SUBCHAPTER B—FARM MARKETING QUOTAS, ACREAGE ALLOTMENTS, AND PRODUCTION ADJUSTMENT

PART 711—MARKETING QUOTA REVIEW REGULATIONS

GENERAL

REVIEW COMMITTEE

JURISDICTION

APPLICATION FOR REVIEW OF QUOTA

HEARING AND DETERMINATION

COURT PROCEEDINGS

PUERTO RICO

OMB CONTROL NUMBERS

AUTHORITY: Secs. 301, 363–368, 371, 374, 375, 379, 52 Stat. 38, as amended, 63–66, amended, 79 Stat. 1211, as amended; 7 U.S.C. 1301, 1363–1368, 1371, 1374, 1375, 1379.

SOURCE: 35 FR 15355, Oct. 2, 1970, unless otherwise noted.

GENERAL

§ 711.1 Effective date.

The Marketing Quota Review Regulations (26 FR 10204, 27 FR 4831, 6539, 28 FR 3913, 31 FR 4271, 5663, 32 FR 15704) shall remain in effect and shall apply to all actions and proceedings taken prior to October 15, 1970, and such regulations are superseded as of midnight, October 14, 1970. The provisions of §§ 711.1 to 711.50 are effective October 15, 1970.

§ 711.2 Expiration of time limitations.

The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

§ 711.3 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in part 719 of this chapter shall apply to this part.

(b) *Act.* Act means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(c) *Applicant.* Applicant means the farmer who filed an application for review of a farm marketing quota and if a hearing involves the quota of a farm resulting from the reconstitution by division of a parent farm, the farm operator of each farm resulting from such reconstitution shall be considered an applicant for purposes of this part.

(d) *Clerk.* Clerk means the county executive director for the county in which the application for review is filed unless another employee of the county or State office is designated by the State executive director to serve as clerk to the review committee.

(e) *Review committee.* Review committee means three farmers designated

to review a quota by the State executive director from the panel of farmers appointed by the Secretary under section 363 of the Act.

(f) *Quota.* Quota means the farm marketing quota established under the Act for a farm during a year in which quotas are approved in the national referendum for a commodity, including any of the following factors:

(1) Farm acreage allotment, farm marketing quota, and any adjustments in such allotment and quota resulting from: (i) Program violations; (ii) lease and transfer; (iii) sale and purchase; (iv) overmarketing and undermarketing; (v) release and reapportionment; (vi) eminent domain transactions; and (vii) forfeiture and reallocation.

(2) Farm preliminary yield, farm normal yield and farm yield.

(3) A determination of the land constituting a farm for which a farm acreage allotment or farm marketing quota is established, including the following: (i) Land devoted to nonagricultural use, (ii) land used for agricultural purposes, (iii) cropland acreage; and (iv) tillable cropland.

(4) Acreage planted to the commodity on the farm.

(5) Actual production for the farm.

(6) Farm marketing excess (acres or pounds).

(7) Marketing quota penalties, including but not limited to, assessments for marketing quota violations involving: (i) False identification, (ii) failure to account for production and disposition, (iii) failure to file a report, and (iv) the filing of a false report.

(Secs. 301, 363–368, 371, 374, 375, 379, 52 Stat. 38 as amended, 63–64, as amended, 66, as amended; 7 U.S.C. 1301, 1363–1368, 1375)

[35 FR 15355, Oct. 2, 1970, as amended by Amdt. 9, 45 FR 37398, June 3, 1980; 49 FR 38240, Sept. 28, 1984]

§ 711.4 Forms.

The following general forms, as revised from time to time, are prescribed for use in connection with review proceedings;

(a) MQ–53 Application for Review of Farm Marketing Quota.

(b) MQ–54 Notice of Untimely Filing of Review Application.

(c) MQ–56 Notice of Hearing of Review Application.

(d) MQ–58 Determination of Review Committee Farm Marketing Quota.

(e) MQ–59 Oath of Review Committeeman.

§ 711.5 Public information.

The clerk shall maintain a record of applications and review committee proceedings which shall be available at the office of the clerk for public inspection and copying in accordance with part 798 of this chapter.

REVIEW COMMITTEE

§ 711.6 Eligibility as member of a panel.

Any farmer who meets the eligibility requirements for county committeeman prescribed in the regulations in part 7 of subtitle A of this title, as amended, in a county within the area of venue for which he is to be appointed shall be eligible for appointment as a member of a review committee panel for such area of venue. If the area of venue consists of only one county or a part of a county, these eligibility requirements must be met in such county or in a nearby county. No farmer whose legal residence is in one State shall be eligible for appointment as a member of a review committee panel for an area of venue in another State.

§ 711.7 Appointment of members of a panel.

The Secretary shall appoint six or more eligible farmers to serve as members of a review committee panel in each area of venue. Notice of appointment shall be sent to the State committee, which shall notify the farmers so appointed. Appointments may be made before, during, or after the period in which applications for review of quotas are required to be filed. Notwithstanding the foregoing, the Secretary shall have the continuing power to revoke or suspend any appointment made pursuant to the regulations in this part, and subject to the provisions of the act, to make such other appointment deemed proper.

§ 711.8 Oath of office.

Each farmer appointed to serve as a member of a review committee panel shall, as soon as possible after appointment, execute an oath of office on such form as may be prescribed by the Deputy Administrator, duly subscribed and sworn to or affirmed before a notary public. No farmer shall serve on a review committee unless such oath of office has been duly executed and filed with the State executive director or the clerk. A farmer appointed for consecutive terms to serve as a member of a review committee panel shall not be required to file a new oath of office after the original filing. If the form of oath of office is materially changed, a new oath of office shall be executed if required by the Deputy Administrator.

§ 711.9 Composition of review committee.

(a) *Three designated members from the panel constitute a review committee.* Three members from the panel shall act as a review committee to hear applications for review for the prescribed area of venue. The State executive director shall designate from the panel of members for the prescribed area of venue three members who shall act as a review committee to hear specific applications and shall designate one of these three members as chairman of the review committee and another member as vice-chairman. Where the number of applications pending require two or more review committees for prompt disposition of such applications, the State executive director shall designate the members of each review committee, the chairman and vice chairman thereof, and the specific application to be heard by each review committee. Two or more review committees may hear applications concurrently in an area of venue. In the absence of the chairman, the vice chairman shall perform the duties and exercise the powers of the chairman. The State executive director shall notify members of each review committee of the schedule of hearings. No member shall serve in any case in which a quota will be reviewed for a farm in which such member, any of his relatives or business associates, is interested, nor shall any member serve where he had acted as State, county, or community committee member on a quota to be reviewed by the review committee.

(b) *Only two members present to commence hearing.* Where only two members of a review committee are present to commence a hearing, although three members were scheduled to hear the application, at the request of or with the consent of the applicant in writing, a hearing conducted by two members of the review committee shall be deemed to be a regular hearing of the review committee as to such application. The determination made by such members shall constitute the determination of the review committee. In the event such members cannot agree upon a determination, such fact shall be set forth in writing and a new hearing scheduled by the State executive director. If the applicant does not consent in writing to a hearing conducted by two members of the review committee, the hearing shall be rescheduled.

(c) *Only two members remain to complete a hearing.* Where only two members of a review committee remain to complete a hearing commenced with three members, due to serious illness, death, or other cause which prevents one of the members from completing the hearing within a reasonable time, at the request or with the consent of the applicant in writing, the remaining two members of the review committee shall henceforth constitute an entire review committee for the purpose of such hearing. In the event such members cannot agree upon a determination, such fact shall be set forth in writing and a new hearing scheduled by the State executive director. If the applicant does not consent in writing to completion of the hearing by two members of the review committee, the hearing shall be rescheduled.

(d) *Reopened or remanded hearings.* In the case of a reopened or remanded hearing, if any member of the review committee is no longer in office because of death, resignation, or ineligibility, the State executive director shall designate another member of the review committee panel to serve on the review committee. If a hearing held pursuant to paragraph (b) or (c) of this section is reopened or remanded and

only one review committee member is available to hear such reopened or remanded hearing, the State executive director shall designate two additional members from the review committee panel to serve on the review committee.

§ 711.10 Term of office.

Appointment as a member of a review committee panel shall be for a term of 3 calendar years. A member may be reappointed for succeeding terms. Notwithstanding the foregoing, a review committee shall continue in office to conclude hearings before it which are begun during such 3-year term and make final determinations thereof, or to hold a reopened hearing, or to conclude a hearing remanded to it by a court.

[Amdt. 3, 38 FR 967, Jan. 8, 1973]

§ 711.11 Compensation.

The members designated as review committeemen shall receive compensation when serving at the same rate as that received by the members of the county committee which established the quotas sought to be reviewed. No member of a review committee shall be entitled to receive compensation for services as such member for more than 30 days in any one year. Payment of compensation, reimbursement for travel expenses and rates therefor, shall be made under such conditions as may be prescribed by the Deputy Administrator.

§ 711.12 Effect of change in composition of review committee.

Nothing contained in §§ 711.6 to 711.11 relating to any vacancy or revocation or suspension of appointment and nothing done pursuant thereto shall be construed as affecting the validity of any prior hearing conducted or determination made in accordance with the regulations in this part, in which the member of the review committee whose office has become vacant participated, or as affecting in any way court proceeding which may be instituted to review such determination.

JURISDICTION

§ 711.13 Areas of venue and jurisdiction.

(a) *Areas of venue.* The State committee shall establish one or more areas of venue in the State. An area of venue may consist of all or part of a county, or more than one county within a State. In establishing areas of venue, the State committee shall take into consideration the requirements of section 363 of the Act as to eligibility of review committee members, the prompt handling of applications for review, transportation problems and the limit of 30-day service by review committeemen in any one year.

(b) *Jurisdiction.* A review committee shall have jurisdiction within the area of venue for which it is established to hear applications respecting quotas established or denied by written notice issued by the county committee or other authorized official for farms within its area of venue, in accordance with this part.

(c) A listing of the areas of venue within a State shall be available from the State FSA office and the Deputy Administrator.

[35 FR 15355, Oct. 2, 1970, as amended at 49 FR 38240, Sept. 28, 1984]

APPLICATION FOR REVIEW OF QUOTA

§ 711.14 Application for review.

(a) *Manner and time of filing.* Any farmer who is dissatisfied with his quota may, within 15 days after the date of mailing to him of notice of such quota, file a written application for review thereof by the review committee. Such 15-day period is prescribed in accordance with section 363 of the Act. Unless application for review is timely filed, as determined under this section, the quota established by the notice shall not be subject to review by the review committee. Notice of quota subject to review under this part includes an official written notice as to the land constituting the farm. For example, a notice denying a request for farm reconstitution would be such a reviewable notice of quota. An application shall be in writing and addressed to, and filed with, the county executive director for the county from which the

notice of quota was received. Any application (Form MQ–53 available on request) whether made on Form MQ–53 or not, shall contain the following:

(1) Date of application and commodity (including type where applicable, e.g. Upland cotton, Flue-cured tobacco).

(2) Correct full name and address of applicant.

(3) Brief statement of each ground upon which the application is based.

(4) A statement of the amount of quota which it is claimed should have been established.

(5) Signature of applicant.

In any case where an application is timely filed for review of a quota on a farm which was reconstituted by division of a parent farm into two or more farms, such application shall be considered an application for review of the reconstitution of the parent farm. In any such case the farm operator of each farm resulting from such reconstitution shall be considered an applicant for purposes of this part with all the rights and privileges provided in this part. If an action may be taken by an applicant which affects the rights of any other applicant in the case, the other applicants shall be given the opportunity to concur in such action or to oppose such action.

(b) *Procedure where application is not timely filed.* The county committee shall examine each application for review. If the application is not filed within the prescribed 15-day period, the county executive director shall send a notice of untimely filing on Form MQ–54 by certified mail to the applicant at the address shown on the application. The applicant may file a request in writing with the county executive director within 15 days after the date of mailing such notice to him requesting a review committee hearing on the sole issue of whether the application was filed within the prescribed 15-day period. In the absence of timely request in writing for such review committee hearing, the application shall be deemed withdrawn by the applicant. If timely request in writing for such review committee hearing is filed, a copy of the application and request shall be forwarded by the county executive director to the State executive director with a request that a hearing on the sole issue of timely filing be scheduled before the review committee. In cases involving the sole issue of timely filing of an application, the review committee shall determine whether the date the application was filed, or the postmark date in case of mailing by the applicant, was within the 15-day period. If the review committee determines that the application was timely filed, a hearing on the merits of the application shall be held. In addition, a hearing on the merits shall be conducted and the application treated as timely filed in any case where the review committee determines that the applicant in good faith requested review of his quota by the county or State committee under the regulations in part 780 of this chapter in reliance upon action or advice of any authorized representative of a county or State committee and subsequently filed application for review under this part within a reasonable time after he learns that the quota is subject to review committee jurisdiction.

(c) *Withdrawal of application.* An application may be withdrawn upon the written request of the applicant. Any application so withdrawn or deemed withdrawn under paragraph (b) of this section shall be endorsed by the clerk ''Dismissed by the applicant''.

(d) *Procedure where application is timely filed.* The county committee shall examine each application for review and where an application is found to be timely filed, the county executive director shall forward a copy of the application to the State executive director with a request that a hearing on the merits be scheduled before the review committee.

§ 711.15 Matters subject to review.

In all cases, the review committee shall consider only such factors as, under applicable provisions of law and regulations, are required or permitted to be considered by the county committee in the establishment of the quota being reviewed. The establishment of national marketing quotas and apportionment of national acreage allotments and marketing quotas among States and counties and the establishment of reserve acreages and quotas at

the national level and apportionment of such reserves among States and counties are not subject to review by a review committee. Review of a quota may include any of the factors which enter into the establishment of such quota for the farm and crop year as set forth in §711.3(f): *Provided, however*, That any factor of such quota considered by a review committee in a prior determination for the farm and crop year shall not be considered in a subsequent review proceeding. For example, a determination of the farm acreage allotment by the review committee would not be reconsidered upon any application for review of the farm marketing excess for the same farm and crop year.

[49 FR 38240, Sept. 28, 1984]

§ 711.16 County committee answer.

(a) The county committee shall prepare a written answer to each application scheduled for hearing setting forth the pertinent facts, the applicable regulations, the data used in establishing the quota and any other matters deemed pertinent:

(b) *Provided*, That the answer may be limited to the issue of timely filing where the hearing is limited to that issue. If the county committee determines that the increase, adjustment or other determination requested in the application is proper in whole or in part, the written answer shall set forth the proposed determination and in such cases, the applicant shall be notified by the county committee of such proposed determination prior to the scheduled review hearing if practicable to do so. In the event the applicant is satisfied with the proposed determination, the county committee shall, upon the withdrawal of the application, take the necessary action to revise the quota within the limits of the Act and applicable commodity regulations if the required amount of acreage allotment or marketing quota is available in the county. The State executive director may perform the functions of the county committee under this section and the functions of the county committee and county executive director under §711.14 (b) and (d) in any case where the application for review involves a notice of farm marketing quota issued by officials other than the county committee.

[35 FR 15355, Oct. 2, 1970, as amended at 49 FR 38240, Sept. 28, 1984]

§ 711.17 Amendments.

Upon due request, and within the discretion of the review committee, the right to amend the application and all procedural documents in connection with any hearing, shall be granted upon such reasonable terms as the review committee may deem right and proper.

HEARING AND DETERMINATION

§ 711.18 Place and schedule of hearing.

The place of hearing shall be in the office of the county committee through which the quota sought to be reviewed was established, or such other appropriate place in the county as may be designated by the State executive director or by the review committee in cases arising under §711.21: *Provided, however*, That the place of hearing may be in some other county if agreed to in writing by the applicant. The State executive director shall schedule applications for hearings and forward such schedule to the clerk.

§ 711.19 Notice of hearing.

The clerk shall give written notice on Form MQ–56 to the applicant by depositing such notice in the U.S. mail, certified and addressed to the last known address of the applicant at least 10 days prior to the time appointed for the hearing and copies of such notice shall also be sent to the county committee and the State office. If the applicant requests waiver of such 10-day period, the hearing may be scheduled earlier upon consent of the other interested parties. The notice of the hearing shall specify the time and place of the hearing, contain a statement of the statutory authority for the hearing, state that the application will be heard by the review committee duly appointed for the area of venue in which the applicant's farm is located, and that a verbatim transcript may be obtained by the applicant if he makes arrangement therefor before the hearing and pays the expense thereof.

§ 711.20 Continuances.

Hearings shall be held at the time and place set forth in the notice of hearing or in any subsequent notice amending or superseding the prior notice, but may without notice other than an announcement at the hearing by the chairman of the review committee, be continued from day to day or adjourned to a different place in the county or to a later date or to a date and place to be fixed in a subsequent notice to be issued pursuant to § 711.19. In the event a full committee of three is not present, those members present, or in the absence of the entire committee, the clerk, shall postpone the hearing unless the hearing is held pursuant to § 711.9 (b) or (c). There shall not be a continuance for lack of a full committee in the case of a reopened or remanded hearing where the hearing was initially held pursuant to § 711.9 (b) or (c) and the two review committeemen who previously held the hearing are present and eligible to serve.

§ 711.21 Conduct of hearing.

(a) *Open to public.* Except as otherwise provided in §§ 711.1 to 711.50, each hearing shall take place before the entire review committee and shall be presided over by the chairman of such committee. The hearing shall be open to the public and shall be conducted in a fair and impartial manner and in such a way as to afford the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture, and all persons appearing on behalf of such parties, reasonable opportunity to give and produce evidence relevant to the quota being reviewed.

(b) *Consolidation of hearings.* Wherever practicable, two or more applications relating to the same commodity and the same farm shall be consolidated by the review committee on its own motion or at the request of the State executive director and heard at the same time on the same record. In any case involving two or more farms resulting from reconstitution by division of a parent farm, the hearing shall be consolidated.

(c) *Representation.* The applicant and the Secretary may be represented at the hearing. The county committee shall be present or represented at the hearing.

(d) *Order of procedure.* At the commencement of the hearing, the chairman of the review committee shall read or cause to be read the pertinent portions of the application for review. The written answer of the county committee shall be submitted and shall be made a part of the record of the hearing. If the applicant asserts and shows to the satisfaction of the review committee that he has not been informed of the county committee's position in time to afford him adequate opportunity to prepare and present his case, the review committee shall continue the hearing, without notice other than announcement thereof at the hearing, for such period of time as will afford the applicant reasonable opportunity to meet the issues of fact and law involved. After answer by the county committee and following such continuance, if any, as may be granted by the review committee, evidence shall be received with respect to the matters relevant to the quota under review in such order as the chairman of the review committee shall prescribe. The review committee may take official notice of relevant publications of the Department of Agriculture and regulations of the Secretary.

(e) *Submission of evidence.* The burden of proof shall be upon the applicant as to all issues of fact raised by him. Each witness shall testify under oath or affirmation administered by the member of the review committee who is presiding at the hearing. The review committee shall confine the evidence to pertinent matters and shall exclude irrelevant, immaterial, or unduly repetitious evidence. Interested persons shall be permitted to present oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing shall be concluded within such reasonable time as may be determined by the review committee.

(f) *Transcript of testimony.* The review committee shall provide for the taking of such notes including but not limited to stenographic reports or recordings at the hearing as will enable it to make

a summary of the proceedings and the testimony received at the hearing. The testimony received at the hearing shall be reported verbatim by a representative of a private firm under an existing Departmental contract for such services if the review committee, the State Executive Director, or the applicant, requests such transcript be made. If such transcript is so requested, the State Executive Director shall advise the Deputy Administrator, State and County Operations, prior to the hearing date who will then arrange for the service. A copy of such transcript shall be furnished to each of the following: The review committee, the State Executive Director, and the Regional Attorney, Office of the General Counsel, United States Department of Agriculture. The applicant or his representative may obtain a copy from the firm at his own expense.

(g) *Written arguments and proposed findings.* The review committee shall permit the applicant, the members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture to file written arguments and proposed findings of fact and conclusions, based on the evidence adduced at the hearing, for the consideration of the review committee within such reasonable time after the conclusion of the hearing as may be prescribed by the review committee. Such written arguments and proposed findings shall be filed in triplicate with the clerk and an additional copy thereof shall be provided to the other party.

[35 FR 15355, Oct. 2, 1970, as amended by Amdt. 5, 38 FR 16989, June 28, 1973]

§ 711.22 Nonappearance of applicant.

(a) *Original hearing.* If, at the time of the hearing, the applicant is absent and no appearance is made on his behalf, the review committee shall, after a lapse of such period of time as it may consider proper and reasonable, have the name of the absent applicant called in the hearing room. If, upon such call, there is no response, and no appearance on behalf of such applicant and no continuance has been requested by the applicant, the review committee shall thereupon close the hearing, as to such applicant, and, without further proceedings in the case, make a determination dismissing the application.

(b) *Reopened or remanded hearing.* If, at a hearing which is reopened pursuant to § 711.25 or remanded by a court, the applicant is absent and no appearance is made on his behalf, the review committee shall continue the hearing for a reasonable period of time and if the applicant does not appear at such continued hearing, the review committee shall make a determination.

§ 711.23 Determination by review committee.

As soon as practicable after hearing on an application, including a hearing on the sole issue of timely filing, the review committee shall make a determination upon the application. If it is determined by the review committee that the application should be dismissed for untimely filing or denied, the review committee shall so indicate. If it is determined that the application should be granted in whole or in part, the review committee shall establish the quota which it finds to be proper. Each determination made by the review committee shall be in writing, shall contain specific findings of fact and conclusions together with the reasons or basis therefor, and shall be based upon and made in accordance with reliable, probative, and substantial evidence adduced at the hearing. The concurrence of two members of the review committee shall be sufficient to make a determination. The written determination shall contain such subscription by each member of the review committee as will indicate his concurrence therein or his dissent therefrom. In case of an increase in the quota, the review committee shall specifically state in the determination in what respect, if any, the county committee has failed properly to apply the act and regulations thereunder. If such increase is based upon evidence not available to the county committee, the findings of the review committee shall so indicate. The appropriate county executive director shall make available to the review committee such clerical and stenographic assistance as may be required.

§ 711.24 Service of determination.

A copy of the determination, certified by the clerk as a true and correct copy of the signed original, shall be served upon the applicant by sending the same by certified mail addressed to the applicant at his last known address. The copy of the determination shall contain at the top thereof substantially the following statement: ''To all persons who, as operator, landlord, tenant, or sharecropper, are or will be interested in the above-named commodity on the farm identified below in the year for which the marketing quota being reviewed is established'' and such statement shall constitute notice to all such persons. The clerk shall make a notation on the original determination of the date and place of such mailing. The clerk forthwith shall forward two copies of such determination to the State office, and one copy to the county committee. The determination of the review committee does not become final until the period for reopening of hearing under § 711.25 has expired without any reopening; or if reopened thereunder, such determination becomes final upon issuance of a new determination pursuant to the reopened hearing, subject to further appeal to a court by the applicant.

§ 711.25 Reopening of hearing.

(a) *Upon motion of review committee.* Upon its own motion within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee may reopen a hearing for the purpose of taking additional evidence or of adding any relevant matter or document.

(b) *Upon written request based on new evidence.* Upon written request by the applicant, the county committee, the State executive director, or other interested parties, to the review committee within 15 days from the date of mailing to the applicant of a copy of the determination of the review committee, the review committee shall reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document if the review committee finds that such evidence or documents constitute new evidence not available to the parties at the time of the hearing.

(c) *Upon written notice by the Secretary.* Upon written notice by the Secretary or on his behalf by the Deputy Administrator to the review committee within 45 days from the date of mailing to the applicant of a copy of the determination of the review committee on Form MQ–58, the hearing shall be deemed reopened and the State executive director shall schedule the reopened hearing.

(d) *Schedule of reopened hearing.* Schedule of and notice of any reopened hearing shall follow the requirements of §§ 711.18 and 711.19 insofar as practicable. Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, no hearing shall be reopened after an appeal to a court pursuant to section 365 of the act has been timely filed by the applicant. No special hearing to contest a reopening of a hearing shall be scheduled; however, the applicant may present evidence and arguments to contest the reopening when the reopened hearing is held.

§ 711.26 Record of hearing.

The record of the proceedings shall be prepared by the clerk and shall consist of the following:

(a) All procedural documents in the case under review, including the application and written notices of quota and hearing and any other written notice in connection with the application.

(b) Copies of regulations presented at the hearing.

(c) The answer of the county committee or the State executive director.

(d) The summary of the proceedings and the testimony prepared by the review committee if a verbatim transcript is not made, or a transcript of the testimony where a verbatim transcript is made, in accordance with § 711.21(f), to which shall be annexed any documentary evidence received at the hearing.

(e) Any written arguments or proposed findings of fact and conclusions filed in connection with the hearing.

(f) The written determination of the review committee.

(g) A list of all papers included in the record and a certificate by the clerk

stating that such record is true, correct and complete.

COURT PROCEEDINGS

§ 711.27 Procedure in the case of court proceedings.

Upon the institution of any suit against the review committee for the purpose of reviewing its determination upon any application for review, the review committee is required by section 365 of the Act to certify and file in court a transcript of the record upon which the determination was made, together with the findings of fact made by the review committee. Any suit for review is required to be instituted by the applicant within 15 days after a notice of the review committee's determination is mailed to him. Such suit may be instituted in the U.S. District Court or in any court of record of the State having general jurisdiction, sitting in the county of the district in which the applicant's farm is located. The bill of complaint in such proceeding may be served by delivering a copy thereof to any member of the review committee. Any member of the review committee served with papers in such suit shall immediately forward such papers to the clerk. No member of the review committee shall appear or permit any appearance in his behalf or in behalf of the review committee, or take any action in respect to the defense of such suit, except in accordance with the instructions from the Deputy Administrator.

PUERTO RICO

§ 711.28 Special provisions applicable to Puerto Rico.

Notwithstanding the provisions of §§ 711.1 to 711.50, the Caribbean Area Agricultural Stabilization and Conservation Committee (hereinafter referred to as the ''ASC Committee'') shall perform, insofar as applicable, the duties and assume such responsibilities and be subject to the limitations as are otherwise required of State and county committees except as provided herein. The Director, Caribbean Area FSA office, shall recommend members of the review committee panel, the areas of venue, and perform the functions of the State executive director. Any farmer who is eligible to vote in a referendum for which a quota has been proclaimed shall be eligible for appointment as a member of a review committee panel. The clerk shall be the ASC district supervisor of the district in which the review committee will hold its hearings. Where it is impractical or impossible to use the United States mail to serve the applicant with notice of hearing or determination, use shall be made of such other method of service as is available. However, when such other method is used, the ASC Committee shall make provision for keeping an accurate record of the date and method of delivery to the applicant.

OMB CONTROL NUMBERS

§ 711.29 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 711) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0068.

[49 FR 38240, Sept. 28, 1984]

PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED

Sec.

AUTHORITY: Secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

SOURCE: 35 FR 12098, July 29, 1970, unless otherwise noted.

§ 714.35 Basis, purpose, and applicability.

(a) *Basis and purpose.* The regulations set forth in this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of prescribing the provisions governing refunds of marketing quota penalties erroneously, illegally, or wrongfully collected with respect to all commodities subject to marketing quotas under the Act.

(b) *Applicability.* This part shall apply to claims submitted for refunds of marketing quota penalties erroneously, illegally, or wrongfully collected on all commodities subject to marketing quotas under the Act. It shall not apply to the refund of penalties which are deposited in a special deposit account pursuant to sections 314(b), 346(b), 356(b), or 359 of the Agricultural Adjustment Act of 1938, as amended, or paragraph (3) of Pub. L. 74, 77th Congress, available for the refund of penalties initially collected which are subsequently adjusted downward by action of the county committee, review committee, or appropriate court, until such penalties have been deposited in the general fund of the Treasury of the United States after determination that no downward adjustment in the amount of penalty is warranted. All prior regulations dealing with refunds of penalties which were contained in this part are superseded upon the effective date of the regulations in this part.

§ 714.36 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in part 719 of this chapter shall apply to this part. The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Other terms applicable to this part.* The following terms shall have the following meanings:

(1) ''Act'' means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(2) ''Claim'' means a written request for refund of penalty.

(3) ''Claimant'' means a person who makes a claim for refund of penalty as provided in this part.

(4) ''County Office'' means the office of the Agricultural Stabilization and Conservation County Committee.

(5) ''Penalty'' means an amount of money collected, including setoff, from or on account of any person with respect to any commodity to which this part is applicable, which has been covered into the general fund of the Treasury of the United States, as provided in section 372(b) of the Act.

(6) ''State office'' means the office of the Agricultural Stabilization and Conservation State Committee.

§ 714.37 Instructions and forms.

The Deputy Administrator shall cause to be prepared and issued such instructions and forms as are necessary for carrying out the regulations in the part.

§ 714.38 Who may claim refund.

Claim for refund may be made by:

(a) Any person who was entitled to share in the price or consideration received by the producer with respect to the marketing of a commodity from which a deduction was made for the penalty and bore the burden of such deduction in whole or in part.

(b) Any person who was entitled to share in the commodity or the proceeds thereof, paid the penalty thereon in whole or in part and has not been reimbursed therefor.

(c) Any person who was entitled to share in the commodity or the proceeds thereof and bore the burden of the penalty because he has reimbursed the person who paid such penalty.

(d) Any person who, as buyer, paid the penalty in whole or in part in connection with the purchase of a commodity, was not required to collect or pay such penalty, did not deduct the amount of such penalty from the price paid the producer, and has not been reimbursed therefor.

(e) Any person who paid the penalty in whole or in part as a surety on a

bond given to secure the payment of penalties and has not been reimbursed therefor.

(f) Any person who paid the whole or any part of the sum paid as a penalty with respect to a commodity included in a transaction which in fact was not a marketing of such commodity and has not been reimbursed therefor.

§ 714.39 Manner of filing.

Claim for refund shall be filed in the county office on a form prescribed by the Deputy Administrator. If more than one person is entitled to file a claim, a joint claim may be filed by all such persons. If a separate claim is filed by a person who is a party to a joint claim, such separate claim shall not be approved until the interest of each person involved in the joint claim has been determined.

§ 714.40 Time of filing.

Claim shall be filed within 2 years after the date payment was made to the Secretary. The date payment was made shall be deemed to be the date such payment was deposited in the general fund of the Treasury as shown on the certificate of deposit on which such payment was scheduled.

§ 714.41 Statement of claim.

The claim shall show fully the facts constituting the basis of the claim; the name and address of and the amount claimed by every person who bore or bears any part or all of the burden of such penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. It shall be the responsibility of the county committee to determine that any person who executes a claim as agent or fiduciary is properly authorized to act in such capacity. There should be attached to the claim all pertinent documents with respect to the claim or duly authenticated copies thereof.

§ 714.42 Designation of trustee.

Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim, they shall be permitted to appoint a trustee. The person designated as trustee shall execute the declaration of trust.

§ 714.43 Recommendation by county committee.

Immediately upon receipt of a claim, the date of receipt shall be recorded on the face thereof. The county committee shall determine, on the basis of all available information, if the data and representations on the claim are correct. The county committee shall recommend approval or disapproval of the claim, and attach a statement to the claim, signed by a member of the committee, giving the reasons for their action. After the recommendation of approval or disapproval is made by the county committee, the claim shall be promptly sent to the State committee.

§ 714.44 Recommendation by State committee.

A representative of the State committee shall review each claim referred by the county committee. If a claim is sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or disapproval, the claim shall be promptly sent to the Deputy Administrator.

§ 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in

arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

§ 714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

PART 717—HOLDING OF REFERENDA

GENERAL

AUTHORITY: Secs. 312, 317, 336, 343, 344a, 358, 376, 52 Stat. 46, as amended; 79 Stat. 66, as amended; 52 Stat. 55, as amended, 56, as amended; 79 Stat. 1197, as amended; 55 Stat. 88 as amended; 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1358, 1376.

SOURCE: 33 FR 18345, Dec. 11, 1968, unless otherwise noted.

GENERAL

§ 717.1 Definitions.

In determining the meaning of the provisions in this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present.

(a) *General terms.* The definitions in part 719 of this chapter shall apply to this part. The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Act.* The Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

(c) *Referendum community.* For referenda conducted by mail ballot, the entire county shall be the referendum community. For referenda conducted at polling places, the referendum community shall conform with the community established by the State committee for purposes of elective areas under the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community Committees in part 7, subtitle A, of this title (§7.7, 33 FR 12955), as amended from time to time: *Provided,* That a referendum community may be composed of an area differing from the community so established in the following cases:

(1) A referendum community may be established by the county committee, with the approval of a representative of the State committee, to conform to a

political township, a local voting precinct for purposes of general elections, or a combination of such townships or precincts;

(2) A referendum community may be established by the county committee, if it determines eligible producers will be given a convenient place to vote, which consists of a combination of a community with less than 25 farms on which there are producers eligible to vote, with one or more communities; and

(3) The entire county shall be the referendum community in counties with less than 100 farms on which there are producers eligible to vote unless the county committee, with the approval of the State committee, determines that more than one referendum community is needed in the county.

The county committee shall maintain in the county office, and make available for public inspection, a descriptive list of the referendum communities established for the county for referenda conducted at polling places.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.2 Supervision of referenda and prescribed method of balloting.

(a) *Supervision of referenda.* The Deputy Administrator shall be in charge of and responsible for conducting each referendum required by the Act. Each State committee shall be in charge of and responsible for conducting such referendum in its State. Each county committee shall be responsible for the proper holding of such referendum in its county. It shall be the duty of the Deputy Administrator and of each committee to conduct each referendum by secret ballot in a fair, unbiased, and impartial manner in accordance with this part.

(b) *Prescribed method of balloting.* Each referendum held under this part shall be by mail ballot unless the Administrator, FSA, or the Deputy Administrator prescribes that a particular referendum shall be held at polling places.

§ 717.3 Voting eligibility.

(a) *Statutory requirements*—(1) *Tobacco quotas proclaimed on an acreage basis under section 312(a) of the Act.* Within 30 days after the proclamation under section 312(a) of the Act of national marketing quotas on an acreage basis for any kind of tobacco for the next 3 succeeding marketing years, there shall be a referendum under section 312(c) of the Act of farmers engaged in the production of the crop of such tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the 3-year period. If more than one-third of the farmers voting oppose such quotas, the quotas so proclaimed for the 3-year period shall not be in effect: *Provided,* That such referendum result shall not preclude the proclamation of national marketing quotas for such kind of tobacco for the next 3 succeeding marketing years subject to a referendum as required under this paragraph. If the referendum results in approval of quotas for the 3-year period, no further referendum applicable to such quotas shall be held (i) unless a new proclamation during the 3-year period is made pursuant to subdivision (3) of section 312(a) of the Act in which case a referendum shall be held as provided in this paragraph (a)(1)(i) of this section, or (ii) unless quotas on an acreage-poundage basis are established pursuant to section 317(c) of the Act, in which case a special referendum shall be held as provided in paragraph (a)(2) of this section.

(2) *Tobacco quotas proclaimed on an acreage-poundage basis under section 317(c) of the Act.* During the first or second marketing year of the 3-year period for which marketing quotas for any kind of tobacco are in effect on an acreage basis, if the Secretary, under section 317(c) of the Act, determines that marketing quotas on an acreage-poundage basis would result in a more effective program, at the time of the next announcement of the amount of the marketing quota on an acreage basis, the Secretary shall also announce the national acreage allotment and national average yield goal. Within 45 days after such announcement of acreage-poundage quotas there shall be a special referendum under section 317(c) of the Act of farmers engaged in the production of the kind of tobacco of the most recent crop to determine

whether such farmers favor the establishment of marketing quotas on an acreage-poundage basis for the next 3 marketing years. If more than two-thirds of the farmers voting in the special referendum favor marketing quotas on an acreage-poundage basis, such quotas shall be in effect for the next 3 marketing years and the marketing quotas on an acreage basis shall cease to be in effect at the beginning of such 3-year period and no further special referendum applicable to such 3-year period shall be held. If marketing quotas on an acreage-poundage basis are not favored by more than two-thirds of the farmers voting in the special referendum, marketing quotas on an acreage basis as previously proclaimed shall continue in effect.

(3) *Tobacco quotas proclaimed on an acreage-poundage basis under section 317(d) of the Act.* If marketing quotas on an acreage-poundage basis have been made effective for a kind of tobacco, the Secretary shall proclaim a national marketing quota for such kind of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect. Such proclamation may be on an acreage-poundage basis or on an acreage basis. Within 30 days after such proclamation, there shall be a referendum under section 312(c) of the Act of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next 3 succeeding marketing years. If more than one-third of the farmers voting oppose such quotas, the quotas so proclaimed for the 3-year period shall not be in effect: *Provided,* That such referendum result shall not preclude the proclamation of national marketing quotas for such kind of tobacco for the next 3 succeeding marketing years under section 312(a) of the Act subject to a referendum thereon as provided in paragraph (a)(1) of this section. If a referendum results in approval of quotas for 3 marketing years on an acreage basis, no further referendum applicable to such 3 marketing years shall be held except as may be required under section 317(c) of the Act. If a referendum results in approval of quotas for 3 marketing years on an acreage-poundage basis, no further referendum applicable to such 3 marketing years shall be held.

(4) *Tobacco quotas proclaimed but disapproved in 3 successive years.* Under section 312(a)(4) of the Act, if producers have disapproved national marketing quotas for a kind of tobacco in referenda held in 3 successive years subsequent to 1952, a national marketing quota shall not be proclaimed for any marketing year within the 3-year period for which quotas were disapproved unless prior to November 10 of the marketing year, one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary to proclaim a national marketing quota for each of the next 3 succeeding marketing years.

(5) [Reserved]

(6) *Extra long staple cotton quotas.* Not later than December 15 following the proclamation of a national quota for extra long staple cotton there shall be a referendum under section 343 of the Act, of farmers engaged in the production of extra long staple cotton in the calendar year in which the referendum is held to determine whether such farmers are in favor of or opposed to the quota for the next marketing year. If more than one-third of the farmers voting in the referendum oppose the quota, such quota shall not be in effect.

(7) [Reserved]

(8) *Rice quotas.* Within 30 days after the proclamation of a national marketing quota for rice there shall be a referendum under section 354(b) of the Act of farmers engaged in the production of the immediately preceding crop of rice to determine whether such farmers are in favor of or opposed to the quota for the next marketing year. If more than one-third of the farmers voting in the referendum oppose the quota, such quota shall not be in effect.

(9) *Peanut quotas.* Not later than December 15 of each calendar year there shall be a referendum under section 358(b) of the Act of farmers engaged in

the production of peanuts in the calendar year in which the referendum is held to determine whether such farmers are in favor of or opposed to marketing quotas with respect to the crops of peanuts produced in the 3 calendar years immediately following the year in which the referendum is held. If more than one-third of the farmers voting in the referendum oppose such quotas, the quotas so proclaimed shall not be in effect: *Provided,* That such referendum result shall not preclude the proclamation of quotas in the next calendar year for a 3-year period subject to a referendum as required under this paragraph. If quotas are favored, no further referendum with respect to the 3-year period shall be held.

(b) *Farmers engaged in the production of a commodity.* For purposes of referenda with respect to marketing quotas for tobacco, extra long staple cotton, rice and peanuts the phrase ''farmers engaged in the production of a commodity'' includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: *Provided,* That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his status as a farmer engaged in the production of the crop. In addition, the phrase ''farmers engaged in the production of a commodity'' also includes each person who it is determined would have had an interest as a producer in the commodity on a farm for which a farm allotment for the crop of the commodity was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable commodity regulations.

(c) *Special conditions applicable to peanuts and rice*—(1) *Peanuts.* In the case of a referendum for marketing quotas for peanuts, farmers engaged in the production of peanuts as determined under paragraph (b) of this section shall not be eligible to vote in the referendum if the farm does not have any production of peanuts subject to marketing quotas. Under section 359(b) of the Act, marketing quotas are not applicable to peanuts produced on any farm on which the acreage harvested for nuts is 1 acre or less provided the producers who share in the peanuts produced on such farm do not share in the peanuts produced on any other farm. Under section 359(b) of the Act, marketing quotas are not applicable to peanuts which it is established (i) were not picked or threshed either before or after marketing from the farm, or (ii) were marketed by the producer before drying or removal of moisture from such peanuts either by natural or artificial means for consumption exclusively as boiled peanuts.

