

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(f) *Criteria for civil money penalty.* FNS may impose a civil money penalty as a sanction in lieu of disqualification only when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction. A civil money penalty may not be imposed in lieu of a permanent disqualification.

(g) *Amount of civil money penalty.* FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) of this section by the number of months for which the firm would have been disqualified under paragraph (e) of this section. In any event, the civil money penalty may not exceed \$10,000 for each violation.

5. In § 278.8, paragraph (a) is revised to read as follows:

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or food wholesaler aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may, within the period stated in § 279.5, file a written request for review of the administrative action with the review officer. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer except that

a permanent disqualification will not be subject to an automatic stay. An administrative stay of a permanent disqualification may be available upon a showing by the appellant that there is a substantial likelihood that no disqualification is warranted. A disqualification for failing to pay a civil money penalty shall not be subject to an administrative review.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In § 279.6, paragraph (b) is revised to read as follows:

§ 279.6 Content of request for review.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the review officer shall notify the firm of the date by which the information must be filed. The firm requesting review may ask for an opportunity to appear before the review officer in person. However, any information submitted in person shall, if directed by the review officer, be put in writing by the firm and filed with the review officer within a period which the review officer shall specify. Any request for a stay of a permanent disqualification must be submitted with the initial request for review and must include information in support of the request for a stay.

7. In § 279.7, paragraph (a) is revised to read as follows:

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the review officer shall notify the appropriate FNS regional office, in writing, of the action under review and, except where a stay is not granted, shall direct that the administrative action shall be held in abeyance until the review officer has made a determination. The review officer may grant a stay of a permanent disqualification only upon a showing by the appellant that there is a substantial likelihood that no disqualification is warranted. The review officer shall, within 15 working days of the receipt of the request for a stay, inform the firm in writing of the review officer's determination as to whether or not to grant a stay. If the questioned administrative action involved a denial of an application to participate in the

program or a denial of a claim, the review officer shall direct that the firm shall not be approved for participation or paid any part of the disputed claim until the review officer has made a determination. In any case, notice to the appropriate FNS regional office shall be accompanied by a copy of the request filed by the firm.

(91 Stat. 958 (7 U.S.C. 2011-2029))

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps)

Dated: December 14, 1982.

Robert E. Leard,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 82-34332 Filed 12-16-82; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

7 CFR Part 610

Technical Assistance

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Final rule amendment.

SUMMARY: This document makes editorial and nomenclature changes in 7 CFR 610.4 for the purpose of clarity and ease of understanding. These changes will have no effect on the public.

EFFECTIVE DATE: December 17, 1982.

FOR FURTHER INFORMATION CONTACT:

Frances E. Robinson, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 447-9157.

SUPPLEMENTARY INFORMATION: This action has been determined to be exempt from the requirements of Executive Order 12291, as the action is an internal agency practice to clarify the rule. This action is administrative in nature, and publication for comment is unnecessary.

The unnumbered paragraph of § 610.4 contains paragraph designations (a), (b), (c), and (d) which are unnecessary and confusing. Also, there is a nomenclature change needed in paragraph (a)(5), as the Department of Health, Education, and Welfare is now the Department of Health and Human Services.

List of Subjects in 7 CFR Part 610

Technical assistance, Soil conservation, Water resources.

PART 610—TECHNICAL ASSISTANCE

§ 610.4 [Amended]

For reasons set out in the preamble, § 610.4 of 7 CFR is amended as follows:

1. By removing the paragraph designations (a), (b), (c), and (d) in the introductory paragraph.

2. By changing the words "Health, Education, and Welfare" to "Health and Human Services" in paragraph (a)(5).

Dated: December 9, 1982.

Peter C. Myers,
Chief, Soil Conservation Service.

[FR Doc. 82-33983 Filed 12-16-82; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 390; Lemon Reg. 389, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period December 19-25, 1982, and increases the quantity of lemons that may be shipped during the period December 12-18, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective December 19, 1982 and the amendment is effective for the period December 12-18, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the

recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on December 14, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.690 is added as follows:

§ 910.690 Lemon Regulation 390.

The quantity of lemons grown in California and Arizona which may be handled during the period December 19, 1982, through December 25, 1982, is established at 240,000 cartons.

2. Section 910.689 Lemon Regulation 389 (47 FR 55469) is revised to read as follows:

§ 910.689 Lemon Regulation 389.

The quantity of lemons grown in California and Arizona which may be handled during the period December 12, 1982, through December 18, 1982, is established at 270,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 15, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 82-34520 Filed 12-16-82; 11:33 am]

BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Part 725

[Amdt. 4]

Tobacco Acreage Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 725 to implement the provisions of the No Net Cost Tobacco Program Act of 1982 (Pub. L. 97-218, 96 Stat. 197, approved July 20, 1982) with respect to the flue-cured tobacco acreage allotment and marketing quota program. The rule provides for the sale of flue-cured tobacco allotments and quotas, generally places restrictions on lease and transfer of allotments and quotas, and provides for adjustment of farm yields and acreage allotments. In addition, this rule provides for restrictions with respect to the marketing of tobacco by producers, warehousemen and dealers. The rule provides for forfeiture of flue-cured tobacco allotments and quotas under certain conditions. A Notice of Proposed Rulemaking will be published in the *Federal Register* requesting comments with respect to the forfeiture of flue-cured tobacco acreage allotments and marketing quotas by persons other than individuals.

