

from the price paid for the tobacco. The No Net Cost Assessment shall not be collected from a producer who identifies the tobacco for marketing with a marketing card which has a converted penalty rate of 100 percent on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(e) *Identification of sale or marketing card memo and buyers records.* Each MQ-76 and each sale memo from an MQ-77 used to identify each sale of tobacco by a producer shall be properly executed by the buyer. The serial number of the MQ-76 marketing card or sale memo from an HQ-77 to identify such tobacco, shall be recorded on the buyer's copy of the MQ-79 (CF&B) and on the check register or check stub for the check written with respect to such tobacco.

(f) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ-79 (CF&B), Buyer's Record, showing by kinds of tobacco purchased by or for such buyer from producers. Such record and report shall show for each sale the sale date, the name of the farm operator, (and the name and address of the person selling the tobacco if other than the operator), the serial number of the within quota marketing card (MQ-76), and from each excess card (MQ-77), the sale memo number used to identify the sale, the pounds of tobacco represented in the sale, the rate of penalty shown on the sale memo (MQ-77), and the amount of penalty. If a marketing card is not presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "None" in the space for the serial number of the marketing card (MQ-76) or sale memo (MQ-77), the applicable rate of penalty per pound in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ-79 (CF&B), excess sale memos (MQ-77), and a remit-

tance for all penalties shown by entries on MQ-79 (CF&B) and on the excess sale memos (MQ-77) to be due shall be forwarded to the State FSA office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(3) In addition to forms MQ-79 and MQ-72-2, if applicable, form MQ-79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ-79 (Supplemental) shall be forwarded to the State FSA office at the same time as the purchase is reported on the MQ-79. A check, draft, or money order in the amount of the collections recorded on form MQ-79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State FSA office along with the forms MQ-79 and MQ-79 (Supplemental).

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991]

#### **§ 723.408 Producer's records and reports.**

(a) *Failure to file reports or filing false reports.* (1) With respect to any kind of tobacco, if the producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of such kind of tobacco produced on or marketed from the farm, applicable tobacco acreage allotment or burley farm marketing quota next established for such farm shall be reduced, unless the county and State FSA committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(2) For all kinds of tobacco except burley tobacco, if a farm operator files a report of acreage of the applicable kind of tobacco on the farm and, after a determination of the acreage, it is determined by the county FSA committee (with approval of the State FSA committee) that the report was false (either significantly under reported or significantly over reported by more than the tolerance for reporting as provided in part 718 of this chapter) in what amounts to a scheme or device to

defeat the purpose of the program, the allotment next established for the farm shall be reduced by an amount determined by multiplying the acreage falsely reported (difference between reported and determined acreage) by:

(i) With respect to flue-cured tobacco, the farm yield established for the farm for the year in which the false report was filed, or

(ii) For any other kind of tobacco, the actual yield per acre for the year in which the false report was filed.

(3) Any report of a marketing of tobacco by a producer or any use of producer's marketing card to sell the tobacco or the pledge the tobacco for a price support loan shall be considered the filing of a false report by the producer and, in addition to other remedies as may apply, the remedies provided in paragraph (a)(1) of this section shall apply, if, under the provisions of part 1464 of this title, the producer was not considered to have been an "eligible producer" with respect to such marketing or other disposition of tobacco.

(b) *Harvesting second crop tobacco from the same farm.* For all kinds of tobacco except burley, if in the same calendar year more than one crop of tobacco was grown from:

(1) The same tobacco plants, or

(2) Different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(c) *False identification.* If there is false identification of any kind of tobacco, the applicable farm acreage allotment or farm marketing quota next established for the farm and kind of tobacco involved shall be reduced, except that such reduction for any such farm shall not be made if the county and State FSA committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(d) *Report on marketing card.* (1) The operator of each farm on which tobacco is produced shall return to the county FSA office each marketing card issued for the farm whenever marketings from

the farm are completed and, in no event, later than,

(i) June 1 of the marketing year in the case of cigar tobacco, and

(ii) For all other kinds of tobacco, not later than 20 days after the close of the tobacco auction markets for the marketing year for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county FSA executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county FSA committee.

(2) For all kinds of tobacco except burley and flue-cured:

(i) At the time the marketing card is returned to the county FSA office, the farm operator must certify with respect to each:

(A) MQ-77, to the quantity of tobacco on hand and its location.