(2) *Rice.* In the case of a referendum for a marketing quota for rice, farmers engaged in the production of rice as determined under paragraph (b) of this section shall not be eligible to vote in the referendum if the farm is not subject to marketing quotas. Under section 353(d) of the Act, marketing quotas are not applicable (i) to nonirrigated rice produced on any farm on which the acreage planted to nonirrigated rice does not exceed 3 acres, or (ii) to rice produced outside the continental United States.

(d) [Reserved]

(e) *One vote limitation.* Each person eligible to vote in a particular marketing quota referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: *Provided,* That:

(1) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(2) An individual eligible voter shall be entitled to one vote even though he is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(3) A person shall also be entitled to vote in each instance of his capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity

he is eligible to vote but the person for whom he acts as a fiduciary shall not be eligible to vote.

(f) *Joint and family interest.* Where several persons, such as members of a family, have participated or will participate in the production of a commodity under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce a commodity as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(g) *Minors.* A minor shall be entitled to one vote if he is otherwise eligible and is 18 years of age or older when he votes.

(h) [Reserved]

(i) *Interpretation.* In the case of any commodity on a farm where no acreage of the commodity is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971]

§ 717.4 Register of eligible voters.

Prior to the date of the referendum a register shall be prepared by the county office manager listing the name and address of each known eligible voter. For referenda conducted at polling places a register shall be prepared for each referendum community. For referenda conducted by mail ballot the entire county is considered to be the referendum community and one register shall be prepared for the county.

HOLDING REFERENDA AT POLLING PLACES

§ 717.5 Community referendum committees.

(a) *Where one referendum is to be conducted.* Except where the entire county is to be considered a referendum community, the county committee shall designate a community referendum committee for each referendum community. Each referendum committee shall consist of at least three regular members and one alternate. The membership of the referendum committee shall be chosen from among the farmers who reside in the community and who are eligible to vote in the referendum or who are community committeemen elected pursuant to the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community committees (part 7 of this title). The county committee shall name one member of the community referendum committee as chairman and another member thereof as vice chairman. The vice chairman shall act as the chairman in the event of the absence or incapacity of the chairman and the alternate shall serve on the committee in the place of any regular member who cannot serve. The community referendum committee shall be responsible for the proper holding of the referendum in its community in a fair, unbiased and impartial manner in accordance with this part. In counties where the entire county is treated as one referendum community, the county committee shall perform, in addition to its other duties, the duties of the community referendum committee.

(b) *Where two or more referenda are to be conducted.* Where two or more referenda are to be held in the county on the same day, the provisions of paragraph (a) of this section shall be applicable except that (1) the total number of farms on which there are producers eligible to vote in any one or more of such referenda shall be used to determine whether there are 100 or

more farms on which there are producers who are eligible to vote in the referenda, and (2) each community referendum committee shall be chosen from among the farmers who reside in the community and who are eligible to vote in any of such referenda or who are community committeemen elected pursuant to the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community committees (part 7 of this title).

§ 717.6 Place for balloting.

The county committee shall designate only one polling place for balloting in each referendum community. The polling place shall be one well known to and readily accessible to the persons in the community and shall be equipped and arranged so that each voter can mark and cast his ballot in secret and without coercion, duress, or interference of any sort whatsoever. Subject to the provisions of § 717.9(c) for absentee ballots, a farmer or producer eligible to vote, shall vote only at a polling place designated for the referendum community in which he was engaged in the production of the commodity for which the referendum is held.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971]

§ 717.7 Time of voting.

There shall be no voting except on the day fixed for the holding of the referendum (except as provided in § 717.9(c) in the case of absentee ballots) and the day fixed for the holding of the referendum shall be the same in all neighborhoods, communities, counties, and States. The date for holding the referendum shall be determined by the Secretary in accordance with the provisions of law applicable thereto and stated in the notice of the referendum prescribed by him. The time that polls shall be opened and closed on the date fixed for holding the referendum in the States and Puerto Rico is as follows:

State	Polls to open a.m.	Polls to close p.m.
Alabama	7:00	7:00
Alaska	8:00	6:00
Arizona	8:00	6:00
Arkansas	8:00	6:30
California	8:00	6:00
Colorado	7:00	7:00
Connecticut	8:00	6:00
Delaware	8:00	6:00
Florida	7:00	7:00
Georgia	7:00	7:00
Idaho	8:00	8:00
Illinois	8:00	6:00
Indiana	8:00	6:00
Iowa	8:00	8:00
Kansas	8:00	8:00
Kentucky	8:00	6:00
Louisiana	8:00	6:00
Maine	8:00	6:00
Maryland	8:00	6:00
Massachusetts	8:00	6:00
Michigan	8:00	8:00
Minnesota	8:00	8:00
Mississippi	8:00	6:00
Missouri	8:00	6:00
Montana	8:00	7:00
Nebraska	8:00	8:00
Nevada	8:00	6:00
New Hampshire	8:00	6:00
New Jersey	8:00	6:00
New Mexico	8:00	6:00
New York	8:00	6:00
North Carolina	7:00	7:00
North Dakota	8:00	9:00
Ohio	8:00	6:00
Oklahoma	8:00	6:00
Oregon	8:00	8:00
Pennsylvania	8:00	9:00
Rhode Island	8:00	6:00
South Carolina	7:00	7:00
South Dakota	8:00	8:00
Tennessee	8:00	7:00
Texas	8:00	7:00
Utah	8:00	6:00
Vermont	8:00	6:00
Virginia	7:00	7:00
Washington	8:00	8:00
West Virginia	8:00	8:00
Wisconsin	8:00	8:00
Wyoming	8:00	8:00
Puerto Rico	8:00	6:00

The times listed in this section shall be the local time in effect for the area in which the polling place is located.

§ 717.8 Notice of referendum.

(a) *Posting a notice.* The county committee shall give public notice of the referendum in each referendum community by posting a notice at one or more places open to the public within such community prior to the date of the referendum. Such notice shall be on a form prescribed by the Deputy Administrator and shall state the commodity or commodities and marketing year, or years, or crops for which the referendum is to be held, the location of the polling place in the community, the date of the referendum, and the

hours when the polls will be opened and closed. The county executive director is authorized to sign such notice on behalf of the county committee.

(b) *Use of agencies of public information.* The county committee and community referendum committees shall utilize, to the extent practicable (without advertising expense), all available agencies of public information, including newspapers, radio, television and other means, to give persons in the county public notice of the day and hours of voting, the location of polling places, and the rules governing eligibility to vote. Such notice should be given as soon as practicable after the arrangements for holding the referendum in the county have been made.

§ 717.9 Manner of voting.

(a) *Secret ballot.* The voting in the referendum shall be by secret ballot. Each voter shall, at the time he is handed the form on which to cast his ballot, be instructed to mark his ballot form so as to indicate clearly how he votes and in such manner that no one else shall see how he votes and then to fold his ballot and place it in the ballot box without allowing anyone else to see how he voted. A suitable place where each voter may mark and cast his ballot in secret and without coercion, duress, or interference of any sort whatever, shall be provided in each polling place. Every unchallenged ballot shall be placed in the ballot box by the person who voted it. The fact that a voter fails to fold a ballot placed in the ballot box shall not invalidate it. It shall be the duty of each community referendum committee to see that no device of any sort whatever is used whereby any voter's ballot may be identified except as provided in this part in the case of a challenged ballot or an absentee ballot.

(b) *Voting by proxy prohibited.* There shall be no voting by proxy or agent, or in any manner except by the eligible voter (or the challenged voter under paragraph (d) of this section) personally depositing in the ballot box his ballot as marked by him (except as provided in the case of an absentee ballot), but a duly authorized officer of a corporation, association, or other legal entity, may cast its vote.

(c) *Absentee ballots.* Any person who will not be present on the day of the referendum in the county in which he is eligible to vote or who will be prevented from voting in person on the day of the referendum because of physical incapacity, or whose religious belief forbids him from voting on the day of the referendum, may obtain prior to the date of the referendum, one ballot from a State or county FSA office conveniently situated for him, or from the Commodity Programs Division, FSA, Department of Agriculture, Washington, D.C., and cast an absentee ballot. The office so issuing the ballot form shall endorse on the reverse side thereof a statement in substantially the following form identifying the place in which it was issued and the county to which it will be mailed or delivered, initialed and dated by the person issuing such form.

Issued in _____ County _____ State, or by _____ State FSA Office, or by _____ Division, FSA, Washington, D.C., for use in _____ County, _____ State.

The issuing office shall keep a register showing for each ballot form so issued by it to be voted absentee, the name and address to whom issued, the date of issuance, and the county and State in which the ballot is to be voted, and the name and title of the person who issued the ballot. The person to whom the ballot is issued shall mark the ballot so as to indicate clearly how he votes and place the ballot in a plain envelope which shall be marked clearly with the words ''Absentee Ballot,'' sealed and inserted in another envelope which shall be marked clearly with the voter's name and return address, sealed and delivered, or mailed, postage paid, to the county committee for the county in which he is eligible to vote. All absentee ballots must, in order to be accepted, reach the county office for the county in which the voter is eligible to vote by not later than the hour for closing the polls in the county on the day of the referendum. No such ballot shall be counted unless the voter's name and address appear on the envelope and it is determined that he is eligible to vote.

(d) *Challenged ballots.* The community referendum committee or any member thereof shall challenge the eligibility of any person to vote in the referendum where (1) the community referendum committee or any member thereof is unable to determine that the person is eligible to vote in the referendum in the community, or (2) the community referendum committee or any member thereof has reason to believe that such person has previously voted in the referendum in another community in the same or another county in person or by mail, or (3) the person's name and address have not been entered on the register of eligible voters, prior to its delivery to the referendum committee, unless the referendum committee is satisfied that the person is eligible to vote. In every case where the eligibility of the voter is challenged, his ballot form, after being marked by the challenged person so as to show how he votes, but in such manner that no one else sees how he votes, shall be folded and placed by him (or by a member of the committee if he refuses) in an envelope, which shall then be sealed and placed in another envelope, identified with his name and address, the word ''Challenged'' and a statement of the reason for the challenge, and shall then be placed in the ballot box. The county committee shall make an investigation in each case of controversy or dispute regarding the eligibility of a voter to vote in the referendum. In each case of a challenged ballot the eligibility of the person to vote in the referendum shall be determined by the county committee as soon as may be possible after the polls are closed and before the time for forwarding to the State committee the county summary of ballots. If it is determined that the person whose vote was challenged is eligible to vote, the sealed envelope containing the ballot shall be placed with the challenged ballot of every other person found to be eligible to vote until all challenged ballots have been passed upon by the county committee. If it is determined that the person whose vote was challenged is not eligible, the sealed envelope shall be marked ''Not eligible'' and signed by a member of the county committee and shall not be opened. When all of the challenged ballots have been passed upon by the county committee, the challenged ballots which were cast by eligible voters shall be opened and tabulated on the county summary of ballots, but no disclosure shall be made as to how any particular person voted.

(e) *Ballot box.* Each polling place shall be furnished with a suitable ballot box. Any container of sufficient size so arranged that no ballot can be read or removed without breaking seals on the container will be suitable. When strip adhesive paper or corresponding seals are used on the ballot box, such seals shall be signed or initialed by the chairman or a member of the community referendum committee so that breaking or replacing the seal will so destroy or affect the identifying marks as to show that the seal has been tampered with.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.10 Local arrangements for holding the referendum.

The county committee shall make all arrangements for the proper holding of the referendum in accordance with this part prior to the date of the referendum. The county committee shall instruct each community referendum committee concerning its duties so that each member of the committee understands his duties and the duties of the committee in all respects, with particular emphasis as to (a) issuing ballot forms, (b) challenged ballots, (c) recording votes, (d) tabulating ballots, and (e) certifying results of the referendum in the referendum community. The county executive director shall furnish each community referendum committee an adequate supply of forms prior to the time the polls in the county are opened for the acceptance of ballots, by delivering the ballot forms and the forms for the community summary of ballots to each chairman of the several community referendum committees.

§ 717.11 Issuing ballots.

The community referendum committee shall open the polling place for the issuance of ballot forms and the casting of ballots at the time designated and shall thereafter until the

time when the polls are required to be closed and the casting of ballots discontinued issue a ballot to each person who is eligible to vote and applies for a ballot and to each person who claims to be eligible to vote and insists upon voting even though his eligibility to vote is challenged by a member of the committee. The community referendum committeeman who issued the ballot form shall immediately enter on the register of voters opposite the name and address of the person voting, a record of the issuance of the ballot, the casting of the ballot, and any challenge of the eligibility of the person casting the ballot. Ballot forms shall be issued and ballots placed in the ballot box while at least two members serving on the community referendum committee are physically present in the polling place and in position to see each ballot form as it is issued and each ballot as it is placed in the ballot box.

§ 717.12 Community referendum committee's canvass of ballots.

Immediately after the polls are closed, the community referendum committee shall open the ballot box and canvass the ballots cast. The canvass of the ballots shall be kept open to the public. A ballot shall be considered as a spoiled ballot if it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted on a particular question. The envelope containing the challenged ballots shall not be opened. The total number of ballots issued as shown on the register of voters shall be determined and the total number of ballots cast, including the spoiled and challenged ballots, shall be determined. The number of ballots cast in favor of and the number of ballots cast in opposition to the question on which the referendum was held shall be determined. The spoiled ballots and challenged ballots shall not be considered in favor of or against the question. If any member of the community referendum committee should see or learn how any person besides himself voted, whether or not the ballot was challenged, spoiled, or otherwise, he shall not disclose such knowledge to a fellow committeeman or any other person except in an investigation conducted under this part.

§ 717.13 Community committee's reporting and record of results of referendum.

The community referendum committee shall notify the county committee by telephone, telegraph, messenger, or in person of the preliminary count of the votes on each question and of the number of spoiled and challenged ballots, as soon as may be possible. All the spoiled ballots shall be placed in an envelope and sealed and marked with the initials of the chairman (or vice chairman) of the community referendum committee and the designation ''Spoiled Ballots'' followed by the number of spoiled ballots and the names of the community, the county and the State. The community referendum committee shall execute the certification as to the accuracy of the register of eligible voters and ballots cast. The community referendum committee shall then prepare and execute the community summary of ballots and post one copy thereof, as soon as it is executed, in a conspicuous place at the polling place, so that it will remain posted and accessible to the public for at least 3 calendar days after the holding of the referendum. The community referendum committee shall seal the voted ballots, including those challenged and spoiled, the register of eligible voters and ballots cast, and the community summary of ballots, in one or more envelopes appropriately identified by the names of the community, the county, and the State, and the nature of the referendum and the date on which it was held, and deliver them to the county committee not later than 9 a.m., local time, on the second calendar day after the date of the referendum, together with the unused ballot and other forms. The chairman (or vice chairman) of the community referendum committee shall be responsible for the safe delivery of such reports, ballots, and forms to the county committee.

§ 717.14 County committee's canvass of ballots.

The county committee, after the closing of the polls, shall open and canvass the absentee ballots received and determine the eligibility of each voter. If any person voting absentee is found to be ineligible to vote, or the ballot is so mutilated or marked that it is not possible to determine with certainty how the person intended to vote, such ballot shall not be counted as for or against the question in the referendum. The county committee shall meet and pass upon the challenged ballots as soon as may be reasonably possible after the challenged ballots are received from the community referendum committees, but not later than 4 calendar days after the day of the referendum. The result of the referendum in each community shall be reviewed and summarized as soon as may be reasonably possible after the records, ballots, and forms are received from the several community referendum committees. Every meeting of the county committee for the purpose of canvassing the ballots cast and reviewing and tabulating the results of the referendum shall be open to the public. No member of the county committee who learns how any person besides himself voted, whether the ballot was an absentee ballot, challenged, spoiled, or otherwise, shall disclose such knowledge to any fellow committeeman or other person except in an investigation conducted under this part.

§ 717.15 County committee's reporting and record of results of the referendum.

The county committee shall notify the State committee by telephone, telegraph, or messenger (who may be a member of the county committee), as to the preliminary count of the votes on each question and the number of challenged ballots by the several community referendum committees as soon as possible. The county committee shall, as soon as may be reasonably possible, but in no event later than 4 calendar days after the date of the referendum, have prepared and certified the county summary of ballots. Such summary shall be prepared and certified in triplicate, one copy of which shall be sent to the State committee, one copy posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee, and one copy filed in the office of the county committee and kept available for public inspection. One copy of each community summary shall likewise be posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee.

§ 717.16 Investigation as to correctness of summary of the referendum.

The county committee shall make an investigation in each case of a dispute or challenge regarding the correctness of the summary of the referendum in a community. No dispute or challenge shall be investigated by the county committee unless it is brought to its attention within 3 calendar days after the date on which the referendum was held. The county committee shall promptly decide the dispute or the challenge and report its findings to the State committee within 5 calendar days after the holding of the referendum and send by certified mail, or deliver in person, to the office of the State committee all voted ballots, register forms, and community summary sheets involved in the dispute or challenge.

§ 717.17 State committee's reporting and record of result of the referendum.

The State committee for each State shall notify the Deputy Administrator by telegraph or telephone as to the preliminary count of the votes in the State as soon as the preliminary results of the referendum are made known to the State committee. The county summaries of ballots shall be summarized on the State summary of ballots as soon as possible, but in no event later than 7 calendar days after the date of the referendum, unless there is a dispute or challenge regarding the correctness of the summary for any county, in which case the State committee shall complete its investigation thereof, decide the dispute or challenge, and prepare the State summary accordingly within 14 calendar

days after the date of the referendum. The State summary shall be prepared in triplicate and certified to by the State executive director. The original and one copy of the State summary shall be forwarded to the Director of the FSA Division having the responsibility for the commodity for which the referendum was held. One copy of the State summary shall be filed for a period of 5 years in the office of the State committee available for public inspection.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

HOLDING REFERENDA BY MAIL BALLOT

§ 717.18 Issuing ballots.

The county committee shall furnish each person who is eligible to vote in a particular referendum a ballot suitable for mailing back to the office of the county committee. If a person who is eligible to vote in a particular referendum is not furnished a ballot, he may obtain one during the referendum period from the office of the county committee for the county in which he is eligible to vote or from any other FSA office where ballots are available, including the Commodity Programs Division, FSA, Department of Agriculture, Washington, D.C. When a ballot is issued from an FSA office other than the FSA office in the county in which the producer is eligible to vote in a particular referendum, the issuing office shall keep a register showing to whom it was issued, the person's address, the county and State in which the ballot is to be voted, and the name and title of the person who issued the ballot.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 1, 34 FR 12940, Aug. 9, 1969]

§ 717.19 Manner of voting.

(a) *Voting procedure.* Each person to whom a ballot is issued by mail or in person may vote in the referendum by marking the ballot so as to indicate clearly how the vote is cast, placing the ballot in a plain envelope, sealing the envelope provided by FSA which is marked clearly with the voter's name and return address, signing the certification on such envelope or making his mark thereto (which mark shall be witnessed), sealing such envelope, and delivering or mailing the envelope to the offfice of the county committee for the county in which the person is eligible to vote.

(b) *Voting by proxy prohibited.* There shall be no voting by proxy or agent except as provided in § 717.3.

(Secs. 312, 317, 336, 343, 344, 354, 358, 375, 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 55, as amended, 56, as amended, 79 Stat. 1197, 52 Stat. 61, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1354, 1356, 1375)

[Amdt. 2, 36 FR 12730, July 7, 1971, as amended by Amdt. 4, 49 FR 24371, June 13, 1984]

§ 717.20 Receiving and tabulating voted ballots.

Ballots received at the county FSA office during the referendum period shall be placed immediately in a ballot box provided by the county executive director and so arranged that ballots cannot be read or removed without breaking the seal on the container. Voted ballots received by the county committee of the county in which the voter is eligible to vote during the period established for holding a particular referendum, shall be tabulated by the county committee. A ballot shall be considered to have been received during the referendum period if (a) in the case of a ballot delivered to the county committee, it was received in the office prior to the close of the work day on the final day of the referendum period, or (b) in the case of a mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the county office prior to the start of canvassing the ballots. However, no such ballot shall be counted unless the voter signs the certification or his mark is witnessed on the returned envelope, and it is determined that he is eligible to vote in the particular referendum.

(Secs. 312, 317, 336, 343, 344, 354, 358, 375, 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 55, as amended, 56, as amended, 79 Stat. 1197, 52 Stat. 61, as amended, 55 Stat. 88, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1354, 1356, 1375)

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 4, 49 FR 24371, June 13, 1984]

§ 717.21 Canvassing voted ballots.

(a) *Time of canvassing.* The canvassing of voted ballots shall take place at the opening of the county office on the fifth day after the close of the referendum period. Ballots received after the start of tabulation, even though contained in envelopes that were postmarked prior to midnight of the final day of the referendum period, shall not be counted.

(b) *Canvassing by county committee.* The canvassing shall be in the presence of at least two members of the county committee and open to the public: *Provided,* That if two or more counties have been combined and are served by one county office, the canvassing of ballots shall be conducted by at least one member of the county committee from each county served by the county office: *Provided further,* That the State committee, or the State executive director if authorized by the State committee, may (1) designate the county executive director and a county or State FSA office employee to canvass the ballots and report the results, as provided in paragraph (c) and §717.22, instead of two members of the county committee, when it is determined that the number of eligible voters for the commodity for which the referendum is being conducted is so limited that having two members of the county committee present for this function is impractical and (2) designate the county Executive Director and/or another county or State FSA office employee to canvass ballots in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(c) *Manner of canvassing.* The canvassing of ballots shall follow the following procedure:

(1) The ballot box shall be opened;

(2) The envelopes from the ballot box shall be separated into three groups consisting of (i) unopened certification envelopes which do not have a proper signed certification, (ii) unopened certification envelopes from ineligible voters, and (iii) unopened certification envelopes from eligible voters;

(3) The unopened certification envelopes from eligible voters shall be opened and plain envelopes removed and then shuffled to preserve the secrecy of the ballots contained in such plain envelopes;

(4) The ballots shall be removed from such plain envelopes and tabulated. A ballot shall be considered as a spoiled ballot if it is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted on a particular question. The spoiled ballots shall not be considered in favor of or against the question.

(5) The unopened certification envelopes which do not have a proper signed certification shall not be opened and shall not be considered in favor of or against the question.

(6) The unopened certification envelopes from ineligible voters shall be considered as challenged ballots. The county committee shall determine the eligibility of the person to vote in the referendum. If determined to be eligible such envelopes shall be handled as provided under paragraphs (c)(3) and (4) of this section. If determined not to be eligible, such envelopes shall not be opened and shall not be considered in favor of or against the question.

(d) *Dispute or challenge.* A dispute or challenge with respect to any referendum held by mail ballot shall not be considered unless notification of such dispute or challenge is filed in writing with the county executive director of the county in which the alleged irregularity occurred within 3 days after the date of the canvassing of voted ballots. Such written notification of a dispute or challenge must identify each alleged instance in which the county committee erred when canvassing the ballots or tabulating the referendum results. The county committee shall determine the validity of the dispute or challenge and report its findings to the State committee within 3 working days after the final date for filing a dispute or challenge.

[33 FR 18345, Dec. 11, 1968, as amended by Amdt. 2, 36 FR 12730, July 7, 1971; Amdt. 3, 38 FR 12891, May 17, 1973; 51 FR 10609, Mar. 28, 1986; 52 FR 10727, Apr. 3, 1987]

§ 717.22 Reporting and record of result of the referendum.

(a) *County committee.* The county committee shall notify the State committee by telephone, telegraph, or messenger (who may be a member of the county committee), as to the preliminary count of the votes on each question and the number of challenged ballots as soon as possible. The county committee shall, as soon as may be reasonably possible, but in no event later than 4 calendar days after canvassing of the ballots, have prepared and certified the county summary of ballots. Such summary shall be prepared and certified in triplicate, one copy of which shall be sent to the State committee, one copy posted for 30 calendar days in a conspicuous place accessible to the public in or near the office of the county committee, and one copy filed in the office of the county committee and kept available for public inspection.

(b) *State committee.* The State committee for each State shall notify the Deputy Administrator by telephone or telegraph as to the preliminary count of the votes in the State as soon as the preliminary results of the referendum are made known to the State committee. The county summaries of ballots shall be summarized on the State summary of ballots as soon as possible, but in no event later than 7 calendar days after canvassing of the ballots, unless there is a dispute or challenge regarding the correctness of the summary for any county, in which case the State committee shall complete its investigation thereof, decide the dispute or challenge, and prepare the State summary accordingly within 14 calendar days after canvassing of the ballots. The State summary shall be prepared in triplicate and certified to by the State executive director. The original and one copy of the State summary shall be forwarded to the Director of the FSA Division having the responsibility for the commodity for which the referendum was held. One copy of the State summary shall be filed for a period of 5 years in the office of State committee available for public inspection.

[Amdt. 1, 34 FR 12940, Aug. 9, 1969]

MISCELLANEOUS

§ 717.23 Applicability of this part to Puerto Rico.

The Caribbean Area Agricultural Stabilization and Conservation Committee shall be in charge of and responsible for conducting in Puerto Rico each referendum required by the Act. Insofar as applicable, the Caribbean Area ASC Committee shall perform all the duties and assume all the responsibilities otherwise required of State and county committees as provided in this part, except that (a) the Director, Agricultural Stabilization and Conservation Caribbean Area Office shall nominate for appointment by the Caribbean Area ASC Committee the members and alternates to serve on community referendum committees and shall establish the boundaries of referendum communities in such a manner that polling places therein will be conveniently located for the farmers eligible to vote in the referendum, and (b) following the canvass of the ballots, results of the referendum shall be reported to the Caribbean Area ASC Committee.

§ 717.24 Result of referendum.

(a) *Proclamation of result.* The final and official tabulation of the votes cast in the referendum shall be made by the Deputy Administrator and the result of the referendum will be publicly proclaimed and published in the FEDERAL REGISTER. The State summaries and related papers shall be filed with such tabulation for a period of 5 years available for public inspection in the Department of Agriculture.

(b) *Unofficial announcements of result.* Each county committee is authorized to issue unofficial reports of the total ''Yes'' and ''No'' votes in its county to the press and the public. Each State committee is authorized to issue to the press and the public the unofficial result of the referendum in its State by counties as rapidly as the votes in the various counties are reported to it.

(c) *Investigations.* If the Deputy Administrator or the Secretary deems it necessary, the report of any community referendum committee, county committee, or State committee shall be reexamined and checked by such

persons or agents as may be designated.

§ 717.25 Disposition of ballots and records.

The county committee shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, unopened certification envelopes, register sheets, and community summaries for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date, and the names of the county and State, and place them under lock in a safe place under the custody of the county office manager for a period of 30 calendar days after the date of the referendum. If no notice to the contrary is received by the end of such time, the voted ballots, challenged ballots, spoiled ballots, and unopened certification envelopes shall be destroyed, but the registers and community and county summary sheets and the register of absentee ballots shall be filed for a period of 5 years in the office of the county committee.

§ 717.26 Applicability.

The regulations contained in this part shall be applicable to all referenda held pursuant to the Agricultural Adjustment Act of 1938, as amended.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

Subpart A—General Provisions

Subpart B—Determination of Acreage and Compliance

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

AUTHORITY: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b, Pub. L. 106–224.

SOURCE: 61 FR 37552, July 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA).

(b) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees).

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(d) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(e) No provisions or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

Administrative variance (AV) means the amount by which the determined acreage may exceed the effective allotment and be considered in compliance with program regulations.

Agricultural Use means devoting the land to annual or perennial crops, including conserving uses, pasture, aquaculture or plantings of trees for any purpose. Land may be left fallow, but weeds must be controlled.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Allotment crop means any crop for which acreage allotments are established pursuant to parts 723 and 729 of this chapter.

Combination means consolidation of two or more farms or parts of farms into one farm.

Contract acreage means the quantity of acres enrolled in a contract in accordance with part 1412 of this title.

Contract commodity means a crop of wheat, corn, grain sorghum, oats, barley, upland cotton, or rice.

Controlled substances means the term as set forth in accordance with 21 CFR part 1308.

County means the County or parish of a State. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

Crop of economic significance means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

Crop reporting date means date established by the Administrator, FSA, representing the final date by which the farm operator, farm owner, or properly authorized agent must report applicable crop acreage for the report to be considered timely filed.

Cropland. (1) Means land which the county committee determines meets any of the following conditions:

(i) Is currently being tilled for the production of a crop for harvest;

(ii) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(iii) Is currently devoted to a one- or two-row shelterbelt planting, orchard, or vineyard;

(iv) Is in terraces, that, were cropped in the past, even though they are no longer capable of being cropped;

(v) Is in sod waterways or filter strips planted to a perennial cover; or

(vi) Is preserved as cropland in accordance with part 704 or 1410 of this title.

(2) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(i) No longer used for agricultural production;

(ii) No longer suitable for production of crops;

(iii) Subject to a restrictive easement or contract that prohibits its use for

the production of crops unless otherwise authorized by the regulation of this chapter;

(iv) No longer preserved as cropland in accordance with the provisions of part 704 or 1410 of this title and does not meet the conditions in paragraphs (1)(i) through (1)(vi) of this definition; or

(v) Devoted to trees (other than those set forth in accordance with part 704 or 1410 of this title, one- or two-row shelterbelt plantings, orchards, or vineyards) which were planted in the preceding year except that land planted to trees or devoted to ponds, lakes, or tanks from September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year, and in the current year shall retain its cropland classification for the current year.

Current year means the year for which applicable allotments, quotas, and acreages, or other program determinations are established for that program. For controlled substance violations, the year that contains the date of actual conviction.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or a designee.

Determination means a decision issued by a State, county or area FSA committee or the employees of such a committee that affects a participant's participation in a program administered by FSA.

Determined acreage means that acreage established by a representative of the Department of Agriculture by use of official acreage, digitizing or planimetering areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

Division means the division of a farm into two or more farms or parts of farms.

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including legally adopted children;

(5) Great grandchildren;

(6) Sibling of the family member in the farming operation; and

(7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm means land that is being operated by one producer with equipment, labor, accounting system and management substantially separate from that of any other unit. Land on which tenants provide their own labor and equipment shall not be considered a separate farm.

Farm inspection (spot-check) means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Farm number means serial number assigned to a farm by the county committee for the purpose of identification.

Farm program payment yield means the yield for a crop which is determined in accordance with part 1413 of this title as in effect on January 2, 1996.

Farmland means the sum of the cropland, forest, and other land on the farm.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, or other measuring device, that is expressed in chains and links.

Joint operation means a general partnership, joint venture, or other similar business organization.

Landlord means one who rents or leases farmland to another.

Measurement service means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

Measurement service after planting means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

Minor child means an individual who is under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

Nonagricultural commercial or industrial use means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

Normal planting period means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

Operator means an individual, entity, or joint operation who is determined by the county committee as being in general control of the farming operations on the farm during the current year.

Owner means one who has legal ownership of farmland, including one:

(1) Who is buying farmland under a contract for deed;

(2) Who has a life-estate in the property; or

(3) (i) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title one who has purchased a farm in a foreclosure proceeding and:

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (3)(i) of this definition shall be entitled to receive benefits in accordance with such a program only to the extent the owner complies with all program requirements.

Partial reconstitution means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops, which results in having two or more farm numbers for the same farm.

Participant means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

Pasture means land that is used to, or has the potential to, produce food for grazing animals.

Person means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved;

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

Producer means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been

produced. A producer includes a grower of hybrid seed.

Production flexibility contract means a contract entered in accordance with part 1412 of this title.

Prohibited plants means marijuana (cannabis sativa), opium poppies (papaver somniferum), coca bushes (erythroxylum coca), cacti of the genus lophophora and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

Random inspection means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

Quota means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

Reconstitution means a change in the land constituting a farm as a result of combination or division.

Reported acreage means the acreage reported by the farm operator, farm owner, or a properly authorized agent on form FSA–578, Report of Acreage, or other form designated by the Deputy Administrator.

Required inspection means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine the producer's adherence to program requirements or to verify the farm operator's, farm owner's, or properly authorized agent's report.

Secretary means the Secretary of Agriculture of the United States, or a designee.

Sharecropper means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

Skip-row or strip-crop planting means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing means determining an acreage before planting by:

(1) Measuring a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision of a field; and,

(2) Staking and referencing the area on the ground.

Standard deduction means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Subdivision means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

Tenant means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tolerance means for marketing quota crops, and peanuts, a prescribed amount within which the reported acreage may differ from the determined acreage and still be considered as correctly reported.

Tract means a unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Tract combination means the combining of two or more tracts if the tracts have common ownership and are contiguous.

Tract division means the dividing of a tract into two or more tracts because of a change in ownership or operation.

Turn-area means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

§ 718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides.

(b) The State committee shall submit to the Deputy Administrator for Farm Programs, requests to deviate from deductions prescribed in § 718.108 of this part, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.111.

§ 718.4 Authority for farm entry and providing information.

(a) The provisions of this section are applicable to any farm enrolled in a program authorized by chapter XIV of this title, all farms on which peanuts are planted for harvest (part 729 of this chapter), and all farms that have an effective tobacco allotment or quota (part 723 of this chapter).

(b) To ascertain compliance by producers to the regulations specified in paragraph (a), a representative of FSA may enter any farm specified in such paragraph. An owner, operator or producer on a farm may refuse the FSA representative entry to the farm and request FSA to provide written authorization for the entry. If entry is not allowed within 30 days of such written notification:

(1) All program benefits otherwise available with respect to such farm in accordance with such regulations shall be denied;

(2) The person objecting to the entry shall pay all costs associated with cost of the inspection by FSA of the farm;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) With respect to tobacco produced on such farm, the farm operator must furnish proof of disposition of:

(i) Burley and flue-cured tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) Other kinds of tobacco produced on the farm and no credit will be given for disposing of any excess tobacco other than properly identified by a marketing card unless such tobacco is disposed of in the presence of a representative of FSA in accordance with § 718.109.

(c) If an owner or operator of a farm refuses to furnish reports or data which are necessary to determine benefits in accordance with the regulations specified in paragraph (a) or FSA determines that the report or data was erroneously provided through the lack of good faith by the operator or owner, all benefits will be denied with respect to the farm which would otherwise be available in accordance with the program under which the report or data is requested.

§ 718.5 Delegations of authority.

The State committee or State Executive Director, as authorized by the Deputy Administrator may, in accordance with instructions issued, exercise the authority provided in this part in cases where the total of any payments and benefits extended under chapters VII and XIV of this title does not exceed:

(a) $5,000 for cases subject to § 718.8; or

(b) $25,000 for cases subject to § 718.9.

§ 718.6 Signature requirements and time limitations.

(a) When a program authorized by this chapter and parts 1410 and 1412 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other

spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to the county FSA office which administers FSA and CCC programs with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program documents required to be executed in accordance with part 3 of this title and part 704 of this chapter;

(2) Easements entered into under part 1410 of this title;

(3) Form FSA–211, Power of Attorney and Form FSA–211–1, Power of Attorney for Husband and Wife; and

(4) Such other program documents as determined by FSA or CCC.

(c) Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is within a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

§ 718.7 Failure to fully comply.

In any case in which the failure of a producer to fully comply with the terms and conditions of a program authorized by this chapter precludes the making of price support to such producer, the Deputy Administrator for Farm Programs may authorize the making of such price support in such amounts as determined to be equitable in relation to the seriousness of the failure if the regulations of this title authorizing the program specifically authorize such action. The provisions of this part shall only be applicable to producers who are determined to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.8 Incomplete performance based upon action or advice of an authorized representative of the Secretary.

(a) Notwithstanding any other provision of the law, performance rendered in good faith based upon action of, or information provided by, any authorized representative of a County or State Farm Service Agency Committee, may be accepted by the Administrator, FSA (Executive Vice President, CCC), the Associate Administrator, FSA (Vice President, CCC), or the Deputy Administrator for Farm Programs, FSA (Vice President, CCC), as meeting the requirements of the applicable program, and benefits may be extended or payments may be made therefor in accordance with such action or advice to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this section shall be applicable only if a producer relied upon the action of a county or State committee or an authorized representative of such committee or took action based on information provided by such representative. The authority provided in this part does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the committee or its authorized representative upon which they relied was improper or erroneous, or where the producer acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices, or advice.

§ 718.9 Finality rule.

(a) A determination by a State or county committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with the provisions of part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

§ 718.10 Rule of fractions.

(a) Rounding of fractions shall be done after the completion of the entire computation which is being made. In making mathematical determinations all computations shall be carried to two decimal places beyond the required number of decimal places as specified in the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure sat the last required decimal place shall be increased by ''1'' as follows:

Required decimal	Computation	Result
Whole numbers	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more)	7.7
Hundredths	8.8449 (or less)	8.84
	8.8450 (or more)	8.85
Thousandths	9.63449 (or less)	9.634
	9.63450 (or more)	9.635
10 thousandths	10.993149 (or less)	10.9931
	10.993150 (or more)	10.9932

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.11 Denial of benefits.

(a) For the purposes of this section, a person means an individual.

(b) Any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in 21 CFR part 1308, shall be ineligible for, with respect to any commodity produced during the same year and the next succeeding four years:

(1) Any price support loan available in accordance with parts 1446 and 1464 of this title;

(2) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(3) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act;

(4) Crop Insurance under the Federal Crop Insurance Act;

(5) A loan made, insured or guaranteed under the Consolidated farm and Rural Development Act or any other provision of law formerly administered by the Farmers Home Administration; or

(6) Any payment made under any Act.

(c) If any person denied benefits under this part is a beneficiary of a trust, benefits for which the trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the beneficiary in the trust.

[61 FR 37552, July 18, 1996, as amended at 62 FR 25437, May 9, 1997]

§ 718.12 Furnishing maps.

The cost of furnishing reproductions of photographs, mosaics and maps is free upon request to the farm operator, owner, Federal Crop Insurance Corporation (FCIC) and reinsured companies, Natural Resources Conservation Service (NRCS) and other Federal or State Agencies performing their official duties in making FSA and related program determinations. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

Subpart B—Determination Of Acreage and Compliance

§ 718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage of a crop when the request is made:

(1) After the established final reporting date for the applicable crop except as provided in § 718.103;.

(2) After the farm operator has furnished the county office production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the existence and use made of the crop, the lack of the crop or a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage by more than the allowable tolerance, the producer must destroy the excess acreage and pay for an authorized employee of FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraph (b)(1) through (3) of this section and those who are subject to the regulations cited in paragraph (b)(4) and (5) of this section must submit accurate information as required by these provisions.

(b)(1) Participants in the program authorized by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs authorized by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a marketing assistance loan or loan deficiency payment is requested; and

(3) Participants in the programs authorized by parts 704 and 1410 of this title must report the use of the land enrolled in such programs;

(4) Participants in the programs authorized by parts 723 and 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero; provided further that for burley tobacco each person who owns a farm for which a burley quota is established must report the acreage planted to burley tobacco, including instances in which the acres planted are zero acres; and

(5) Participants in the programs authorized by parts 729 and 1446 of this title must report the acreage planted to peanuts by type.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

(d) Peanut producers shall provide the county office evidence of disposition of any peanuts that are kept on the farm, including:

(1) Type and quantity for use for seed on any farm in which the producer has an interest; and

(2) Type, quantity, names, and addresses of purchases for peanuts sold or given to others.

(e) Peanut producers shall provide the county office information for acquisition of seed peanuts from other sources, including:

(1) Name and address of person who sold or gave producer the peanuts;

(2) Type, farmer's stock or shelled basis, and quantity; and

(3) Acquisition date.

[61 FR 37552, July 18, 1996, as amended at 66 FR 53509, Oct. 23, 2001]

§ 718.103 Late-filed reports.

(a) A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to the existence and use made of the crop, the lack of the crop or a disaster condition affecting the crop.

(b) The farm operator shall pay the cost of a farm visit by an authorized FSA employee unless the County Committee has determined that failure to report in a timely manner was beyond the producer's control.

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 1996 and subsequent years to change the acreage reported if the county committee determines that the revision does not have an adverse impact on the program and the acreage has not already been determined by FSA.

(b) Revised reports shall be filed and accepted:

(1) At any time for all crops if evidence exists for inspection and determination of the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the requirements of paragraph (a) have been met and the producer was in compliance with all other program requirements by the applicable established crop reporting date.