DATES: Effective December 13, 1982. Comments must be received before February 15, 1983 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013; (202) 382-0200. The Final Regulatory Impact Analysis

covering this rule will be available on request from Jack S. Forlines.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This interim rule is necessary to implement the provisions of the No Net Cost Tobacco Program Act of 1982 (hereinafter referred to as the "Act"). The 1982-83 marketing year for flue-cured tobacco began on July 1, 1982. Since producers, warehousemen, tobacco dealers and buying companies need to be informed of the provisions of this rule as soon as possible, it has been determined that this interim rule shall become effective upon the date of filing with the Director, Office of the Federal Register without prior opportunity for public comment. However, the public is invited to comment on this interim rule for a period of 60 days after the date of publication in the *Federal Register*. A final document discussing comments received and any amendments to this interim rule which may be deemed necessary will be published in the *Federal Register* as soon as possible.

The Act amends the Agricultural Act of 1949 and the Agricultural Adjustment Act of 1938 to provide for the operation of the tobacco price support and production adjustment program in such a manner as to result in "no net cost" to taxpayers, except for administrative expenses. The Act makes other changes to strengthen the operation of the

program. The major provisions of this interim rule are as follows:

(1) *Leasing of flue-cured tobacco allotments and quotas.* Unlike prior tobacco programs, this interim rule provides for the elimination of fall leasing, except in the case of natural disasters. Fall leasing of flue-cured allotments and quotas has been the subject of much criticism as the result of the opportunity for speculation and the increase in the cost of leasing allotments and quotas when middlemen are involved in leasing transactions. The involvement of middlemen in spring leasing is also addressed by requiring that any agreement for the leasing of a flue-cured tobacco allotment and quota must be exclusively between the lessor and lessee or an agent who regularly represents the lessor or the lessee in business transactions unrelated to tobacco. The lessor and the lessee of a flue-cured tobacco allotment and quota must certify compliance with all leasing requirements which are specified in this interim rule. If, after a notice and an opportunity for a hearing, it is determined that a lessee or lessor knowingly made a false statement, the lessee will be ineligible for price support or the lessor's allotment and quota will be reduced, as applicable. The total flue-cured tobacco allotment for any farm is limited, after transfer of allotment by either lease or sale, to 50 percent of the tillable cropland on the farm. Subleasing of allotments and quotas is prohibited.

(2) *Sale of tobacco allotments and quotas.* The sale of flue-cured tobacco allotments and quotas is permitted but such sales may only be made to persons who are or will become active tobacco producers within the same county. At the time a transfer agreement is filed with the county ASCS office to transfer allotment and quota by sale, the agreement must specify the farm to which the allotment and quota shall be assigned. This procedure is designed to prevent "hip-pocket" allotments and quotas (i.e., allotments and quotas assigned to persons rather than to farms). It is the responsibility of a purchaser of an allotment and quota who is not the owner of the farm to which the allotment and quota is assigned to take whatever measures are deemed to be necessary to protect the investment in such purchase should the producer fail to remain an active producer on the farm to which the assignment has been made. An allotment and quota which is purchased may not be sold for a period of 5 years, except as may be required to prevent forfeiture. In addition, the owner of the farm to which allotment and quota is assigned is the only person who is

authorized to sell such allotment and quota.

(3) *Forfeiture of tobacco allotments and quotas.* Any person owning a farm having a flue-cured tobacco allotment that exceeds 50 percent of the tillable cropland on the person's farm must sell or forfeit the excess allotment. Tillable cropland is land which has been cleared and is capable of cultivation without unusual preparation. Tillable cropland does not include orchards, vineyards and land which has been devoted to trees. A person currently having an allotment that exceeds 50 percent of the farm's tillable cropland may prevent forfeiture by: (a) The acquisition of additional tillable cropland; (b) the sale of excess allotment; or (c) the conversion of nontillable land to tillable cropland status.

Section 201 of the Act amends section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b) to provide that if a person purchases a flue-cured tobacco acreage allotment and disposes of an acreage of tillable cropland which results in the total acreage of flue-cured tobacco allotted to such person's farm exceeding 50 percent of the tillable cropland owned by such person, such person will take steps to assure that the total acreage of flue-cured tobacco allotted to such farm does not exceed 50 percent of the tillable cropland owned by such person. Failure of the person to take such action will result in forfeiture of such excess allotment and quota. In addition, if any person owns a farm on or after December 1, 1983, for which the total acreage allotted for the production of flue-cured tobacco exceeds 50 percent of such farm's tillable cropland, such person shall forfeit any acreage allotment representing the excess.