(B) MQ-76, to the accuracy of the Record of Sales recorded on the card.

(ii) Failure of the farm operator to make the applicable certification shall constitute failure to satisfactorily account for the disposition of tobacco marketed from the farm.

(3) Upon failure to satisfactorily account to the county FSA committee for disposition of tobacco marketed from the farm the allotment or quota next established for such farm and such kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county FSA committee and a representative of the State FSA committee that the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition. However, such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the acreage allotment or quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(e) *Report of production and disposition.* (1) In addition to any other reports which may be required by this subpart, the operator or any producer on a farm (even though the harvested acreage does not exceed the acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request by certified mail from the State or county FSA committee, furnish on MQ-108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the State or county FSA committee within 15 days after the request was mailed showing as to the farm at the time of filing such report with respect to the applicable kind of tobacco the:

- (i) Total harvested acres,
- (ii) Total amount of tobacco on hand and its location,
- (iii) Total pounds of tobacco produced,
- (iv) Name and address of the warehouse operator, dealer, or other person to or through whom tobacco was marketed, and the number of pounds marketed, the gross price paid and the date of the marketings, and
- (v) Complete details as to any tobacco disposed of other than by sale.

(2) With respect to any farm on which burley or flue-cured tobacco was produced or available for marketing from carryover tobacco, the operator or any producer on the farm (even though the harvested acreage does not exceed the flue cured farm acreage allotment or even though no farm acreage allotment or farm marketing quota was established for the farm) shall, upon written request from the county FSA committee, furnish on Form MQ-108-1, Report of Unmarketed Tobacco, a written report of the amount and location of the applicable kind of tobacco produced on the farm which is unmarketed at the end of the marketing season and the amount the applicable kind of tobacco produced by such operator or producer on any other farm, which is unmarketed at the end of the marketing season and which is stored on the farm, by sending the report to the county FSA committee within 15 days after the request was mailed to such

person at such person's last known address.

(3) Failure to file the MQ-108 or MQ-108-1 as requested, or the filing of MQ-108 or MQ-108-1 which is found by the State or county FSA committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure to account for the disposition of tobacco produced on the farm and the allotment or quota next established for such farm shall be reduced, except that such reduction shall not be made if it is established to the satisfaction of the county or State FSA committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: However, such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or no person connected with such farm for the year for which the farm acreage allotment or farm marketing quota is being established caused, aided, acquiesced in the failure to furnish such proof.

(f) *Reports by producer-manufacturers.*

(1) For all kinds of tobacco except burley and flue-cured tobacco, each producer who manufactures tobacco products from tobacco produced by or for such person as a producer, shall report to the State FSA office with respect to each farm on which such tobacco is produced and as soon as all tobacco from the farm has been weighed as follows:

(i) If the harvested acreage is within the allotment, the producer-manufacturer shall report the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the harvested acreage is in excess of the allotment, the producer-manufacturer shall report the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. If the required reports are not made, penalty shall be

paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county FSA committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer has excess tobacco and does not pay the penalty thereon at the converted rate of penalty shown on the marketing card, such producer-manufacturer shall notify in writing the buyer of the manufactured product or the buyer of any residue resulting from processing the tobacco, at time of sale of such product or residue, of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the State FSA executive director and shall account for the disposition of such tobacco by furnishing the State FSA executive director a report on a form to be furnished by such State FSA executive director, showing the name and address of the buyer of the manufactured products or residue, a detailed account of the disposition of such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue to indicate, together with copies of the written notice that was given to the buyer of such products or residue to indicate the exact amount of the penalty due.

(3) Failure to file the report required in paragraph (f)(2) of this section, or the filing of a report which is found by the State FSA committee to be incomplete or incorrect, shall be considered failure of the producer-manufacturer to account for the disposition of tobacco produced on the farm and the allotment next established for the farm shall be reduced for such failure, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State FSA committees, that:

(i) The failure to furnish such report of disposition was unintentional and the producer-manufacturer on such farm could not reasonably have been expected to furnish such report of disposition. However such failure will be construed as intentional unless such report of disposition is furnished and

payment of all additional penalty is made, or

(ii) No person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the failure to furnish such report. The producer-manufacturer shall be liable for the payment of penalty.