§ 718.105 Tolerances, variances, and adjustments for tobacco and peanuts.

(a) Tolerance or variance for tobacco and peanuts is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements. Tolerance or variance for tobacco is the amount by which the determined acreage may differ from the reported acreage or allotment and still be considered in compliance with program requirements.

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements. Tolerance rules do not apply to:

(1) Official fields when the entire field is devoted to one crop;

(2) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or

(3) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.

(c) An administrative variance is applicable to all marketing quota crop acreages. Marketing quota crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05

Effective acreage allotment is within this range	Administrative variance
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(d) A tolerance applies to tobacco other than flue-cured or burley, if the determined acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective farm acreage allotment to avoid marketing quota penalties or receive price support.

(e) Tolerance for peanuts is the larger of 1.0 acre or 5 percent of the reported acreage, not to exceed 10.0 acres.

[61 FR 37552, July 18, 1996, as amended at 65 FR 8246, Feb. 18, 2000]

§ 718.106 Acreages.

(a) If an acreage has been established by a representative of FSA for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of FSA.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to any allowable deduction or adjustment credit except as otherwise provided in this part.

§ 718.107 Skip rows and strip crops.

(a) To be considered under the skip row provisions of this section the field must be planted in a uniform planting pattern and the number of rows planted between skips cannot exceed 36 rows. If more than one pattern is used within a field, the area planted to each pattern will be considered a subdivision.

(b) The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than 64 inches wide, except where cotton is planted in skip row patterns:

(1) If the distance between the rows is 30 inches the strips of the idle land are less than 60 inches wide; or

(2) If the distance between the rows is 32 inches or wider and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row if the producer has a history of planting 32-inch or wider rows.

(c) The county committee shall determine if the producer has a history of 32-inch or wider rows by verifying that cotton acreage has been planted in 32-inch or wider rows in past years and reported on the acreage report, or reported to other State or Federal Agencies.

(d) If the strips of idle land are too wide to be classified as solid planted in accordance with paragraph (b) of this section the acreage of the strips planted to the crop, including one-half the distance between the rows of the crop but not less than 15 inches beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(e) When one crop is alternating with another crop, the entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than 64 inches.

(f) If strips of the alternating crop are too wide to be considered solid planted in accordance with paragraph (b) of this section and if the alternating crop:

(1) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller of one-half the distance between the strips of the crop being measured or 30 inches shall be considered as being devoted to the crop being measured; or

(2) Does not have substantially the same growing season as the crop being measured, then the acreage of the crop being measured shall be determined in accordance with paragraph (b) or (c) of this section.

(g) When the crops are planted in single wide rows, the entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than 64 inches. If the distance between the rows of the crop is at least 64 inches, only 64 inches in width for each row shall be considered as being devoted to the crop.

§ 718.108 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.107 shall be deducted from the acreage of the crop if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

(2) For tobacco, three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches in width may be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses, one-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 33 links in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

§ 718.109 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm visit to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

§ 718.110 Notice of measured acreage.

Written notice of measured acreage shall be on Form FSA–468, Notice of Determined Acreage, when mailed to the farm operator and shall constitute notice to all interested producers on the farm.

§ 718.111 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 calendar days after the date of the notice furnished the farm operator in accordance with § 718.109 or § 718.110 or within 5 calendar days after the initial appraisal of the yield of a crop or before any of the farm-stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination

shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

§ 718.201 Farm constitution.

(a) Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by one person as a single farming unit except that it shall not include:

(1) After August 1, 1996, land subject to a production flexibility contract with land not subject to a production flexibility contract;

(2) Land under separate ownership unless the owners agree in writing;

(3) Land under a lease agreement of less than 1 year duration;

(4) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is owned by one person and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same State and are owned by the same person if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(5) Federally owned land;

(6) State-owned wildlife land unless the former owner has possession of the land under a leasing agreement;

(7) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program;

(8) For land subject to production flexibility contracts, land located in counties that are not contiguous. However, this subparagraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit; and

(9) With respect to peanut poundage quotas, land across:

(i) County lines when the quotas established for the land involved cannot be transferred; or

(ii) State lines.

(b)(1) If all land on the farm is physically located in one county, the farm records shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached,

the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator;

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit;

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located; or

(7) Land is sold for or devoted to nonagricultural commercial or industrial uses; however, a reconstitution is not required and allotments, quotas and acreages may remain with the farm if either of the following apply:

(i) The land is already devoted to residential, recreational, industrial or commercial buildings; or

(ii) The owner would qualify to use the landowner designation method of division in accordance with § 718.205 or the allotments and quotas can be transferred by sale or owner in accordance with this part and parts 723 or 729 of this chapter and the owner of the parent farm and the purchaser file a signed written memorandum of understanding before Form FSA–476 or Form MQ–24 is issued, stating that the land will be devoted immediately or within 3 years to:

(1) Nonagricultural commercial uses; or

(2) Recreational, residential, industrial or non-farm commercial uses.

(d) Notwithstanding the provisions of paragraphs (c)(1) through (c)(7), a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

[61 FR 37552, July 18, 1996, as amended at 65 FR 7953, Feb. 16, 2000]

§ 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent or court-appointed guardian (or other person responsible for the minor child) unless:

(1) The minor child is a producer on a farm;

(2) Neither the minor's parents nor guardian has any interest in the minor's farm or production from the farm;

(3) The minor establishes and maintains a separate household from the parent or guardian;

(4) Personally carries out the farming activities in the operation; and

(5) Maintains a separate accounting for the farming operation.

(c) Notwithstanding paragraph (b) of this section, a minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

§ 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

§ 718.204 Reconstitution of allotments, quotas, and acreages.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a production flexibility contract in accordance with part 1412 of this title will be effective for the current year if initiated on or before July 1 of the fiscal year.

(c) For tobacco and peanut farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (b) and (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs found in this title.

§ 718.205 Rules for determining farms, allotments, quotas, and acreages when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, cropland, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(2) Allotments, quotas, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and acreages, such allotments, quotas, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided

pursuant to paragraphs (d) through (g) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and acreages, including historical acreage that has been doublecropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section. In the case of land subject to a Wetlands Reserve Program easement or Emergency Wetlands Reserve Program easement, the parent farm shall retain the allotments, quotas, and acreages.

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landowner may designate, as provided in this paragraph, the manner in which allotments, quotas, and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and acreage that shall be permanently reduced when the sum of the allotments, quotas, and acreages exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments or quotas. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments or quotas, shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments and quotas, with respect to the part which has been owned for 3 years or more.

(5) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(6) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or acreage has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and acreages between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4).

(d)(1) The contribution method is the proration of a parent farm's allotments, quotas, and acreages to each tract as the tract contributed to the allotments, quotas, or acreages at the time of combination and may be used

when the provisions of paragraphs (b) and (c) of this section do not apply. The contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if FSA records are available to show the amount of contribution.

(2) The county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(e) The agricultural use method is the proration of contract acreage to the tracts being separated from the parent farm in the same proportion that the agricultural and related activity land for each tract bears to the agricultural and related activity land for the parent farm. This method of division shall be used if the provisions of paragraphs (b) through (d) of this section do not apply.

(f)(1) The cropland method is the proration of allotments and quotas to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments and quotas which are more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(2) The cropland method shall not be used to divide contract acreage.

(g)(1) The history method is the proration of allotments and quotas to the tracts being separated from the farm on the basis of the allotments and quotas determined to be representative of the operations normally carried out on each tract. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in the proration of allotments and quotas, more representative than the cropland method of division of the operation normally carried out on each tract; and

(ii) Obtains written consent of all owners to use the history method.

(2) Notwithstanding any other provision of this section, the county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(3) The history method shall not be used to divide contract acreage.

(h)(1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d), (e), (f) and (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or acreage with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or acreages established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division performed according to paragraphs (d) through (g) may be increased or decreased if the county committee determines the method used did not

provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(i) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs.

[61 FR 37552, July 18, 1996, as amended at 65 FR 65722, Nov. 2, 2000]

§ 718.206 Rules for determining allotments, quotas, and acreages when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and acreages, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and acreages for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

[61 FR 37552, July 18, 1996; 61 FR 49049, Sept. 18, 1996]

§ 718.207 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating allotments and quotas, with respect to land involved in eminent domain acquisitions. Such allotments and quotas, in accordance with this section, may be pooled for the benefit of the owner who is displaced from the acquired farm by eminent domain acquisition. Such pooling shall be for a 3-year period from the date of displacement or during such other period as the displaced owner may request for the transfer of allotments and quotas, from the pool to other farms owned by such person.

(b) An eminent domain acquisition is a taking of title to land, or the taking of an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain.

(c) For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) The owner shall be considered displaced from a farm which is subject to an eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency or its designee if the lease provided uninterrupted possession to the owner from the date of acquisition to the end of the lease or extensions of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that allotments and quotas may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period of the pool.

(f) Whenever the county committee determines, by notice from the owner or otherwise, that an owner has been displaced from the farm, the county committee shall establish a pool for the allotments and quotas eligible for pooling under this section for a 3-year period beginning on the date of displacement. Pooled allotments and quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) Pooling is not permitted or required:

(1) If the county committee determines that an agency has authority under its eminent domain powers to acquire a farm for the continued production of an allotment or quota and does so acquire a farm only for such purpose and files a written notice with the county committee of the county in which the farm is located at the time of acquisition designating the allotment and quota to be produced on the farm, there shall be no pooling of such allotment and quota. Such farm allotments and quotas shall be established for the farm in accordance with applicable commodity regulations. For acreages, there shall be no pooling of the acreage under any circumstances if an agency acquires land and retains the land in an agricultural or related activity;

(2) If the displaced owner files written notice with the county committee of an intention to waive the right to have all the allotments and quotas or any part thereof pooled and the county committee determines that the displaced owner has not been coerced to waive such right, the allotments and quotas shall be retained on the agency acquired land;

(3) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and quotas shall be retained on the portion of the farm not acquired by the agency and shall not be pooled;

(4) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on a farm, the allotments and quotas attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. The amount of an allotment and quota which may be retained on the farm cannot exceed the land devoted to an agricultural or related activity. Allotments and quotas which are not retained shall be pooled; or

(5) If, prior to pooling, an owner files a request to transfer the allotments and quotas to other farms in the same county which are owned by such owner, the county committee may approve a direct transfer without the formal establishment of a pool. Such transfer shall be subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled allotments and quotas notwithstanding other provisions of applicable commodity regulations.

(h) Pooled allotments and quotas may be released on an annual basis by the owner to a county committee during any year for which allotments and

quotas are pooled and not otherwise transferred from the pool. The county committee may reapportion the released allotments and quotas to other farms in the same county that have allotments or quotas for the same commodity. Pooled allotments and quotas shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled allotments and quotas which are released shall be considered to have been fully planted in the pool and not on the farm to which such allotments and quotas are reapportioned.

(i) Pooled allotments and quotas that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled allotment or quota, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j) (1) The displaced owners may request a transfer of all or part of the pooled allotments and quotas to any other farm in the United States which is owned by the displaced owner, but only if there are farms in the receiving county with allotments and quotas, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of an allotment and quota from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining an allotment or quota from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date

of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the allotment and quota is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage which is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that an allotment or quota is transferred;

(v) The contractual arrangements between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the allotment or quota is transferred; and

(vi) The contractual arrangements under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the State where the receiving farm is located (the receiving State committee). Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraph (j)(4) (ii), (iii) and (iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the allotment or quota is transferred.

(6) Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate notice of allotment and quota under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining the amount of the allotment and quota available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the allotments and quotas, most recently established for the acquired farm placed in the pool. When all or a part of the allotment and quota placed in the pool is transferred and used to establish or increase the allotment and quota for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments and quotas to have been planted on the receiving farm for which an allotment and quota, are established or increased under this section. If only a

part of the available allotment and quota is transferred from the pool, the remaining part of the allotment and quota, shall remain in the pool for transfer to other farms of the owner until all such allotments and quotas have been transferred or until the period of eligibility for establishing or increasing allotments and quotas under this section has expired.

(7) If any allotment or quota is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or that the conditions of paragraph (j)(4) of this section are not met, the allotment and quota for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the allotment or quota transferred from the pool. If the time period for the transfer of the allotment or quota from the pool has not expired, the amount of allotment or quota initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could exercise the right of administrative review. Any cancellation of the transfer of an allotment or quota by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county committee shall issue a notice of any marketing quota and penalty as may be required in accordance with applicable commodity regulations.

(8) If the displaced owner files a request for transfer of pooled allotments or quotas, within the prescribed period for filing such request, but the request for transfer is filed during a year in which all or a part of the pooled allotments or quotas were released to the transferring county committee pursuant to paragraph (h), the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of pooled allotment or quota involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment or quota for which the transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the allotments and quotas are retained on the portion not acquired as provided in paragraphs (g) (3) and (4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may file with the county committee a written designation of beneficiary of the rights in the allotments and quotas attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or negotiate a lease with the agency or its designee, the regular transfer rights with respect to farms owned by such beneficiary, and the release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights provided under paragraph (l)(1) of this section:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraph (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If an allotment or quota for an acquired farm next established after the data of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the allotment or quota shall be reduced in the pool in accordance with the applicable commodity regulations.

§ 718.208 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity which is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 718.209 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information with respect to the present operations on the farms, including all leasing arrangements, shall also be set forth in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota under this section shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by the same percentage as the allotment or quota being transferred is adjusted. The amount of the allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be subject to the condition that an acreage equal to the allotment and quota transferred, before any productivity adjustment, shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If such a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected by the transfer. If a county committee obtains evidence that the conditions applicable to any transfer under this section have not been met, a report of the facts shall be made to the State committee. If the State committee determines that such conditions have not been met, the transfer will be canceled, and the allotment and quota shall be retransferred to the original farm. Where cancellation and retransfer is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation of the transfer.

PART 723—TOBACCO

Subpart A—General Provisions

Sec.

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

AUTHORITY: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

SOURCE: 55 FR 39914, Oct. 1, 1990, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 723 appear at 62 FR 15600, Apr. 2, 1997, and at 63 FR 11585, Mar. 10, 1998.

Subpart A—General Provisions

§ 723.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 723) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of U.S.C. chapter 35 and have been assigned OMB control numbers 0560–0058 and 0560–0006.

§ 723.102 Applicability.

The regulations contained in this subpart are applicable to the 1990 and subsequent crops of burley; flue-cured; fire-cured; dark air-cured; Virginia sun-cured; cigar-filler and binder (types 42, 43, 44, 54, and 55); and Cigar filler (type 46) tobacco. These regulations govern the establishment of farm marketing quotas and acreage allotments, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties and the keeping of records and making of reports. All of the provisions of these regulations apply to each kind of tobacco for which marketing quotas are in effect unless the wording of the text indicates otherwise.

§ 723.103 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, Farm Service Agency (''FSA'') and shall be carried out in the field by State and

county Agricultural Stabilization and Conservation committees (''State and county FSA committees'').

(b) State and county FSA committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State FSA committee shall take any action required by these regulations which has not been taken by the county FSA committee. The State FSA committee shall also:

(1) Correct, or require a county FSA committee to correct any action taken by such county FSA committee which is not in accordance with the regulations of this part, or

(2) Require a county FSA committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county FSA committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county FSA committee. Further, the Administrator or the Administrator's designee may modify any deadline or other provisions of this part to the extent that doing so is determined by such person to be appropriate and not inconsistent with the purposes of the program administered under this part.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 9128, Feb. 24, 1998]

§ 723.104 Definitions.

(a) *Applicability*. The definitions set forth in this section shall be applicable for all purposes of program administration for all kinds of tobacco except as may otherwise be indicated. The definitions in and provisions of parts 718 and 720 of this chapter are hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms*. The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Active burley and flue-cured tobacco producer. (1) Any person who shared in the risk of producing a crop of burley or flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a burley or flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator.

Allowable floor sweepings. The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of the respective kind of tobacco at auction for the season for the warehouse involved.

Auction sale. A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business including sale of all lots of tobacco at public auction in sequence at a given time.

Base Period. The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established. For burley tobacco marketing quotas established effective for the 1994 and subsequent crop years, the base period shall be the 3 calendar years immediately preceding the year for which farm marketing quotas are currently being established. For all other kinds of tobacco the five year base period shall remain in effect.

Buyer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Buyers corrections account. The warehouse account of tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouse operator and supported by an adjustment invoice from the buyer. This account shall include the pounds deducted resulting from returned lots, short lots, and short weights, and pounds added resulting from long lots and long weights, which buyers debit or credit to the warehouse operator and support with adjustment invoices.

Carryover tobacco. Tobacco produced prior to the current calendar year which has not been marketed or otherwise disposed of prior to the beginning of the marketing year for the current crop.

Common ownership unit. A common ownership unit is a distinguishable part of a farm, consisting of one or more tracts of land with the same owners, as determined by FSA.

Considered planted acreage. An acreage that is used for determining an old farm's history acreage for a kind of tobacco when the acreage planted on the farm to the kind of tobacco in the current year is less than the farm acreage allotment established for such farm in the current year. With respect to:

(1) *Flue-cured tobacco.* If flue-cured tobacco was marketed from the farm during the current year, the considered planted acreage is an acreage determined by subtracting the planted acres from the farm acreage allotment. If flue-cured tobacco was not marketed from the farm in the current year, the considered planted acreage is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to flue-cured tobacco because of a natural disaster,

(ii) Computed for pounds leased from the farm,

(iii) In the eminent domain pool,

(iv) Reduced for overmarketing,

(v) Reduced for violation of marketing quota regulations, and

(vi) Converted from the production of flue-cured tobacco during the respective crop year in accordance with part 704 of this chapter.

(2) *A kind of tobacco other than burley or flue-cured tobacco.* The considered planted acreage for a farm is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

(i) That could not be planted to the kind of tobacco because of a natural disaster.

(ii) Temporarily transferred from the farm.

(iii) Temporarily released.

(iv) Converted from production of the kind of tobacco in accordance with part 704 of this chapter.

(v) In the eminent domain pool.

(vi) Reduced for violation of the regulations set forth in this part.

Container. A package in which tobacco is marketed, packed, and stored.

Current crop. The crop planted in the current year.

Current year. The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

Damaged tobacco. Any tobacco that has suffered a loss of value due to deterioration resulting from a cause such as rot, separation of leaves from stems, fire, smoke, water, or other conditions that would cause such tobacco to be distinguishably different from that normally marketed in trade channels.

Dealer. A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Effective farm acreage allotment. The effective farm acreage allotment for flue-cured tobacco is the allotment determined under § 723.205 of this part.

Effective farm marketing quota. The effective farm marketing quota is the current year farm marketing quota plus or minus any temporary quota adjustments.

Excess tobacco for a farm. (1) For burley and flue-cured tobacco. The quantity of tobacco marketed above 103 percent of the effective farm marketing quota.

(2) *For kinds of tobacco other than burley or flue-cured.* That quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm times the number of acres harvested in excess of the farm acreage allotment, plus any carryover excess tobacco.

Experimental tobacco. Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

False identification. False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm when, in fact, it was produced on another farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

Family farm corporation. A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (1)(ii)(B) and;

(2) One or more of the individuals specified in paragraph (1) participates in the direct management of the day to day operations of the corporation.

Farm acreage allotment. For flue-cured tobacco, the allotment established in accordance with § 723.205 of this chapter.

Farm marketing quota. (1) *For burley tobacco, old farms*. The pounds determined by multiplying the preliminary farm marketing quota by the national factor and adjusting the result for any permanent quota adjustment.

(2) *For burley tobacco, new farms*. The pounds for the farm determined by the county FSA committee with the approval of the State FSA committee.

(3) *For flue-cured tobacco*. The pounds determined by multiplying the farm acreage allotment by the farm yield.

(4) *For kinds of tobacco other than burley or flue-cured*. The actual production of tobacco on the farm acreage allotment, which shall be the average yield per acre for the entire acreage of tobacco harvested on the farm times the farm acreage allotment.

Farm Service Agency. An agency within the U.S. Department of Agriculture.

Farm yield. The yield determined as provided in § 723.204 of this part.

Floor sweepings. The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

FSA. The Farm Service Agency.

Green weight. The weight of tobacco which is in the form normally marketed by farmers prior to being redried, or processed.

Leaf account tobacco. The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse operator, including floor sweepings purchased from another warehouse operator or dealer, as adjusted by the debits and credits to the buyers correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, and floor sweepings which accumulate on the warehouse floor.

Market. The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. ''Marketing'' and ''marketed'' shall have corresponding meaning to the term ''market.''

Marketing recorder. Any employee of the U.S. Department of Agriculture, or any employee of an Farm Service Agency county (FSA) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketing of tobacco.

Marketing year. (1) For flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year.

(2) For kinds of tobacco other than flue cured. The period beginning October 1 of the current year and ending September 30 of the following year.

New farm. A farm for which an acreage allotment or marketing quota is established for the current year from the national reserve that is set aside for such purpose from the national acreage allotment or marketing quota established for the kind of tobacco.

Nonauction sale. Any marketing of tobacco other than at an auction sale.

Old farm. (1) *For burley tobacco.* A farm which had burley tobacco planted or considered planted in one or more years of the base period.

(2) *For tobacco other than burley.* A farm on which there is tobacco history acreage in one or more years of the base period.

Overmarketings. The pounds by which the pounds marketed exceed the effective farm marketing quota.

Planted or considered planted credit. For burley tobacco, credit that is assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm.

(2) Burley tobacco could not be planted because of a natural disaster.

(3) Quota is:

(i) Leased and transferred from the farm, or

(ii) In the eminent domain pool.

(4) A restrictive lease on federally owned land is in effect prohibiting tobacco production.

(5) Effective quota is zero because of overmarketings or a violation of regulations, or

(6) Acreage is converted from production of burley tobacco in accordance with part 704 of this chapter.

Pound. The amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is normally marketed by a producer, would equal 1 pound standard weight.

Preceding year. The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

Preliminary farm marketing quota. For burley tobacco, the farm marketing quota for the preceding year.

Preliminary farm yield. For flue-cured tobacco, the yield determined for a farm as provided in §723.203 of this part.

Processed, Processing. A method of preparing green weight tobacco for storage in which the tobacco may be redried, stemmed, tipped or threshed and the resulting product packed in a container.

Production record. A record prepared by a processor to account for the processing of tobacco.

Quota adjustments. For burley tobacco:

(1) *Temporary.* Adjustments for:

(i) Effective undermarketings,

(ii) Overmarketings from any prior year,

(iii) Reapportioned quota from quota released from farms in the eminent domain pool,

(iv) Quota transferred by lease or by owner,

(v) Pounds in violation of the regulations for a prior year, and

(vi) Pounds reduced from the burley tobacco quota during the current year in accordance with part 704 of this chapter.

(2) *Permanent.* Adjustments for:

(i) Old farm adjustment from reserve,

(ii) Pounds of quota transferred to the farm from the eminent domain pool,

(iii) Pounds of quota transferred to or from the farm by sale,

(iv) Pounds of quota transferred to the farm from the forfeiture pool, or

(v) Pounds of forfeited quota.

Resale. The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

Sale. The first marketing of tobacco on which the gross amount of the sale price therefore has been or could be readily determined.

Sale date. The date on which the gross amount of the sale price of tobacco is determined.

Sale day. The period at the end of which the warehouse operator bills to buyers the tobacco purchased by them during such period.

Scrap tobacco. The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

Shared in the risk of production. For burley or flue-cured tobacco, involvement in the production of the respective kind of tobacco by a person who:

(1) Invests in the production of a crop of the respective kind of tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

(2) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(3) Waits until such crop of tobacco is marketed to receive any return on the investment; and

(4) Maintains records, for a period of 3 years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of this definition have been met.

Strip, scrap, stem. Types of products resulting from processing of tobacco.

Suspended sale. Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

Tillable cropland. With respect to flue-cured tobacco only, cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county FSA committee determines can be planted to crops without unusual preparation or cultivation.

Tobacco. Kinds of tobacco that are subject to marketing quotas as follows: Burley tobacco, (type 31); Flue-cured tobacco, (types 11, 12, 13, and 14); Fire-cured tobacco (types 21, 22, and 23); Dark air-cured tobacco (types 35 and 36); Virginia sun-cured tobacco (type 37); Cigar filler (type 46); and Cigar-filler and binder tobacco (types 42, 43, 44, 54, and 55) as classified by the Agricultural Marketing Service at part 30 of this title.

Tobacco available for marketing. All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

Tobacco in the form not normally marketed by producers. Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, stemmed, tipped, threshed or otherwise processed.

Tobacco pickings. The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality shall be considered to be tobacco in the form not normally marketed by producers.

Trucker. A person who trucks, or who otherwise hauls tobacco for a producer, or for any other person.

Undermarketings. For burley or flue-cured tobacco, the actual undermarketings are the pounds by which the effective farm marketing quota is more than the pounds of the respective kind of tobacco marketed, and the effective undermarketings are the smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds of quota temporarily transferred to the farm for the previous year. However, with respect to the 1989 crop, actual undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds of tobacco marketed and number of pounds for which a disaster payment was made on the 1989 crop of tobacco under part 1477 of this title.

Warehouse operator. A person who engages in the business of conducting a sale of tobacco at public auction.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991; 57 FR 43581, Sept. 21, 1992; 63 FR 11582, Mar. 10, 1998]

EDITORIAL NOTE: At 65 FR 7953, § 723.104(h) was amended by removing the definition of *Tillable cropland.* However, there is no paragraph (h) in § 723.104.

§ 723.105 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All rounding herein shall be in accordance with the provisions of part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of acres.

(c) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the ''percent excess,'' shall be determined in tenths of a percent.

(d) *Converted rate of penalty.* For tobacco other than burley or flue-cured, the amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the ''converted rate of penalty,'' shall be determined in tenths of a cent.

(e) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.

(f) *Yields and quotas.* Yields and quotas shall be determined in whole pounds.

§ 723.106 Location of farm for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in part 718 of this chapter.

§§ 723.107–723.110 [Reserved]

§ 723.111 Flue-cured (types 11–14) tobacco.

(a) The 1993-crop national marketing quota is 891.8 million pounds.
(b) The 1994-crop national marketing quota is 802.6 million pounds.
(c) The 1995-crop national marketing quota is 934.6 million pounds.
(d) The 1996-crop national marketing quota is 873.6 million pounds.
(e) The 1997-crop national marketing quota is 973.8 million pounds.
(f) The 1998-crop national marketing quota is 807.6 million pounds.
(g) The 1999-crop national marketing quota is 666.2 million pounds.

[58 FR 11962, Mar. 2, 1993, as amended at 59 FR 6866, Feb. 14, 1994; 60 FR 22460, May 8, 1995; 61 FR 37673, July 19, 1996; 62 FR 24800, May 7, 1997; 63 FR 55938, Oct. 20, 1998; 64 FR 66718, Nov. 30, 1999]

§ 723.112 Burley (type 31) tobacco.

(a) The 1993-crop national marketing quota is 603.0 million pounds.
(b) The 1994-crop national marketing quota is 542.7 million pounds.
(c) The 1995-crop national marketing quota is 549.0 million pounds.
(d) The 1996-crop national marketing quota is 633.8 million pounds.
(e) The 1997-crop national marketing quota is 704.5 million pounds.
(f) The 1998-crop national marketing quota is 637.8 million pounds.
(g) [Reserved]
(h) The 2000-crop national marketing quota is 247.4 million pounds.

[58 FR 36859, July 9, 1993, as amended at 59 FR 22725, May 3, 1994; 60 FR 27868, May 26, 1995; 61 FR 50425, Sept. 26, 1996; 62 FR 30230, June 3, 1997; 63 FR 55940, Oct. 20, 1998; 65 78407, Dec. 15, 2000]

§ 723.113 Fire-cured (type 21) tobacco.

(a) The 1993-crop national marketing quota is 1.975 million pounds.
(b) The 1994-crop national marketing quota is 2.15 million pounds.
(c) The 1995-crop national marketing quota is 1.95 million pounds.
(d) The 1996-crop national marketing quota is 1.97 million pounds.
(e) The 1997-crop national marketing quota is 2.395 million pounds.
(f) The 1998-crop national marketing quota is 2.725 million pounds.
(g) The 1999-crop national marketing quota is 2.6 million pounds.
(h) The 2000-crop national marketing quota is 2.138 million pounds.

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 723.114 Fire-cured (types 22–23) tobacco.

(a) The 1993-crop national marketing quota is 38.2 million pounds.
(b) The 1994-crop national marketing quota is 40.4 million pounds.
(c) The 1995-crop national marketing quota is 39.8 million pounds.
(d) The 1996-crop national marketing quota is 40.6 million pounds.
(e) The 1997-crop national marketing quota is 43.4 million pounds.
(f) The 1998-crop national marketing quota is 44.6 million pounds.
(g) The 1999-crop national marketing quota is 41.4 million pounds.
(h) The 2000-crop national marketing quota is 42.9 million pounds.

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 723.115 Dark air-cured (types 35–36) tobacco.

(a) The 1993-crop national marketing quota is 11.16 million pounds.
(b) The 1994-crop national marketing quota is 10.6 million pounds.
(c) The 1995-crop national marketing quota is 9.6 million pounds.
(d) The 1996-crop national marketing quota is 9.2 million pounds.
(e) The 1997-crop national marketing quota is 9.88 million pounds.
(f) The 1998-crop national marketing quota is 11.15 million pounds.

(g) The 1999-crop national marketing quota is 12.8 million pounds.

(h) The 2000-crop national marketing quota is 12.75 million pounds.

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 723.116 Sun-cured (type 37) tobacco.

(a) The 1993-crop national marketing factor is 128,000 pounds.

(b) The 1994-crop national marketing quota is 131,000 pounds.

(c) The 1995-crop national marketing quota is 130,000 pounds.

(d) The 1996-crop national marketing quota is 148,000 pounds.

(e) The 1997-crop national marketing quota is 156,400 pounds.

(f) The 1998-crop national marketing quota is 163,000 pounds.

(g) The 1999-crop national marketing quota is 171,000 pounds.

(h) The 2000-crop national marketing quota is 171,000 pounds.

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

(a) The 1993-crop national marketing quota is 14 million pounds.

(b) The 1994-crop national marketing quota is 9.3 million pounds.

(c) The 1995-crop national marketing quota is 9.0 million pounds.

(d) The 1996-crop national marketing quota is 8.9 million pounds.

(e) The 1997-crop national marketing quota is 8.4 million pounds.

(f) The 1998-crop national marketing quota is 6.63 million pounds.

(g) The 1999-crop national marketing quota is 4.5 million pounds.

(h) The 2000-crop national marketing quota is 3.64 million pounds.

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 723.118 Cigar-filler (type 46) tobacco.

(a) The 1993-crop national marketing quota is zero pounds.

(b) The 1994-crop national marketing quota is zero pounds.

(c) The 1995-crop national marketing quota is 0.0 million pounds.

(d) There shall be no national or individual marketing quotas for the 1996 and subsequent marketing years for this type (46).

[58 FR 36857, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996]

§§ 723.119–723.121 [Reserved]

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas.

(a) *Flue-cured tobacco.* A preliminary farm acreage allotment shall be determined for the current year for each farm which has flue-cured tobacco history acreage for the base period. The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

(b) *Burley tobacco.* The preceding year's farm marketing quota shall be the current year's preliminary farm marketing quota for each old farm except that the preliminary farm marketing quota shall be zero if:

(1) The farm or all of cropland has gone out of agricultural production and eminent domain procedure of part 718 of this chapter does not apply.

(2) Quota that was pooled under the provisions of part 718 of this chapter has been canceled.

(3) A new farm quota that was established in a prior year is canceled.

(4) There was no acreage of burley tobacco planted or considered planted for any year of the base period.

(5) All the cropland on the farm has been determined by the county FSA committee to be no longer suitable for the production of a crop and provisions of part 704 of this chapter do not apply.

(6) Beginning with the 1994 crop year there was no acreage of burley tobacco planted or considered planted in 2 out of the 3 immediate preceding years.

(c) *Kinds of tobacco other than flue-cured and burley.* A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as established under paragraph § 723.218 of this part in the base period. If the history acreage for the previous year is the same as the basic allotment, the preliminary allotment shall be the same as the previous year's basic allotment. Otherwise, the preliminary allotment shall be the simple average of the sum of the basic allotment and history acreage for the preceding year.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991]

§ 723.202 Determining farm acreage allotment, except for flue-cured tobacco.

With respect to each kind of tobacco, the preliminary allotments determined for all old farms shall be adjusted uniformly so that the total of such allotments for old farms plus the reserve acreage available for establishing new farm allotments, adjusting inequities in acreage allotments for old farms, and for correcting errors in old farm allotments shall not exceed the national acreage allotment established for such kind of tobacco.

§ 723.203 Determination of flue-cured tobacco preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for a flue-cured tobacco old farm for the current year shall be determined as follows:

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

(2) *Farm not having preliminary farm acreage allotment.* The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor.

(b) *New Farms.* The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 723.204 of this part for such farm by the national yield factor applicable for the year in which the new farm allotment was established.

§ 723.204 Determination of farm yields and normal yields.

(a) *Flue-cured tobacco.* The farm yield for an old farm shall be determined by multiplying the preliminary farm yield, if the farm has such a yield, by the national yield factor for the current year. The farm yield for new farms and old farms that do not have a preliminary yield shall be that yield, which the county FSA committee determines for the farm taking into consideration:

(1) The soil and other physical factors affecting the production of tobacco on the farm, and

(2) The farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

(b) *Burley tobacco.* The farm yield for a farm on which a farm yield has been established shall be the same in the current year as the farm yield previously established for the farm. For any farm not having a previously established yield, the county FSA committee shall establish a yield based on similar farms having a farm yield; however, such yield shall not exceed 3500 pounds.

(c) *All kinds of tobacco except burley and flue-cured.* The normal yield for a farm shall be that yield which the county FSA committee determines is normal for the farm taking into consideration the yields obtained on the farm during any of the years of the base period for which data are available, the soil and other physical factors affecting the production of tobacco on the farm, and the yields obtained on other farms in the locality which are similar with respect to such factors. The normal yield first determined for a farm for any year in accordance with the foregoing provision shall serve as the normal yield for the farm for all purposes in connection with the tobacco marketing program for the year for which such normal yield is determined.

§ 723.205 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the national acreage factor as determined by the Secretary for the current year by the preliminary farm acreage allotment for the current year and adjusting the result by:

(1) *Upward adjustment.* Adding the:

(i) Acreage approved in accordance with the provisions of § 723.210 of this part in order to adjust for an inequity or to correct an error;

(ii) Acreage determined by dividing the pounds of quota which are purchased in the current year by the farm yield; and

(iii) Acreage determined by dividing the pounds of forfeited quota which are approved for adjustment from the forfeiture pool by the farm yield.

(2) *Downward Adjustment.* Subtracting the:

(i) Acreage determined by dividing the pounds of quota sold in the current year by the farm yield; and

(ii) Acreage of forfeited allotment.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by dividing by the effective farm marketing quota by the farm yield.

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Burley tobacco.* The burley farm marketing quota shall be determined by multiplying the national factor as determined by the Secretary for the current year by the preliminary farm marketing quota for the current year and adjusting the result for permanent quota adjustments.

(b) *Flue-cured tobacco.* The flue-cured farm marketing quota shall be determined by multiplying the farm acreage allotment by the farm yield.

(c) *Burley or flue-cured tobacco.* The effective farm marketing quota shall be the farm marketing quota adjusted by:

(1) *Upward adjustments.* Adding the:

(i) Effective under marketings from the preceding marketing year, but effective for the 2002 and subsequent marketing years, the aggregate amount for all farms of under marketings of burley tobacco for all farms that can be carried over shall be limited to 10 percent of the national basic quota of the preceding year. If needed, factoring will be undertaken to insure that the limit of the preceding sentence is not exceeded.

(ii) The pounds of quota which are temporarily transferred to the farm in the current year.

(2) *Downward adjustments.* Subtracting the pounds of quota that are:

(i) Overmarketed from the preceding marketing year,

(ii) Overmarketed from any year before the preceding year but have not been subtracted when determining the effective farm marketing quota in a prior year.

(iii) Temporarily transferred from the farm in the current year.

(iv) Reduced in the current year as a result of a violation in a prior year as provided for in § 723.408 of this part.

(v) [Reserved]

(vi) Determined, for flue-cured tobacco only, by multiplying the farm yield by the acres reduced from the flue-cured tobacco acreage allotment during the current year in accordance with part 704 of this chapter.

(vii) For burley tobacco only, designated for reduction under a Conservation Reserve Program contract in accordance with part 704 of this chapter.

[55 FR 39914, Oct. 1, 1990, as amended at 66 FR 53509, Oct. 23, 2001; 66 FR 59675, Nov. 30, 2001]

§ 723.207 Determination of acreage allotments or burley marketing quotas for new farms.

(a)(1) *All kinds of tobacco.* The acreage allotment or burley marketing quota established in any crop year for all new farms shall not exceed the national acreage or poundage, as applicable, reserved for new farms for the respective kind of tobacco. The acreage allotment or burley marketing quota for a new farm shall be that acreage or burley marketing quota which the county FSA committee, with the approval of the State FSA committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the

land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Such acreage allotments or burley marketing quota shall not exceed 50 percent (75 percent for Cigar-filler and Binder tobacco) of the average of the applicable acreage allotments or burley marketing quotas established for at least two but not more than five old farms which are similar with respect to land, labor; and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco; and with respect to flue-cured tobacco acreage allotments, shall not exceed one acre.

(2) *Kinds of tobacco, except burley and flue-cured.* If the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under part 718 of this chapter for the farm.

(b)(1) *Written application.* The farm operator must file an application for a new farm acreage allotment or marketing quota at the office of the county FSA committee where the farm is administratively located on or before February 15 of the year for which the new farm acreage allotment or marketing quota is requested.

(2) *Operator requirements.* The operator requesting a new farm acreage allotment or marketing quota must be the sole owner of the farm, except for Cigar-filler and Binder tobacco, the operator need not own the farm. The farm operator shall not own or have an ownership interest in or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4)(i) *Income from farming.* The operator must expect to obtain during the current year more than 50 percent of the producer's income from the production of agricultural commodities or products. The following shall be considered in computing the operator's income:

(A) *Farm income.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment or quota shall not be included.

(B) *Non-farm income.* Non-farming income shall include but not limited to salaries, commissions, pensions, social security payments, and unemployment compensation.

(C) *Spousal income.* The spouse's farm and non-farm income shall be included in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of their current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provisions for low-income farmers.* The county FSA committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and non-farm sources is so low that it will not provide a reasonable standard of living for the operator and the operator's family, and a State FSA committee representative approves such action. In making their determination, the county FSA committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents,

and other factors affecting the individual's ability to provide a reasonable standard of living.

(5) *Experience.* The operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the year for which the new farm allotment is requested. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application. However, for Cigar-filler and binder tobacco only, the operator must have experience in any prior year in the production of tobacco as a farm owner, farm operator, sharecropper, tenant, warehouse operator, or laborer on a farm which produced Cigar-filler and binder tobacco.

(6) *Operator has not sold or forfeited allotment.* For flue-cured tobacco only, during the current or the 4 preceding years, the operator must not have sold or forfeited any flue-cured tobacco allotment from any farm.

(c) *Eligibility requirements for the farm.* A new farm acreage allotment or marketing quota may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment, an allotment or quota for any kind of tobacco.

(2) *Availability of land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to part 718 of this chapter, which is subsequently returned to agricultural production shall not be eligible for a new farm allotment or marketing quota for a period of 5 years from the date the former owner was displaced.

(4) *Farm includes land previously having a tobacco acreage allotment.* A farm which includes land which has no tobacco allotment because the owner did not designate an allotment for such land when the parent farm was reconstituted pursuant to part 718 of this chapter shall not be eligible for a new farm acreage allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(5) *Entire quota sold.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the 4 preceding years, the farm was constituted as any part of a farm for which an acreage allotment or marketing quota had been established and for which the current or a former owner sold or permanently transferred all of the tobacco acreage allotment or marketing quota.

(d) *False information.* Any new farm acreage allotment or marketing quota which was determined by the county FSA committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant, shall be canceled by the county FSA committee as of the date the allotment or quota was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment or quota shall be canceled effective for the current crop year.