As used in section 201 of the Act, the phrase "owned by such person" indicates that ownership of land is a significant factor in determining allotment which must be forfeited under certain conditions. Accordingly, this interim rule provides that the phrase "owns a farm" means the ownership of: (a) A farm as constituted in accordance with the provisions of 7 CFR Part 719 if the entire farm shares a common ownership; or (b) a tract of land within a farm as constituted in accordance with the provisions of 7 CFR Part 719 if the farm, as constituted, consists of separate ownership tracts.

Thus, when determining the amount of allotment subject to forfeiture because of inadequate tillable cropland, the county ASC committee will consider each ownership tract as though it were a separate farm in those cases where a

farm consists of tracts of land under separate ownership.

Once a flue-cured allotment and quota is purchased, the purchaser must share, for a period of five years, in the risk of production of tobacco produced under the allotment and quota or the allotment and quota shall be sold or forfeited.

(4) *Forfeiture pools.* In each county, a forfeiture pool will be established for forfeited allotments and quotas.

Allotments and quotas will be reallocated by the county committee to eligible persons taking into consideration such factors as the size of the current allotment on the farm, the length of time the applicant has been farming tobacco, and the extent to which the applicant has leased allotment and quota. Forfeited allotments and quotas may be reallocated to farms which currently do not have a tobacco allotment and quota.

(5) *Forfeiture of reallocated allotment and quota.* If an applicant fails to share in the risk of production of tobacco during any of the five years beginning with the crop year in which the allotment and quota is reallocated, the allotment and quota shall be forfeited. Mere failure to utilize the allotment and quota will not result in forfeiture but will extend the five-year period one year for each year the allotment and quota is not utilized.

(6) *Periodic adjustment of flue-cured tobacco yields.* In 1983 and at 5-year intervals thereafter, the Secretary of Agriculture shall adjust: (a) The national average yield goal for flue-cured tobacco to the past 5 years' moving national average yield; and (b) the farm acreage allotments and preliminary farm yields for flue-cured tobacco farms to reflect the past 5 years' moving county average yield in order that the expected production from the allotted acres will more accurately reflect the production capability.

Due to advances in agricultural research and technology, producers of flue-cured tobacco are able to obtain larger yields on an acre of tobacco. Therefore, maintaining a constant allotment may result in the production of a quantity of tobacco that exceeds the marketing quota. This provision updates the acreage-poundage ratio with respect to current yields.

(7) *Limitation on the sale of tobacco floor sweepings.* Effective for the 1982 and subsequent crops of flue-cured tobacco, the allowable floor sweepings of flue-cured tobacco which may be marketed without penalty by warehousemen has been reduced to 0.24 percent times the total first sales of tobacco at auction for the season for the warehouse involved. Previously the

allowance of flue-cured tobacco was 0.5 percent. Marketing floor sweepings in excess of the allowable amount will result in a penalty of 150 percent of the average market price for flue-cured tobacco for the immediately preceding marketing year.

(8) *Lien for payment of penalty.* This provision authorizing a lien on tobacco sets forth a more efficient mechanism for collecting marketing penalties. If a marketing quota penalty is assessed, there shall be a lien in favor of the United States on the tobacco with respect to which the penalty is to be assessed and on any other tobacco subject to marketing quotas in which the person has an interest until the penalty is paid. Currently, penalties which are reduced to a claim in favor of the United States are deductible only from the proceeds of tobacco which is pledged as collateral for a price support loan.

(9) *False identification of tobacco.* The regulations which are currently applicable for flue-cured tobacco provide for the correction of farm production records when actual marketings are determined to be incorrect because of false identification. In many cases, this actually results in an increase in quota for the producer who falsely identifies tobacco.

This interim rule provides that if a producer falsely identifies tobacco, the quantity of tobacco falsely identified shall be considered for purposes of establishing future farm marketing quotas as having been produced both on the farm for which it was identified as having been produced and on the farm of actual production.

(10) *Warehouseman's records and reports.* This interim rule provides for minor changes in the flue-cured tobacco regulations with respect to the records and reports of warehousemen. The most significant change is the requirement that a notation of "No Price Support" must be entered by the warehouseman on the basket ticket for each lot of tobacco which is identified with a marketing card bearing the same notation.

(11) *Dealer's records and reports.* This interim rule also provides for minor changes in the flue-cured regulations with respect to the records and reports of dealers. The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Fund as provided in 7 CFR Part 1464. For the 1982-83 marketing year, the dealer shall deduct three cents per pound from the price paid to the producer in nonauction purchases, unless the purchase is identified with a marketing card bearing the notation "No Price Support." The amount of such deductions in

subsequent marketing years will be announced by the Secretary.

(12) *Limitation on the size of new farm allotments.* The regulations for flue-cured tobacco currently provide that a new farm allotment shall not exceed 50 percent of the average of the acreage allotments established for similar farms in the community. In many cases, this provision would permit flue-cured tobacco acreage allotments to be established for new farms that would be unreasonably high when compared to the average county or national acreage allotment. This interim rule provides that the maximum flue-cured acreage allotment which may be established for any new farm shall be limited to one acre.

