re-offered for sale once only if such bale be declared at the time of such subsequent sale as being a re-offered bale.

Any bale of tobacco which, when re-offered under this regulation, is rejected or not purchased, shall be returned to the seller at the seller's expense.

23. Disposal of unsold bales

The owner of a licensed auction floor may destroy or dispose of bales which have not been sold at any auction within 14 days of the end of such auction if the owner thereof has not given instructions with regard to the disposal thereof.