(e) *Failure to plant.* A new farm acreage allotment or marketing quota shall be reduced to zero if no tobacco is planted on the farm the first year.

§ 723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.

(a) *Flue-cured tobacco.* The farm acreage allotment for the divided farm shall be divided pursuant to the provisions of part 718 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in part 718 of this chapter.

(b) *Burley tobacco.* (1) *Division of farm marketing quota.* The farm marketing quota for the divided farm shall be divided according to part 718 of this

chapter. Other basic data shall be apportioned among the resulting farms in the same proportion as the farm marketing quota.

(2) *Divided burley tobacco farms with less than 1,000 pounds of quota.* If a farm is divided through reconstitution and the burley tobacco poundage quota which transfers with the resulting farms receive less than 1,000 pounds of quota, the owners of such farms shall take action by July 1 of the current crop year to increase the quota to a minimum of 1,000 pounds or the quota shall be reduced to zero. The quota on the divided farms may be increased by:

(i) Combining the farm having less than 1,000 pounds with other land owned by the same person so that the combined farm has a minimum of 1,000 pounds of farm marketing quota, or

(ii) Purchasing a sufficient amount of quota so that the farm has at least 1,000 pounds of quota.

(3) *Sale of Quota.* If the owners of the divided farms fail to increase the quota on such farms to a minimum of 1,000 pounds as provided in paragraph (b)(2), the owner must sell the quota by July 1 of the current crop year.

(4) *Effective Quota.* For the current crop year, the effective farm marketing quota on the divided farms shall be considered to be zero for leasing and planting purposes until the farm complies with the 1,000 pound minimum quota.

(5) *Reduction of Quota.* The county FSA committee shall reduce the quota to zero on the divided farms if the owners of such farms fail to take action as provided in paragraph (b)(2) and (3) of this section.

(6) *Farm Exemptions.* Farms exempt from the 1,000 pound minimum quota limitation are farm divisions:

(i) among immediate family members,

(ii) through probate or,

(iii) when no sale or change in ownership of land occurs or,

(iv) when the buyer and purchaser can furnish proof acceptable to the county FSA committee, in accordance with guidelines provided by the Deputy Administrator, that the transaction was finalized prior to November 15, 1990.

(v) when the individual tract or farm with less than 1,000 pounds of quota could be combined with another tract or farm with sufficient quota to reach 1,000 pounds but for the existence of a production flexibility contract on one of the farms.

(c) *Burley and flue-cured tobacco.* (1) *Tract yield.* The tract yield for the tracts divided from a parent farm shall be the same as the tract yield established for the tracts before the division of the parent farm. If a tract is divided, the tract yields for the resulting tracts shall be the same as the tract yield established for the tract before it was divided.

(2) *Single tract farm.* If a tract that is divided from a parent farm becomes a single tract farm, the tract yield shall become the preliminary farm yield and the farm yield for the farm shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

(3) *Carryover tobacco.* Where carryover tobacco produced on a parent farm is marketed after the effective date of a reconstitution, such marketings shall be charged to the divided tracts in the same ratio as the marketing quotas are established for the divided tracts or as the county FSA committee determines that:

(i) The proceeds from such marketings are received by the owner or operator of one or more of the divided tracts, or

(ii) The owners of the divided tracts agree.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991; 62 FR 15600, Apr. 2, 1997]

§ 723.209 Determination of acreage allotments, marketing quotas, yields for combined farms; and special tobacco combinations.

(a) *Burley tobacco.* The farm yield for a combined burley farm shall be the weighted average of the tract yields for the tracts being combined. The weighted average shall be the summation of the extensions of each respective tract's contribution percentage times the tract's yield.

(b) *Flue-cured tobacco.* Flue-cured farm acreage allotments, history acreages, and other basic data for combined farms shall be computed for the base

period in accordance with part 718 of this chapter, except that the preliminary farm yield for a combined farm shall be the weighted average of the tract yields for the tracts that comprise the combination. The weighted average shall be the summation of the extensions of each respective tract's contribution percentage times the tract's yield. The farm yield for the combined farm shall be determined by multiplying the preliminary farm yield for the combined farm by the national yield factor for the current year.

(c) *Special tobacco combinations.* Notwithstanding other provision of this title, the Deputy Administrator may, upon proper application and to the extent deemed consistent with other obligations, permit farms, with respect to tobacco allotments and tobacco quotas, to be considered combined for purposes of this part and part 1464 of this title only without being combined for other purposes. This allowance shall apply for tobacco of all kinds and types and with respect to all farms even if one or more of the farms to be combined is the subject of a production flexibility contract (PFC) executed in connection with the program operated under the provisions of 7 CFR part 1412. Such special, limited combinations must otherwise meet the requirements of 7 CFR part 718 for combinations, except the signature (consent) requirements of § 718.201(a)(2) of that part. The Deputy Administrator may set such consent requirements for special farm combinations under this section as the Deputy Administrator believes necessary or appropriate. Further, in any case in which one of the farms is a PFC farm, none of the land on any PFC farm that would have been used for the production of tobacco can be used for the production of a ''PFC commodity'' as defined in this section. Such permission shall be conditioned upon the agreement of all interested parties that land on the PFC allotment or quota farm that would have been used for the production of tobacco shall not be used for the production of any PFC commodity. In the event that such production nonetheless occurs, the special tobacco combination may be made void, retroactive to the date of original approval. Such curative action will likely result in a finding of excess tobacco plantings and sanctions and remedies, which would likely include liability for penalties and other sanctions for excess marketings of tobacco. The Deputy Administrator may set such other conditions on the combinations as needed or deemed appropriate to serve the goals of the tobacco program and the goals of the PFC. The term *PFC commodity* for purposes of this section means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

[55 FR 39914, Oct. 1, 1990, as amended at 62 FR 15600, Apr. 2, 1997; 63 FR 9128, Feb. 24, 1998; 63 FR 26714, May 14, 1998]

§ 723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.

(a)(1) *General.* The allotment or quota for a farm under a long-term land use program agreement shall be given the same consideration under this section as the allotment or quota for any other old farm. Notwithstanding the limitations contained in any other section of this part, the farm acreage allotment or marketing quota for each kind of tobacco established for an old farm may be increased to correct an error or adjust an inequity if the county FSA committee determines, with the approval of a representative of the State FSA committee, that the increase is necessary to establish an allotment or quota for such farm which is fair and equitable in relation to the allotment or quota for other old farms in the county in which the farm is located. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(2) *Burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm marketing quotas in each State to the national total of preliminary farm marketing quotas.

(3) *All kinds of tobacco except burley tobacco.* The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total preliminary farm acreage allotments in each State to the national total of preliminary farm acreage allotments.

(b) *Basis for adjustment.* Increases to adjust inequities in acreage allotments or marketing quotas shall be made on the basis of the past farm acreage, yields, and farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under part 718 of this chapter; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. The total of all adjustments in old farm allotments or quotas under this paragraph shall not exceed the pounds apportioned to the county for such purpose.

(c)(1) *Burley tobacco.* Adjustments in a farm marketing quota under this paragraph shall become a part of the farm marketing quota.

(2) *Flue-cured tobacco.* Acreage apportioned to a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such a farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

(3) *All other kinds of tobacco.* For all other kinds of tobacco, acreage approved for a farm under this section becomes a part of the farm acreage allotment.

(d) *Making certain adjustments on a common ownership unit basis.* Notwithstanding other provisions of this section, inequity adjustments may be allotted by common ownership unit rather than by farm when it is determined by the county FSA committee that the making of the allocation on that basis provides greater equity.

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

§ 723.211 Allotments, quotas, and yields for farms acquired under right of eminent domain.

(a) *Determination of acreage allotments and marketing quotas.* The determination of farm acreage allotments and marketing quotas for farms acquired by an agency having the right of eminent domain, the transfer of such allotments or quotas to a pool, and reallocation from the pool shall be administered as provided in part 718 of this chapter. Where all or a part of an allotment or quota is pooled, all or a proportionate part of the farm acreage allotment or marketing quota shall be pooled.

(b) *Closing dates.* The State FSA committee shall establish, in accordance with instructions issued by the Deputy Administrator, a final date for:

(1) *Release.* Releasing pooled farm acreage allotment or farm marketing quota to the county FSA committee for reapportionment to other farms in the county having allotments or quotas for the same kinds of tobacco.

(2) *Request for reapportionment.* Filing a request to receive reapportioned acreage or quota from the county FSA committee for the current year.

(c) *Displaced owner release.* The displaced owner of a farm may, not later than the final release date established by the State FSA committee for the current year, release in writing to the county FSA committee for the current year, all or any part of the acreage allotment or burley tobacco marketing quota for the farm in a pool under part 718 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments or marketing quotas for the same kind of tobacco.

(d) *Reapportionment.* The county FSA committee may reapportion, not later than 30 days after the final date established by the State FSA committee for requesting reapportioned acreage or marketing quota for the current year, the released acreage or quota or any part thereof to other farms in the county on the basis of the past farm acreage or marketings and the past farm acreage allotments or quotas for the same kind of tobacco; land, labor, and equipment available for the production of such kind of tobacco; crop rotation practices; and soil and other physical factors affecting the production of such kind of tobacco.

(e) *Effect of reapportionment.* For purposes of establishing future farm allotments or quotas, any reapportioned allotment or quota shall not be considered as planted on the farm to which the allotment or quota was reapportioned.

(f) *Burley or flue-cured tobacco provisions.* For burley or flue-cured tobacco:

(1) *Farm yield.* The farm yield for a farm to which a pooled marketing quota is transferred shall be determined in accordance with instructions issued by the Deputy Administrator.

(2) *Undermarketings or overmarketings.* The undermarketings of a farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and the overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(3) *Undermarketings while in eminent domain pool.* The pooled quota is considered planted while in the pool. Therefore, for the purpose of determining undermarketings during the time the quota is pooled, the effective quota is considered to be zero.

§ 723.212 Time for making reduction of farm marketing quotas or acreage allotments for violation of the marketing quota or acreage allotment regulations for a prior marketing year.

Any reduction made in a farm acreage allotment or farm marketing quota for the current year for any of the reasons provided for in § 723.408 of this part, shall be made no later than April 1 of the current year in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; or May 1 in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made in the farm acreage allotment or farm marketing quota next established for the farm, but no later than by corresponding dates in a later year. No reduction shall be made in the farm acreage allotment or farm marketing quota for any farm for a violation if the farm acreage allotment or marketing quota for such farm for any prior year was reduced because of the same violation.

§ 723.213 Approval of acreage allotments and marketing quotas and notices to farm operators.

(a) *Review by State FSA committee.* All farm yields, acreage allotments, and marketing quotas shall be determined by the county FSA committee of the county in which the farm is located and shall be reviewed by a representative of the State FSA committee.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment or farm marketing quota shall be mailed to the operator of each farm shown by the records of the county FSA committee to be entitled to an allotment or quota. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment or quota is established. Insofar as practicable, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota or acreage allotment referendum. A copy of such notice containing the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county FSA office and shall thereafter be kept available for public inspection in the office of the county FSA committee. A copy of the notice of acreage allotment or marketing quota certified as true and correct shall be furnished to any person interested in the farm for which the allotment or quota is established.

(c) *Marketing quota erroneous notice.* (1) If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment or marketing quota larger than the correct effective farm acreage allotment or marketing quota, the acreage allotment or marketing quota shown on the erroneous notice shall be deemed to be the tobacco acreage allotment or marketing quota for the farm for the current year only, if the county FSA committee determines (with the approval of the State Executive Director) that the:

(i) Error was not so gross as to place the operator on notice thereof, and

(ii) Operator, relying upon such notice and acting in good faith, materially changes the operator's position with respect to the production of the crop.

(2) Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota.

(3) For purposes of determining history acreage the correct acreage allotment shall be used, in determining whether or not 75 percent of the allotment has been planted.

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

§ 723.214 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for the producer's farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county FSA office to have such allotment and marketing quota reviewed by a review committee in accordance with part 711 of this chapter.

§ 723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State FSA committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment or marketing quota for any farm in the county. The county FSA committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage with the farm acreage allotment or marketing quota for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county FSA committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county FSA committee for the nearby county shall be consulted before action is taken by the county FSA committee receiving the application.

(c)(1) *Amount of burley tobacco transfer.* The burley quota to be transferred shall not exceed the smaller of:

(i) The effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or

(ii) The quota requested to be transferred.

(2) *Amount of transfer for other than burley tobacco.* The allotment to be transferred shall not exceed the smaller of:

(i) The farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or

(ii) The allotment requested to be transferred.

(d) *County FSA committee approval.* The county FSA committee shall approve the transfer if it finds that:

(1) All or part of the farm acreage allotment or marketing quota for the transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county FSA committee, or the Deputy Administrator may cancel such transfer. Action by the county FSA committee to cancel a transfer shall be subject to the approval of the State FSA committee or its representative.

(f) *Acreage history credits.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments or quotas to have been planted to tobacco on the farm from which such allotment or quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county FSA committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county FSA committee may

accept applications filed after the closing date upon a determination by the county FSA committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State FSA committee approves such determination.

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

(a) *General.* The allotment or quota established for a farm may be transferred to another farm to the extent provided for in this section. For transfers by sale, common ownership units on a farm may be considered to be separate farms. Transfers are not permitted for cigar binder (types 54 and 55) tobacco allotments.

(1) *Types of transfers.* With respect to:

(i) Cigar-filler (type 46) and cigar-filler (types 42, 43, and 44), tobacco transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(A) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease

(B) Owner, or

(C) Sale.

(iv) Fire-cured, dark air-cured, and Virginia sun-cured tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale.

(2) *Transfer agreement.* In order to transfer a marketing quota or allotment between two eligible farms, including a marketing quota or allotment that is pooled in accordance with part 718 of this chapter, the transfer must be recorded on Form FSA–375 and:

(i) *Where to file.* Filed in the county FSA office which serves the county in which the transferring farm is located for administrative purposes.

(ii) *Signature-burley tobacco.* Signed by, for burley tobacco only:

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

(B) *Sales.* The owner of the selling farm and an active burley tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which the quota will be assigned, the owner or operator of the farm must give written consent for the quota to be assigned to the farm.

(C) *Owner transfers.* The owner of the transferring farm, who also must be the owner or operator of the receiving farm.

(iii) *Signature-flue-cured tobacco.* Signed by, for flue-cured tobacco only:

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

(B) *Sales.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which allotment and quota will be assigned, the owner or operator of the farm must be given written consent for the allotment and quota to be assigned to the farm.

(iv) *Signatures—except burley and flue-cured tobacco.* Signed by, for all kinds of tobacco other than burley and flue-cured tobacco, the owner and operator of the transferring farm and the owner or operator of the receiving farm.

(v) *Witness.* Each person whose signature is required by paragraphs (a)(2)(ii), (iii), or (iv) of this section must sign Form FSA–375 in the presence of a State or county FSA committee member or employee who shall sign Form FSA–375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be witnessed in the county FSA office where

the farm is administratively located, they may be witnessed in any State or county FSA office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county FSA office mails Form FSA–375 for the required signatures;

(b) *Effective date.* In order for the transfer to be effective for the current year, the Form FSA–375 shall be filed:

(1) *When to file—burley tobacco.* For burley tobacco:

(i) On or before July 1 of the current year, except as provided in paragraph (b)(1)(ii) of this section. An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county FSA committee, with the concurrence of the State FSA committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) After July 1 of the current crop year and before February 16 of the following calendar year when the transfer is by lease and the transferring farm has suffered a loss of production of burley tobacco due to hail, drought, excessive rain, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(2) *When to file—flue-cured tobacco.* For flue-cured tobacco:

(i) On or before June 15 if the transfer is by sale.

(ii) After June 30 and on or before November 15 for a transfer by lease when the transferring farm has suffered a loss of production of flue-cured tobacco due to drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(3) *When to file—except burley and flue-cured tobacco.* For all other kinds of tobacco, by the date established by the State FSA committee, except that a lease shall be effective if the county FSA committee, with the approval of a State FSA committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond the control of the producer.

(c) *Approval or disapproval.* A transfer agreement shall not be approved before the period for filing an application for review of the initial notice of allotment or quota has expired. The county FSA committee or its designee shall approve each transfer agreement that meets the eligibility requirements of this section. The county FSA committee shall disapprove any transfer agreement that does not meet the eligibility requirement of this section. Any approval or disapproval of a transfer agreement shall to the extent possible be made within 30 days after the transfer agreement is filed with the county FSA committee unless additional time is required as the result of conditions beyond the control of the county FSA committee. However;

(1) *Burley tobacco.* If an agreement is filed after July 1 which provides for the sale of quota, a transfer agreement shall not be approved until the next year's quota is computed for the selling farm. In addition, if marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Flue-cured tobacco.* If an agreement is filed after June 15 which provides for the sale of an allotment and quota, a transfer agreement shall not be approved until next year's allotment and quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(d) *Time of determination.* An approved transfer agreement shall become effective for the then current crop year, except that if an agreement that is filed after June 15 for the sale of flue-cured tobacco quota or after July 1 for the

sale of burley tobacco quota, such approved agreement shall become effective for the next crop year.

(e) *Burley tobacco*. For burley tobacco only:

(1) *Basis for transfer by sale*. If the transfer of a quota is by sale, the transfer shall be based on part or all of the farm poundage quota.

(2) *Basis for transfer by lease or owner*. If the transfer of a quota is by lease or by the owner, transfer shall be based on a part of or all of the effective farm poundage quota.

(3) *Accumulation of quota*. A transfer by lease or by owner shall not be approved if the county FSA committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately transferring to and from the farm for 2 or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(4) *Subleasing*. In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county FSA committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period. However, a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(5) *Transferring farm restrictions*. An agreement to transfer quota from a farm by lease or by the owner shall not be approved:

(i) *Limitation*. If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect changes in national quota factors which have occurred since each respective purchase and/or reallocation of quota. However, this provision shall not be applicable to transfer agreements that are filed after July 1.

(ii) *New farm*. If the farm is a new farm.

(iii) *Reduction pending*. If consideration of a marketing quota violation is pending which may result in a quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a 1-year transfer will be approved if otherwise eligible.

(iv) *Filed on or before July 1*. Unless the receiving farm is administratively located in the same county as the transferring farm. However, burley tobacco producers in the States of Tennessee, Ohio and Indiana shall, irrespective of the preceding sentence, be permitted to lease and transfer burley tobacco quota from one farm in a State to any other farm in the State if other conditions for the transfer are met.

(v) *Filed after July 1*. If the transfer agreement is filed after July 1, unless the county FSA committee in the county in which the farm is located for administrative purposes determines that the:

(A) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, drought, excessive rain, tornado, or other natural disaster.

(B) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota.

(C) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(D) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(E) Receiving farm is administratively located in the same State as the transferring farm.

(vi) *Consent of lien holder*. For a multiple year transfer, if the farm is subject to lien, unless the lien holder agrees in writing to the transfer; and

(vii) *Claim for marketing quota penalty*. If a claim has been filed against the

lessor for a tobacco marketing quota penalty and the claim remains unpaid; However, this provision shall not apply if the claim is paid or the entire proceeds of the lease of the quota are applied against the claim and the county FSA committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such quota is expected to become final before July 1.

(ix) *Divided farms with less than 1,000 pounds of quota.* If the farm has been divided by reconstitution and the divided farm has a farm marketing quota of less than 1,000 pounds subject to being reduced to zero pursuant to section 723.208(b).

(6) *Receiving farm restrictions.* An agreement to transfer quota to a farm by lease or by owner shall not be approved:

(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the same county as the transferring farm and the provisions of paragraph (e)(5)(iv) of this section are not applicable.

(B) If the pounds of quota being transferred to the farm exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the:

(A) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year. However, the total quantity of tobacco that can be leased or transferred to a farm during a crop year may not exceed that quantity which equals 15 percent of the effective quota on the farm prior to any leases or transfers filed after July 1 of the crop year.

(C) Transferring farm is administratively located in the same State as the receiving farm.

(7) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota was bought and/or reallocated from quota previously forfeited as provided in § 723.219(i)(1), and the purchase and/or reallocation became effective within the current or any of the three preceding years; if the purchased and/or reallocated quota was obtained from quota purchased and/or reallocated as provided in paragraph (b) of this section within the four preceding years. However, this provision shall not be applicable if:

(A) The quota was purchased and/or reallocated to the farm during four preceding years; and

(B) The county FSA committee, with the concurrence of a representative of the State FSA committee, determines that the failure to permit the sale of quota, to the extent otherwise permitted by this section, would cause an undue hardship on the seller and the:

(1) Sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(2) Owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(3) Owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(4) Owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or sharecropper and a replacement cannot be obtained.

(ii) *Location of farms.* Unless both the selling farm and the buying farm are administratively located in the same county.

(iii) *Pounds for sale.* The pounds transferred by sale shall be based on part of all of the farm poundage quota.

(iv) *Reduction pending.* If consideration of an indicated marketing quota violation is pending which may result in quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a transfer will be approved if otherwise eligible.

(v) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the quota in order to prevent forfeiture.

(vi) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the quota are applied against the claim and the county FSA committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vii) *Consent of lien holder.* Requires consent of the lien holder, if the farm is subject to a lien, unless the lien holder agrees in writing to the transfer. However, consent of a lien holder is not required for a transfer of the pounds of quota from a farm for which forfeiture is required in accordance with the provisions of § 723.219.

(viii) *Quota is subject to an approved Conservation Reserve Program Contract.* If the quota has been reduced because of an approved Conservation Reserve Program contract according to part 704 of this chapter unless forfeiture is otherwise required.

(8) *Restrictions on buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producers.* Unless the buyer is an active burley tobacco producer.

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If quota was sold from the farm in the current or either of the two preceding years.

(iv) Unless both the buying farm and the selling farm are administratively located in the same county.

(v) *Quota limitation.* If the sum of the pounds of quota being transferred in the current year exceeds the larger of: (A) 30 percent of the receiving farm's existing quota, or (B) 20,000 pounds.

(9) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: However, an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

(10) *Redetermination of quota after transfer by lease or by the owner.* After a transfer by lease or by the owner, the effective farm marketing quota shall be redetermined for both the transferring farm and the receiving farm.

(11) *Apportionment of data-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(ii) The pounds of quota which have been transferred from the selling farm by lease or by the owner in the current year;

(iii) The pounds of quota which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(iv) The pounds of quota transferred to the farm by lease or by owner in the previous year;

(v) The previous year's farm marketing quota; and

(vi) The previous year's effective farm marketing quota.

(12) *Apportionment of data-buying farm.* The buying farm's share of each respective item of farm data shall be

determined by subtracting the pounds which are retained on the selling farm for the respective item from the pounds which were established for the selling farm for the respective item before the current sale of quota. However, the pounds of quota transferred from the selling farm by lease or by the owner and/or the pounds of quota reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which were transferred by lease or by the owner, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall he added to any previous data for the buying farm.

(13) *Redetermination quota after sale or purchase of quota.* After adjusting the data in accordance with the provisions of this section, the effective farm marketing quota shall be determined for both the buying and selling farm.

(14) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm marketing quota of the parent farm.

(15) *Multiple year transfer by lease or by owner.* The effective farm marketing quota on a receiving farm having a multiple-year transfer agreement in effect shall be adjusted for each year for which such transfer agreement is in effect to reflect any decrease in the national quota factor which causes the farm marketing quota established for the transferring farm to be less than the pounds of quota which have been transferred to the receiving farm.

(16) *Considered planted credit.* Considered planted credit shall be given to the transferring farm when tobacco quota is transferred from the farm by lease or by owner.

(f) *Flue-cured tobacco.* For flue-cured tobacco only:

(1) *Location of buying and selling farms.* Marketing quota for flue cured tobacco transferred by sale must be to a farm administratively located within the same county, except that if 25 percent of the active flue-cured tobacco producers within a State petition the Secretary and the Secretary determines that a majority of the active flue-cured tobacco producers voting in the referendum approve, the sale of a flue-cured tobacco allotment or quota from a farm in the State to any other farm in the State shall be permitted if all other conditions for such transfers are met. Further, the Secretary may permit flue-cured farms with the same owner that are located in contiguous counties to be combined for administrative purposes as one farm, notwithstanding provisions in part 718 of this chapter that might not otherwise permit that kind of combination.

(2) *Maximum quota to be transferred by sale.* If the transfer is by sale, the transfer shall be based on part or all of the farm poundage quota. the maximum quota that may be transferred by sale is the farm poundage quota.

(3) *Transfer by lease-involvement of outside parties.* If the transfer is by lease, only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for such transfer. The transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred by lease is the effective farm poundage quota.

(4) *Lessor farm restrictions.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county FSA committee in the county in which the farm is located for administrative purposes determines that the:

(A)*(1)* The farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or

(*2*) In accordance with guidelines issued by the Deputy Administrator, the planted acreage of flue-cured tobacco on the farm is sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty*. If a claim has been filed against the lessor for tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county FSA committee determines that the amount of the lease represents a reasonable price for the pounds of quota being leased.

(iv) *Located in the same State*. Unless the lessor farm is administratively located in the same State as the lessee farm.

(5) *Lessee farm restrictions*. A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility*. Unless the producers on the farm qualify for price support under the provisions of part 1464 of this title; and

(ii) *Limitation*. If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(iii) *Located in same State*. Unless the lessee farm is administratively located in the same State as the lessor farm.

(6) *Selling farm restrictions*. A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota*. If a farm marketing quota includes quota that was purchased and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the current or any of the three preceding years. However, this provision shall not be applicable if:

(A)(*1*) The quota being sold was purchased in such period, if forfeiture of such quota is required by § 723.220 of this part, and the amount of quota being transferred does not exceed the amount of quota for which forfeiture otherwise is required in accordance with the provisions of § 723.220 of this part; or

(*2*) The county FSA committee, with the concurrence of a representative of the State FSA committee, determines that the failure to approve the sale would cause an undue hardship on the seller and:

(B) The sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(C) The owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(D) The owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(E) The owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or share cropper and a replacement cannot be obtained.

(ii) *Reduction pending*. If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before April 1, a transfer may be approved.

(iii) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the allotment and quota in order to prevent forfeiture.

(iv) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer: However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of § 723.220 of this part.

(v) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the allotment and quota are applied against the claim and the county FSA committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vi) *Allotment and quota subject to an approved Conservation Reserve Program contract.* If the allotment and quota is subject to an approved Conservation Reserve Program contract, unless forfeiture otherwise would be required in accordance with the provisions of § 723.220 of this part.

(7) *Buying farm restrictions.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active flue-cured tobacco producer.

(ii) [Reserved]

(iii) *Quota previously sold.* If the farm owner sold quota from a farm during the current or any of two preceding years.

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(8) *Allotment and quota after transfer by lease.* The effective farm acreage allotment and the effective farm marketing quota shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§ 723.205 and 723.206 of this part, respectively.

(9) *Apportionment of data after transfer of quota by sale-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The planted and considered planted acres for the base period;

(ii) The history acres for the base period;

(iii) The farm acreage allotment for the current year and for the base period;

(iv) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(v) The pounds of quota which have been transferred from the selling farm by lease in the current year;

(vi) The acres of allotment which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(vii) The pounds of quota transferred to the farm by lease in the previous year;

(viii) The previous year's farm marketing quota;

(ix) The previous year's effective farm marketing quota; and

(x) The previous year's marketings.

(10) *Apportionment of data-buying farm.* The pounds of farm marketing quota which have been purchased shall be divided by the farm yield for the buying farm in order to determine the farm acreage allotment for the buying farm. The buying farm's share of other farm data shall be determined by subtracting the acres or pounds, as applicable, which are retained on the selling farm from the acres or pounds which were established for the selling farm

before the current sale of quota: However, the acres computed for the acres of reduction resulting from a marketing quota violation for the buying farm shall be multiplied by a factor determined by dividing the farm yield of the selling farm by the farm yield of the buying farm in order to determine the acres of reduction from the buying farm for the current year. The pounds of quota transferred from the selling farm by lease and/or the acres of allotment reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which are leased, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(11) *Allotment and quota.* After adjusting the data in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for both the buying and the selling farm.

(12) *Effect of price support eligibility.* If a lease agreement is filed after the farm operator reports the acreage of tobacco on the farm in the current year, the effective farm acreage allotment which has been determined prior to the approval of the transfer will be used in determining price support eligibility for the farm.

(13) *Violation of lease provisions.* (i) If, after a lease agreement is approved, information is brought to the attention of the county FSA committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county FSA committee shall schedule a hearing, notify such person of the time and place of the hearing, and present evidence at the hearing with respect to the allegation of false certification. If, as a result of the evidence presented, the county FSA committee determines that such person knowingly made a false certification, the county FSA committee shall notify the person of the determination and afford such person 15 days after the mailing of the notice to request a review of the determination by a review committee as provided for by part 711 of this chapter.

(ii) If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(iii) If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county FSA committee.

(14) *Considered planted credit.* Considered planted credit shall be given to the lessor farm for the tobacco acreage allotment which is deducted as the result of the transfer of quota from the farm by lease.

(15) *Sale of quota with installment payment option.* Notwithstanding any other provision of this section the owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment. Such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(v) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with this subparagraph shall not revert to the seller's farm but shall remain with the farm to which

assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota.

(g) *Burley and flue-cured tobacco.* For burley or flue-cured tobacco:

(1) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 15 for flue-cured tobacco, or July 1 for burley tobacco, of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to each farm in proportion to the pounds of farm poundage quota purchased by each farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(2) *Cancellation of transfer.* A transfer of flue-cured allotment and quota, or burley quota, under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county FSA committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining eligibility for price support and marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if the:

(i) Transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and

(ii) Parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota.

(3) *Canceled because of fraud.* If a transfer of a flue-cured allotment and quota, or burley quota, is canceled because of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case, the overmarketings shall be charged against the farm from which the transfer was made if the farm, after any reconstitution which may be necessary as a result of fraud, is assigned a flue-cured allotment and quota, or burley quota, against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having a flue-cured allotment and quota, or burley quota, after any reconstitution required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(4) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such agreement if a written request by all parties to the agreement is made to the county FSA committee by November 15 of the current marketing year for flue-cured tobacco, or by February 15 of the current marketing year for burley tobacco. After any such dissolution or revision of a transfer agreement, an official notice of the flue-cured acreage allotment and marketing quota, or burley quota, shall be issued by the county FSA committee to each of the operators involved in the transfer agreement.

(h) *Cigar tobacco.* For cigar-filler (type 46) and cigar-filler (types 42, 43, and 44) tobacco only, the provisions of paragraph (j) of this section are applicable in addition to the following:

(1) *Farm eligible.* The owner and operator (acting together if different person) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of

a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. Transfer of allotments by lease shall not exceed 5 years.

(2) *Transfer approved acre per acre.* The lease and transfer shall be approved acre per acre.

(3) *Considered planted credit.* The amount of allotment acreage which is leased from a farm shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(4) *Limitation on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm shall not exceed 50 percent of the acreage of cropland in the farm, except that in the case of cigar-filler (types 42, 43, 44, and 46) transfers, such transfers shall be limited to a total of 10 acres.

(5) *Transfer from the pool.* Allotments in a pool pursuant to part 718 of this chapter may be eligible for lease and transfer during the 3-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(i) *Fire-cured, Dark air-cured, and Virginia sun-cured tobacco.* For Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, only, the provisions of this section are applicable in addition to the following:

(1) *Persons eligible to file a record of transfer (FSA–375)—sale or lease.* The owner and operator of any old farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may sell or lease all or any part of such allotment to any other owner or operator of a farm in the same county, and in the same State for Virginia fire-cured (type 21) or Virginia sun-cured (type 37) tobaccos. The receiving farm need not be an old farm. In the case of a permanent transfer, a statement signed by all parties to the transaction confirming that the sale has been made shall be filed with the county FSA committee.

(2) *By owner.* The owner of any old tobacco farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may transfer any or all of such allotment permanently, or for a term of years designated by the owner, to another farm in the same county (within the same State for Virginia fire-cured and Virginia sun-cured tobacco) owned or controlled by such owner.

(3) *Maximum period of transfer by lease.* Transfer of allotments by lease shall not exceed 5 years.

(4) *Basis for transfer.* The transfer shall be approved acre for acre.

(5) *Adjustments in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfer of allotment is made shall be adjusted by the county FSA committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the farm history acreage shall not be reduced on the farm from which the transfer is made and farm history acreage shall not be transferred to the receiving farm.

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 718 of this chapter.

(7) *Prohibition on permanent transfer.* A permanent transfer by sale or by owner shall not be approved from any farm to which an allotment was permanently transferred by sale or by owner within the 3 immediately preceding crop years.

(8) *Temporary transfer to non-owned farm.* A transfer requested on a temporary basis to a farm controlled but not owned by the applicant shall be approved only if the applicant will be the operator of the farm to which the transfer is to be made for each year of

the period for which the transfer is requested. When the applicant for whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond such operator's control, the transfer shall remain in effect unless the transfer is terminated under the provisions of paragraph (j) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetence, or bankruptcy of such person.

(9) *Transfer of pooled allotment.* Allotments established for a farm as pooled allotment under part 718 of this chapter may be transferred on a:

(i) Permanent basis during the 3-year life of a pooled allotment, or

(ii) Temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period. A temporary agreement to transfer shall not serve to extend the life of such pooled allotment.

(10) *New farm eligibility.* Any farm from which the entire farm allotment is sold or permanently transferred by the owner shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(11) *Transfer of history acreage.* Permanent transfer of allotment shall have the effect of transferring history acreage, farm base, and marketing quota attributable to such allotment. In the case of a transfer by lease, the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment was transferred.

(j) *Tobacco except burley, flue-cured, and cigar (types 54 and 55).* For tobacco that may be transferred in accordance with the provisions of paragraph (h) or (i) of this section, the following provisions shall also apply:

(1) *New farm allotment.* A new farm allotment shall not be transferred.

(2) *Tobacco allotment subject to an approved Conservation Reserve Program contract.* A transfer of allotment designated for reduction under a Conservation Reserve Program contract shall not be approved.

(3) *Subleasing prohibited.* A transfer of allotment from a farm shall not be approved during the period for which a current temporary transfer agreement is in effect that transferred quota to the same farm.

(4) *Limitation on transfer to and from a farm in the same year.* If a transfer agreement is in effect for the current crop year for a farm, a transfer of allotment shall not be approved during the same crop year:

(i) From such farm receiving allotment by transfer for such year, or

(ii) To such farm which had allotment transferred from it for such year.

(5) *Farm in violation.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county FSA committee shall delay approval of any transfer of allotment from or to the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such case cannot be made effective for the current crop year before the final date for reducing allotments for violations, the transfer may be approved by the county FSA committee. In any case, if, after a transfer of a tobacco acreage allotment has been approved by the county FSA committee, it is determined that the allotment for the farm from which or to which such acreage is transferred is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(6) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm shall not be approved if a claim has been filed against the lessor, seller, or transferring owner for a tobacco marketing quota penalty and the claim remains unpaid. However, this provision shall not apply if the claim is paid or the entire proceeds of the lease or sale of the allotment are applied against the claim and the county FSA committee determines that the amount paid for the lease or sale represents a reasonable price for the acres of allotment being transferred.

(7) *Approval after review period.* A transfer of allotment shall not be approved by the county FSA committee for any farm before the time of filing an application for review, as shown on

the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a transfer agreement, such agreement shall not be approved by the county FSA committee until the allotment for such farm is finally determined pursuant to part 711 of this chapter.

(8) *Acreage allotment after lease and transfer.* The acreage allotment determined after a temporary transfer for a farm under the provisions of this section shall be the allotment of such farm for the current year only for the purpose of determining:

(i) Excess acreage,

(ii) The amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco,

(iii) Eligibility for price support, and

(iv) The farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(9) *Cancellation of transfer.* Any transfer of allotment under this section which was approved by the county FSA committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county FSA committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes, if:

(i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the transfer agreement; and

(ii) The parties to the transfer agreement were not notified of the cancellation before the tobacco was planted.

(10) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county FSA committee. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county FSA committee with approval of a representative of the State FSA committee determines that the producer was prevented from timely filing for reasons beyond such producer's control.

(11) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after the transfer has been approved. Notwithstanding the above, in the case of a division, the county FSA committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county FSA committee shall apportion the leased acreage.

(12) *Consent of lien holder.* A transfer of allotment other than by annual lease shall not be approved from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lien holder.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991; 58 FR 11960, Mar. 2, 1993; 63 FR 11582, Mar. 10, 1998; 65 FR 7953, Feb. 16, 2000; 66 FR 53509, Oct. 23, 2001]

§ 723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.

(a) *Annual or permanent release of acreage allotments to State committee.* Except as provided in this paragraph, all or any part of a farm acreage allotment on which Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco will not be produced and which the operator of the farm voluntarily releases on an annual basis, or both the owner and operator voluntarily releases on a permanent basis, in writing to the State FSA committee by not later than the final date for filing releases established by the State FSA committee for the current year shall be deducted from the allotment of such farm.

(1) For the farm voluntarily releasing tobacco farm acreage allotment on an annual basis, such acreage will be considered as having been planted on the releasing farm for the purpose of establishing allotments for subsequent years. For the farm receiving such annual released acreage, such acreage shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis

shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis shall be adjusted to reflect the acreage permanently released.

(2) An acreage allotment shall not be released either annually or permanently:

(i) From the eminent domain allotment pool if an application for transfer from the pool has been filed in accordance with part 718 of this chapter;

(ii) From a new farm; or

(iii) To the extent such acreage is designated for reduction under a Conservation Reserve Program contract.

(b) *Reapportionment of released acreage allotment.* The acreage voluntarily released on an annual or permanent basis for the current year may be reapportioned by the State FSA committee to any farm in any county in the State including a farm receiving a new farm allotment. The State FSA committee shall select the counties to which the released acreage will be reapportioned. The county FSA committee shall select the farms to which the released acreage will be reapportioned. The State FSA committee shall keep records on both an annual and permanent basis of the source of acreage released. Any acreage released for the current year on a permanent basis which is not reapportioned by the State FSA committee in the current year may be reapportioned in the following year. The county FSA committee for the county receiving released acreage may reapportion the tobacco allotment acreage on an annual or permanent basis to other farms in the county in amounts determined by the county FSA committee to be fair and reasonable on the basis of land, labor, and equipment available for production of Cigarfiller and binder (types 42, 43, 44, 54, and 55) tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Released acreage should not be reapportioned on a temporary or permanent basis to any farm unless there is assurance from the operator to the county FSA committee that the released acreage being received will be produced. Allotment reapportioned to a farm on an annual basis can only be used by the receiving farm for increased production during the current year. Allotment reapportioned to a farm on a permanent basis shall be added to the current year allotment or shall serve to establish an allotment for a farm without a current allotment. A farm shall be eligible to receive reapportionment of released acreage on either or both an annual or permanent basis only if a written request is filed by the farm owner or operator at the office of the county FSA committee not later than the final date for filing such requests established by the State FSA committee for the current year.

§ 723.218 Determining tobacco history acreage.

With respect to each respective kind of tobacco, the tobacco history acreage shall be determined for each farm for which a tobacco acreage allotment was established for such kind of tobacco for the current year.

(a) The history acreage shall be the same as the farm acreage allotment for the respective kind of tobacco if in the current year, or either of the two preceding years, the sum of the planted and considered planted acreage of such kind of tobacco was as much as 75 percent of the farm acreage allotment. Otherwise, the history acreage shall be the sum of the planted and considered planted acreage of such kind of tobacco.

(b) Notwithstanding any other provision of this section, for the respective kind of tobacco, the history acres for the current year and for each year of the base period shall be reduced to zero if:

(1) A new farm allotment was canceled;

(2) The allotment was in a pool established in accordance with the eminent domain provision of part 718 of this chapter and the period of eligibility has expired for transferring the allotment from the pool; or

(3) The county FSA committee determines that the farm has been retired from agricultural production and the allotment is not eligible for pooling in accordance with the eminent domain provisions of part 718 of this chapter.

§ 723.219 Forfeiture of burley tobacco marketing quota.