(13) *Penalties for marketing certain tobacco that is ineligible for price support.* Effective for any of the 1983 and subsequent crops of flue-cured tobacco for which marketing quotas are in effect, producers shall be subject to a penalty with respect to any marketings of flue-cured tobacco produced on a farm which is ineligible for price support because the farm operator or other producer on the farm has not agreed to contribute to the No Net Cost Tobacco Fund. The penalty per pound will be equal to 75 percent of the preceding marketing year's average market price per pound for flue-cured tobacco.

(14) *Contributions to the No Net Cost Tobacco Fund by the lessor.* Effective with respect to the 1983 and subsequent crops of flue-cured tobacco, a farm owner must, as a condition of eligibility to lease and transfer marketing quota from the farm, contribute to the No Net Cost Tobacco Fund for each pound of quota leased. The lessor's contribution per pound will be equal to that of other producers who qualify for price support with respect to flue-cured tobacco produced.

(15) *Processing and storing 1982 crop carryover tobacco.* Section 201 of the Act amended section 316(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(a)) to eliminate fall leasing (i.e., leasing during the marketing season) for flue-cured tobacco. Prior to enactment of section 201, producers had planted their crops with the expectation of being able to lease quota to their farm if the production exceeded 110 percent of the effective farm marketing quota. In the absence of a carryover program, many producers would be required to store the excess tobacco on their farms until the next marketing season.

This interim rule authorizes Flue-Cured Tobacco Cooperative Stabilization Corporation to process and store 1982 crop producer carryover

tobacco and to act as the producer's marketing agent in marketing the tobacco in the 1983-84 marketing year. The handling of 1982 crop carryover tobacco is limited to the producer-owned and operated Flue-Cured Tobacco Cooperative Stabilization Corporation to assure that the tobacco will be insulated from commercial trade channels and will not be marketed until the subsequent marketing year.

(16) *Approval of transfers of allotment and quota by lease or sale.* This interim rule provides that if a claim for marketing quota penalty has been filed by ASCS against a lessor or seller, a lease or sale of allotment and quota by such lessor or seller will not be approved by the county committee until such time as the claim is satisfied or the proceeds from the lease or sale are applied against such claim.

List of Subjects in 7 CFR Part 725

Acres allotment, Marketing quota, Penalties, Report requirements, Tobacco.

Interim Rule

PART 725—[AMENDED]

Accordingly, 7 CFR Part 725 is amended as follows:

1. The table of contents is amended by revising or adding the following entries:

725.72 Transfer of tobacco marketing quotas by lease or by sale.

725.74 Forfeiture of allotment and quota.

725.85 Identification of tobacco subject to quota.

725.86 Lien for penalty.

725.109 Duties of Kansas City ASCS Field Office.

725.116 [Reserved]

2. The authority citation is revised to read:

Authority: Sec. 301, 313, 314, 316, 316A, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65-66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314b, 1314b-1, 1314c, 1363, 1372-75, 1377, 1378, Sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421.

3. In § 725.51, the introductory paragraph is revised; paragraphs (a-1), (a-2), (jj-1), and (ll-1) are added; and paragraphs (e-1), (h), (m), (p), (s), and (dd) are revised to read as follows:

§ 725.51 Definitions.

In determining the meaning of the provisions of this subpart, 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. As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this title or chapter shall include current and later amendments to the referenced parts. Unless defined in this section the words or phrases defined in § 719.2 of this chapter shall have the same meaning when used in this part.

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

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

(a-2) *Allowable floor sweepings.* The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of flue-cured tobacco at auction for the season for the warehouse involved.

(e-1) *Considered planted credit.* Credit assigned in the current year for an old farm as follows:

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(m) *Farm acreage allotment.* The allotment determined in accordance with § 725.58.

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

(s) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse (except floor sweepings

which accumulate on the warehouse floor), as adjusted by the debits and credits to the buyers corrections account, and including floor sweepings purchased from another warehouse or dealer.

(dd) *Preliminary farm acreage allotment.* The allotment determined in accordance with § 725.56.

(jj-1) *Shared in risk of production.* Involvement in the production of flue-cured tobacco by a person who meets all of the conditions as set forth in either paragraph (jj-1) (1) or (2) of this section:

(1) *Investing producer.* A person who:

(i) Invests in the production of a crop of flue-cured tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

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

(iii) Waits until such crop of flue-cured tobacco is marketed to receive any return on the investment; and

(iv) Maintains records, for a period of three years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of paragraph (jj-1)(1) of this section have been met.

(2) *Lessor.* A person who:

(i) Owns a farm having a flue-cured tobacco allotment and quota;

(ii) Leases such allotment and quota to another person for use in producing a crop of flue-cured tobacco (the tobacco may be produced on the lessor's farm or on a farm operated by the lessee);

(iii) Depends solely on a specified share of the proceeds from the marketing of such crop of flue-cured tobacco (the tobacco which is produced using the leased allotment and quota) for payment of the rental for such allotment and quota;

(iv) Waits until such crop of flue-cured tobacco is marketed to receive any payment of the rental for such allotment and quota; and

(v) Maintains records, for a period of three years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of paragraph (jj-1)(2) of this section have been met.

(ll-1) *Tillable cropland.* Cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county committee determines can be planted to crops without unusual preparation or cultivation.

