

(ii) The producer is not an eligible producer or the tobacco is not eligible tobacco as determined in accordance with part 1464 of this title.

(3) *Full penalty rate.* The full penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm for which:

(i) An acreage allotment was not established;

(ii) The farm operator or another producer on the farm prevents the county FSA committee from obtaining information necessary to determine the correct acreage of tobacco on the farm;

(iii) The farm operator fails in accordance with part 718 of this chapter to provide a certification of acreage planted to tobacco, or

(iv) The farm operator or another producer on the farm has not agreed to make contributions to the No Net Cost Fund or pay assessments to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(4) *Converted penalty rate.* Except as provided in paragraph (f)(3) of this section, a converted penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm from which there is excess tobacco available for marketing and the percentage of excess is less than 100 percent. For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty for the current crop by the percent excess determined according to this paragraph. For a farm without carryover tobacco from a prior year, the percent excess shall be determined by dividing the excess acreage of tobacco by the harvested acreage of tobacco for the farm. For a farm having carryover tobacco from a prior year, the percent excess shall be determined as follows:

(i) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior year by the normal yield for the farm for that year. Reduce such "carryover" acres by the amount determined by subtracting the harvested acreage from the allotment in the current year. If the "carryover" acres are entirely offset by the underharvested

acreage, the percent excess will be zero and a MQ-76 may be issued if the farm otherwise is eligible for price support and the remainder of this paragraph (f)(4) of this section are inapplicable.

(ii) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" by the "percent within quota" (i.e., 100 percent minus the percent excess) for the year in which the carryover tobacco was produced.

(iii) Determine the "total acres" of tobacco by adding the "carryover acres" and the acreage of tobacco harvested in the current year.

(iv) Determine the "excess acres" by subtracting from the "total acres" the sum of the current year's allotment and the "within quota carryover acres."

(v) Determine the percent excess by dividing the "excess acres" by the "total acres."

(5) Except as provided in paragraphs (f)(3) and (4) of this section, a zero penalty rate shall be entered on any MQ-77 issued in accordance with this section.

(g) *Other marketing card data.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

§ 723.306 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that subject to prior liens, the net proceeds from any tobacco pledged as collateral

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for a price support loan shall be paid to the "Farm Service Agency, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county FSA executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county FSA executive director, two or more marketing cards may be issued for any farm. Upon the return to the county FSA office of a marketing card which had been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county FSA executive director who issued the card to have been lost, destroyed, or stolen.

§ 723.307 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

(1) It is not issued or delivered in the manner prescribed;

(2) An entry is omitted or is incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or,

(4) Any erasure or alteration has been made and not properly initialed by the county FSA executive director.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county FSA executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes in-

valid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county FSA executive director who issued the card, or by a marketing recorder), the farm operator, or the person in possession of the card, shall return it to the county FSA office at which it was issued.

§ 723.308 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined and announced annually by the U.S. Department of Agriculture.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 11582, Mar. 10, 1998]

§ 723.309 Persons to pay penalty.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, the persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer or dealer through an auction sale shall be paid by the warehouse operator who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 11582, Mar. 10, 1998]

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of