(a) *Determination of quota subject to forfeiture.* (1) For purposes of paragraph (b) of this section, the phrase ''owns a farm'' means ownership of:

(i) A farm as constituted under part 718 of this chapter, if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares a common ownership if the parent farm consists of tracts of land having separate ownerships.

(2) For purposes of paragraph (b) of this section, the county FSA committee shall apportion, in accordance with the provisions of part 718 of this chapter, the burley tobacco quota assigned to a farm between the various tracts of land which are separately owned by:

(i) A person not using the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes.

(ii) A person who uses the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or for educational, instructional, or demonstrational purposes.

(3) The farm marketing quota determined under this section for each farm or tract, as applicable, shall be the amount of quota subject to forfeiture under this section.

(b) *Person who does not use the land on the farm for which the marketing quota is established for agricultural purposes or does not use such marketing quota for educational, instructional, or demonstrational purposes.* For purposes of this paragraph, the term ''person'' means a person as defined in part 718 of this chapter, including any governmental entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only spouses), but excluding any individual.

(1) *Required forfeiture.* With respect to any person owning a farm for which a burley tobacco marketing quota is established, if the county FSA committee determines that such person does not use the land on such farm for agricultural purposes, or does not use such burley tobacco marketing quota for educational, instructional, or demonstrational purposes, such person shall forfeit such quota which is not sold on or before December 1 of the year after any year for which the county FSA committee makes such determination.

(2) *Agricultural purposes.* Land on the farm for which a burley tobacco marketing quota is established shall be considered to be used for agricultural purposes if the county FSA committee determines that:

(i) In the current year or either of the 2 preceding years such land is used for the production of:

(A) Row crops of any type;

(B) Livestock or poultry (including pasture and forage for livestock);

(C) Trees (including orchards and vineyards); or

(D) Hay or native grasses on open land; or

(ii) In the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional, or demonstrational purposes.

(3) *Documentation.* Within 30 days after a written request is made by the county FSA committee, or within such extended time as may be granted by the county FSA committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(1) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request, the county FSA committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional, or demonstrational purposes.

(c) *Buyers of quota fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 3 crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was

planted. However, any purchaser or subsequent purchaser of quota required to be sold under the mandatory sale to prevent forfeiture, provisions of paragraph (b) of this section shall be required to share in the risk of production of such quota for five crop years beginning with the crop year for which the purchase became effective.

(2) Failure to utilize purchased quota for the production of tobacco shall not result in the forfeiture of such quota, but the three year period and the five year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

(3) *Reduction for failure to share in the risk of production.* The effective quota shall be reduced, but not below zero pounds, for leasing and marketing quota purposes only, to the extent of the purchased quota for each crop after the crop year in which the buyer of such quota fails to share in the risk of producing a crop of tobacco which is subject to such quota.

(4) *Determining forfeited amount.* If only part of the quota on a farm is attributable to a purchased quota, the amount of the farm marketing quota which must be forfeited under paragraph (c) of this section shall be determined by increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect changes in national quota factors since the purchase occurred and subtracting the pounds of quota which have been sold to prevent forfeiture.

(d) *Hearing.* Before any forfeiture of quota becomes effective under the provisions of this section, the county FSA committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county FSA committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

(iii) The affected person knowingly failed to take steps to prevent forfeiture of burley tobacco quota.

(4) Notify the affected persons of the county FSA committee determination and, if forfeiture of quota is to be required, afford such person an opportunity to appeal to a review committee in accordance with the provision of part 711 of this chapter.

(e) *Apportionment of data and determination of quota after forfeiture.* (1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the farm before the forfeiture to determine a factor for apportioning farm data. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data for the forfeiting farm:

(i) Overmarketings which have been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(ii) Pounds of quota transferred from the forfeiting farm by lease or by the owner in the current year.

(iii) Pounds of quota reduced in the current year for a marketing quota violation in a prior year.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(vi) Previous year's farm marketing quota.

(vii) Pounds of quota transferred to the farm by lease or by owner in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the pounds of each respective item of farm data which are retained on the forfeiting farm from the pounds of the respective item of data which were established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Quota after forfeiture.* After adjustment of data, the effective farm marketing quota shall be determined in accordance with the provisions of § 723.206 of this part for the forfeiting farm.

(f) *Forfeiture pool.* (1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of:

(i) Farm marketing quota for the current year.

(ii) Quota reduced for marketing quota violations.

(iii) Quota transferred from the forfeiting farm by lease or by the owner.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(2) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factor used in determining quotas for old farms. Quota data in the forfeiture pool shall be decreased each time any burley tobacco quota is reallocated from the forfeiture pool. Such decrease in the quota data will be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(g) *Reallocation of quota from forfeiture pool.* (1) *Application.* In order to establish eligibility to receive quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before April 30. The State FSA committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county FSA office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for quota from the forfeiture pool, the county FSA committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active tobacco producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not sold or forfeited quota from any farm.

(3) *Time to reallocate.* The county FSA committee shall:

(i) Not reallocate any quota from the forfeiture pool until the time has passed for filing an application for forfeited quota for the current year.

(ii) Reallocate any quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for quota from the forfeiture pool.

(4) *Reallocation by county FSA committee.* Reallocation of any burley tobacco quota shall be made by the county FSA committee. In making its determination of the amounts of quota to reallocate, the county FSA committee may consider the size of the current quotas on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), previous leasing history of the applicants, and such other factors which in the judgment of the county FSA committee should be considered. A burley tobacco quota may be reallocated to a farm which currently does not have a burley tobacco quota. A factor shall not be used to reallocate quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to be reallocated.* The county FSA committee may reallocate all or part of the quota in the forfeiture pool. The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 100 pounds, whichever is less. The maximum amount is 500 pounds. However, up to 1,500 pounds may be allocated with State FSA committee concurrence.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the effective farm marketing quota shall be determined for the receiving farm.

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

(i) *Successor-in-interest.* A successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest has been assumed by such successor-in-interest.

(1) *New owner of farm.* The new owner of a farm on which a portion or all of the farm marketing quota for such farm was either purchased and/or was reallocated from forfeited quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 30 of the current crop year and such owner would otherwise be required to sell or forfeit the farm marketing quota because in the preceding crop year the owner of such quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated quota, the new owner may be considered the buyer of the quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county FSA committee on or before June 30 of the current year a certification that such owner intends to become an active burley tobacco producer. Any purchased or reallocated quota, which is acquired by a new owner who is not considered to be the buyer of the quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of burley tobacco quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of production of burley tobacco produced on the farm.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21442, May 9, 1991]

§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

(a) *Determination of allotment and quota subject to forfeiture.* (1) For purposes of paragraphs (b) and (c) of this section, the phrase ''owns a farm'' means ownership of:

(i) A farm as constituted under part 718 of the chapter if the entire farm shares a common ownership; or

(ii) All of the land within a common ownership if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county FSA committee shall, in accordance with the provisions of part 718 of this chapter, apportion the flue-cured tobacco

acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

(4) The farm acreage allotment and farm marketing quota determined under this section for each farm or tract, as applicable, will be the amount of allotment and quota subject to forfeiture under this section.

(b) *Persons not significantly involved in management or use of land for agricultural purposes.* For purposes of this paragraph, the term ''person'' means a person as defined in part 718 of this chapter, including any: Governmental entity, public utility, educational institution, or religious institution, but not including any: Individual, partnership, joint venture, family farm corporation, trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instruction or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county FSA committee determines that any person which owns farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before December 1 of the year for which the county FSA committee makes such a determination.

(2) *Owner ceases to be significantly involved.* A person shall be considered to be significantly involved in the management or use of land for agricultural purposes if the county FSA committee determines that:

(i) For the 3 preceding years, more than 20 percent of the gross income of the person has been derived from the management or use of land for the production of crops which are planted and harvested annually, and/or livestock, including pasture and forage for livestock; and

(ii) Any other person or all other persons which in combination own more than 50 percent of the assets of the owner of the flue-cured tobacco allotment and marketing quota also meet the criteria specified in paragraph (b)(2)(i) of this section.

(3) *Documentation.* Within 30 days after a written request is made by the county FSA committee, or within such extended time as may be granted by the county FSA committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to such request, the county FSA committee shall determine that the person is not significantly involved in the management or use of land for agricultural purposes.

(c)–(d) [Reserved]

(e) *Buyers of allotment fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys flue-cured acreage allotment and quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the three crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not result in the forfeiture of such quota, but the

3 year period which is specified in paragraph (e)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

(3) *Reduction for failure to share in risk of production.* The effective allotment and quota shall be reduced, but not below zero acres or pounds, for planting, leasing, and marketing quota purposes only, to the extent of purchased allotment and quota for each crop year after the crop year in which the buyer of such allotment and quota fails to share in the risk of producing a crop of tobacco planted under such allotment and quota.

(4) *Determining forfeited amount.* If only part of the allotment and quota on a farm resulted from purchased allotment or quota, the amount of farm marketing quota which must be forfeited under paragraph (e) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect any annual changes in national acreage and national yield factors subsequent to the year of purchase.

(ii) Adding the amounts determined in paragraph (e)(4)(i) of this section, multiplying the result by the farm yield for the farm, and subtracting the pounds of quota which have been sold to prevent forfeiture.

(f) *Tobacco not planted nor considered planted.* Notwithstanding any other provision of this part, any person who owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established, shall forfeit such allotment and quota after February 15 of any year immediately following the 1st year of the 3-year period immediately preceding the year for which the county FSA committee determines that flue-cured tobacco was not planted nor considered planted on such farm during at least 2 years of such 3-year period.

(g) *Hearing.* Before any forfeiture of allotment and quota becomes effective under the provisions of this section, the county FSA committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county FSA committee as to whether:

(i) Any of the conditions of requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

(4) Notify the affected person of the county FSA committee determination and, if forfeiture of allotment and quota is to be required, afford such person an opportunity to appeal to a review committee under the provision of part 711 of this chapter.

(5) Wait until the period has passed for the affected person to appeal the county FSA committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(h) *Apportionment of data and determination of allotment and quota after forfeiture.* (1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the forfeiting farm before the forfeiture to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm, the:

(i) Planted and considered planted acres for the base period.

(ii) History acres for the base period.

(iii) Farm acreage allotment for the base period.

(iv) Overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(v) Acres of allotment reduced in the current year for a marketing quota violation in a prior year.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketings.

(viii) Previous year's farm marketing quota.

(ix) Pounds of quota transferred from the forfeiting farm by lease in the current year.

(x) Pounds of quota transferred to the farm by lease in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the acres or pounds which are retained on the forfeiting farm from the acres or pounds established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Allotment and quota after forfeiture.* After adjustment of data, the effective farm acreage allotment and the effective farm marketing quota shall be determined in accordance with § 723.205 and 723.206 of this part, respectively, for the forfeiting farm.

(i) *Forfeiture pool.* (1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of allotment and quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of the:

(i) Farm acreage allotment for the current year and for the base period.

(ii) Farm marketing quota for the current year and for the base period.

(iii) Acres reduced for violation.

(iv) Planted and considered planted acres for the base period.

(v) History acres for the base period.

(vi) Previous year's effective farm marketing quota.

(vii) Previous year's marketing.

(viii) Quota transferred from the forfeiting farm by lease.

(2) *Yield for forfeiture pool.* The farm yield for the forfeiture pool shall be determined by dividing the farm marketing quota in the forfeiture pool by the farm acreage allotment in the forfeiture pool. The preliminary farm yield for the forfeiture pool shall be determined by dividing the farm yield by the national yield factor.

(3) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factors used in determining yields, allotments, and quotas for old farms. Acreage and quota data in the forfeiture pool shall be decreased each time quota is reallocated from the forfeiture pool, such decrease to be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(j) *Reallocation of allotment and quota from forfeiture pool.* (1) *Application.* In order to establish eligibility to receive allotment and quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before March 31. The State FSA committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county FSA office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for allotment and quota from the forfeiture pool, the county FSA committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not:

(A) Sold or forfeited allotment and quota from any farm.

(B) Used the designation method of division to retain less allotment than the farm would have retained by another method of division.

(3) *Time to reallocate.* The county FSA committee shall:

(i) Not reallocate any allotment and quota from the forfeiture pool until the time has passed for filing an application for forfeited allotment and quota for the current year.

(ii) Reallocate any allotment and quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for allotment and quota from the forfeiture pool.

(4) *Reallocation by county FSA committee.* Reallocation of any allotment and quota shall be made by the county FSA committee. In making its determination of the amounts to reallocate, the county FSA committee may consider the size of the current allotments on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), and other factors which in the judgment of the county FSA committee should be considered. Allotment and quota may be reallocated to a farm which currently does not have a flue-cured tobacco allotment. A factor shall not be used to reallocate allotment and quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to reallocate.* The county FSA committee may reallocate all or part of the quota in the forfeiture pool.

(i) *Minimum.* The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* The maximum amount of quota which may be reallocated to an eligible applicant is 1,000 pounds. However, with State FSA committee approval, up to 2,500 pounds may be allocated.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Allotment and quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for the receiving farm according to §§ 723.205 and 723.206, respectively, of this part.

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (e)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

(l) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest was assumed.

(1) *New owner.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and quota instead of

being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county FSA committee on or before June 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota, which is acquired by a new owner who is considered to be the buyer of the allotment and quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the allotment and quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of allotment and quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of the production of tobacco produced on the farm.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21442, May 9, 1991; 65 FR 7953, Feb. 16, 2000]

Subpart C—Tobacco Subject to Quota, Exemptions From Quotas, Marketing Cards, and General Penalty Provisions

§ 723.301 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco which is determined by a representative of the State FSA committee or county FSA committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind of tobacco unless it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR part 30), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (types 61 and 62) tobacco when it is nonquota tobacco and produced in Connecticut, Massachusetts, Georgia or Florida;

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspection and identification shall be made prior to removal of the tobacco from the State where it was produced; and

(5) Tobacco which is nonquota tobacco and produced in a quota area in which the total of the acreage allotments for quota tobacco established for farms is less than twenty acres.

§ 723.302 Tobacco for experimental purposes.

For farms on which tobacco is being grown for experimental purposes by or under the direction of a publicly owned agricultural experiment station, such tobacco shall be exempt from any penalties otherwise required by this part

if, before the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, the director of such publicly owned agricultural experimental station furnishes a report, to the State Executive Director for the State in which the farm is located, that includes the following information:

(a) Name and address of the publicly owned agricultural experiment station.

(b) Name of the owner, and name of the operator if different from the owner, and the farm number of each farm on which tobacco is grown for experimental purposes only.

(c) The acreage or poundage of tobacco that is to be grown on each farm for experimental purposes only.

(d) A certification signed by the director of the publicly owned agricultural experiment station to the effect that such acreage or poundage of tobacco is being grown for each farm for experimental purposes only, the tobacco is being grown under the auspices of such director, and the acreage of each plot was considered necessary for carrying out the experiment.

§ 723.303 Production of registered or certified flue-cured tobacco seed.

Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage in excess of the effective allotment to seed production without such acreage of tobacco causing a ''No Price Support'' entry on the marketing card issued for the farm if an agreement is signed by the farm operator, and the producer, if different from the operator, which provides:

(a) *Destruction prior to harvest.* For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(b) *Producer payment of compliance costs.* That the producers shall pay the cost of compliance visits to a farm by representatives of the county FSA committee for the purposes of:

(1) Designating and determining the acreage of seed production, and

(2) Determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of tobacco leaves.

(c) *Agreement.* That the producer(s) signing the agreement shall agree to timely notify the county FSA office when the tobacco seed has been harvested.

(d) *No history credit.* That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(e) *Cancellation of marketing cards.* That if the county FSA committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that tobacco produced on the farm is not eligible for price support.

§ 723.304 Determination of discount varieties.

(a) *Definition. Discount variety* means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XyZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244. However, where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco variety which is not certified to be discount variety shall be considered as ''acceptable variety.''

(b) *Producer report.* The operator, or any producer, on each farm producing flue-cured tobacco shall file with the county FSA office a report on MQ–32 showing whether or not discount variety tobacco was planted on the farm.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county FSA committee on MQ–34–1, Notice of Action Required Regarding Determination of

Seed Varieties of Flue-Cured Tobacco, to file a report on MQ–32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county FSA committee to be discount variety tobacco unless the county FSA committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ–34–2, Notice of Determination of Discount Variety of Flue-Cured Tobacco. This notice to the farm operator shall constitute notice to all persons who, as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ–34–2 notifying such producer that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ–32.

(f) *Issuance of marketing cards.* (1) If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county FSA executive director shall issue MQ–76, bearing the notation ''Discount Variety-Limited Price Support.'' If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county FSA executive director shall issue MQ–76, bearing the notation ''Discount Variety-No Price Support.''

(2)(i) Where an MQ–76, bearing the notation, ''Discount Variety-Limited Price Support'' is issued for a farm, the card may be exchanged at the county FSA office for an MQ–76, without the notation, or

(ii) Where an MQ–76, bearing the notation ''Discount Variety-No Price Support'' is issued for a farm the card may be exchanged at the county FSA office for MQ–76 with the notation ''No Price Support.'' However, the farm operator shall establish to the satisfaction of the county FSA committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by such operator, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) MQ–76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation ''Discount Variety-Limited Price Support'' if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety*—(1) Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year, the Director may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when it is determined that no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehouse operators of action required under this paragraph shall be by the State FSA executive director.

(2)(i) Each warehouse operator who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than such operator's own floor, and who requests the other warehouse operator to identify such tobacco as being ''acceptable variety'' shall execute MQ–79–1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each warehouse operator who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco indicating that such tobacco with a ''certified'' lot ticket indicating that such tobacco is covered by an executed MQ–79–1.

(iii) Each executed MQ–79–1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Tobacco sale bill number and date.

(D) Date, signature of dealer and current address, and dealer identification number.

(3)(i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a ''certified'' lot ticket, and who requests the warehouse operator to identify such operator's tobacco as being an ''acceptable variety,'' shall execute MQ–79–1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each executed MQ–79–1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Date, signature of dealer and current address and dealer identification number.

(D) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it eligible for certification on MQ–79–1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State FSA executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) Estimate of production. For any farm on which discount variety tobacco is being grown, a Form MQ–92, Estimate of Production, shall be obtained.

§ 723.305 Issuance of marketing cards.

(a) *General.* Each marketing of tobacco from a farm in a quota area shall be identified by a valid marketing card unless prior to marketing an AMS certification is issued for such tobacco to indicate that such tobacco is a nonquota kind of tobacco.

(1) A marketing card (MQ–76 or MQ–77) shall be issued for the current marketing year for each farm having quota tobacco available for marketing. Cards shall be issued in the name of the farm operator except that:

(i) Cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station,

(ii) Cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest,

(iii) For kinds of tobacco other than flue-cured and burley, if a part of a farm which includes the tobacco acreage on the farm is cash leased to such producer, cards shall be issued in the name of such producer. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county FSA committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop.

(2) If the county FSA committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market such producer's proportionate share of the crop, a hearing shall be scheduled by the county FSA committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county FSA committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county FSA committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county FSA committee shall make its decision on the basis of information available to such committee. If the county FSA committee finds that any producer on the farm has been or likely will be deprived of the right to use the marketing card

issued for the farm to market such producer's proportionate share of the crop, a separate marketing card shall be issued to such producer. With respect to burley and flue-cured tobacco, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 103 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market such producer's proportionate share of the crop and another card (or other cards if considered preferable by the county FSA committee) shall be issued showing 103 percent of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer in the current crop year.

(b) *Person authorized to issue marketing cards.* The county FSA executive director shall be responsible for the issuance of marketing cards. For kinds of tobacco other than burley and flue-cured tobacco, each marketing card shall bear the actual or facsimile signature of the county FSA executive director who issued the card.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing such producer's proportionate share.

(2) Any person who succeeds, other than a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same right to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *No price support-burley and flue-cured tobacco.* For burley and flue-cured tobacco, the notation ''No Price Support'' shall be entered on each marketing card issued for the use of:

(1) *Farm.* The farm if any producer on the farm is ineligible for price support under the provisions of part 1464 of this title.

(2) *Producer.* The producer on a farm if the producer is ineligible for price support under the provisions of part 1464 of this title.

(e) *Farm quota data entered on marketing card and supplemental card for burley or flue-cured tobacco:*

(1) Any marketing card issued to market burley or flue-cured tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 103 percent times the effective farm marketing quota.

(2) Notwithstanding paragraph (e)(1) of this section, if the tobacco available for marketing from the farm is determined by the county FSA committee or the county FSA executive director to be less than the effective farm marketing quota, for purposes of issuing a marketing card and showing thereon the farm's 103 percent of the effective quota, the effective farm marketing quota for the farm shall be considered to be the pounds determined to be available for marketing from the farm. If any producer on the farm satisfies the county FSA committee or county FSA executive director that the quantity of tobacco produced on the farm in the current year, plus any carryover tobacco from a prior year, is greater than the previously determined pounds of tobacco available for marketing from the farm, the pounds shown on the marketing card shall be increased accordingly, but not to exceed an amount which would cause the total pounds shown on the marketing card to equal 103 percent of the effective farm marketing quota.

(3) Upon request by the farm operator, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county FSA office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 103 percent of quota from a prior marketing card

shall be shown in the first space on the reverse side of the marketing card.

(4) Upon written request of the farm operator two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, ''103 percent of quota,'' on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

(f) *Farm quota data entered on marketing card and supplemental card for any kind of tobacco other than burley or flue-cured:* (1) Within quota marketing card. A within quota marketing card, MQ–76, indicating the tobacco is eligible for price support shall be issued for use in identifying the kind of tobacco that is available for marketing from a farm when such tobacco:

(i) Is eligible for price support according to the provisions of part 1464 of this title.

(ii) Was grown for experimental purposes by a publicly owned agricultural experiment station.

(2) *Excess marketing card.* An excess marketing card (MQ–77) shall be issued for a farm for marketing a kind of tobacco that is ineligible for price support. Before the MQ–77 is issued the county FSA executive director shall enter on such marketing card the rate of any penalty that is to be deducted from the proceeds from any marketing of tobacco identified by such marketing card. An MQ–77 shall be issued for each farm for each kind of tobacco for which:

(i) There is excess tobacco available for marketing from the farm; or

(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 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 invalid (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 false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State FSA office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Farm Service Agency may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include the following:

(1) Advances to producers,

(2) Charges for hauling, or

(3) Any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sales.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 723.311 Lien for penalty; liability of persons who are affiliated with indebted person or who permit the indebted person to use their identification card.

(a) *Lien on tobacco.* Until the amount of any marketing quota penalty imposed under this part is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

(1) The tobacco with respect to which such penalty is incurred; and

(2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien, described in paragraph (a) of this section, attaches at the time that the penalty is assessed. As to third parties, in the event of a lack of actual notice of the lien, then notice shall be deemed to occur when:

(1) In the case of indebted producers, the debt is entered on the debt record maintained by the county FSA office of the county in which the tobacco was grown;

(2) In the case of an indebted warehouse operator, the debt is entered on the debt record of the State FSA office for the State in which the warehouse is located; and

(3) In the case of an indebted dealer, the debt is entered on the debt record of the State FSA office for the State in

which the dealer is required to file reports.

(c) *Availability of list of marketing quota penalty debts.* Each county and State FSA office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record in their office. The list shall be available for examination upon request by any interested person.

(d) *Liability for penalty owed by another person.* (1) When a penalty in excess of $10,000 is incurred under this part by an entity, all persons who have a substantial ownership interest in the entity shall be jointly and severally liable with the entity for the payment of such penalty, unless it is demonstrated to the satisfaction of the Deputy Administrator that the violation was inadvertent. Substantial ownership interest shall be deemed to be any ownership interest greater than ten percent.

(2) A dealer or warehouse operator who permits an indebted person to use such dealer's or warehouse operator's identification card to market tobacco shall be liable for the amounts due by the indebted person to the United States under this part up to the amount of the value of the tobacco so marketed. In addition, unless the Deputy Administrator determines otherwise, any persons or person, who as a warehouse operator or dealer becomes affiliated with any person who at the time of affiliation is indebted under this part to the United States, shall be liable for the amount of the debt owed to the United States by the person with whom such person or persons become affiliated up to the amount of the value of any tobacco which is marketed by such affiliated warehouse operator or dealer during the time of the affiliation with the indebted person. Affiliation may include any relationship in which the parties have a common interest in tobacco, or in an enterprise or entity involved in the marketing, processing, or handling of tobacco, or where the parties both hold a position of responsibility or ownership in such an enterprise or entity, or where there is common ownership of a business involved in the transaction. A warehouse operator or dealer may also be considered to be affiliated with an indebted person when such warehouse operator or dealer is associated with a person who is both:

(i) An employee or otherwise authorized to buy and sell tobacco for such warehouse operator or dealer; and

(ii) An indebted person or at the time of indebtedness incurred by an entity was a substantial owner or an officer of the indebted entity.

Affiliation may also be deemed to occur where parties have traded in tobacco under circumstances which indicate that there may be a lack of arm's length trading between the parties such as where the parties engage in casual or undocumented transactions in significant quantities of tobacco, or where the parties have traded in tobacco with each other without a movement of the tobacco, or where there is a trading in tobacco without documentation of a significant exchange of money, or other circumstances which indicate an affiliation. Where questions of affiliation arise, it shall be the burden on the parties involved to show that trading in such tobacco was conducted in accordance with normal trade practices and was not part of a scheme or device to avoid payments of sums due the United States or the CCC.

(e) *TMQ lien notation.* Upon notification that a TMQ lien has been established, the producer marketing card (MQ–76) or dealer identification card (MQ–79–2) shall be returned immediately to the issuing office for recording the TMQ lien. Failure to immediately return the applicable card will result in FSA notifying all registered warehouse operators and dealers of the TMQ lien information and of their responsibilities for collecting the TMQ lien. The card shall be promptly returned to the producer or dealer after it is annotated with the TMQ lien.

[57 FR 43581, Sept. 21, 1992]

§ 723.312 Request for refund of penalty.

Any person who paid any penalty may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ–85, Farm Record and Account, with the county FSA office within 2 years

after the payment of the penalty. Approval of return shall be by the county FSA committee, subject to the approval of the State FSA executive director.

§ 723.313 Identification of marketings.

(a) *Burley or flue-cured tobacco*. With respect to:

(1) *Identification of producer marketings*. Each auction and nonauction marketing of burley or flue-cured tobacco shall be identified by a valid marketing card, Form MQ–76, issued for the farm. The reverse side of the marketing card shall show in pounds:

(i) 103 percent of quota,

(ii) Balance of 103 percent of quota after each sale, and

(iii) Date of each sale.

(2) *Cross-references of tobacco sale bill number to prior sale bill*. Each warehouse operator, for each lot of tobacco weighed in on the warehouse floor for sale the same day, shall cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouse operator in the ''Remarks'' space on the tobacco sale bill, on all copies, at the time such tobacco is weighed at the warehouse.

(3) *Recording producer sale*. Each producer sale at auction shall be recorded on Form MQ–72–1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on a Form MQ–72–2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ–72–2 and shall enter the data on Form MQ–76. For producer sales at auction, Form 72–1 and Form MQ–76 shall be executed only by the FSA marketing recorder.

(4) *Identification of dealer marketings of resale tobacco*. Each auction and nonauction marketing of resale tobacco in the current year, such tobacco shall be identified by a dealer identification card, Form MQ–79–2, issued to the dealer for use in the current marketing year.

(b) *Dark air-cured, fire-cured, or Virginia sun-cured tobacco*. With respect to dark air-cured, fire-cured, or Virginia sun-cured tobacco:

(1) *Identification of producer marketings*. Each marketing of such kind of tobacco from a farm shall be identified by a valid marketing card issued for the farm for the respective kind of a tobacco, either an MQ–76 or MQ–77 (including sale memo). With respect to each nonauction sale from:

(i) A within quota farm a check mark shall be entered on the inside of MQ–76, and

(ii) An excess farm for which an MQ–77 is issued, an executed bill of nonauction sale shall be prepared, and such bill of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(2) *Suspended sale and sales without marketing cards*. Any suspended sale, which is not identified by an MQ–76 or MQ–77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ–82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ–82 shall be executed only by a marketing recorder or other representative of the State FSA executive director.

(3) *Other persons authorized to execute MQ–76 or MQ–77 (including sale memo)*. (i) A warehouse operator who has been authorized during the current marketing year on MQ–78, Tobacco Warehouse Organization, may record a sale on MQ–76 or MQ–77 (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card is presented.

(ii) Any warehouse operator, or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ–78, may for each purchase of scrap tobacco execute an MQ–76, or MQ–77 (including a sale memo if the bill of nonauction sale has been executed).

(4) *Verification of sales processed during the absence of marketing recorder*. Any person authorized on MQ–78 to act as a marketing recorder shall promptly present to a marketing recorder for verification each warehouse bill (floor sheet) processed and identified by an MQ–76 or MQ–77 (including any sale

memos) executed in the absence of a marketing recorder.

(5) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ–78 for persons may be withdrawn by the State FSA executive director if such action is determined to be necessary to properly enforce the regulations in this part.

(c) *Separate display on auction warehouse floor.* Any warehouse operator upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each respective kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Use a lot ticket that is distinguishably different from the lot ticket used to identify any other kind of tobacco.

(3) Identify each lot by a lot ticket clearly showing the kind of tobacco. However, if where the tobacco is represented to be a nonquota kind the lot ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(4) Make and keep records that will ensure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(d) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouse operator, it shall be identified as leaf account resale tobacco.

(e) *Verification of penalties by warehouse operators or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouse operator shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(g) *Marketing card and sale memo for cigar tobacco.* With respect to cigar tobacco:

(1) If a sale of producer's cigar tobacco to a buyer is not identified with a marketing card (MQ–76 or MQ–77) issued for the farm, including a sale memo from MQ–77, by the end of the sale day and recorded and reported on MQ–79 (CF&B), Buyers Record, by the tenth day of the calendar month next following the month during which the sale occurred, the marketing shall be identified on MQ–79 (CF&B) as a marketing of excess tobacco and reported not later than the tenth day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ–79 (CF&B) as a marketing of excess tobacco, and reported not later than the tenth day of the calendar month next following the month during which the sale day occurred.

(2) *Verification of penalty by buyer.* Each excess sale memo issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the sale memo.

Subpart D—Recordkeeping, Reporting Requirements, Marketing Penalties, and Other Penalties

§ 723.401 Registration of burley and flue-cured tobacco warehouse operators and dealers.

(a) *Warehouse registration.* For burley and flue-cured tobacco, any warehouse operator dealing in either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State FSA Office, Raleigh, North Carolina.

(b) *Dealer registration.* Each person who expects to deal in burley or flue-cured tobacco during a marketing year shall complete a Dealer Application and Agreement (MQ–79–2–A) annually,

except dealers who are exempt from maintaining or filing records and reports as provided in § 723.405. The application must be filed after March 1 of the calendar year in which the marketing year begins, and shall be filed with the State FSA office or, if designated by the State Executive Director, the county FSA office for the county where the dealer resides or where the dealer's principal business is located. The applicant shall provide the names, and such other information as required by the Deputy Administrator, of all other persons who will be authorized to use the dealer identification card (MQ–79–2). A dealer entity is limited to one dealer registration number. Persons affiliated with another dealer of the same household shall not be eligible for a dealer registration number unless the Deputy Administrator determines that the entities or individuals are separate and independent.

(c) *Approval of application and agreement.* The State Executive Director of the State FSA office shall, under the direction of the Deputy Administrator, be the approving official for the Dealer Application and Agreement. If the approving official has reason to doubt that the applicant is a bona fide dealer or intends to become a bona fide dealer, the application may be disapproved until such time as the applicant furnishes information satisfactory to the State FSA committee that the application is bona fide. An application shall also be disapproved for any person who has failed to file reports or permit inspections required in § 723.404(d)(9). A person whose application is disapproved shall be provided with the opportunity to appeal the disapproval and to furnish information to substantiate the application or to comply with other requirements in § 723.404.

(d) *Letter of credit or bond*—(1) *General requirements.* Effective with the beginning of the 1992 marketing year for burley tobacco and with the 1993 marketing year for flue-cured tobacco, in order to secure the payment of penalties as may be incurred by a dealer during the marketing year for which approval as a dealer is sought, each dealer, as a condition for final approval to handle tobacco, must present a letter of credit or bond which is determined by the Deputy Administrator to be acceptable security and which meets the dollar requirements of this section. The letter of credit or bond shall be submitted to the State FSA office where the dealer is registered. A letter of credit must have been issued by a commercial bank insured by the Federal Deposit Insurance Corporation. A bond must be a surety bond insured by a bonding company or agent licensed in the State where the dealer is registered. The letter of credit or bond must be in the form and have the content specified by the Deputy Administrator. A letter of credit or bond shall be furnished annually after initial approval of the dealer's application and notification of the amount required. The dealer identification card shall not be issued until it is determined that acceptable security has been presented.

(2) *Amount required.* The base amount of the letter of credit or bond shall be the larger of:

(i) $25,000 or

(ii) the sum of the amounts determined by multiplying the respective pounds of burley and flue-cured tobacco purchased by the dealer during the preceding marketing year by 10 percent of the marketing year penalty rate for the respective kind of tobacco involved for the relevant year with the resulting amount not to exceed $100,000.

A dealer shall submit the letter of credit or bond for the base amount plus an amount equal to the amount of any unpaid tobacco marketing quota penalty owed by such dealer. The amount shall also be increased by $5,000 for each 10,000 pounds of tobacco for which the dealer has failed to file reports or filed false reports in violation of § 723.404 for the 3 previous marketing years. The Deputy Administrator may reduce the amount of security required in order to avoid undue hardship and shall make provision for release of the letter of credit or bond at the appropriate time.

(e) *Suspension and surrender of dealer card.* The dealer identification card shall be surrendered upon demand of the FSA. Failure to comply with the provisions of §§ 723.404 or 723.414 or with other material provisions of this part

shall be cause for suspension of the dealer identification card and the dealer shall be given 15 days to complete all necessary compliance measures or to show cause why the card should not remain suspended.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991; 57 FR 43581, Sept. 21, 1992]

§ 723.402 Warehouse authorized to retain producer marketing cards between sales.

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of farmer's tobacco to the warehouse, marketing cards, with the permission of the producer, may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse eligible to retain producers marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by FSA a written request with the State FSA committee (or county FSA committee if designated by the State FSA committee).

(2) Agree to be responsible to FSA for an amount of money equal to that amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco for any overmarketing resulting from errors made at the warehouse in entering ''balance after sale'' pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Any burley or flue-cured tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of the operator;

(ii) Serial number of farm;

(iii) Marketing card number, if applicable;

(iv) Date marketing card obtained from producer; and

(v) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by FSA for failure to comply with provisions of this agreement.

(c) *Penalties considered to be the responsibility of warehouse operators.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State FSA committee (or county FSA committee if designated by the State FSA committee) for authorization to retain producer's marketing cards at the warehouse, with grower permission, shall be responsible to FSA for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco overmarketings resulting from errors made at the warehouse in entering ''balance after sale'' pounds on the burley or flue-cured producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against

the producer in accordance with § 723.409(e) of this part.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card.

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

§ 723.403 Auction warehouse operators' records and reports.

(a) *Report on Form MQ–78, Tobacco Warehouse organization.* Each warehouse operator shall annually, prior to opening of auction markets, furnish FSA an executed Form MQ–78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeepers have a financial interest.

(4) Names and addresses of custodians of warehouse records, including their location.

(b) *Separate records and reports.* Each auction warehouse operator shall keep the records and make the reports separately for each quota or nonquota kind of tobacco as provided in this section.

(c) *Record of marketing.* Each warehouse operator shall:

(1) *Auction or nonauction sale.* Keep such records as will enable the warehouse operator to furnish the following information to State FSA office with respect to each sale of tobacco made at such person's warehouse:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the producer, in the case of a sale by a producer.

(ii) The name of the seller in the case of a resale.

(iii) Date of sale.

(iv) Number of pounds sold.

(v) Amount of any penalty and the amount of any deduction for such penalty from the price paid the producer.

(vi) With respect to each individual lot of tobacco constituting an auction sale, the:

(A) Name of purchaser.

(B) Number of pounds sold.

(C) Gross sale price.

(2) *Separate account records.* Maintain records of all purchases and resales of tobacco by the warehouse operator to show a separate account for:

(i) Nonauction purchases by or on behalf of the warehouse operator of farmer-owned tobacco.

(ii) Purchases and resales of:

(A) Leaf account tobacco.

(B) Floor sweeping tobacco.

(d) *Tobacco sale bill for burley and flue-cured tobacco.* (1) Each burley or flue-cured tobacco warehouse operator shall use tobacco sales bills furnished at the warehouse operator's expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) For flue-cured tobacco only, registration number assigned the warehouse by the Department;

(iii) Name and address of warehouse where sale is held;

(iv) For flue-cured tobacco only, the identification of other producers having an interest in the tobacco;

(v) Date of sale;

(vi) Number of pounds in each lot;

(vii) Name and address of seller; and

(A) Farm number (including State and county codes) for producer tobacco, and

(B) Dealer registration number for resale tobacco;

(viii) Identification number, if available, for each lot of tobacco to be offered for sale;

(ix) Poundage balance before sale for producer tobacco based on 103 percent of farm quota;

(x) Name or symbol of purchaser of each lot which is sold;

(xi) Gross number of pounds sold;

(xii) Sale price for each lot and gross sale price for all lots sold;

(xiii) Nonauction purchases by the warehouse holding the sale;

(xiv) Tobacco grade for tobacco consigned to price support;

(xv) The buyer's grade symbol for tobacco bought by private buyers.

(xvi) The letters ''N/A'' in the buyer and grade space for nonauction purchases by the warehouse.

(xvii) Marketing quota penalty collected; and

(xviii) Amount withheld from sale to cover claims due the United States.

(2) At the end of each sale day, the tobacco sale bills shall be sorted and filed in numerical order by sale dates, and lot tickets shall be filed in an orderly manner by sale dates or by numerical order.

(e) *Identification of tobacco for marketing*—(1) *Marketing card.* Each marketing of tobacco from a farm in any State for which a farm marketing quota has been established for any kind of tobacco shall be identified by a marketing card issued for the farm on which such tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(2) *Recording farm identification.* For burley or flue-cured tobacco, at the time the tobacco is weighed in, the warehouse operator shall record on the tobacco sale bill, the State and county codes and the farm serial number from the marketing card issued for the farm from which the tobacco is to be marketed.

(3) *Return of marketing card.* For tobacco that is to be sold at auction, the warehouse operator shall retain the marketing card until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer at which time the marketing card shall be returned to the producer. In any case where a producer's marketing card is found in the possession of a warehouse operator, and no producer on the farm for which the card is issued has tobacco on the floor for sale, or tobacco for which settlement is not yet completed, such card will be picked up by an FSA representative for return to the producer. The warehouse operator shall be responsible for the safekeeping and proper use of the marketing card during such person's retention of the marketing card.

(4) *No price support.* For burley or flue-cured tobacco, if tobacco is to be marketed at auction from a farm for which a marketing card is issued bearing the notation ''No Price Support'', the warehouse operator shall enter the same notation on the tobacco sale bill at the time the tobacco is weighed in for sale. The warehouse operator shall prepare a separate tobacco sale bill to cover any tobacco which represents more than 103 percent of the effective farm marketing quota and the notation ''No Price Support'' shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale.

(5) *Nonauction purchase.* The warehouse operator shall enter the letters ''NA'' on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and shall record on all such tobacco sale bills:

(i) For burley or flue-cured tobacco, the farm serial number from the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(ii) For tobacco other than burley or flue-cured, the serial number of the marketing card that is used to identify the tobacco at the time of the nonauction purchase.

(6) *Copy of sale bill.* The warehouse operator shall furnish to the producer a copy of the tobacco sale bill bearing the letters ''NA'' for any lot of such tobacco purchased by the warehouse operator.

(7) *Lot ticket.* At the time tobacco is weighed for marketing, the warehouse operator shall record the weight of the lot of tobacco on the tobacco sale bill and on the lot ticket. The sale bill number on which the lot of tobacco is recorded shall be recorded on the lot ticket. If the marketing card which is presented to identify the tobacco at weigh-in bears the notation ''No Price Support,'' the same notation shall be entered by the warehouse operator on the lot ticket for each lot of tobacco which is identified with the same marketing card.