4. Section 725.56 is revised to read as follows:

§ 725.56 Determination of preliminary farm acreage allotments.

(a) *Farms requiring a determination.* A preliminary farm acreage allotment shall be determined for the current year for each farm which has tobacco history acreage for the base period as determined in accordance with the provisions of § 725.73.

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year: *Provided*, That in 1983 and at five-year intervals thereafter, the preliminary farm acreage allotment shall be the farm acreage allotment for the preceding year divided by a factor determined by averaging the yields for the county, as determined by the Deputy Administrator, Program Planning and Development, for the most recent five-year period and dividing the result by the average of the yields for the county as determined by the Deputy Administrator, Program Planning and Development, for the five years 1959 through 1963. If the computed factor is outside the range of 1.0000 to 1.3500, the factor shall be increased to 1.0000 or decreased to 1.3500, as applicable: *Provided further*, That in the fifth year of any five-year period beginning with 1983 the factor shall be divided by the factor which resulted from the computation made in accordance with the first proviso of this paragraph for the previous five-year period.

5. In § 725.57, paragraph (a) is revised to read as follows:

§ 725.57 Determination of preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for an 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. However, for 1983 and at five-year intervals thereafter, the preliminary farm yield shall be the yield determined by multiplying the preliminary farm yield for the farm for the preceding year by the factor which is used in determining preliminary farm acreage allotments, as provided for in § 725.56.

(2) *Farm not having preliminary farm acreage allotment.* The preliminary farm yield shall be determined by dividing the farm yield which is determined in accordance with the provisions of

§ 725.59 by the national yield factor for the current year.

6. Section 725.58 is revised to read as follows:

§ 725.58 Determination of farm acreage allotments and effective farm acreage allotments.

(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 as follows:

(1) *Upward adjustment.* Add the:
(i) Acreage approved in accordance with the provisions of § 725.66 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.* Subtract 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 the effective farm marketing quota by the farm yield.

7. In § 725.59, paragraph (a) is revised to read as follows:

§ 725.59 Determination of farm yields.

(a) *Old farms.* The farm yield for an old farm shall be:

(1) *Farm with preliminary farm yield.* Determined by multiplying the preliminary farm yield by the national yield factor for the current year.

(2) *Farm without preliminary farm yield.* Determined in the same manner as the farm yield for a new farm as provided in paragraph (b) of this section.

8. Section 725.60 is revised to read as follows:

§ 725.60 Determination of effective farm marketing quotas.

The effective farm marketing quota shall be the farm marketing quota adjusted as follows:

(a) *Upward adjustment.* Add:

(1) The smaller of (i) the undermarketings from the preceding marketing year, or (ii) farm marketing quota for the preceding year plus the pounds of quota which are transferred

to the farm by lease in the preceding year; and

(2) The pounds of quota which are transferred to the farm by lease in the current year.

(b) *Downward adjustment.* Subtract:

(1) The pounds of quota which are overmarketed from the preceding marketing year;

(2) The pounds of quota which are overmarketed from any year before the preceding year which have not been subtracted when determining the effective farm marketing quota in a prior year;

(3) The pounds of quota which are transferred from the farm by lease in the current year; and

(4) The pounds of quota which are reduced in the current year as a result of a violation in a prior year as provided for in § 725.98.

9. In § 725.63 paragraph (b) is revised to read as follows:

§ 725.63 Determination of allotments and yields for divided farms.

(b) *Preliminary farm yields.* The preliminary farm yields for the tracts resulting from a division of a parent farm shall be the same as the preliminary farm yield established for the parent farm: *Provided*, That if the contribution method of division is used and a preliminary farm yield was established for a tract before the tract become a part of the parent farm, the preliminary farm yield shall be the preliminary farm yield established for the tract, as adjusted by the factor(s) applied to the preliminary farm yield of the parent farm, which is determined in accordance with the provisions of § 725.57, after the tract became a part of the parent farm.

10. In § 725.69, the introductory paragraph and paragraph (c)(3) are revised and paragraph (b)(6) is added to read as follows:

§ 725.69 Determination of acreage allotments for new farms.

The acreage allotment for a new farm shall be that acreage which the county committee, with approval of the State 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: *Provided*, That the acreage allotment so determined shall not exceed the smaller of one acre or 50

percent of the average of the acreage allotments established for not less than two nor 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.

(b) ***

(6) *Operator has not sold or forfeited allotment.* During the current or the four preceding years the operator has not sold or forfeited any flue-cured tobacco allotment from any farm.

(c) ***

(3) *Farm includes land formerly having tobacco allotment.* A farm shall not be eligible for a new farm tobacco allotment if, during the current year or the four preceding years: (i) The farm had a tobacco allotment and the owner sold all of the allotment, or (ii) some of the land which comprises the farm was part of an old farm prior to a reconstitution and the owner of the old farm retained no tobacco allotment for such land when the tobacco allotment for the old farm was reconstituted by the designation method of division.