(g) *Amount of allotment or quota reductions*—(1) *Burley tobacco*. For burley tobacco, the farm marketing quota determined for a farm for the current year shall be reduced by that amount of tobacco which is involved in a marketing quota violation as described in paragraphs (a), (b), (c), (d), or (e), of this section which occurred in any prior year. However, the amount of such reduction shall not exceed the current year farm marketing quota. The county FSA committee shall determine the amount of tobacco involved in the marketing quota violation. If the actual quantity of tobacco involved in such violation is unknown, the county FSA committee shall determine the quantity by considering both the condition of the crop during production, if known, and such other information as is available.

(2) *Kinds of tobacco except burley tobacco*. The amount of reduction in the allotment for the current year for a violation described in paragraphs (a), (c), (d), (e), or (f) of this section shall be that percentage, but not to exceed 100 percent, which the amount of the tobacco involved in the violation is of the respective farm marketing quota for the farm for the year in which the violation occurred times the current year farm acreage allotment. The quantity of tobacco in violation shall be determined by the county FSA committee. If known, the actual quantity shall be determined by the county FSA committee to be the amount of tobacco involved in the violation. If the actual quantity is unknown, determine the quantity by taking into consideration the condition of the crop during production, if known, and such other information that is available.

(h) *Allotment or quota reduction for combined farms*. If the farm involved in the violation is combined with another

farm prior to the reduction, the allotment or quota reduction shall be applied as heretofore provided in this section to that portion of the farm acreage allotment or farm marketing quota for which a reduction is required.

(i) *Allotment or quota reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments or quota for the divided farms required to be reduced.

(j) *Quota reductions for flue-cured tobacco.* For flue-cured tobacco only, if an acreage allotment reduction is made under this section, the marketing quota shall be reduced to reflect such reduction in an amount determined by multiplying the acreage reduction by the farm yield.

(k) *County administrative hearing in connection with violations.* Except for the failure to return a marketing card, the allotment or quota for any farm shall not be reduced for a violation under this section until the operator of the farm has been afforded an opportunity to discuss the nature and extent of the violation with the county FSA committee. If after having been afforded an opportunity to discuss a violation with the county FSA committee the farm operator fails or refused to discuss the violation, the county FSA committee shall take action as required by this part.

(l) *Sequence of allotment or quota reductions.* For burley and flue-cured tobacco, if the tobacco farm acreage allotment or farm marketing quota for a farm is to be reduced in the current year because of both:

(1) A violation, and

(2) Overmarketings in a prior year, the reduction in the farm acreage allotment or farm marketing quota for the violation shall be made before making the reduction for overmarketings.

(m) *Correction of farm records.* For burley and flue-cured tobacco, where farm data for actual marketings are determined to be incorrect because of a violation, the records shall be corrected for each farm on which the tobacco was produced, and for each farm whose card was used to identify marketings.

(n) *Report on Form MQ-92, Estimate of Production.* An estimate of production, Form MQ-92, shall be prepared immediately prior to harvest for each farm for which the county or State FSA committee or a representative of the county or State FSA committee believes than an MQ-92 for the farm would be in the best interests of the program. The county FSA committee shall have the authority to visit any farm for the purposes of making an estimate of production or determination of planted acreage needed to complete an estimate of production.

(o) *Effect of false identification on establishing future farm marketing quotas.* Notwithstanding any other provision of this section, with respect to burley or flue-cured tobacco, if a producer falsely identifies such tobacco as having been produced on or marketed from a farm, the quantity of the tobacco which is falsely identified shall be considered, for the purpose of establishing future farm marketing quotas, as having been produced on both the farm for which it was identified as having been produced, and the farm of actual production, if known, or, as the case may be, such quantity of tobacco shall be considered as actually marketed from the farm.

[55 FR 39914, Oct. 1, 1990, as amended at 57 FR 43582, Sept. 21, 1992]

**§ 723.409 Producer violations, penalties, false identification collections and remittances by dealers, buyers, handlers, warehouses, and other parties; related issues.**

(a) *Generally—(1) Circumstances in which penalties are due.* A penalty shall be due on all marketings from a farm which are:

(i) In excess of the applicable quota or allotment;

(ii) Made without a valid marketing card;

(iii) Made under circumstances where a buyer or dealer, or their agents, know, or have reason to know, that the tobacco was, or is, marketed in a manner which by itself or in combination with other marketings is designed to, or has the effect of, defeating the purposes of the tobacco price support and production adjustment program, avoiding marketing quota limitations, or