(8) *Recording serial number of marketing card.* For tobacco other than burley or flue-cured, before the tobacco is offered for sale, the warehouse operator shall record, on the sale bill, the serial number of the Form MQ–76 or MQ–77 issued for the farm from which the tobacco is to be marketed at auction.

(9) *Recording sale bill number.* For tobacco other than burley or flue-cured, the serial number of the sale bill shall be recorded:

(i) By the warehouse operator on the check register or check stub from the check written to cover an auction sale of tobacco by a producer.

(ii) On the inside of the marketing card by the marketing recorder or warehouse operator for each sale of tobacco by a producer.

(10) *Burley or flue-cured marketings.* A marketing card used to cover a sale of burley or flue-cured tobacco shall show on the reverse side the poundage balance of the ''103 percent of quota.''

(i) *Auction sale.* At the time of weigh-in the tobacco sale bill shall show the poundage balance of 103 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of penalty.

(ii) *Nonauction sale to a warehouse operator at the warehouse.* If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the ''103 percent of quota.'' The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(iii) *Nonauction country purchase by a warehouse operator.* The warehouse operator shall deduct, from the balance of the ''103 percent of quota'' entry on the marketing card, the pounds of tobacco purchased as a nonauction country purchase. In addition, each warehouse operator shall record on Form MQ–79 and on Form MQ–72–2, Report of Tobacco Nonauction Purchase, each nonauction country purchase of tobacco made by such warehouse operator. The data to be reported on Form MQ–72–2 is set forth in § 723.404 of this part.

(11) *Sale memo and bill of nonauction sales.* For tobacco other than burley or flue-cured, a record of sales on Forms MQ–76, MQ–77, or MQ–82, Sale Without Marketing Card (including sale memo from MQ–77 or MQ–82), shall be obtained by a warehouse operator to cover each marketing of tobacco from a farm through a warehouse and each nonauction sale of tobacco purchased by or for the warehouse operator including scrap tobacco obtained as a result of providing curing space or stripping space for farmers. Each MQ–76 and MQ–77 (including sale memo) shall be executed as follows:

(i) *Auction sale.* An auction sale identified by MQ–76 shall show in the spaces provided thereon, the sale bill number, check-mark to show the sale was by auction, a check-mark to show nonauction for purchases identified ''NA'' on the sale bill, pounds sold, name and address of warehouse, and date of sale. In addition, each sale memo issued from MQ–77 to cover an auction sale shall show on the first page thereof in all of the spaces provided therefor, the warehouse bill number, pounds sold, amount of penalty due, name and address of warehouse, and date of sale.

(ii) *Nonauction sale to a warehouse operator who does not prepare a sale bill.* An MQ–76 used to cover a nonauction sale of tobacco to a warehouse operator who does not prepare a sale bill to cover the sale shall show, a check-mark to indicate sale was by nonauction, pounds sold, name and address of the warehouse, and date of sale. When an MQ–77 is used under this paragraph, a sale memo shall be executed, including the signature of the producer on the reverse side.

(iii) *Nonauction sale to a warehouse operator who prepares a sale bill.* When a warehouse operator purchases:

(A) All the delivery of a producer's tobacco at a nonauction sale and prepares a sale bill to cover the purchase, on MQ–76 there shall be shown the bill number, check-mark to show nonauction purchases, pounds sold, name and address of warehouse, and date of sale. When an MQ–77 is used a sale memo shall be executed, including the signature of the producer on the reverse side.

(B) Part of a delivery of a producer's tobacco as a nonauction purchase and the remainder of the tobacco is sold at auction, if such tobacco is identified by an MQ–76 the Record of Sales shall be completed to show the name and address of the warehouse, the date of sale, the sale bill number, check-mark under both auction and nonauction, and, under ''Lbs. Sold,'' the total number of pounds covered by the entire delivery. If the sale is identified by an MQ–77, the sale memo (front) shall be completed to show the sale bill number, the total number of pounds covered by the entire delivery under ''Lbs.

Sold,'' the amount of penalty due, name and address of the warehouse, and the date of sale. In addition, the reverse side of the sale memo shall show the number of pounds sold at nonauction.

(f) *Nonquota tobacco or quota tobacco of a different kind.* If tobacco is presented for sale that is represented to be nonquota tobacco or should there be a question as to what kind of quota tobacco is being offered for sale, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. The lot ticket for the tobacco shall be cross-referenced to the sale bill by sale bill number and date. The sale bill shall show the producer's name and address and the State and county code and farm number of the farm on which the tobacco was produced. If an AMS inspection shows that a lot of tobacco is of a different kind than that identified by the lot ticket, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the lot ticket and sale bill shall be furnished to the State FSA office at the end of the sale day.

(g) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show ''resale'' and;

(1) For dealers, the name of the dealer making each resale; and

(2) For the warehouse, the name of the warehouse and either ''floor sweepings'' or ''leaf account'' tobacco.

(h) *Suspended sale record.* (1) Any tobacco sale bill covering sale of tobacco for which a valid marketing card or dealer identification card was not presented at the end of the sale day shall be given to a marketing recorder who shall stamp such bills, ''Suspended'', and shall handle according to instructions provided by the Deputy Administrator.

(2) When cleared, such suspended sale shall show ''suspended-cleared'' and date cleared. If a suspended sale is not cleared from suspension by the last auction sale day for the warehouse for the season (or for burley tobacco only, within 7 days of the sale if such date is earlier), it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouse operator.

(i) *Payee to be shown on auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example ''John Doe or Bearer.''

(j) *Warehouse entries on other dealer's reports.* Each warehouse operator shall record, or have the dealer record, on a Form MQ–79 the total purchases and resales made by each such dealer or other warehouse operator during each sale day at the warehouse. Warehouse operators shall sign the Form MQ–79 on the same line as the transaction is recorded when a dealer resells tobacco at the warehouse. If any tobacco resold by the dealer and carried over by the dealer from a crop produced prior to the current crop, an entry shall be made on the MQ–79 to clearly show such fact.

(k) *Warehouse data for burley or flue-cured tobacco.* (1) Each operator of a burley or flue-cured tobacco auction warehouse shall prepare at the end of each sale day a report on MQ–80, Daily Warehouse Sales Summary, showing for each sale day:

(i) For each manufacturer, buyer, order buyer, and any tobacco cooperative, pounds of tobacco purchased at auction (consigned in the case of tobacco cooperatives).

(ii) The sum of the items for paragraph (k)(1)(i) of this section.

(iii) Resales at auction for each person listed under paragraph (k)(1)(i) of this section.

(iv) For each dealer subject to reporting purchases and resales on MQ–79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(v) The total pounds purchased at auction at the warehouse for the leaf account.

(vi) The total pounds purchased at nonauction at the warehouse for the leaf account.

(vii) The sum of the total pounds for paragraphs (k)(v) and (vi) of this section.

(viii) The total leaf account resales.

(ix) The total floor sweeping resales.

(x) The sum of the total purchases for paragraphs (k)(1)(ii), (iv), and (vii) of this section.

(xi) The sum of the total resales for paragraphs (k)(1)(ii), (iv), (viii) and (ix) of this section.

(xii) The totals of the purchases column on the Form MQ–79 representing the nonauction purchases for the warehouse leaf account.

(xiii) The totals of the resales column on Form MQ–79 representing the nonauction resales (including floor sweepings nonauction sales) by the warehouse.

(xiv) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ–72–1.

(xv) For each dealer, at the time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(2) As to the information required to be entered on MQ–80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) The total number of Forms MQ–72–1 for the sale day and the sum of pounds sold, and

(ii) The total number of suspended sale bills and the sum of such pounds sold.

(3) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ–80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, provided further that if on inspection it is determined that there is damaged tobacco in the warehouse or otherwise on hand, no carryover credit for the next marketing year shall be allowed for the damaged tobacco and the amount of pounds of damaged tobacco shall be deducted from the operator's purchase credit for the current year,

(ii) Permit its inspection by a representative of FSA, and

(iii) Provide for the weighing of such tobacco, to be witnessed by an FSA representative, and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(4) The warehouse operator shall furnish to the marketing recorder a copy of each executed MQ–80.

(5) Before the next marketing season begins, carryover tobacco reported by the warehouse operator as provided in paragraph (k)(3) of this section shall be reinspected by a representative of FSA.

(i) If the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the warehouse operator shall:

(A) Provide for the weighing of such tobacco which shall be witnessed by a representative of FSA.

(B) Furnish to such representative at the time of weighing a certification as to the actual weight of the tobacco.

(ii) If the FSA representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial certification, the initial weight, together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (k)(3) of this section, shall be used for the purpose of determining the amount of penalty, if penalty is due.

(iii) The reweighed quantity shall be the official pounds to be credited to the account as carryover tobacco.

(iv) If upon reinspection by a representative of FSA, there is an amount of tobacco determined to be damaged tobacco, the pounds of damaged tobacco shall be deducted from the purchase credit, if not done so previously, and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

(l) *Warehouse data for tobacco other than burley or flue-cured.* (1) Each operator of a tobacco auction warehouse, other than the operator of a burley or flue-cured auction warehouse, shall prepare and promptly forward at the end of each sale day to the State FSA office a report on MQ–80, Daily Auction

Warehouse Report, showing for each sale day, unless otherwise stated below:

(i) For each dealer or buyer as originally billed, the total pounds of tobacco purchased at auction and resales at auction on the warehouse floor.

(ii) For any association as originally billed, the total pounds and gross amount of loan tobacco acquired at auction, and resales at auction, if any, on the warehouse floor.

(iii) The total pounds of:

(A) Leaf account purchases at auction on the warehouse operator's own floor,

(B) Leaf account purchases at nonauction sale for which a floor sheet is prepared,

(C) All leaf account resales at auction on the warehouse operator's own floor, including resales of tobacco from the warehouse operator's buyers corrections account, and

(D) All resales at auction on the warehouse operator's own floor of floor sweepings which accumulated on the warehouse operator's own floor.

(iv) The respective sums of the purchases, including loan tobacco, and resales for paragraphs (l)(1)(i), (ii), and (iii) of this section.

(v) The computed total of first sales at auction on the warehouse floor.

(vi) The warehouse gross sale pounds for the day as billed to buyers.

(vii) The pounds on warehouse check register if shown thereon, and

(viii) The total pounds of the resales,

(ix) On the report for the last sale day for the season, the pounds of all tobacco on hand whether such tobacco represents leaf account tobacco or floor sweepings which accumulated on the warehouse operator's own floor.

(x) For each warehouse sale of excess tobacco from a farm, the applicable sale memo and numbers thereof with remittance of the penalty due as shown thereon.

(2) As to information required to be entered on MQ–80, Daily Auction Warehouse Report, by the marketing recorder, the warehouse operator shall keep and make available such records as will enable the marketing recorder to enter thereon:

(i) For each sale identified by an MQ–76, MQ–77 (including sale memo), or MQ–82, Sale Without Marketing Card, the pounds sold;

(ii) For each sale suspended, the warehouse bill(s) number and pounds sold;

(iii) For each sale cleared from suspension, the MQ–76 number or, for MQ–77 or MQ–82, the sale memo number and the date of clearance.

(3) When a producer rejects the sale of a lot of tobacco, and the tobacco has been billed out and the bills presented to the buyer, the warehouse operator shall not change the marketing card, or Form MQ–80 on which the sale was reported. If the warehouse operator gains possession of the tobacco and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(4) In balancing first sales (represented by marketing recorder's total) with computed first sales (bill-out total minus resales as reported by the warehouse operator) the State FSA executive director is authorized to approve reports with variance not to exceed one-half of 1 percent of such pounds.

(5) At the end of the season, each warehouse operator shall:

(i) Report on the final MQ–80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location,

(ii) Permit its inspection by a representative of FSA, and

(iii) Provide for the weighing of such tobacco (to be witnessed by a representative of FSA) and furnish to such representative a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due. Separate data shall be reported for floor sweeping tobacco.

(m) *Bill-out invoice.* For flue-cured tobacco when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number (warehouse code), sale bill number, and line number on which the lot of tobacco was recorded on the sale bill.

(n) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.*

For each marketing year, the warehouse operator shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouse operator may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) lots from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchase.

(o) *Handling rejected (producer) sale after bill-out.* Where a producer rejects the sale of a lot of tobacco, and the tobacco has been billed-out and bills presented to the buyer, the warehouse operator shall not change the MQ–76 or MQ–80 on which the sale was reported. If the warehouse operator gains possession of the tobacco, and it is resold by such warehouse operator, it shall be identified as resale tobacco.

(p) *Report to county FSA office of long weights and long lots.* Each warehouse operator shall report to the county FSA office or marketing recorder long weights and long lots of producer tobacco (first sales) for which the farmer has been paid.

(q) *Record and report of warehouse operator's leaf account purchases and resales not on such warehouse operator's floor.* (1) Each warehouse operator shall keep a record and make reports on MQ–79, Dealer's Report, showing:

(i) All nonauction purchases of tobacco, except nonauction purchases at such warehouse operator's warehouse which are reported on MQ–80.

(ii) All purchases and resales of tobacco at public auction through warehouses other than such operator's own warehouse.

(iii) All nonauction resales of tobacco.

(2) Form MQ–79 shall be prepared and a copy, including copies of Form MQ–72–2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State FSA office not later than the end of the calendar week (at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold.

(3) If tobacco is purchased prior to the opening of the local auction market, an MQ–79 shall be prepared and a copy, together with copies of MQ–72–2 for all nonauction purchases of burley or flue-cured tobacco, forwarded to the State FSA office not later than the end of the calendar week which would include the first sale day of the local auction markets.

(4) A remittance for all penalties shown by the entries on Form MQ–79 and Form MQ–72–2 to be due shall be forwarded to the State FSA office with the original copy of MQ–79.

(5) Resales of floor sweepings shall be reported separately from leaf account tobacco.

(r) *Buyers corrections account.* Each warehouse operator shall keep such records including negative adjustment invoices as will enable the warehouse operator to furnish a weekly report on Form MQ–71 to the State FSA office showing the total pounds of the debits (for returned lots, short lots, and short weights of tobacco) and the credits (for long lots and long weights of tobacco) to the buyers corrections account. Where the warehouse operator returns to the seller tobacco debited to the buyers corrections account, the warehouse operator shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on such dealer's MQ–79, Dealer's Report. Any balancing figure reflected on the warehouse operator's summary of bill-outs shall not be included in the buyers corrections account.

(s) *Reporting of processed leaf account tobacco.* Any warehouse operator who delivers tobacco to a firm for the purpose of redrying, processing, or stemming of such tobacco shall, by the end of the week in which such tobacco was

delivered, report to the State FSA office on MQ–79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered, and

(3) The pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

(t) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouse operator or any other person who grades tobacco for farmers shall maintain records which will enable such person to furnish the State FSA office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(u) *Report of farm scrap resulting from furnishing stripping space for farmers.* Any warehouse operator or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable such person to furnish the State FSA office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(v) *Producer tobacco.* Producer tobacco (first sale) in possession of a warehouse operator, resulting from long weights and long lots, which has not previously been identified by a sale shall be recorded and reported in the same manner as a nonauction sale to a warehouse operator who does not prepare a warehouse bill (floor sheet) and shall be reported on MQ–79, Dealer's Record. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco or, if the kind is not known, at the penalty rate for the kind of tobacco generally marketed through the warehouse.

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

§ 723.404 Dealer's records and reports, excluding cigar tobacco buyers.

(a) *General.* This section is applicable to all kinds of tobacco except cigar tobacco.

(1) Each dealer, except as provided in § 723.405 of this part shall keep by kinds of tobacco the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided in this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number (if applicable) and the reporting dealer's identification number (if applicable) as well as the names of the warehouse and dealers involved in the transaction.

(2) Each dealer shall properly execute the ''Receipt for Dealer's Record'' contained in MQ–79, which is issued to the dealer, and shall transmit such receipt to the applicable State FSA office.

(b) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer of the tobacco, if different from the operator; or

(C) The seller if purchased as a nonauction purchase from a warehouse operator or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address, the producer association number, if applicable, and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amounts remitted for the No Net Cost and the Tobacco Marketing Assessments.

(ix) The quantity of tobacco purchased from a prior crop and carried

over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of the:

(A) Warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(B) Buyer if the tobacco was sold at a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(c) *Nonauction purchase.* (1) Each purchase of tobacco from a producer from a quota producing area shall be identified by a marketing card, issued for the farm on which the tobacco was produced unless an AMS inspection is obtained prior to purchase which shows that tobacco being offered for sale is a kind not subject to marketing quotas.

(2) For burley and flue-cured tobacco:

(i) After each nonauction purchase, the dealer shall enter a declining balance of ''103 percent of quota'' on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous ''103 percent of quota'' entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marketing card at the time each lot of tobacco is purchased.

(ii) After each nonauction purchase, the dealer shall prepare a form MQ–72–2 which shall set forth the following:

(A) The date of the purchase.

(B) The registration number of the dealer.

(C) The name and address of the person selling the tobacco.

(D) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.

(E) The pounds of tobacco purchased.

(F) The amount of penalty collected.

(G) The method (estimating or weighing) of determining the pounds of tobacco marketed.

(H) The signature of the seller and the date signed.

(iii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry 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.

(3) For all other kinds of tobacco:

(i) When a Form MQ–77 Marketing Card is used to identify a nonauction sale, the producer's signature shall be obtained on the reverse side of a sale memo which is a part of the Form MQ–77. A nonauction sale not identified by a marketing card shall be identified by a Form MQ–82 executed by a marketing recorder or other representative of the State FSA committee. The dealer shall record each nonauction purchase of tobacco on Form MQ–79, Dealer's Record.

(ii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. 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 for each kind of tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(d) *Record and report of purchases and resales.* (1) For burley and flue-cured tobacco, each dealer shall keep a record and make reports on Form MQ–79

showing all purchases and resales, excluding tobacco not in the form normally marketed by producers. After each transaction is entered on the Form MQ–79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ–79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ–79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) For all other kinds of tobacco, each dealer shall keep a record and make reports on Form MQ–79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(3) A Form MQ–79 shall be prepared and a copy (together with executed copies of Form MQ–72–2 for all nonauction purchases of burley and flue-cured tobacco) shall be forwarded to the State FSA office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ–79 shall be prepared and a copy, together with executed copies of Form MQ–72–2 for all nonauction purchases, shall be forwarded to the State FSA office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ–72–2 for all nonauction purchases shall be prepared and forwarded to the State FSA office not later than the end of the calendar week which would include the first day of the local auction market where the resale takes place.

(4) The data to be entered on Form MQ–72–2 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (c)(2) of this section.

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and January 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

(i) Show the word ''final'' on the Dealer's Report, MQ–79, for the season,

(ii) Report on such ''final'' MQ–79 for the season the quantity of tobacco on hand and its location,

(iii) Permit its inspection by a representative of FSA, and

(iv) Provide for weighing of such tobacco (to be witnessed by a representative of FSA) and furnish a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(v) If upon inspection by a representative of FSA, there is an amount of tobacco determined to be damaged tobacco according to § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

(6) Notwithstanding the provisions of paragraph (d)(5) of this section, any dealer having tobacco transactions after January 15 for flue-cured and April 1 for other than flue-cured shall make reports on Form MQ–79 at the end of each week, as provided in paragraph (d)(3) of this section.

(7) For burley and flue-cured tobacco, before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (d)(5) of this section shall be reinspected by a

representative of FSA. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by an FSA representative. The dealer shall furnish to such representative at the time of weighing a certification as to the actual weight of such tobacco. If an FSA representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (d)(5) of this section shall be used for the purpose of determining penalty, if penalty is due. Penalty shall be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover. If upon reinspection by a representative of FSA, there is an amount of tobacco determined to be damaged tobacco under § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

(8) 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).

(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ–79–2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured and April 1 for burley tobacco.

(e) *Daily report to warehouse operator for buyers correction account.* Notwithstanding the provisions of § 723.405 of this part, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouse operator at an auction sale or otherwise, which is not invoiced to such person or which is incorrectly invoiced to such person by the warehouse operator, shall furnish to the warehouse operator on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouse operator for that sale day.

(3) Such reports as required under paragraphs (d)(1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the warehouse where the purchase was made.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State FSA office on MQ–79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered; and

(3) Pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco

shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be a nonquota kind.* Any dealer who plans to purchase tobacco that was produced on a farm in a quota area shall treat such tobacco as a quota kind of tobacco according to the provisions of this part 723 unless prior to the purchase a certification is obtained from an AMS inspector to indicate that such tobacco is a nonquota kind of tobacco. In such case, the dealer shall mail or otherwise deliver to the State FSA office, on the date of the purchase, a copy of the AMS certification and a statement signed by the AMS inspector, the producer, and the dealer to indicate the:

(1) State and county code and farm number of the farm on which the tobacco was produced.

(2) Name and address of the producer.

(3) Name and address of the dealer.

(4) Weight of the tobacco.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991; 57 FR 43582, Sept. 21, 1992]

§ 723.405 Dealers exempt from regular records and reports on MQ–79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 723.404 of this part except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of § 723.404(e) of this part. A dealer or buyer whose resales in the form normally marketed by producers farmers exceed 5 percent of their purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 723.404 of this part (except for requirements which relate to nonauction purchases from producers and requirements of § 723.404(e) of this part.

(b)(1) This paragraph is applicable only to burley and flue-cured tobacco. Each dealer or buyer shall make a report to the Director, not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30 for burley tobacco and July 1 through June 30 for flue-cured tobacco) which is not included in the initial report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

(2) For purchases at auction for each warehouse;

(i) USDA registration number (warehouse code),

(ii) Name and address of warehouse,

(iii) Gross pounds originally billed to the buyer,

(iv) Gross pounds billed to the buyer for which payment was made,

(v) Gross pounds from the company correction account deducted for short lots and short weights and returned lots, and

(vi) Gross pounds from the company correction account added for long lots and long weights.

(3) For purchases at nonauction;

(i) Name and address of seller (dealer or farmer),

(ii) Seller's number (dealer's registration number or farm number, including State and county code), and

(iii) Pounds purchased.

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouse operator, or other person who intends to purchase damaged tobacco shall notify the State FSA office where the warehouse operator or dealer is registered or should be registered. Such report must be made at least 2 business days in advance of the purchase so as to allow for inspection arrangements to be made. The inspection shall be conducted by an FSA representative and no purchase credit shall be allowed the buyer for the

quantity determined to be damaged tobacco. Damaged tobacco may be disposed of without incurring a penalty only if the tobacco is destroyed and the destruction is witnessed by an FSA representative or the tobacco is sold directly to a processor or manufacturer and such sale is reported to the same State FSA office. Any tobacco not disposed of in that manner shall be deemed to have been a marketing of excess tobacco and will be subject to a penalty at the full penalty rate for the quantity of tobacco involved.

(b) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouse operator, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to FSA that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouse operator, or other person on MQ–79, Dealer's Record Book, for any purchase of tobacco which is not in the form normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(c) *Report by dealer or warehouse operator.* Any dealer, warehouse operator or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State FSA office issuing form MQ–79, Dealer's Record Book, to such person. Such report shall be made timely so that a representative of FSA may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before such plans are reported to the state FSA office and before the tobacco is inspected by an FSA representative or an inspection is declined by an FSA representative shall be deemed excess tobacco and the penalty at the full rate shall be due.

(d) *Report by processor or manufacturer.* Each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processor or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

(e) *Dealer records and reports.* (1) Any dealer, warehouse operator or other persons who purchased tobacco classified as not in the form normally marketed by producers shall keep such records as will enable such person to report to the State FSA office the following:

(i) Name of seller, pounds purchased, and date of purchase.

(ii) The disposition of such tobacco including name of buyer, pounds sold, date of sale,

(2) Upon request by the State FSA office such person shall provide for the inspection and weighting of the tobacco to be witnessed by an FSA representative.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991; 57 FR 43582, Sept. 21, 1992]

§ 723.407 Cigar tobacco buyer's records and reports.

(a) *This section is applicable to buyers of cigar tobacco*—(1) *Definition of cigar buyer.* With respect to this section, a buyer is any person who buys cigar tobacco including an association or cooperation that receives tobacco from producers for the purpose of:

(i) Selling it for the producers, or

(ii) Placing it under price-support loan through Commodity Credit Corporation.

(2) *Report of buyer's name and address.* Each buyer shall properly execute, detach, and promptly forward to the State FSA office, ''Receipt for Buyer's Record'' contained in MQ–79 (CF&B), which is issued to the buyer.

(b) *Record of purchases.* A buyer shall keep records which provide the following information for each lot of each kind of tobacco purchased or sold by the buyer, including tobacco obtained from grading tobacco for producers or furnishing curing space, or stripping space:

(1) The name of:

(i) The operator of the farm on which the tobacco was produced; or

(ii) The name and address of the seller, in the case of a sale by a person other than the farm operator.

(2) The identification number of the farm at/from which the tobacco was purchased.

(3) The date of purchase.

(4) The pounds of tobacco purchased.

(5) The gross purchase price.

(6) The amount of penalty.

(7) The amounts remitted for the No Net Cost and Tobacco Marketing Assessments.

(c) *Report of sales.* Each buyer shall maintain records which will show, by kind of tobacco, the disposition of tobacco purchased under paragraph (b) of this section.

(d) The dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment 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 remittance 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 otherwise avoiding provisions of this part or part 1464 of this title;

(iv) Falsely identified; or,

(v) Marketings for which the producer or other party fails to make a proper account as required by the provisions of this part.

(2) *Amount of the penalty.* The amount of the penalty shall be the amount computed by multiplying the penalty rate by the penalty quantity.

(3) *Penalty rate.* The penalty rate for purposes of this section is that rate which is computed as the penalty rate per pound for the applicable kind of tobacco under § 723.308, except to the extent that a converted penalty rate may be used as provided for in this section.

(4) *Penalty quantity.* The penalty quantity for purposes of this section is the quantity of tobacco that is determined by the county FSA committee subject to the Director's review to be subject to penalty, provided further that:

(i) For burley and flue-cured tobacco, the penalty quantity for purposes of this section shall be the amount of marketings from the farm in excess of 103 percent of the farm's effective marketing quota for that year, except that if the violation involves false identification or a failure to account for tobacco, the FSA may, in its discretion, depending on the nature of the violations, use as the penalty quantity an amount up to 25 percent of the farm's effective marketing quota plus 100 percent of the farm yield on any excess acreage for the farm (acreage planted in excess of the allotted acres, as estimated or determined).

(ii) For tobacco other than burley and flue-cured tobacco, the penalty quantity shall be the amount of marketings from the farm in excess of the farm's marketing quota provided further, that in order to aid in the collection of the penalty the FSA may endeavor, to the extent practicable, to apply the penalty to all of the farm's marketing by converting the full penalty rate to a converted proportionate penalty rate which rate may be identified on the producer's marketing card and collected and remitted accordingly. In making the calculation of the converted penalty rate, the agency shall take into account any carryover tobacco applicable for the farm. If an erroneous penalty rate is shown on the marketing card, then the producer of the tobacco and the producer who marketed the tobacco shall be liable for any balance due.

(5) *Limitations on reduced penalty quantities.* No penalty shall be assessed at less than the maximum amount unless it is determined by the county FSA committee, with the concurrence of the State FSA committee, that all of the following exist with respect to such violation:

(i) The violation was inadvertent and unintentional;

(ii) All of the farm's production has been accounted for and there are no excess marketings for which there are penalties outstanding;

(iii) The records for all involved farms have been corrected to show the marketings involved; and

(iv) The false identification or failure to account did not give the producer an advantage under the program.

(6) *Effect of improper, invalid, deceptive or unaccounted for marketings on penalty quantity calculation.* Any marketing made without a valid marketing card, falsely identified, or unaccounted for in accordance with the requirements of this part, or made under circumstances which are designed to, or have the effect of, defeating the purpose of the tobacco marketing quota and price support program, avoiding any limitation on marketings, avoiding a penalty, or avoiding compliance with, or the requirements of, any regulation under this part or under part 1464 of this title, shall be considered an excess marketing of tobacco. Further, such marketings shall, unless shown to the satisfaction of the county FSA committee to be otherwise, be considered, where relevant, to be in excess of 103 percent of the applicable marketing quota for the farm, and shall be subject to a penalty at the full penalty rate for each pound so marketed.

(7) *Pledging of tobacco by an ineligible producer.* In addition to any other circumstances in which a penalty may be assessed under this part, the marketing or pledging for a price support loan of any tobacco when the producer is not considered to be an ''eligible producer'' under the provisions of part 1464 of this title, shall be considered to be a false identification of tobacco and shall be dealt with accordingly. This remedy shall be in addition to all others as may apply.

(8) *Failures to make certain reports.* If any producer who manufactures tobacco products from tobacco produced by such person or another fails to make the report required by § 723.408(f) or otherwise required by this part, or makes a false report, such producer shall be deemed to have failed to account for the disposition of tobacco produced on the farm(s) involved. The filing of a report by a producer under § 723.408 of this part which the State FSA committee finds to be incomplete or incorrect shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Special provisions for tobacco buyers, dealers, handlers, warehouse operators and others who acquire, handle, or facilitate the marketing of tobacco.* Notwithstanding the provisions of paragraph (a) of this section and other provisions of this part:

(1) Unless such amount has been remitted by another in accord with the provisions of this part, a dealer, buyer, warehouse operator or other person handling tobacco shall collect, and remit to FSA, an amount equal to the full penalty rate provided for in § 723.208 times the quantity of tobacco involved where the tobacco is not identified with a valid producer or dealer card, the tobacco is sold under suspicious circumstances, or when there is reason to suspect that the tobacco may be subject to a penalty for any reason or may be marketed in derogation of the goals and purposes of the tobacco support program. For purposes of the preceding sentence ''handling'' shall include any services provided with respect to the tobacco, and any facilitation of the marketing of tobacco regardless of the level or amount of contact, if any, that the party may actually have with the tobacco.

(2) The amount of the penalty required to be collected may be deducted from the proceeds due a seller and all parties chargeable under paragraph (b)(1) of this section shall be jointly and severally liable for insuring that the monies are remitted to FSA except to the extent that the Director shall allow for an exemption to facilitate the marketing of tobacco, or for some other reason.

(3) The collection and remittance of penalty shall be in addition to any other obligations that such person may have to collect other amounts, including other penalties or assessments due on such marketings.

(4) If a penalty is collected and remitted by a buyer, dealer, or warehouse operator that is shown not to be due or only partially due, then the overpayment shall be refunded to the appropriate party. It is the responsibility of the person that collected the penalty and the person that sold the tobacco involved to show to the satisfaction of the FSA that such penalty is not due in the full amount collected.

(c) *Canceled allotment or quota.* If part or all of the tobacco produced on a farm has been marketed and the farm acreage allotment or farm marketing quota for the farm is canceled, any

penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota-burley or flue-cured tobacco.* With respect to burley or flue cured tobacco, if the county FSA committee determines that the farm operator or another producer on the farm has marketed more than 103 percent of such operator's or producer's share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing such producer's proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound of tobacco marketed above 103 percent of such producer's share of the effective farm marketing quota. However, the sum of such penalties shall not exceed the total penalties due on total marketings above 103 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph, a hearing shall be scheduled by the county FSA committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 103 percent of such person's proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing floor sheets and other relevant supporting documents. At least two members of the county FSA committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county FSA committee shall make a determination on the basis of available records and shall assess any penalties that may be required against the applicable person.

(e) *Penalties not to be assessed-burley or flue-cured tobacco.* With respect to burley or flue-cured tobacco, if the operator or another producer on the farm markets a quantity of tobacco above 103 percent of the effective farm marketing quota for the farm and such overage is found to have been caused by the failure to record or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer if:

(1) For amounts of $100 or less, the county FSA committee, and

(2) For amounts over $100, the county FSA committee with approval of the State FSA committee determines that each of the following conditions is applicable:

(i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another FSA employee, and

(ii) The farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketings for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

(f) *Refusal to contribute required assessments.* A marketing penalty at the full rate per pound is due on each pound of tobacco marketed from a farm when the farm operator or producers refuse to pay no-net-cost or marketing assessments as provided in part 1464 of this title. In all such cases, the farm from which the tobacco has been produced shall be considered to have a marketing quota of zero pounds and an allotment of zero acres.

[55 FR 39914, Oct. 1, 1990, as amended at 57 FR 43583, Sept. 21, 1992; 63 FR 11582, Mar. 10, 1998]

§ 723.410 Penalties considered to be due from warehouse operators, dealers, buyers, and others excluding the producer.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley

and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ–76 or MQ–77 (including sale memo)) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ–82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

(c) *Burley or flue-cured tobacco nonauction sale.* For burley and flue-cured tobacco, any nonauction marketing of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time of marketing on MQ–79, Dealer's Report, the marketing card, and MQ–72–2, Report of Tobacco Nonauction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ–79, the marketing card, and MQ–72–2, Report of Tobacco Nonauction Purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ–79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) *Nonauction sale, except burley, flue-cured, and cigar tobacco.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any nonauction sale of tobacco which:

(1) Is not identified by an MQ–76 or MQ–77 (including a valid sale memo); and

(2) Recorded on MQ–79, Dealer's Record, not later than the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ–76 or MQ–77 (including a valid sale memo) and recorded on MQ–79 not later than the end of the calendar week which includes the first day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(e) *Failure to obtain an MQ–76 and sale memo, and failure to record a sale on MQ–76-cigar tobacco.* Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm, or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the required record.

(f) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State FSA committee shall not be based on the warehouse operator's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouse operator's prior purchases of leaf account tobacco.

(g) *Dealer tobacco—burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ–79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at nonauction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office.

(h) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouse operator or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator or dealer furnishes proof of such resale which is acceptable to the State FSA executive director. The penalty thereon shall be paid by the warehouse operator or dealer who fails to make the report as required.

(i) *Marketing falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(j) *Carryover tobacco, except cigar tobacco.* Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators and § 723.404 of this part for dealers shall be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator furnishes proof acceptable to the State FSA committee and unless the dealer furnishes proof acceptable to the State FSA executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator or dealer.

(k) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ–79 (CF&B), Buyer's Record Book, by the 10th day of the month following the month during which the sale dated occurred shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(l) *Floor sweepings.* Any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of Agriculture. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes for the auction season shall be considered marketed. The floor sweepings on hand shall be weighed by the warehouse operator and the weight shall be certified by the warehouse operator, such weighing to be done in the presence of a representative of either the county FSA committee or State FSA committee. Floor sweepings which are destroyed in the presence of a representative of the county FSA committee, within 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county FSA committee determines, after the warehouse has been closed for the auction season for more than 30 days (15 days with respect to flue-cured tobacco), that the cumulative quantity of floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice

of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the ''Farm Service Agency, USDA'' within 15 days after the mailing of the notice.

(m) *Blending tobacco not in the form normally marketed by producers—burley and flue-cured tobacco*. Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers that is blended with tobacco in the form normally marketed by producers shall not be credited as a purchase to the dealer's or warehouse operator's account by the State FSA committee when reconciling the warehouse operator's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and penalty shall be due on the pounds of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

(n) *Advances and other cases in which the producer's marketing card is used improperly*. For tobacco of any kind to which this part applies, if tobacco is marketed by a person by using the producer's marketing card or the tobacco is pledged for a price support loan by using that card, but under the provisions of part 1464 of this title, the producer is deemed to have not been an ''eligible producer'' with respect to the disposition of that tobacco at the time because of an advance or other preauction arrangement, such disposition of the tobacco shall be considered a false identification of the tobacco and may be considered to be a marketing of excess tobacco. In such cases, the person who paid the advance, took possession of the tobacco, or made the agreement with the producer which made the producer no longer an ''eligible producer'' with respect to the tobacco, shall be jointly and severally liable with the producer for any penalty with respect to such disposition which is levied against the producer under the provisions of this part and additionally, if such disposition is determined to be a marketing of excess tobacco, shall be liable for a penalty calculated by using the penalty rate for the tobacco involved multiplied by the pounds of tobacco involved. These remedies shall be in addition to any other remedies which may apply, including but not limited to, any liability for a refund of any price support loan advances which were paid in the name of, or for the account of, the producer of the tobacco.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21444, May 9, 1991; 57 FR 43583, Sept. 21, 1992; 63 FR 11583, Mar. 10, 1998]

§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.

(a) *Trucker records*. Each trucker shall keep such records as will enable such trucker to furnish the State FSA office a report with respect to each lot of tobacco received by such trucker showing.

(1) The name and address of the producer;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The location where received; and

(5) The name and address of the person to whom it was delivered.

(b) *Processor records*. Each firm engaged in the business of processing tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying or stemming).

(5) The amount of any advance or loan made by such person on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco

processed and the number of containers by classification (strips, stems, scrap or leaf).

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased at auction or tobacco which was previously reported on Form MQ–79. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c) *Records for stored tobacco.* Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, marketing agent or other person for whom the tobacco was received;

(2) The date and receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by such firm;

(5) The disposition of the tobacco; and

(6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ–79. Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

§ 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, dealer, buyer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco, and who is engaged in more than one such business, shall keep such records as will enable such person to make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

§ 723.413 Length of time records and reports are to be kept.

Records to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State FSA executive director, or the Director.

§ 723.414 Failure to keep records and make reports or making false report or record.

(a)(1) *Failure to keep records and make reports.* Under the provisions of section 373(a) of the Act, any warehouse operator, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouse operator, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer or warehouse operator to obtain a:

(i) Producer's marketing card, MQ–76 and MQ–77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ–79–2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representation—warehouse operators, dealers, and processors.* The

monetary penalties described in this part are in addition to penalties prescribed by other criminal statutes including 18 U.S.C. 231 which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused ''103 percent of quota poundage'' on marketing cards.

(c) *Misrepresentation and scheme or device.* A warehouse operator or dealer who is determined by FSA to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(2) Made any fraudulent representation,

(3) Misused a MQ–76 or MQ–79–2, or

(4) Sold excess tobacco, shall pay a marketing quota penalty as prescribed in this part.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21444, May 9, 1991]

§ 723.415 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any report, but not so furnished, any warehouse operator, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State FSA executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Farm Service Agency, U.S. Department of Agriculture upon written request by the State FSA executive director, all such books, papers, records, lot tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ–72–1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State FSA executive director has reason to believe are relevant and are within the control of such person.

§ 723.416 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and community committees, and all county FSA office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Subpart E—Establishing Burley and Flue-Cured Tobacco National Marketing Quotas

SOURCE: 63 FR 11583, Mar. 10, 1998, unless otherwise noted.

§ 723.501 Scope.

This subpart sets out regulations for setting annual national marketing quotas for burley and flue-cured tobacco based on the purchase intentions of certain manufacturers of cigarettes and on other factors. It also sets out penalty provisions for manufacturers who fail to purchase, within the tolerances set in this part, the amount of domestic tobacco, by kind, reflected in the stated intention as accounted for in accordance with this subpart.

§ 723.502 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A manufacturer, who as determined by the Director, produces and sells more

than 1 percent of the cigarettes produced and sold in the United States annually.

Price support inventory. The inventory of tobacco which, with respect to a particular kind of tobacco, has been pledged as collateral for a price support loan made by CCC through a producer-owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations or their successors, which by law act as agents for producers for price support loans for tobacco, and which were, as of January 1, 1996, for burley and flue-cured tobacco, the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

Unmanufactured tobacco. Stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco.

§ 723.503 Establishing the quotas.

(a) *General*. Subject to the 3-percent adjustment provided for in paragraph (b) of this section, the annual marketing quotas for burley and flue-cured tobacco shall be calculated for each marketing year for each kind separately as follows:

(1) *Domestic manufacturer purchase intentions*. First, for each kind and year, the Director shall calculate the aggregate relevant purchaser intentions as declared or set under this section.

(2) *Exports*. Next, the Director shall add to the total determined under paragraph (a)(1) of this section the amount which is equal to the Director's determination of the average quantity of exported domestic leaf tobacco of the applicable kind for the past 3 marketing years. For this purpose, exports include unmanufactured tobacco only, including, but not limited to, stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco, and excludes tobacco contained in manufactured products including, but not limited to, cigarettes, cigars, smoking tobacco, chewing tobacco, snuff and semi-processed bulk smoking tobacco. The quantity of exports for the most recent year, as needed, may be estimated.