11. Section 725.72 is revised to read as follows:

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) *General.* Effective with respect to the 1982 crop year for a lease and to the 1983 crop year for a sale, a flue-cured tobacco marketing quota (including quota which has been pooled in accordance with the provisions of part 719 of this chapter) may be transferred between farms within a county by sale or by lease. A flue-cured marketing quota also may be transferred by lease to a farm in an adjoining county within the same State when the State committee authorizes the county committee to approve the transfer of quota after June 15 if the lessor has suffered a loss of flue-cured tobacco as a result of a flood, hail, wind, tornado, or other natural disaster.

(b) *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 is the farm poundage quota.

(c) *Lease.* If the transfer is by lease, the transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred is the effective farm poundage quota.

(d) *Transfer provisions.* (1) *Accumulation of quota.* A transfer shall not be approved if the county committee

determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately leasing to and from the farm for two or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(2) *Subleasing.* In order to determine whether there is any subleasing of an allotment and quota, the current year is divided into two periods, the period up to and including June 15 and the period after June 15. The county 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: *Provided*, That a transfer may be approved within any such period if an allotment and 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 allotment and quota by lease.

(3) *Lessor farm.* A transfer of quota from a farm by lease shall not be approved:

(i) *Purchased and/or reallocated quota.* 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 both changes in county farm yields as provided in § 725.56 and changes in national acreage factors which have occurred since each respective purchase and/or reallocation of quota: *Provided*, That this provision shall not apply to a transfer which is filed after June 15 under the natural disaster provisions of this section.

(ii) *New farm.* If the farm is a new farm.

(iii) *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 committee determines that a decision will not be made on the pending case on or before April 1, a 1-year transfer may be approved.

(iv) *Filed after June 15.* If the transfer agreement is filed after June 15 unless the county committee in the county in which the farm is located for administrative purposes is authorized to permit leasing after June 15 in accordance with the natural disaster provisions of this section and the county committee determines that the:

(a) Farm has suffered a loss of 10 percent or more of the expected production from the acreage of flue-

cured tobacco planted for harvest in the current year.

(b) Producer 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.

(v) *Consent of lienholder.* For a multiple year lease if the farm is subject to a lien, unless the lienholder agrees in writing to the transfer.

(vi) *No Net Cost Tobacco Fund contribution.* Unless the contribution required by § 1464.10 of this title is made to the No Net Cost Tobacco Fund, in accordance with instructions issued by the Deputy Administrator.

(vii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid: *Provided*, That this provision shall not apply if the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county 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 allotment and quota is expected to become final before April 15.

(4) *Lessee farm.* A transfer of quota to a farm by lease shall not be approved:

(i) *Tillable cropland limitation.* If the pounds of quota being transferred plus the pounds of quota previously transferred to the farm by lease exceed the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield: *Provided*, That this provision shall not be applicable to a transfer of quota which is filed after June 15 in accordance with the natural disaster provisions of this section.

(ii) *Current allotment.* Unless the farm has a current flue-cured tobacco farm acreage allotment (i.e., old farm or new farm allotment). The effective quota on the farm may be zero pounds before the transfer of quota to the farm.

(iii) *Filed after June 15.* If the transfer agreement is filed after June 15:

(a) Unless the producers on the farm qualify for price support under the provisions of Part 1464 of this title; and

(b) 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.

(5) *Selling farm.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previous purchases and/or reallocated quota.* If the farm marketing quota includes quota that was bought, and/or reallocated from quota which has been forfeited and the purchase and/or reallocation became effective during the current year or in the four preceding years: *Provided*, That this provision shall not be applicable if the quota being sold was purchased in such period, if forfeiture of such quota may be required by § 725.74, and if the pounds of quota being transferred do not exceed the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 725.74 (c) and (d).

(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 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 lienholder.* If the farm is subject to a lien unless the lienholder agrees in writing to the transfer: *Provided*, That consent of a lienholder is not required for a transfer of the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 725.74 (c) and (d).

(v) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: *Provided*, That 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 committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(6) *Buying farm.* 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) *Tillable cropland limitation.* If the sum of the pounds of quota being transferred, plus the pounds of quota previously transferred to the farm in the current year by lease, exceeds the difference between the farm marketing

quota and one-half the result obtained by multiplying the acres of tillable cropland by the farm yield.

(iii) *Quota previously sold.* If the farm owner sold quota from the farm during the current or any of the four preceding years or two years if such sale was to prevent a forfeiture of the quota.

(e) *Transfer agreement.* In order for a transfer of allotment and quota by lease or sale to be approved in the current year the transfer must be:

(1) *Form.* Recorded on Form ASCS-375.

(2) *Signatures.* Agreed upon and signed by:

(i) *Lease.* The owner of the transferring farm and the owner or operator of the receiving farm.

(ii) *Sale.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner or operator of the farm to which the allotment and quota will be assigned, the owner or operator of the farm must give written consent for the allotment and quota to be assigned to the farm.

(3) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(4) *When to file.* Filed on or before:

(i) *Lease.* April 15: *Provided*, That a transfer agreement filed on or before June 15 may be considered to have been filed on April 15 if the county committee, with concurrence of the State committee, determines that on or before April 15 the lessee and lessor agreed to transfer the quota but the transfer agreement was not filed timely as the result of conditions beyond the control of either the lessee or lessor: *Provided further*, That a transfer may be approved if the transfer agreement is filed on or before November 15 in accordance with the natural disaster provisions of this section.

(ii) *Sale.* June 15.

(f) *Period of lease.* A transfer by lease may be for a period of one to five years: *Provided*, That the lease shall be limited to one year if the transfer agreement is filed after June 15 in accordance with the natural disaster provisions of this section.

(g) *Compliance statement for lease.* Only the lessor and lessee (or the lessor or lessee and any attorney, trustee, bank, or other agent or representative, 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, a transfer of flue-cured tobacco allotment and quota. In order for a transfer of allotment and quota by lease to be valid,

both the lessor and the lessee shall file a statement, on a form approved by the Deputy Administrator, in the county ASCS office of the county in which the lease is filed certifying that the lease is in compliance with the provisions in this section. If, after the lease agreement is approved, information is brought to the attention of the county committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification, the county committee shall schedule a hearing and notify such person of the time and place of the hearing, and afford such person an opportunity to be present and present evidence at the hearing with respect to the allegation of a false certification. If, as a result of the evidence presented, the county committee determines that such person knowingly made a false certification, the county committee shall notify the person of the determination and afford such person 15 days after mailing of the notice to request a review of the determination by a review committee as provided by Part 711 of this chapter. If it is determined that a lessor knowingly made a false certification, the following shall occur:

(1) *Lessor.* The next flue-cured tobacco allotment established for the lessor farm shall be reduced by that percentage which the leased quota was of the flue-cured tobacco farm marketing quota for the farm in the year of the lease.

(2) *Lessee.* The lessee shall be ineligible for price support and a "No Price Support" marketing card shall be issued for the farm for marketing the current year crop of flue-cured tobacco which is marketed after the determination is made: *Provided*, That a "No Price Support" marketing card shall be issued in a year subsequent to the first year such card is issued if the cumulative pounds of tobacco marketed with the "No Price Support" marketing card are less than the pounds leased as the result of a false certification: *Provided further*, That after the cumulative marketings identified with the "No Price Support" marketing card issued for the farm are equal to or greater than the pounds leased as a result of a false certification, the marketing card may be exchanged at the county ASCS office for a marketing card without such notation if the farm and producer are otherwise eligible for price support.

(h) *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: *Provided*, That the county committee may delegate authority to the county executive director or other county office 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 of authority may authorize the county executive director or county office employee to approve any transfer agreement or the delegation of authority may be limited to approval of either transfers by lease or transfers by sale. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval by the county committee 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 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 the 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.

(2) *Effective date.* An approved transfer agreement shall become effective during the current crop year, except that if an agreement to sell an allotment and quota is filed after June 15 of the current year, such agreement shall become effective for the next crop year.

(i) *Allotment and quota after transfer by lease.* The effective farm marketing quota and the effective farm acreage allotment shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§ 725.58 and 725.60.

(j) *Apportionment of data and determination of allotment and quota after transfer of quota by sale.*—(1) *Apportionment of data for the 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.

(2) *Apportionment of data for the 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: *Provided*, That 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: *Provided further*, That 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.

(3) *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 in accordance with

§§ 725.58 and 725.60 for both the buying farm and the selling farm.

(k) *Effect on 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.

(l) *Natural disaster.*—(1) *State committee authorization.* Notwithstanding any other provision of this section, the State committee may authorize the county committee to approve a transfer of quota by lease which is filed after June 15 if:

(i) *County committee determination.* The county committee of the county in which the lessor farm is located determines that as a result of drought, hail, wind, excessive rain, tornado, or other natural disaster, the county has suffered a loss of 10 percent or more of the expected yield from the acreage of flue-cured tobacco planted for harvest in the current year and the State committee concurs in such determination.

(ii) *County committee recommendation.* The county committee of the county in which a natural disaster loss occurred recommends to the State committee that the county committee be authorized to approve a transfer of a quota by lease when filed after June 15, if the agreement otherwise complies with the provisions of this section.

(iii) *Tobacco program not impaired by transfer.* The State committee determines that transfer of quota after June 15 will not impair the effective operation of the tobacco marketing quota or price support program.

(2) *Eligible farms.* In any county for which a transfer of quota is authorized after June 15 because of disaster conditions, a lessor farm may transfer quota by lease after June 15 to a lessee farm in the same county or in an adjoining county within the State if such farms otherwise meet the eligibility requirements specified in this section.

(3) *Adjoining county.* As used in this section, the phrase "adjoining county" means a county having a common border with another county in the same State if such common border is more than the point at which intersecting lines meet.

(m) *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 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 quota may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(n) *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 acreage allotment of the parent farm.

(o) *Multiple year lease.* (1) The acreage allotment and/or marketing quota on the lessee farm having a multiple-year lease shall be adjusted for each year for which a transfer agreement is in effect to reflect any change in the farm yield or to reflect any decrease in the national acreage factor which causes the farm marketing quota established for the lessor farm to be less than the pounds of quota which have been transferred to the lessee farm.