(3) *Reserve stock level adjustment*. The Director may then adjust the total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion, determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent of the previous year's national market quota. Any adjustment under this clause shall be discretionary taking into account supply conditions: provided that for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level. However, if for any of the 2001 and subsequent crops the uncommitted pool stocks of burley tobacco become equal to or less than the reserve stock level, then for that year and any subsequent year the limitation contained in the previous sentence on the amount of the downward adjustment in quota that may be made based on the reserve stock level, for that kind of tobacco, shall not apply.

(b) *Additional 3-percent adjustment*. The amount otherwise calculated under paragraph (a) of this section may be adjusted by the Director by 3 percent of the total. This adjustment is discretionary and may be made irrespective of whether any adjustment has been made under paragraph (a)(3) of this section and may be made to the extent the Director deems such an adjustment is in the best interest of the program.

(c) *Dates of announcement*. For flue-cured tobacco, the quota determination should be announced by December 15 preceding the marketing year. For burley, the announcement should be made by February 1 preceding the marketing year.

[63 FR 11583, Mar. 10, 1998, as amended at 66 FR 53509, Oct. 23, 2001]

§ 723.504 Manufacturers' intentions; penalties.

(a) *Generally.* Each domestic manufacturer shall, for each marketing year, for burley and flue-cured tobacco separately, submit a statement of its intended purchases of eligible tobacco by the date prescribed in paragraph (d) of this section; further, at the end of the marketing year, each such manufacturer shall submit a statement of its actual countable purchases of eligible tobacco for that marketing year, by kind, for burley and flue-cured tobacco. For these purposes, countable purchases of eligible tobacco shall be as defined in, and determined under, paragraph (b) of this section. If a domestic manufacturer fails to file a statement of intentions, the Director shall declare the amount which will be considered that manufacturer's intentions for the marketing year. That declaration by the Director shall be based on the domestic manufacturer's previous reports, or such other information as is deemed appropriate by the Director in the Director's discretion. Notice of the amount so declared shall be forwarded to the domestic manufacturer. If the domestic manufacturer fails to file a year-end report or files an inaccurate or incomplete report, then the Director may deem that the manufacturer has no purchases to report or take such other action as the Director believes is appropriate to fulfill the goals of this section. Intentions and purchases of countable tobacco will be compared for purposes of determining whether a penalty is due from the domestic manufacturer.

(b) *Eligible tobacco for statements of intentions and countable purchases toward those intentions.* For reports and determinations under this section, eligible tobacco for purposes of determining the countable purchases under paragraph (a) of this section will be unmanufactured domestic tobacco of the relevant kind for use to manufacture, for domestic or foreign consumption, cigarettes, semi-processed bulk smoking tobacco and other tobacco products. Eligible tobacco for these purposes does not include tobacco purchased for export as leaf tobacco, stems, trimmings, or scrap. Countable purchases of eligible tobacco shall include purchases of eligible tobacco made by domestic manufacturers directly from the producers, from a regular auction market, or from the price support loan inventory, and shall also include purchases by the manufacturer where the manufacturer purchases or acquires the tobacco from dealers or buyers who purchased the tobacco for the domestic manufacturer during the relevant marketing year directly from a producer, at a regular auction market, or from the price support loan inventory.

(c) *Weight basis and nature of reports.* The weight basis used for all reports and comparisons shall be a farm sales weight basis unless the Director permits otherwise and all reports will be considered to have been made on that basis unless the report clearly states otherwise. Submitted reports shall be assumed to cover countable purchases of eligible tobacco only, absent indications to the contrary.

(d) *Due dates and addresses for reports.* For flue-cured tobacco, the domestic manufacturer's statement of intentions shall be submitted by December 1 before the marketing year and the year-end report shall be submitted by August 20 following the end of the marketing year. Those respective dates for burley tobacco shall be January 15 before the burley tobacco marketing year and November 20 after the burley tobacco marketing year. Reports shall be mailed or delivered to the Director, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514.

(e) *Penalties.* A domestic manufacturer shall be liable for a penalty equal to twice the purchaser's no-net-cost assessment rate per pound for the applicable kind of tobacco for the relevant marketing year, if the manufacturer's purchases of either burley or flue-cured tobacco for the marketing year do not equal or exceed, as determined by the Director, 90 percent of their stated purchase intentions for that kind of tobacco for the relevant marketing year. The Director shall adjust the domestic manufacturer's intentions, however, to the extent, that producers have not produced the full amount of the national quota for the relevant marketing year for the particular kind of

tobacco. The burden of establishing all purchases shall be with the domestic manufacturer and the Director may, in the case of indirect purchases for the manufacturer, require that the manufacturer obtain verification of the purchases by the dealer who made the purchase from the producer, at a regular auction market, or from the price support loan inventory, in order to assure that the tobacco is, to the manufacturer, a countable purchase. The Director may require such additional information as determined needed to enforce this subpart.

(f) *Penalty notice and penalty remittance.* Penalties will be assessed after notice and an opportunity for hearing before the Director. Remittances are to be made to the CCC and will be credited to the applicable producer loan association's no-net-cost fund or account as provided for in part 1464 of this title.

(g) *Maintenance and examination of records.* Each domestic manufacturer shall keep all relevant records of purchases, by kind, of burley and fluecured tobacco for a period of at least 3 years. The Director, Office of Inspector General, or other duly authorized representative of the United States may examine such records, receipts, computer files, or other information held by a domestic manufacturer that may be used to verify or audit such manufacturer's reports. The reasonable cost of such examination or audit may be charged to the domestic manufacturer who is the subject of the examination or audit. All records examined or received under this part by officials of the Department of Agriculture shall be kept confidential to the extent required by law.

PART 729—PEANUTS

Subpart A—General Provisions

Sec.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

Subpart C—Marketing Cards, Marketings, Penalties, and Assessments

Subpart D—Recordkeeping and Reporting Requirements

AUTHORITY: 7 U.S.C. 1301,1357 *et. seq.*, 1372, 1373, 1375; 7 U.S.C. 7271; and 15 U.S.C. 714b and 714c.

SOURCE: 56 FR 16211, Apr. 19, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 729.101 Paperwork Reduction Act assigned number.

The information collection requirements contained in 7 CFR part 729 have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560–0006.

§ 729.102 Applicability.

The regulations contained in 7 CFR part 729 are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and are applicable to the 1996 through 2002 crops of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of records, and the making of reports incident thereto. The peanut marketing quota and disposition requirements for peanuts for the 1991 through 1995 crops shall, as applicable, continue to be governed by the regulations codified at 7 CFR part 729, as of April 1, 1996.

[56 FR 16211, Apr. 19. 1991, as amended at 61 FR 36999, July 16, 1996]

§ 729.103 Definitions.

(a) *Applicability*. The definitions set forth in this section shall be applicable for all purposes of program administration for peanuts except as may otherwise be indicated. The definitions in, and provisions of, parts 718, 719, and 720 of this chapter and 1446 of this title are hereby made applicable to these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms*. The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

Base period. The 3 crop years immediately preceding the current year for which a basic quota is being established.

Basic penalty rate. The per pound amount determined by multiplying the national support level per ton for quota peanuts, as announced by the Secretary for the applicable marketing year, by 1.4 and dividing the result by 2000.

Basic quota. A farm's share of the peanut poundage quota allocated to a State. The basic quota for the current year is the preliminary quota as adjusted pursuant to this part for any:

(i) Increase or decrease in the State poundage quota from the poundage quota allocated to the State for the preceding year;

(ii) Reduction in the quota due to nonproduction;

(iii) Reduction for permanent release of quota from the farm in the current year;

(iv) Permanent transfers of quota to or from the farm for the current year; and

(v) Reallocation of quota to the farm from quotas;

(A) Reduced for nonproduction.

(B) Permanently released.

Buyer. A person, who also may be known as a handler, who:

(i) Buys or otherwise acquires peanuts in any form;

(ii) Markets, as a commission merchant, broker, cooperative, agent, or in any other capacity, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(iii) Receives peanuts as collateral for, or in settlement of, a price support loan.

CCC. The Commodity Credit Corporation, a financial instrumentality within the United States Department of Agriculture.

Commingled peanuts. Peanuts that were produced on 2 or more farms and loaded into a single conveyance in such manner that the peanuts become, or can become, intermingled and as a result making it impossible to divide the peanuts into separate lots in such manner that the peanuts may be identified accurately as to the farm of production at the time of marketing.

Considered produced credit. If the marketings of peanuts from a farm in the current year are less than such farm's basic quota, the credit granted in the current year (but not to exceed the basic quota established for the farm for the current year less the pounds of peanuts which were produced and marketed from the farm during the current marketing year) for the amount of one or more of the following as may apply:

(i) Peanuts that the county committee determines, according to instructions provided by the Deputy Administrator, were not produced because of drought, flood or any other natural disaster or any other condition beyond the control of the producer. Conditions beyond the control of the producer are for this purpose:

(A) Unavailability of an adequate supply of seed to plant an acreage of peanuts that is sufficient to produce the basic quota.

(B) A court order that prevents access to the farm or otherwise prevents the release or transfer of the peanut quota in a manner in which considered produced credit could be earned.

(ii) A peanut poundage quota that was leased and transferred by a transfer agreement that was filed before August 1 of the current year to the extent the quota was produced or considered produced on the receiving farm; provided further, that to the extent that for any base period a farm receives credit under this paragraph, such farm may not receive credit under paragraph (iii) of this definition.

(iii) Peanut poundage quota that was voluntarily released for the current year, or was leased and transferred by a transfer agreement that was filed before August 1 of the current year, if neither of the following are applicable:

(A) Part, or all, of the quota was voluntarily released during any 2 or more years of the base period, or

(B) Part, or all, of the quota was leased and transferred to another farm within the same county during any 2 or more years of the base period.

(iv) A farm's basic quota that was not produced if the Farmers Home Administration or the Farm Service Agency had control of, or title to, such farm.

(v) Peanut quota converted from the production of peanuts in accordance with part 1410 of this title.

(vi) Quota in an eminent domain pool.

Converted penalty rate. The per pound amount determined by multiplying the basic penalty rate by the result obtained when the absolute value (positive or negative) of the difference between the acreage of peanuts reported by the farm operator and the acreage of peanuts determined to have been planted on the farm as determined in accordance with part 718 of this chapter is divided by the acreage of peanuts determined for such farm.

Deputy Administrator. The Deputy Administrator for Farm Programs, Farm Service Agency.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Effective quota. The basic quota as adjusted for the applicable crop year for:

(i) Temporary transfers of quota to or from the farm;

(ii) Temporary releases of quota from the farm;

(iii) Temporary reapportionment of quota to the farm;

(iv) Quota converted and reduced in the current year from the production of peanuts pursuant to regulations in part 704 of this chapter for the Conservation Reserve Program, or in any other regulations for that program or similar program; and

(v) Temporary seed quota allocated to the farm.

Electronic (smart) marketing card. A CCC approved standard card for use in identifying peanuts when marketed,

and which contain a micro computer chip on which applicable:

(i) Farm data is recorded by the county FSA office before the marketing card is issued to the farm operator.

(ii) Marketing data is recorded at the buying point when the peanuts are marketed.

Excess peanuts. The quantity of peanuts:

(i) Marketed or considered marketed as quota peanuts from the farm in the current marketing year in excess of the farm's effective quota, or

(ii) Marketed as contract additional peanuts from the farm in the current marketing year in excess of the amount contracted in accordance with part 1446 of this title.

False identification. The deliberate or inadvertent identification of peanuts at the time of marketing as being produced on a farm when the peanuts were not produced on such farm.

Farm production history. The sum of the produced and considered produced quantity of peanuts for a farm during the base period.

Farm yield. The yield established for a farm for the immediately preceding year on the basis of peanut production on the farm or on similar farms during the years 1973 through 1977 or, if a farm yield was not established for the preceding year, the yield appraised by the county committee that is fair and reasonable on the basis of farm yields established on other farms in the locality on which the soil and other physical factors affecting production are similar.

Farmers stock peanuts. Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

Final acreage. The acreage devoted to peanuts on a farm, excluding any acreage devoted to green peanuts, as determined in accordance with part 718 of this chapter.

First purchaser. Any person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to CCC or brought from the price support loan inventory, the term means the person acquiring the peanuts from CCC or the inventory.

FSA. The Farm Service Agency of the Department of Agriculture.

Green peanuts. Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture to grade peanuts.

Loan additional peanuts. Peanuts which are pledged as collateral for a price support loan at the applicable additional loan rate established by or for CCC.

Market. To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms ''marketed'', ''marketing'', and ''for market'' shall have corresponding meanings to the term ''market'' in the connection in which they are used. The terms ''barter'' and ''exchange'' shall include the use of any quantity of peanuts by the producer as payment to another for any reason including payment for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer. Any lot of farmers stock peanuts will be considered as marketed when acquired from the producer. Peanuts which are delivered by the producer as collateral for, or in settlement of, a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when the peanuts are unloaded at the delivery point. Any peanuts produced on a farm which are retained on the farm after January 31, or such later date as may be established by the Executive Vice President, CCC, of the year following the year in which the peanuts were

produced shall be considered as marketed for domestic edible use as of January 31, or such later date.

Marketing year. The 12 month period beginning on August 1 of a current year in which the peanuts are grown and ending July 31 of the following year.

National poundage quota. The poundage quota announced by the Secretary for the relevant crop year.

Nonquota farm. A farm that does not have a basic quota greater than zero for the current year.

Peanut quantity marketed or considered marketed. With respect to a lot of farmers stock peanuts, the quantity of such peanuts that is marketed or considered marketed shall be:

(i) *Inspected peanuts.* For peanuts inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot less foreign material in the lot and less moisture in excess of 7 percent of gross weight for the lot.

(ii) *Noninspected peanuts.* For peanuts not inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot.

(iii) *Shelled peanuts.* For shelled peanuts marketed by a producer, the poundage of the shelled peanuts in the lot multiplied by a factor of 1.5.

Peanuts. All peanuts produced, excluding:

(i) Any peanuts which were not dug;

(ii) Any dug peanuts not picked or threshed which are disposed of under the direction and supervision of FSA personnel; and

(iii) Green peanuts.

Planted acreage. The acreage on which peanuts were planted in a workmanlike manner determined in accordance with the provisions of part 718 of this chapter.

Preliminary quota. For the current year and an eligible farm, the basic quota established for the farm for the preceding year to the extent that the farm is not subject to a reduction in quota.

Quota farm. A farm having a basic quota greater than zero in the current year.

Quota peanuts. Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. Quota peanuts shall be considered to be all peanuts which are dug on a farm except the following:

(i) Green peanuts;

(ii) Peanuts which are placed under loan at the additional loan rate and not redeemed by the producer;

(iii) Peanuts which are marketed in accordance with the requirements of this part as contract additional peanuts.

(iv) Peanuts considered marketed but because of conditions beyond the control of the producer had no commercial value as determined by the FSA at the time the peanuts were marketed.

Seed sheller. A person who in the course of such person's usual business operations shells peanuts for use as seed for the subsequent year's crop.

Temporary seed quota. Quota temporarily allocated for the current crop year only and in an amount determined by FSA to account for the amount of seed peanuts planted on the farm for production of peanuts, excluding green peanuts and peanuts produced under the one-acre exemption set forth in § 729.306 of this part.

Tillable cropland. Cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for nonagricultural uses) which the county committee determines can be planted to crops without unusual preparation or cultivation.

Yield per acre or actual yield. The yield of peanuts for a farm for a crop year computed by dividing the total production of peanuts for the farm by the final acreage of peanuts for the farm.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38327, Aug. 13, 1991; 57 FR 27144, June 18, 1992; 61 FR 36999, July 16, 1996; 62 FR 25438, May 9, 1997; 65 FR 8247, Feb. 18, 2000]

§ 729.104 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee:

(1) Shall instruct a county committee to:

(i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or

(ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with the regulations of this part.

(iii) Take any action required in accordance with the regulations of this part if such county committee has knowingly failed to take such action.

(2) May, after duly instructing a county committee in accordance with paragraph (c)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(d) The Deputy Administrator:

(1) Shall instruct a State committee to:

(i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or

(ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with this part.

(iii) Take any action required in accordance with regulations of this part if such State committee has knowingly failed to take such action.

(2) Shall after duly instructing the State committee in accordance with paragraph (d)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(3) May waive or modify deadlines and other program requirements in cases for which the Deputy Administrator determines that lateness, or failure to meet such other requirements, as applicable, does not affect adversely the operation of the peanut program. Such authority shall include, but not be limited to, the delegation of the authority to the State FSA committee to, acting in accordance with such instructions as the Deputy Administrator may issue, modify deadlines for the filing of transfer of peanut quotas.

(e) Notwithstanding any provisions in the regulations of this part, the Administrator, FSA, or a designee, may determine any question arising under the regulations of this part or may reverse or modify any determination made by a State or county committee.

[56 FR 16211, Apr. 19, 1991, as amended at 61 FR 36999, July 16, 1996; 62 FR 25438, May 9, 1997]

§ 729.105 Types of peanuts.

Peanuts shall be classified by type into one of the following types as identified and determined by the Federal-State Inspection Service:

(a) Runner;

(b) Spanish;

(c) Valencia; or

(d) Virginia.

§ 729.106 Extent of calculations and rule of fractions.

(a) Computations made pursuant to this part shall be rounded in accordance with the provisions of part 793 of this chapter.

(b) Acreages shall be determined in tenths of an acre.

(c) Per pound penalties and liquidated damages shall be determined in tenths of a cent.

(d) The following calculations shall be determined in whole pounds:

(1) Peanuts produced;

(2) Considered produced;

(3) Marketed;

(4) Preliminary quotas;

(5) Basic quotas;

(6) Effective quotas;

(7) Farm yields; and

(8) Actual yields per acre.

§ 729.107 Location of farms for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in part 719 of this chapter.

§ 729.108 Request for reconsideration or appeal.

Any producer who is dissatisfied with a determination rendered by the county FSA committee under this part may file a request for reconsideration or appeal in accordance with part 780 of this chapter.

[56 FR 16211, Apr. 19, 1991, as amended at 61 FR 36999, July 16, 1996]

§ 729.109 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out this subpart. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

§ 729.201 Apportionment of National poundage quota to States.

The national poundage quota for peanuts for each of the 1996 through 2002 crops less a reserve for the correction of errors shall be apportioned to States in the same proportion that the national poundage quota was allocated to farms in the State for the 1995 crop year. Accordingly, based on the poundage quota allocated to farms in the State for the 1995 crop year, 16 States shall share in the 1996 through 2002 national poundage quotas for peanuts and the following factors shall be used to allocate such quota to the respective States: Alabama—0.13445344, Arizona—0.00062508, Arkansas—0.00208329, California—0.00043493, Florida—0.04275200, Georgia—0.41291226, Louisiana—0.00091430, Mississippi—0.00379765, Missouri—0.00015357, New Mexico—0.00580694, North Carolina—0.11052130, Oklahoma—0.06677613, South Carolina—0.00735223, Tennessee—0.00042788. Texas—0.13183290, and Virginia—0.07915610.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 61 FR 36999, July 16, 1996]

§ 729.202 Reserve for corrections.

The Director, TPD, will hold a national reserve for purposes of correcting errors that are made in determining farm quotas. The Director will determine the reserve annually by multiplying the national quota announced by the Secretary by 0.0025. To the extent determined appropriate, the Director may authorize a State committee to correct any error in a farm's quota.

[65 FR 8247, Feb. 18, 2000]

§ 729.203 Quota not produced.

(a) *Determining nonproduced quota.* For purposes of making a reduction in a farm's basic quota when the quantity of peanuts produced and considered produced on such farm during any 2 or more years of the base period is less than the basic quota established for such farm for the respective year, the nonproduced quota shall be determined, for any year of the base period for which the sum of the farm's produced and considered produced quota is less than such farm's basic quota established for such year. The nonproduced quota shall be determined by subtracting the sum of the farm's produced and considered produced quota for such year from the basic quota established for the farm for such year.

(b) *Adjustment to nonproduced quota.* For purposes of determining basic quota for subsequent crop years, if the basic quota for a farm is reduced for nonproduction in accordance with this subpart, the nonproduced quota for the base period of the year of the reduction, as determined in accordance with paragraph (a) of this section, shall be adjusted downward by the amount that the basic quota was reduced. The adjustment shall be made in the nonproduced quota by starting with the year in which the nonproduced quantity was smallest during the most recent 2 years of that base period. If the nonproduced quota was equal in each of the most recent 2 years of that base period the adjustment shall begin with the most recent year of such 2 year period. If the nonproduced quota for the year the adjustment begins is less than the amount by which the farm's basic quota was reduced for nonproduction, the adjustment to the nonproduced quota shall continue in the remaining year of the most recent 2 years of that base period until the nonproduced quota has been adjusted by an amount equal to the amount that the basic quota was reduced for nonproduction or until the nonproduced quota in each of the most recent 2 years of that base period has been reduced to zero.

§ 729.204 Temporary seed quota allocation.

(a) *Applicability.* The temporary allocation of quota pounds, as provided in this section shall be determined:

(1) For the marketing year only in which the crop is planted;

(2) For eligible producers for each of the 1996 through 2002 marketing years; and

(3) To exclude the production of green peanuts and peanuts produced under the one-acre exemption provided for in 7 CFR 729.306.

(b) *Quantity of allocation.* The temporary quota allocated to a producer shall be the farmers stock equivalent pounds of qualifying seed peanuts considered planted on the farm as determined by FSA by multiplying the acres determined planted to qualifying peanuts times the per-acre planting rates of:

(1) 95 pounds for Runner-type peanuts;

(2) 110 pounds for Virginia peanuts;

(3) 80 pounds for Spanish peanuts; and

(4) 80 pounds for Valencia peanuts.

(c) *Conversion factor.* For the purpose of determining the farmers stock basis for temporary seed quota allocations under this section, the amount of seed planted as determined in accord with paragraph (b) of this section shall be multiplied by a factor of 1.5.

(d) *Time of notification.* The notice of determination for temporary seed quota allocations shall be made by the Deputy Administrator as soon as practicable following the deadline for filing certifications of planted acres.

(e) *Penalty for erroneous certification.* If the certified acreage on which the temporary seed quota allocation is made is greater than the determined acreage, by more than the larger of 1 acre or 5 percent of the certified acreage not to exceed 10 acres, and the producer marketed the production for the acreage based upon an allocation of temporary seed quota on certified acres not determined, a penalty will be determined by multiplying the difference between the certified and determined acreage times the applicable per acre seeding rate times 140 percent of the per pound quota support rate for the applicable crop year. The penalty amount shall be calculated by multiplying the difference between the certified and determined peanut acreage by the applicable per acre seeding rate used in the calculation of the temporary seed quota by 140 percent of the applicable per pound quota support rate for the crop year involved. In addition, a commensurate penalty at the same rate may be assessed in cases within the tolerance allowed by the previous sentence in any instance in which the variance is determined to be due to a scheme or device to defeat the purposes of the program, or is repeated. Further, all errors may in all cases result in a commensurate diminution of the quota allowed the farm for the following year.

[61 FR 36999, July 16, 1996, as amended at 62 FR 25438, May 9, 1997; 65 FR 8247, Feb. 18, 2000]

§ 729.205 Farms ineligible for farm poundage quota.

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities (other than a university used for research purposes).

(2) A person:

(i) Who is not a peanut producer; and

(ii) Whose primary domicile, as determined by FSA, in the case of any individual is in a State outside the State in which the quota is allocated or, in the case of an entity, does not qualify under this section to be considered to be a resident of the State in which the quota is allocated.

(b) *Determination of residency and related rules.* (1) For purposes of administering paragraph (a) of this section, an entity may be considered a resident of the State in which the quota is located if:

(i) It is determined that a person or persons with at least a cumulative 20-percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; or

(ii) As determined appropriate by the Deputy Administrator, the corporation or other entity, but not a general partnership or an entity not recognized as a separate and distinct legal entity from its members, has been created under the laws of the State in which the quota is allocated.

(2) For purposes of the provisions of (a)(2)(i) of this section, a person shall not be considered to be a producer of a crop of peanuts unless such person is at risk for at least 15 percent of the proceeds from the marketing of the production of the quota at issue.

(c) *Exemption for involuntary acquisition.* Paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm.

(d) *Applicable crop year.* For purposes of applying the rules in paragraph (a) of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(e) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Except for the exemption for involuntary acquisition in §729.205(c), beginning in 1997 any farm poundage quota held on or after August 1 of 1997 by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with §729.206 of this part; provided, however, that if the ineligibility arises solely because of a purchase of a farm after August 1, 1997, or involves a quota which is acquired because of the expiration of a CRP contract after August 1, 1997, the quota shall not be forfeited but may not be used to market peanuts until the ineligibility is determined by the county committee to have been removed or the quota is sold to an eligible farm. Such reallocations shall be made to the extent practicable but shall take into account those instances in which the regulations call for an ineligibility for quota allocation rather than forfeiture of the quota.

[61 FR 37000, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]

§729.206 Determining a farm's basic quota.

(a) *No change in State poundage quota.* If the poundage quotas allocated to the State for the current year is the same as the State's poundage quota for the preceding year, the current year's basic quota for each quota farm in the State shall be the same as such farm's preliminary quota for the current year.

(b) *Increase in State poundage quota—*(1) *Eligible farms.* If the poundage quota allocated to a State for the current year is greater than the poundage quota allocated to such State for the preceding year, the amount of increase in the poundage quota shall be allocated proportionately, on the basis of each farm's production history as determined under this part, among:

(i) All quota farms in the State.

(ii) All other farms in the State that were nonquota farms in the preceding year and on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor.* A factor shall be determined to apportion, to eligible farms, the increase in the State's poundage quota. The factor shall be determined by dividing the amount of increase in the State poundage quota by the total of the farm production history for all eligible farms determined in accordance with paragraph (b)(1) of this section.

(3) *Basic quota.* The current year basic quota for each:

(i) Quota farm in the State shall be the preliminary quota plus an amount determined by multiplying the farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(ii) Eligible farm that was a nonquota farm in the preceding year shall be the result obtained by multiplying such farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(c) *Decrease in State poundage quota.* If the poundage quota allocated to a State for the current year is less than the poundage quota allocated to such State for the preceding year, the current year's basic quota for each quota farm in the State shall be determined by multiplying the current year's preliminary quota by a factor determined by dividing the State quota by the total of the current year's preliminary quotas on all farms in the State.

(d) *Reduction for nonproduction of quota*—(1) *Reconstitutions.* If the farm resulted from a farm reconstitution during the base period, any reduction determined according to this paragraph for nonproduction of the basic quota shall be made separately for the individual tracts in the farm in such manner as the Deputy Administrator determines to be appropriate.

(2) *Reduction amount.* The current year's basic quota otherwise determined for a farm in accordance with paragraph (a), (b), or (c) of this section shall be reduced if, with respect to any 2 years of the base period, the county committee determines that part, or all, of the basic quota for such farm was not produced or considered produced on the farm. The amount of the reduction shall be the sum of the two smallest quantities, including zero pounds if applicable, of nonproduced quota determined in accordance with this subpart for such farm during the base period.

(e) *Reallocation of quota reduced or permanently released*—(1) *Eligible farms.* The total of quotas permanently released and quotas reduced for nonproduction according to paragraph (d) of this section, hereinafter referred to as the State quota available for reallocation, shall be reallocated to farms on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor for reallocation of quotas.* The factor(s) for reallocating the State quota available for reallocation shall be determined as follows:

(i) Determine State totals of farm production history separately for eligible:

(A) Quota farms.

(B) Nonquota farms.

(ii) If the totals of the farm production history from eligible quota farms is equal to or greater than 3 times the total of the farm production history from eligible nonquota farms, determine a factor by dividing the State quota available for reallocation by the sum of the separate State totals of farm production history from eligible quota and nonquota farms.

(iii) If paragraph (e)(2)(ii) of this section is not applicable, determine separate factors for eligible quota and nonquota farms as follows:

(A) For eligible quota farms, determine the factor by multiplying the State quota available for reallocation by .75 and dividing the result by the State total of the farm production history from eligible quota farms.

(B) For eligible nonquota farms, determine the factor by multiplying the State quota available for reallocation by .25 and dividing the result by the State total of farm production history from eligible nonquota farms.

(iv) Notwithstanding paragraphs (e)(2)(ii) and (iii) of this section, if the factor determined for a nonquota farm is greater than 0.3333 a factor of 0.3333 shall be used to reallocate to the nonquota farm such nonquota farm's share of the State quota available for reallocation.

(3) *Application of factor.* The current year's basic quota for each eligible farm determined according to paragraph (e)(1) of the section shall be determined by multiplying such farm's production history by the applicable factor determined in accordance with paragraph (e)(2) of this section. If a current year's basic quota otherwise has been determined for the farm in accordance with this section, the basic quota determined in accordance with this paragraph shall be added to any basic quota otherwise determined for such farm in accordance with this section.

(f) *Reallocation in Texas of quota reduced for nonproduction and permanently released quota*—(1) *Special provisions for certain Texas Counties.* Notwithstanding the provisions in paragraphs (b) and (e) of this section, all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms in accordance with paragraph (e) of this section, shall be reallocated to farms having 1990-crop

basic quotas in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in such county. The production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in each of the following Texas counties: Andrews, Bailey, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hidalgo, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger, and Yoakum counties.

(2) *Allocation to counties.* Any quota to be allocated to eligible Texas counties in accordance with paragraph (f)(1) of this section shall be apportioned to the eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Accordingly, based on the production of additional peanuts in 1988, such quota shall be apportioned to eligible counties according to the following factors: Andrews—0.005342, Bailey—0.003007, Briscoe— 0.016039, Childress—0.008190, Collingsworth—0.184498, Dickens—0.000000, Donley—0.03 1981, Gaines—0.413627, Hale—0.000647, Hall—0.063101, Hardeman—0.010278, Haskell—0.137459, Hidalgo—0.026700, Hockley—0.000679, Knox—0.002818, Lamb—0.026475, Terry—0.009885, Wheeler—0.003102, Wilbarger—0.000000, and Yoakum—0.056172.

(3) *Exception to allocation to counties.* In that Gaines county is the only county listed in paragraph (f)(1) of this section for which the total of farm basic quotas exceeded 20,000,000 pounds for the 1989 crop of peanuts and the total of farm basic quotas in Gaines County for the 1989 crop was 22,853,615 pounds, if the cumulative increase in the basic quota for Gaines County, granted under any special rules for Texas under this section and its predecessor for the 1991 and subsequent crops exceeds 22,853,615 pounds, the amount in excess of 22,853,615 pounds shall, in accordance with the provisions of the authorizing legislation, be apportioned to the remainder of the counties listed in paragraph (f)(1) of this section on the basis of the total production of additional peanuts in the respective counties for the 1988 crop.

(4) *Determining factor for reallocation of quota*—(i) To receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section, a farm must have had a basic quota greater than zero for the 1990 crop of peanuts. If a farm that had a basic quota greater than zero in 1990 is reconstituted subsequent to 1990:

(A) By division, the resulting farms will be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section.

(B) By combination, the resulting farm will not be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section unless, prior to the combination, each farm that is involved in the combination was considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive an increased quota under paragraph (f)(2) of this section.

(ii) A farm allocation factor shall be determined for each eligible farm as follows:

(A) Using data from the year preceding the year for which the reallocation is being made, determine a factor by dividing the quantity of contract additional peanuts delivered to handlers from the farm by the total remaining peanuts marketed from the farm.

(B) Total all factors determined in accordance with paragraph (f)(4)(ii)(A) of this section.

(C) Except as may be determined by the Deputy Administrator to avoid schemes and devices in contravention of the purposes of this part to avoid inequities, the farm allocation factor shall be determined by dividing the factor determined in accordance with paragraph (f)(4)(ii)(A) of this section by the total determined in accordance with paragraph (f)(4)(ii)(B) of this section.

(5) *Increase in basic quota.* The basic quota otherwise determined for a farm in accordance with the provisions of this section shall be increased by an

amount determined by multiplying any quota allocated to the county in accordance with paragraph (f)(2) of this section by the farm allocation factor determined in accordance with paragraph (f)(4)(ii)(C) of this section.

(6) *Quotas for eligible nonquota farms.* Quotas for eligible nonquota farms in any Texas county shall be determined in the same manner as provided for other States in paragraph (e) of this section.

(7) *Allocation of increase in State poundage quota.* Any increase in the State poundage quota for Texas, shall be reallocated to eligible farms in any Texas county, including the counties in paragraph (f)(1) of this section, in accordance with paragraph (b) of this section.

[56 FR 16211, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 57 FR 27144, June 18, 1992. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.207 Tenants sharing in increased quota.

(a) *General.* If the poundage quota allocated to a State is greater than the poundage quota allocated to such State for the preceding year, an eligible tenant who leased a part or all of a farm in any county in such State for the production of peanuts shall share equally with the farm owner, in accordance with the provisions in this section, in that quantity of basic quota that is allocated, as a result of the tenants production of additional peanuts on the farm during the base period to such farm, from the State's increased poundage quota. Farms ineligible for quota allocation under § 729.205 do not receive a quota increase; therefore, the provisions of this section with respect to tenant share are not applicable to such farms.

(b) *Eligible tenant.* If a person leased part or all of a farm, and had a 100 percent producer interest in one or more fields of peanuts that were produced on such farm during the base period, and such farm's basic quota is increased as a result of an increase in a State's poundage quota, such person shall be considered as an eligible tenant on such farm and shall share in such increase in the farm's basic quota if such person:

(1) *Qwnership interest.* Does not have any ownership interest in such farm;

(2) *Shared in previous year's production of peanuts.* Shared in the production of any peanuts produced on the farm in the crop year immediately preceding the crop year for which such increase in basic quota is granted;

(3) *Application for share of increase.* Files an application at the county FSA office of the county in which such farm is located for administrative purposes, by February 15 of the crop year for which such increase in basic quota is granted, for a share of such increase;

(4) *Supporting proof.* Provides supporting proof, that is acceptable to the county committee, of the quantity of additional peanuts produced on such farm by such person during each year of the base period.

(c) *Tenant's share of increase.* An eligible tenant's share of the increase in a farm's basic quota shall be one half of an amount determined by multiplying the quantity of additional peanuts produced by such tenant and for which acceptable proof was provided in accordance with paragraph (b)(4) of this section by the factor determined in accordance with § 729.206(b)(2) of this part.

(d) *Disposition of tenant's share of increase-*(1) *By tenant.* An eligible tenant may dispose of any basic quota determined for such tenant in accordance with paragraph (c) of this section. Such disposition must take place by:

(i) *Time for disposition.* The later of April 1 of the current year or 30 days after the date of notification of the amount of such basic quota.

(ii) *Manner of disposition.* Filing an application at the county FSA office to transfer such basic quota:

(A) *Farm owned by tenant.* To a farm within the county that is owned by such tenant.

(B) *Sale of quota.* By sale to the owner of any farm within the county in accordance with § 729.214 of this part.

(2) *Allocation to other farms.* Any basic quota determined for an eligible tenant in accordance with paragraph (c) of this section that is not disposed of by such eligible tenant in accordance with paragraph (d)(1) of this section shall, to the extent practicable, be reallocated

to other farms within the State in accordance with § 729.206(e) of this part.

(e) *Other provisions.* Any increase in a farm's basic quota that results from a tenant's production of additional peanuts on such farm during the base period shall remain on such farm if the:

(1) Tenant who otherwise might have qualified to receive a share of such increase in basic quota does not file an application for a share of such quota in accordance with paragraph (b) of this section; or

(2) Additional peanuts were produced by a person who was a tenant on such farm only during the beginning year of the base period or the second year of the base period.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996; 65 FR 8247, Feb. 18, 2000]

§ 729.208 Allocation of quota for experimental and research programs.

(a) *General.* A basic quota shall be established for the 1991 crop for each land-grant institution identified in the Act of May 8, 1914 (38 stat. 372, chapter 79; 7 U.S.C. 341 et seq.), colleges eligible to receive funds under the Act of August 30, 1890 (26 stat. 419 chapter 841; 7 U.S.C. 321 et seq), including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture if such institution possessed basic quota for the 1985 crop year or was authorized under this part at that time to market peanuts from the 1985 crop for quota purposes without incurring marketing penalties.

(b) *Amount of allocation.* The amount of quota allocated from the national reserve to an eligible institution shall not exceed the poundage quota allocated to the institution for the 1985 crop year and shall not exceed the quantity of peanuts that was exempted from payment of marketing penalties by such institution for the 1985 crop year, as applicable, except that the total pounds allocated for the 1991 crop to all institutions in the State shall be allocated so as not to exceed one-tenth of one percent of the poundage quota allocated to the State in which the respective institutions are located.

(c) *Limitation.* The quantity of peanuts marketed by such institution by use of the quota granted in accordance with paragraph (b) of this section shall not exceed the quantity needed for experimental and research purposes. The director of each such institution shall be responsible for providing information as needed to determine compliance with this section.

(d) *Quota for 1996 through 2002 crops.* For each institution with continuing eligibility for which a 1995 basic quota was determined in accordance with this section or its predecessor, a basic quota shall be established for the 1996 through 2002 crops in the same manner as for other farms within the State.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996; 65 FR 8247, Feb. 18, 2000]

§ 729.209 Tillable cropland limitation.

If any person owns a farm for which the basic quota exceeds an amount determined by multiplying the larger of the farm yield or the highest actual yield for the farm during the base period by the tillable cropland on the farm, the person shall take steps, such as the sale of quota, the purchase of tillable cropland, the permanent transfer of quota, or other similar means that will result in elimination of the excess. If such person fails to take such action, the farm's preliminary quota for the next year, and the basic quota permanently shall be reduced by the amount of the excess.

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.210 Determining a farm's effective quota.

The effective quota for a farm shall be the basic quota adjusted by:

(a) *Upward adjustment.* Adding the:

(1) The temporary seed quota allocated to the farm;

(2) Quota temporarily reapportioned to the farm; or

(3) Quota temporarily transferred to the farm by either lease, owner, or operator.

(b) *Downward adjustment.* Subtracting the quota:

(1) Temporarily transferred from the farm by either lease, owner or operator;

(2) Temporarily released; or

(3) Converted in the current year from the production of peanuts in accordance with part 704 of this chapter or similar program as determined by the Deputy Administrator.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37000, July 16, 1996]

§ 729.211 Determination of farm yields.

(a) *Farm yield*—(1) *Quota farm in previous year.* The farm yield for the current year for a farm that was a quota farm in the previous year shall be the same as the farm yield established for the farm in the previous year.

(2) *Nonquota farm.* If a farm was a nonquota farm in the year preceding the current year and such farm becomes a quota farm in the current year, a farm yield shall be determined by the county committee if a farm yield has not been established previously for such farm. Such farm yield shall be determined on a fair and reasonable basis by the county committee after considering the farm yields that have been established on other similar farms in the same locality.

(b) *Reconstituted farms.* For reconstituted farms, the farm yield for such farm shall be:

(1) *Combination of quota farms.* For combined quota farms, the weighted average of the farm yields for the tracts being combined.

(2) *Combinations of quota and nonquota farms.* For a combination of a quota and nonquota farm, the farm yield of the tract(s) with an established quota, even though a farm yield had been previously established for such nonquota tract(s).

(3) *Combination of nonquota farms.* For a combination of a nonquota farm, established by the county committee in the same manner as for farms under paragraph (a)(2) of this section, even though a farm yield had been previously established for the individual tracts.

(4) *Divisions.* For tracts resulting from the division of a farm, the same farm for each tract that results from the division as the farm yield for the parent farm, except that should one or more tracts within the divided farm have a previously established farm yield, the farm yield for such tract(s) shall be that previously established for such tract(s).

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.212 Approval of farm yield and farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, basic quota, and effective quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee.

(b) *Notice to farm operator.* (1) As soon as practicable after the basic quota or the effective quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If the basic quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of basic quota or effective quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed, or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the operator shall constitute notice to all persons, including, but not limited to, any person who as operator, landlord, tenant, or sharecropper has an interest in the farm for which the quota is established.

(c) A failure to provide the notice provided for in paragraph (b) of this section shall not entitle any person to a quota to which they are otherwise entitled, unless otherwise provided in this part.

[56 FR 16211, Apr. 19, 1991. Redesignated at 61 FR 36999, July 16, 1996]

§ 729.213 Erroneous notice of effective farm poundage quota.

If the official notice of effective quota issued for a farm erroneously stated a quota larger than the correct effective quota, the quota shown on the erroneous notice shall serve as the

basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that:

(a) *Extent of error.* The error was not so substantial as to place the operator on notice that such notice of quota was incorrect; and

(b) *Response to notice.* The operator, relying upon such notice and acting in good faith:

(1) Has made plans, or is engaged in activities, to produce the quota in the amount set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops); or

(2) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

[61 FR 37000, July 16, 1996]

§ 729.214 Transfer of quota by sale, lease, owner, or operator.

Peanut quota may be transferred between eligible farms, or between separately owned tracts within a farm, in accordance with the provisions of this section.

(a) *Basis of transfers.* A transfer of quota may be either permanent or temporary to the extent provided for in this section.

(1) *Permanent.* A permanent transfer shall be based on a part or all of the farm's basic quota. The maximum quota that may be permanently transferred from a farm in the current year is the farm's basic quota. A permanent transfer may be by:

(i) *Sale.* The sale of a farm's basic quota.

(ii) *Owner.* The owner transfering basic quota between two farms when such farms have identical ownership as determined by FSA under instructions of the Deputy Administrator.

(2) *Temporary.* A temporary transfer is for one year and shall be based on a part or all of the farm's effective quota. The maximum quota that may be temporarily transferred from a farm in the current year is the farm's effective quota. A temporary transfer, to the extent permitted by this section, may be by:

(i) *Lease.* The lease and transfer of a farm's effective quota.

(ii) *Owner.* The owner transferring effective quota to another farm owned or operated by such owner.

(iii) *Operator.* The operator transferring effective quota to another farm owned or operated by such operator.

(b) *Transfer agreement.* In order to transfer poundage quota in the current year between two eligible farms, the transfer agreement must be:

(1) *Form.* Recorded on Form FSA–375.

(2) *Where to file.* Filed in the county FSA office which serves the county in which the transferring farm is located for administrative purposes.

(3) *Signatures.* Agreed upon and signed by:

(i) *Sale or lease.* In the case of a sale or lease, the owner(s) and operator of the transferring farm and the owner(s) or operator of the receiving farm. However, if a lease is filed after July 31 by a farm operator who cash leased the farm the signature of the owner(s) of such farm is not required.

(ii) *Owner transfer.* In the case of an owner transfer, the owner of the transferring farm who also must be the owner or operator of the receiving farm.

(iii) *Operator transfer.* In the case of an operator transfer, the operator of the transferring farm who also must be the owner or operator of the receiving farm.

(iv) *Lienholder.* In all cases, any person who holds a mortgage or other lien against the transferring farm.

(4) *Witness.* Signed on Form FSA–375, by each person whose signature is required by paragraph (b)(3) of this section, in the presence of a State or county committee member or an FSA employee who shall sign Form FSA–375 as a witness. If such signatures cannot be witnessed in the county FSA office where the farm is administratively located, they may be witnessed in any State or county FSA office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county FSA office mails

Form FSA–375 for the required signatures.

(5) *When to file.* Filed at any time after all required signatures have been recorded.

(i) *Permanent transfer.* If filed:

(A) Before August 1, the transfer shall be effective for the current year.

(B) After July 31, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(ii) *Temporary transfer.* If filed after July 31 and before February 1, the transfer agreement shall not be approved unless both the transferring farm and the receiving farm meet applicable provisions in paragraph (f) of this section that apply to transfers filed during such period.

(c) *Location of farms.* In order to transfer poundage quota between two farms, such farms must be located within the same State and, to the extent required by paragraph (d) of this section, in the same county. It is not necessary for the receiving farm to have had a basic quota in the current or prior year, except as provided in paragraph (d)(4) of this section.

(d) *Limitations on transfer by sale or lease.* Subject to the provisions of paragraph (m) of this section:

(1) *States with less than 10,000 tons of quota.* With respect to farms in any State for which the State's poundage quota for the year preceding the current year was less than 10,000 tons, transfers of peanut quota by sale or lease may be made to any other farm in any county within the State.

(2) *States with 10,000 tons or more of quota.* For farms in States with 10,000 tons or more of quota:

(i) Poundage quota may be transferred to any other farm within the same county.

(ii) If the farm is in a county with less than a total of 50 tons of quota, the poundage quota may be transferred to any other farm within the same State without regard to the limitations set forth in paragraph (d)(2)(iii) of this section.

(iii) If the farm is in a county with a total of 50 tons or more of quota, poundage quota transferred out of county shall be limited to 40 percent of the quota in the transferring county as of January 1, 1996. Further, the cumulative unexpired out-of-county transfers for a crop year may not exceed the following percentages of the quota in the transferring county as of January 1, 1996:

(A) 15 percent for the 1996 crop;

(B) 25 percent for the 1997 crop;

(C) 30 percent for the 1998 crop;

(D) 35 percent for the 1999 crop; and

(E) 40 percent for the 2000 and subsequent crops.

(iv) *Selecting approved transfers.* For purposes of administering the limitations on the amount of transfers, the Director shall establish a method for selecting, by lot or other method, those applications which are to be approved. The Director may give preference to permanent transfers.

(3) *Fall transfers.* The limitations in paragraph (d)(2)(iii) of this section do not apply to 1-year fall transfers, which may, in all cases, be made to any farm in the same State, subject to such restrictions as otherwise apply for fall transfers.

(4) *Owner or operator transfer.* Owner or operator transfers of poundage quota are permitted to contiguous counties within the same State without regard to the percentage limitations of paragraph (d)(2)(iii) of this section; provided that, the receiving farm had a basic quota established for the preceding year's crop and has the same owner, in an owner transfer, or the same operator, in an operator transfer.

(e) *Transfers to and from the same farm (subleasing)—*

(1) *Transfer agreement filed after January 31 and before August 1.* The county committee shall not approve a transfer agreement which is filed after January 31 of any year and before August 1 of the same year, if the approval would result in a temporary transfer both to and from either the transferring or receiving farm during such period, except that such transfer agreement may be approved if the farm that otherwise would be eligible to transfer or receive such quota resulted from a farm reconstitution that was approved subsequent to a transfer of quota.

(2) *Record of transfer filed after July 31 and before February 1.* The county committee shall not approve a temporary

transfer of effective quota if the transfer agreement is filed after July 31 of any year and before February 1 of the following year and approval would result in a temporary transfer both to and from either the receiving farm or transferring farm during such period.

(f) *Other transfer provisions*—(1) *Temporary transfer of quota from a farm.* A temporary transfer of quota from a farm by lease, owner, or operator shall not be approved:

(i) *Effective quota includes reapportioned quota.* If the transfer agreement was filed before August 1 of a crop year and the effective quota for the farm includes temporarily reapportioned quota from quota released from other farms of that crop year.

(ii) *Peanut poundage quota penalty.* If any person whose signature is required to perfect the transfer is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid or, in the case of a transfer by lease, the entire proceeds of the lease are applied to the penalty and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(iii) *Filed after July 31 and before February 1 (''Fall transfers'').* If filed after July 31 of the crop year and before February 1 of the following year, unless:

(A) The reported or determined acreage of peanuts plus prevented planted credit for the transferring farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield during the base period, is equal to or greater than 90 percent of the farm's effective quota prior to adjustment for temporary seed quota allocated to the farm;

(B) The county committee determines that the producers on the farm made a good faith effort to produce a normal crop of peanuts on the acreage devoted to peanuts.

(C) The quantity to be transferred does not exceed the quota balance remaining on the farm's marketing card(s); and

(D) For a lessee, such lessee provides satisfactory evidence that the lease is a cash lease or the owner signs the transfer agreement.

(2) *Temporary transfer of quota to a farm.* A temporary transfer of quota to a farm by lease, owner, or operator shall not be approved:

(i) *Tillable cropland limitation.* If the transfer agreement was filed before August 1 of the crop year and the effective quota after the transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(ii) *Filed after July 31 and before February 1.* If the transfer agreement is filed after July 31 of the crop year and before February 1 of the following year unless the quantity being transferred:

(A) Is needed in order to market all eligible peanuts from the receiving farm as quota peanuts, and

(B) Does not exceed an amount by which the receiving farm's effective quota before the transfer is less than the entire production of peanuts from the farm exclusive of any peanuts that have been graded as Segregation 2 or Segregation 3 peanuts.

(3) *Permanent transfer of quota from a farm.* A permanent transfer of quota from a farm by sale or by owner shall not be approved:

(i) *Permanent transfer of quota by sale to the farm.* For the amount of quota purchased and permanently transferred to the farm in the current year and during the base period, as adjusted for any increase or decrease in such quota due to adjustment in the national quota during the base period, except that a transfer of a tenant's share of any peanut quota increase shall not be considered for purposes of determinations made under the provisions of this paragraph.

(ii) *Peanut poundage quota penalty.* If the owner is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid, or in the case of a sale of quota, the entire proceeds from the sale of quota are applied to the penalty and the county committee determines that the amount paid for the quota represents a reasonable price for the pounds of quota being sold.

(iii) *Conservation Reserve contract.* If the peanut quota is subject to an approved Conservation Reserve Program contract.

(4) *Permanent transfer of quota to a farm.* A permanent transfer of quota to a farm by sale or by owner shall not be approved if the basic quota after transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(g) *Approval or disapproval of a transfer agreement.* The county committee shall approve or disapprove each transfer agreement. The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section or in this part. However, the county committee may delegate authority to the county executive director or other county FSA employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility conditions as set forth in this section. Such delegation may authorize the approval of any eligible transfer agreement or the delegation of authority may be restrictive as to the type of transfer agreements that may be approved. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. However, if a transfer agreement is filed after July 31 of the crop year that provides for a permanent transfer of poundage quota, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(2) *Effective date.* An approved transfer agreement shall become effective during the current crop year, except that if an agreement to permanently transfer quota is filed after July 31 of the crop year, such agreement shall become effective for the next crop year.

(h) *Effect of permanent transfer of quota.* In the event of a permanent transfer of a quota, applicable farm data for each year of the base period shall be transferred to the receiving farm from the transferring farm in proportion to the quantity of basic quota which has been transferred from the transferring farm.

(i) *Notice of revised quotas.* A revised notice of farm poundage quota shall be issued for each farm affected by the transfer of farm poundage quota.

(j) *Cancellation of transfer*—(1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement, or approved due to error by the county committee, shall be void and canceled effective as of the date of approval except as may be provided by the Deputy Administrator to accomplish the purposes of this part. The cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketing of quota peanuts in excess of the revised effective farm poundage quota.

(2) If cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for, and effect of, the cancellation.

(k) *Withdrawal or minor revision.* The county committee may permit withdrawal or minor revisions of a transfer upon a:

(1) Written request by all parties to the transfer, and

(2) County committee determination that such withdrawal or revision is clearly in the best interest of all the producers and will not impair the effective operation of the peanut program.

(l) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of temporary transfers by owner to the same owner or operator to the same operator, if the current year's produced or considered-produced credit from the receiving farm exceeds such farm's basic quota, such produced or considered-produced

credit on the receiving farm shall be reduced by the amount of such excess, to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year produced or considered-produced credit for the transferring farm.

(m) *Considered produced credit.* Quota that is leased and transferred from a farm shall be considered produced on such farm to the extent of considered produced credit set forth in the definition of ''Considered produced credit'' in § 729.103 of this part.

[56 FR 16211, Apr. 19, 1991, as amended at 57 FR 27144, June 18, 1992. Redesignated and amended at 61 FR 36999, 37001, July 16, 1996; 62 FR 2719, Jan. 17, 1997; 62 FR 25438, May 9, 1997; 65 FR 8247, Feb. 18, 2000]

§ 729.215 Release and reapportionment of quota.

(a) *Release.* By filing Form FSA–278 with the county FSA office that serves the county in which the farm is located for administrative purposes, part or all of the farm's:

(1) *Temporary release.* Effective quota may be temporarily released to the county committee for the current year.

(2) *Permanent release.* Basic quota may be permanently released to the county committee. If the farm consists of separately identifiable tracts having different ownership, the owner(s) of any tract may permanently release part or all of the basic quota contributed to the farm by such tract.

(b) *Request for released quota.* Permanently released quota shall be reallocated without a request from the farm's owner or operator to eligible farms as determined in accordance with § 729.204 of this part. Temporarily released quota, may be reapportioned to farms for which a request for released quota has been filed, on Form FSA–278, in the county FSA office that serves the county in which the farm is located for administrative purposes. Temporarily released quota shall be reapportioned in accordance with the provisions of this section.

(c) *Time for filing.* The final date for filing a release of quota or for requesting reapportionment of temporary released quota shall be:

(1) *Permanent release.* For quota to be permanently released, thirty days after the date of mailing of the notice of the farm's quota.

(2) *Temporary release or request for released quota.* For a temporary release or a request for released quota, the date established by the State committee for the county in which the farm is located for administrative purposes.

(d) *Signature requirement.* The FSA–278 shall be signed by:

(1) *Temporary releases.* In the case of a temporary release, the farm operator. In addition, if quota was either leased and transferred from the farm, or released from the farm, in more than one year of the base period, the FSA–278 shall be signed by the farm's owner(s).

(2) *Permanent releases.* In the case of a permanent release, both the owner(s) and operator of the farm.

(e) *Reapportionment of temporarily released quota*—(1) *Time to reapportion.* The county committee shall reapportion, within 10 days after the final date for temporary release of quota in the county, any quota that will be reapportioned to farms in the county. In addition, if the county committee receives released quota from the State committee, such quota shall be reapportioned within 10 days after receipt of the notice of the availability of the quota.

(2) *Basis of reapportionment.* The county committee:

(i) When reapportioning temporarily released quota, shall give priority to producers on nonquota farms and to producers on farms having basic quotas that are significantly below the average basic quota in the county. Otherwise, the county committee shall reapportion the released quota in amounts determined by the county committee to be fair and reasonable on the basis of:

(A) Experience by the applicant in producing peanuts;

(B) Soil and other physical factors affecting the production of peanuts on the applicant's farm; and

(C) Tillable cropland available for the production of peanuts on the applicant's farm.

(ii) Shall not reapportion released quota to a farm that has transferred

quota from the farm in the current year.

(iii) Shall not reapportion quota to a farm to the extent that the farm's effective quota after the reapportionment will exceed an amount determined by multiplying the farm's tillable cropland by the larger of the farm yield or the highest actual yield for peanuts during the base period.

(f) *Release to State committee.* (1) Temporarily released quota that is not reapportioned by the county committee to farms in the county shall be released to the State committee for reallocating to other county committees that have requested additional quota for reapportionment to eligible producers.

(2) Permanently released quota shall be released to the State committee for reallocation to eligible farms in accordance with § 729.206 of this part.

(g) *Considered produced credit.* Quota that is temporarily released shall be considered produced on the releasing farm if neither of the following are applicable:

(1) Part, or all, of the farm's quota was released during any 2 or more years of the base period, or

(2) Part, or all, of the farm's quota was leased and transferred to another farm in the same county during any 2 or more years of the base period.

(h) *Withdrawal or minor revision of released quota.* A withdrawal or minor revision in the pounds temporarily or permanently released may be approved upon a written request filed with the county committee if, at the time the request is filed, the county committee has not transmitted permanently released quota to the State committee or, with respect to temporarily released quota, has not reapportioned such released quota to farms in the county or released such quota to the State committee for reallocation to requesting county committees.

[56 FR 16211, Apr. 19, 1991. Redesignated and amended at 61 FR 36999, 37001, July 16, 1996]

§ 729.216 National poundage quota.

(a) *National poundage quota for 1996 and subsequent crop years.* The national poundage quota for the 1996 and subsequent crop years shall be established by the Secretary at a level that is equal to the quantity of peanuts that the Secretary estimates will be devoted in each marketing year to domestic edible use (except seed), and related uses as may be set out in paragraph (c) of this section.

(b) *Disapproval of quotas.* No loan for quota peanuts may be made available for any crop of peanuts with respect to which it is determined by the Deputy Administrator that poundage quotas have been disapproved by producers pursuant to a referendum conducted in accordance with section 358–1(d) of the Agricultural Adjustment Act of 1938, as amended.

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota for quota peanuts for marketing year 1998 is 1,167,000 short tons.

(4) The national poundage quota for quota peanuts for marketing year 1999 is 1,180,000 short tons.

[61 FR 37001, July 16, 1996, as amended at 61 FR 60510, Nov. 29, 1996; 62 FR 62692, Nov. 25, 1997; 64 FR 48942, Sept. 9, 1999; 65 FR 16118, Mar. 27, 2000]

Subpart C—Marketing Cards, Marketings, Penalties, and Assessments

§ 729.301 Issuance of cards.

(a) *General.* As used in this part, peanut marketing card, Form FSA–1002, means a paper marketing card on which data is manually recorded or a plastic marketing card in which data is recorded electronically into a micro computer chip by a computer.

(b) *Issuance of marketing cards.* A marketing card shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced except that:

(1) A marketing card issued for experimental peanuts shall be issued in the name of the experiment station, and

(2) A marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest.

(c) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(d) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(e) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm, as determined by the county committee.

(2) Any person who the county committee determines has succeeded, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer would with respect to the disposition of the peanuts.

(f) *Data on marketing card and supplemental card*—(1) Before issuance, the following data and information must be recorded on the marketing card:

(i) The name of each producer and the producer's share of the crop of peanuts;

(ii) The effective farm poundage quota;

(iii) The pounds of any additional peanuts contracted and the handler number of the contracting handler;

(iv) The converted penalty rate, if applicable;

(v) The name of any producer on the farm against whom a peanut poundage quota lien has been established and the unpaid balance of such lien;

(vi) The name of any producer on the farm against whom a U.S. claim has been established and the unpaid amount of such claim;

(vii) With respect to any farm with a producer that is ineligible for price support, an indication of such ineligibility; and

(viii) An indication that the peanuts marketed from the farm are ''Eligible for Buyback'' if the farm operator authorizes the handler to purchase peanuts under the ''Immediate Buyback'' purchase in accordance with part 1446 of this title.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota for the farm from the returned marketing card shall be recorded as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the effective quota (not to exceed the balance of effective quota available) which is to be assigned to each card.

(g) *Issuance of producer identification cards*—(1) Before issuance, the following information shall be recorded on the producer identification card:

(i) Name and address of the farm operator, and

(ii) State, county code, and farm serial number.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts until such lot of peanuts has been marketed.

(h) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen, if the farm operator gives immediate written notice of such fact to the appropriate county FSA office and furnishes a satisfactory report of the quantity of peanuts which was marketed by use of such marketing card before such card was lost, stolen, or destroyed.

(i) *Invalid cards.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, or stolen.

(4) An alteration has been made without the approval of the county executive director.

(5) For a paper card, the card becomes illegible.

(j) *Validating invalid cards.* If a marketing card is known to be invalid, the farm operator or other producer shall return the marketing card to the county office. The county executive director shall issue a replacement marketing card or the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered.

§ 729.302 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card FSA–1003, and the peanut marketing card FSA–1002, which was issued for the farm on which the peanuts were produced. The producer may at the producer's risk leave the peanut marketing card in the custody of the handler during the period between marketing lots of peanuts to the same handler; however, the marketing card shall not be left in the possession of the handler after the producer has completed marketings for the season.

§ 729.303 Designation of category for marketing peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota loan, quota commercial, loan additional, or contract additional peanuts as defined in part 1446 of this title. The designation must be made within the time allowed by the handler but not later than the close of inspection of the third workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected and graded. In the absence of a designation, any Segregation 1 peanuts shall be marketed and deemed to be marketed in the following order of priority:

(a) As quota loan or quota commercial peanuts, at the option of the buying point operator, to the extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

§ 729.304 Marketing card entries.

(a) Immediately after each lot of peanuts is marketed the buyer, or the buyer's representative, shall make the following entries on the marketing card from the FSA–1007:

(1) The FSA–1007 serial number which identifies the lot of peanuts;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number, or for loan peanuts, the association number;

(6) The buying point number;

(7) The type of peanuts marketed; and

(8) Any penalties or claims collected.

(b) If noninspected peanuts are purchased at a buying point, the buyer, or the buyer's representative, shall make the following entries on the paper marketing card from the FSA–1030, Report of Purchase of Noninspected Peanuts;

(1) The date of marketing;

(2) The pounds purchased;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number;

(6) The type of peanuts marketed; and

(7) Any penalties or claims collected.

§ 729.305 Peanuts on which penalties are due and refund of excess penalty collected.

(a) In addition to other remedies as may apply, a penalty is due from the person involved in a violation of this part and shall be assessed against such person at the basic penalty rate on:

(1) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(2) All peanuts produced on a farm for which the producer:

(i) Failed to report the peanut acreage as provided in accordance with part 718 of this chapter; or

(ii) Is responsible, if entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm is refused or denied.

(3) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee. The quantity of peanuts subject to penalty under this provision shall be the quantity of peanuts determined by the county committee to have been falsely identified. Acts considered to be false identification shall include the following:

(i) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production;

(ii) Marketing or permitting the marketing of peanuts to a registered handler without identifying the peanuts with a peanut marketing card issued for the farm on which such peanuts were produced;

(iii) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, peanuts were not marketed from the farm; or

(iv) Marketing peanuts that have been commingled with those of another farm.

(4) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm in excess of the quantity for which the producer has satisfactorily accounted.

(5) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted between the producer and handler as provided in part 1446 of this title.

(6) The quantity of farmers stock peanuts the county committee determines was necessary to plant the reported acreage for the crop year if the producer fails or refuses to file an accurate seed peanut report of seed purchases; and

(7) All peanuts marketed in violation of this subpart for reasons not otherwise enumerated in paragraph (a) of this section.

(b) If the reported acreage of peanuts on a farm differs from the determined acreage by more than the tolerance provided in part 718 of this chapter, a penalty at the converted rate shall be due from all producers on the farm on all peanuts marketed from the farm. In addition, in the case of a false certification, the sanctions provided for in § 729.204(e) shall apply except to the extent that it may be determined by the Deputy Administrator that a second assessment would be unduly redundant.

(c) Any penalty collected in excess of the correct amount as determined pursuant to this section may be refunded upon a finding by the county committee that an excess amount was collected.

[56 FR 16211, Apr. 19, 1991, as amended at 65 FR 8247, Feb. 18, 2000]

§ 729.306 Farms with one acre or less of peanuts.

All peanuts produced on a farm on which the acreage of peanuts is one acre or less may be marketed for domestic edible use without incurring a marketing penalty if the producer who shares in the peanuts produced on any such farm does not share in the peanuts produced on any other farm.

§ 729.307 Assessment of penalties; joint and several liability.

Any person against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed may request reconsideration of the assessment of the penalty in accordance with part 780 of this chapter. If more than one person is liable for a penalty, the liability of all persons involved shall be joint and several liability.

§ 729.308 Lien for penalty.

(a) *Lien on peanuts.* Until the amount of any penalty provided by this part is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States.

(b) *Lien precedence.* The lien on the peanuts takes precedence over all claims and attaches at the time the debt is entered on a county claim record in the county FSA office for the county in which the subsequent crop is grown.

(c) *List of peanut marketing penalty debts.* Each county FSA office shall maintain a list of peanut marketing penalties for which a claim has been established and recorded in such office. The list shall be made available for examination upon written request by any interested person.

§ 729.309 Persons to pay penalty or collect debts.

(a) *Marketings to handlers.* The buyer shall be liable for the full penalty due on marketings of excess quota peanuts that such handler buys or otherwise acquires from a producer. Also, the buyer shall be liable with the producer for the full penalty due on peanuts purchased from a producer as additional peanuts in excess of the amount contracted with the producer as contract additional peanuts in accordance with part 1446 of this title. The buyer may deduct the penalty from the price paid to the producer for the peanuts. If the net value of a lot of peanuts is less than the penalty due on such lot, or if the handler fails to collect the penalty due on any marketing of a lot of peanuts from a farm, the buyer and each of the producers on the farm shall be held jointly and severally liable for the amount of any unpaid penalty due on such lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any marketings of excess quota peanuts to persons who are not established peanut buyers.

(c) *Penalty for error on marketing card.* The producer and the buyer are jointly and severally liable for any penalties which may be due if the buyer made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in marketings in excess of the effective poundage quota or the pounds contracted as additional peanuts in accordance with part 1446 of this title.

(d) *Notice to affected parties.* All affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card or the marketing of peanuts as contract additional peanuts exceeds the amount contracted by the producer as additional peanuts in accordance with part 1446 of this title. In addition:

(1) *PPQ lien.* If a peanut poundage quota (PPQ) lien is recorded on a claim record maintained in a county FSA office in accordance with § 729.308 of this part or recorded on the peanut marketing card such recordation shall constitute notice to any peanut buyer that until the amount of the penalty involved plus accrued interest is paid, the United States has a lien on any peanuts, from any crop year that are subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota (PPQ) lien amounts shall be collected by the buyer and paid to the Farm Service Agency prior to making collection for any other liens or claims, except for a lien that was perfected before the PPQ lien became

attached, as provided in § 729.308 of this part. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

(2) *U.S. claim.* If a U.S. claim, other than for a PPQ lien, is recorded on a marketing card, such recordation shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan due the debtor must be withheld from the producer and paid to the Farm Service Agency. Such buyer shall be liable for payment of such amount that was, or should have been, withheld.

(3) *Converted penalty rate.* If a converted penalty rate is entered on the marketing card by the county FSA office, the buyer shall collect penalty at such converted penalty rate on each pound of peanuts acquired from the producers of the peanuts. Any penalty that is collected must be paid to the Farm Service Agency. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

§ 729.310 Payment of penalty or other debt.

(a) *Method of payment.* A draft, money order, or check made payable to the Farm Service Agency may be used to pay any penalty, other indebtedness collected in accordance with this subpart, or interest thereon. All methods of payment shall be received subject to collection and payment at face value.

(b) *Due date.* The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(c) *Interest.* The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. If the rate charged CCC by the Treasury is increased, the interest due on the penalty may be, to the extent permitted by law, increased commensurately for the period of such increase. Interest shall accrue from the date the penalty was due if the penalty is not remitted within 30 days after the date the penalty was assessed. Nothing in paragraph (c) of this section, shall limit the liability of a person for pre-penalty interest where otherwise provided for in this part or otherwise provided for by law.

§ 729.311 Peanuts on which penalties are not to be assessed.

Notwithstanding other provisions in this subpart:

(a) *Error in weight.* A penalty shall not be collected if such penalty results from an error in net weight of a lot of peanuts marketed, as reported on Form FSA–1007, Inspection Certificate and Sales Memorandum, and the error does not exceed one-tenth of one percent of the correct net weight of such lot of peanuts. However, notwithstanding the preceding sentence, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size or amount of the error.

(b) *Peanuts grown on State prison farms.* A penalty shall not be collected on peanuts grown on State prison farms for consumption within such State prison system, and so consumed.

(c) *Peanuts grown for experimental or research purposes.* (1) A penalty shall not be collected on the marketing of any peanuts that are:

(i) Grown only for experimental or research purposes, which shall include seed determined by the Deputy Administrator to be breeder or foundation seed;

(ii) Grown on land owned or leased by a publicly-owned agricultural experiment station, which shall include a State-operated seed organization;

(iii) Produced at public expense by employees of entities described in paragraph (c)(1)(ii) of this section, or are produced by farmers for seed determined by the Deputy Administrator to be breeder or foundation seed peanuts for experimental or research purposes pursuant to an agreement with a publicly-owned agricultural experiment station, which shall include such State-operated seed organizations.

(2) The exemption from penalty, as provided in paragraph (c)(1) of this section shall not apply unless:

(i) Such peanuts are used for purposes other than for:

(A) Food or feed, or

(B) Seed to produce peanuts for food.

(ii) The director of the applicable publicly-owned agricultural experiment station, including State-operated seed organizations, furnishes to the State FSA Executive Director:

(A) A list, by county, showing for each farm on which such peanuts are grown for experimental or research purposes, the name and address of the entity that supplies information; the name of the owner, and operator, if different from the owner, of the farm on which such peanuts are grown; and the acreage of peanuts grown for such experimental or research purposes;

(B) A signed statement that such acreage of peanuts will be grown for experimental and research purposes including breeder and foundation seed; such production of peanuts is necessary for the State-operated program conducted for such purposes by the entity; and such peanuts will be produced under the direction of representatives of such entity; and

(C) Such additional reports, if any, as the Deputy Administrator may require.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts used to plant peanuts for use as green peanuts shall not be subject to penalty if the county committee determines that such seed peanuts:

(1) Are unique strains of peanuts used for green peanuts.

(2) Are not commercially available, and,

(3) Are used exclusively to plant peanuts for harvest as green peanuts.

§ 729.312 Reduction or waiver of penalty.

(a) *Reduction or waiver of penalty*. The county committee may reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee, with concurrence of the State committee, determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver*. A penalty may be reduced or waived by an authorized official or committee either before or after it has been formally assessed. If the reduction or waiver is made before formal assessment, the notice of assessment shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Reconsideration or appeal.* Any person against whom a penalty is assessed under this subpart may, through a request for reconsideration or through an appeal, as applicable, request that the penalty be reduced or waived.

§ 729.313 Failure to comply with program.

Any person who has failed to comply with the provisions in this part because such person was misinformed or relied on the advice of an authorized representative of the Secretary in rendering performance under this part, and such person believed in good faith that such misinformation or advice met the requirements of the program as set forth in these regulations, may file a request with the State committee for review of an adverse county committee ruling with respect to such failure to comply. After review of the case, the State committee shall submit the case to the Deputy Administrator with its recommendation. The Deputy Administrator may grant relief as deemed appropriate in such case. This authority, however, does not extend to cases where such person knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the person relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

§ 729.314 Schemes and devices.

(a) Penalties shall be assessed in such manner as will correct for and nullify any action in which a person has knowingly, whether passively or actively:

(1) Engaged in, acquiesced in, or adopted any scheme or device which tends to defeat the purpose of the regulations in this part,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

(b) Such penalties as are provided for in this part shall be in addition to all other remedies and sanctions provided for, or permitted, by law.

§ 729.315 Handling Segregation 3 peanuts.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall retain such lot of peanuts for seed in accordance with paragraph (c) of this section or shall deliver such lot of peanuts:

(1) To the area association for a price support loan subject to such conditions as apply to eligibility for such loans including those in part 1446 of this title.

(2) As contract additional peanuts subject to provisions of part 1446 of this title;

(3) As quota peanuts, subject to the conditions set forth in this part to a handler who has signed the peanut marketing agreement provided the peanuts were produced for seed under an agreement with a State agency; or

(4) To a handler as quota peanuts if:

(i) The peanuts were produced for seed under an agreement with a State agency.

(ii) The handler to whom the peanuts are sold has, for that purpose, signed a supervision supplement to a warehousing contract with the area marketing association.

(b) *Failure to properly dispose of Segregation 3 peanuts*—(1) *Loss of price support.* If the producer does not, within the time allowed in this part for designation of the category for marketing such peanuts, dispose of Segregation 3 peanuts in the manner specified in this section, such producer shall be ineligible for continued quota price support for the remainder of the marketing year.

(2) *Liquidated damages.* Any peanut producer participating in the price support loan program shall be deemed to have agreed that:

(i) CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by this subpart or by the CCC;

(ii) The amount of such damages will be difficult, it not impossible, to ascertain;

(iii) With respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in this section, liquidated damages shall be due to CCC, not as a penalty, based on the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts,

(iv) Such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer; and,

(v) This remedy shall be in addition to any other remedy or sanction available against the producer, including penalties under this part.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot of Segregation 3 peanuts for seed, the buying point operator shall give a copy of the FSA–1007 to the producer as a record showing the quantity and quality factors of the peanuts. The producer:

(1) Shall designate such peanuts as quota peanuts.

(2) Shall have the net weight of such peanuts determined and deducted from the farm marketing card.

(3) Shall advise the inspector that the peanuts are being retained for seed.

(4) Must store such peanuts separate from other peanuts on the farm.

(5) Shall notify the county executive director when such peanuts are used and otherwise account for the disposition of such peanuts.

(6) Shall not sell such peanuts to a handler for seed; however, the peanuts may be sold to another producer for seed.

(7) May, if it is later determined that such peanuts are unfit for seed use and after receiving prior approval from the county office, sell such peanuts as quota peanuts for crushing without benefit of price support.

§ 729.316 Marketing assessments.

(a) Subject to adjustments in accordance with §729.317, a nonrefundable marketing assessment shall, in the amount provided for in this section, be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, including marketings by pledging peanuts as collateral for a price support loan. The per pound assessment as a percentage of the applicable national average quota or additional peanut loan rate, shall be an amount equal to:

(1) 1.15 percent for the 1996 crop; and

(2) 1.2 percent for the 1997 through 2002 crops.

(b) *Collections and payment of marketing assessments.* The first purchaser of peanuts shall:

(1) Collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by:

(i) In the case of the 1996 crop, a per pound amount equal to .6 percent of the national average loan rate; and

(ii) In the case of each of the 1997 through 2002 crops, a per pound amount equal to .65 percent of the applicable national average loan rate.

(2) In addition to the amount collected under paragraph (1) of this section, pay a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by .55 percent of the applicable national average loan rate.

(c) *Private marketings.* For all peanuts retained on the farm for seed or other uses or marketed by such producer to any person outside the United States or marketed in private marketings through a retail or wholesale outlet to any person who is not required to register as a handler in accordance with part 1446 of this title, the producer shall pay a marketing assessment equal to the full amount determined by multiplying the per pound amount provided in paragraph (a) of this section by the gross weight of the peanuts if they are uninspected farmers stock peanuts or, if inspected, the net weight of such peanuts. If such peanuts are shelled before they are marketed, the quantity marketed shall be converted to a farmers stock equivalent as consistent with this part, for purposes of determining the amount of assessment that is due.

(d) *Loan collateral peanuts.* With respect to peanuts that are pledged as collateral for a price support loan through an approved warehouse, an assessment shall be:

(1) Determined and paid by multiplying the net weight of such peanuts by the applicable per pound amount provided in paragraph (b)(1) of this section for private sales and deducting the total from the loan value of such peanuts before other deductions may be made for any other reason; and

(2) Further determined and paid by multiplying the net weight of such peanuts, when sold from the price support inventory, by the applicable per pound amount provided in paragraph (b)(2) of this section for private sales and collecting that amount from the person who acquires such peanuts from the applicable association or from the CCC.

(e) *Remittance of marketing assessments.* With respect to marketing assessments as provided in:

(1) Paragraph (b) of this section, such assessments shall be remitted in a manner prescribed by the Deputy Administrator. To avoid a penalty, as prescribed in this section, the marketing assessments due with respect to any lot of peanuts acquired directly from a producer must be remitted during the 15 days that follow the week in which the data from the applicable Form FSA–1007 is due to be transmitted to FSA in accordance with the provisions in part 1446 of this title. For purposes of this section a week shall be the 168 hour period that begins at 12:01 a.m. local time on any Sunday and the postmark on the envelope in which such marketing assessment is remitted may be the basis for determining whether the marketing assessment was remitted timely;

(2) Paragraph (c) of this section, such assessments shall be remitted, within 10 days after the date such peanuts are marketed, and shall be remitted to the county FSA office that serves the county in which the farm is administratively located. Peanuts that are retained on the farm for seed or other use, shall be considered marketed at the time the certification of marketings is filed or due to be filed at the

county FSA office, whichever is earlier;

(3) Paragraph (d)(1) of this section, such assessments shall be credited by the association to the appropriate account of the CCC and in accordance with instructions issued by the Executive Vice President, CCC; and

(4) Paragraph (d)(2) of this section, such assessment shall be paid at the time and in the manner prescribed in the applicable:

(i) Sales announcements for sales of farmers stock peanuts by CCC;

(ii) Sales announcement or other similar document issued by the association for association sales of loan stocks of farmers stock peanuts; and

(iii) Storage contract for farmers stock peanuts purchased by a handler when peanuts are purchased by such handler in accordance with the ''immediate buyback'' provisions set forth in § 1446.309.

(f) *Penalties*. If any person fails to collect, pay or timely remit the assessment required by this section, the person shall be liable in addition to principal and interest, for a penalty determined by multiplying the quantity of peanuts involved by 10 percent of the per pound national average quota support rate for the applicable crop year.

[61 FR 37565, July 18, 1996]

§ 729.317 Increased marketing assessments.

(a) *Applicability*. If area quota pool losses are not otherwise covered by the offsets prescribed by part 1446 of this title, and the transfer of marketing assessments collected in accordance with provisions of this part, the marketing assessment for quota peanut producers shall be:

(1) Increased by an amount needed by CCC to cover such losses; and

(2) Collected as determined by CCC on all quota peanuts marketed in the next marketing year in the area covered by the quota pool which had the loss.

(b) *Insufficient collections*. If the amount of such increased assessments collected on the marketing of quota peanuts in any year is less than the amount needed to cover the accumulated net pool losses for any crop, there shall be an increased assessment in subsequent years until the amount needed is collected.

(c) *Excess collections*. If the increased amount of assessments, as provided in this section, collected on the marketing of quota peanuts for any year is greater than the amount needed for the purpose for which the collection is made, the excess amount shall be retained to offset any losses which may occur in quota pools within that marketing area in subsequent years.

(d) *Collection procedures*. Unless otherwise specified by CCC, the collection procedures for the increased assessments shall be as provided for in § 729.316 and the assessment rates of § 729.316 shall be increased accordingly.

[61 FR 37566, July 18, 1996]

Subpart D—Recordkeeping and Reporting Requirements

§ 729.401 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form FSA–1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The FSA–1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an FSA–1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in this part.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

§ 729.402 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county FSA office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute a certification of the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm. Marketing penalties may be assessed for such failure as provided in this part, unless a satisfactory report of disposition is furnished to the county committee.

§ 729.403 Report of marketing green peanuts.

(a) *Farm operator report.* The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form FSA–1011 at the FSA office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The acreage on the farm from which peanuts were marketed solely as green peanuts; and

(2) The name and address of the buyer to, or through whom, each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However, if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) *Buyer report.* Each buyer of green peanuts shall report purchases of green peanuts from producers on FSA–1011 to the county FSA office in the county in which the farm is administratively located. Small lot purchases not in commercial quantities including, but not limited to, street sales, local market sales, and grocery store sales shall not be subject to this reporting requirement. This report shall subject the buyer to a review of those purchase and sales records as required in this part. Each buyer shall keep records of green peanuts purchased including the following information:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county codes) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

(c) *Failure to file green peanut report.* Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall, subject the farm operator or buyer, as applicable, to marketing penalties as set forth in this part.

§ 729.404 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the farm operator shall file a report with the county FSA office of the acquisition of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of part 718 of this chapter. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmers stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant green peanuts shall also be reported to the county FSA office.

§ 729.405 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report to the State committee of production and disposition of the peanuts grown on the farm. The report must be filed on FSA–1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show the:

(1) Final acreage of peanuts on the farm;

(2) Total production of peanuts on the farm;

(3) Name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed:

(4) Quantity and disposition of peanuts not marketed; and

(5) Type of peanuts.

(b) Notwithstanding paragraph (a) of this section, if peanuts are marketed in small lots to persons who are not established buyers, the report otherwise required in paragraph (a) of this section, may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(c) Failure to file the FSA–1010 as requested or the filing of an FSA–1010 which is found by the State committee to be incomplete, incorrect, or in violation of the requirements of paragraphs (a) or (b) of this section, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm and will subject the producer to marketing penalties as set forth in this part.

§ 729.406 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each such business.

§ 729.407 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers' cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut combine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record, including electronic records, as required under this part or who makes any false report or record shall be deemed to have improperly handled peanuts for the quantity of peanuts to which such failure applies for which a penalty may be assessed under the provisions of this part or part 1446 of this title, as applicable. Such liability is in addition to criminal penalties or other remedies permitted by law.

§ 729.408 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the FSA State Executive Director, or their designees, and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed necessary to enforce the peanut poundage quota program and shall be allowed access to such records. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut combine, shall make

available for examination such books, papers, automated records, electronic records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter which relates to the provisions of this part. Any person who fails to provide such access shall be subject to a penalty payable to CCC in amount up to, as determined by the Deputy Administrator, the amount calculated by multiplying the amount of peanuts involved by the quota support rate for the applicable crop year.

§ 729.409 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be required in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.