(2) Notwithstanding any other provisions of this section, a previously approved multiple-year lease shall not be effective in the current year unless the contribution required by § 1464.10 of this title to the No Net Cost Tobacco Fund is made for the current year in accordance with instructions issued by the Deputy Administrator.

(p) *Cancellation of transfer.* (1) A transfer of allotment and 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 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 penalties purposes if: (i) The 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) the 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. The provisions of this paragraph shall not preclude any application of the provisions with respect to erroneous notice which are set forth in § 725.70.

(2) If a transfer of an allotment and 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 of allotment and quota was made if the farm, after any reconstitution which may be necessary as a result of the fraud, is assigned an allotment and quota against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having an allotment and 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.

(q) *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 committee by November 15 of the current crop year. After any such dissolution or revision of a transfer agreement, an official notice of the acreage allotment and marketing quota shall be issued by the county committee to each of the operators involved in the transfer agreement. If a request to dissolve or revise a multiple-year lease is made after November 15 of the current crop year, but before the last crop year for which the transfer agreement is effective, the next allotments and quotas established for the farms shall reflect the dissolution or revision.

(r) *Considered planted credit—lessor farm.* 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.

12. In § 725.73, paragraph (c) is added to read as follows:

§ 725.73 Determining tobacco history acreages.

* * * * *

(c) *History acreage reduced to zero.* Notwithstanding any other provisions of this section, 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 provisions of Part 719 of this chapter and the period of eligibility to transfer the allotment from the pool has expired; or

(3) The county 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 719 of this chapter.

13. Section 725.74 is revised to read as follows:

§ 725.74 Forfeiture of allotment and 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 719 of this chapter if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares common ownership (commonly referred to as a "tract") if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county committee shall apportion, in accordance with the provisions of Part 719 of this chapter, the flue-cured tobacco allotment and quota assigned to a farm between the various tracts of land which are separately owned by:

(i) A person which is not significantly involved in the management or use of land for agricultural purposes, as may be described in paragraph (b) of this section.

(ii) An individual, or owned by a person which is significantly involved in the management or use of land for agricultural purposes.

(3) An allotment and quota shall be determined for a tract under 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 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) [Reserved.]

(c) *Flue-cured tobacco farm acreage allotment exceeds 50 percent of tillable cropland.* If any person owns a farm for which the flue-cured tobacco farm acreage allotment assigned to the land owned by the person exceeds 50 percent of the tillable cropland on such farm, the person shall take steps, such as the sale of allotment, the purchase of tillable cropland, or conversion of land to tillable cropland status, which will result in elimination of the excess or the person shall forfeit flue-cured tobacco farm acreage allotment equal to the amount of such excess that remains on or after:

(1) *Farm owned on or before December 1, 1983.* December 1, 1983: *Provided,* That if the farm is acquired after September 1, 1983 the date may be extended by the county committee to July 1, 1984 if before December 1, 1983 the owner requests such extension in writing.

(2) *Farm acquired after December 1, 1983.* July 1 of the year after the year of acquisition.

(3) *Farm includes purchased allotment.* Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, if the flue-cured tobacco farm acreage allotment includes acreage of purchased allotment and the flue-cured tobacco farm acreage allotment exceeds 50 percent of the tillable cropland because the owner disposed of an acreage of tillable cropland after purchasing the allotment, the forfeiture shall not take place until July 1 of the year after the year of such disposal.

(4) *Increase in allotment resulting from changes in county yields or change in national acreage factor.* July 1 of the year after the crop year for which the change(s) become effective.

(d) *Buyer of allotment fails to share in risk of production.*—(1) *Forfeiture required.* If any person buys a flue-cured acreage allotment and quota under the provisions of § 725.72 and such person fails to share in the risk of producing the tobacco which was planted under such allotment and quota during any of the five crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased allotment and quota which 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 shall not subject such allotment and quota to forfeiture, but the five year period of paragraph (d)(1) of this section shall be extended one year for each year in which the allotment and 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 and quota, the amount of farm marketing quota which must be forfeited under paragraph (d) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm acreage allotment for the farm to reflect changes in county farm yields as provided in § 725.56 and changes in national acreage factors.

(ii) Adding the amounts determined in paragraph (d)(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.

(e) *Hearing.* Before any forfeiture of allotment and quota becomes effective under the provisions of this section, the county 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, as to whether or not the affected person knowingly failed to take steps to prevent forfeiture of allotment and quota.

(4) Notify the affected person of the county 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 committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(f) *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:

(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 base period.

(iv) The overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(v) The pounds of quota transferred from the forfeiting farm by lease in the current year.

(vi) The acres of allotment reduced in the current year for a marketing quota violation in a prior year.

(vii) The previous year's effective farm marketing quota.

(viii) The previous year's marketings.

(ix) The previous year's farm marketing quota.

(x) The 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 of pounds which are retained on the forfeiting farm from the acres or pounds established for the forfeiting farm before the forfeiture.

(2) *Forfeiture pool data.* 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 farm acreage allotment, the effective farm acreage allotment and the effective farm marketing quota shall be determined according to §§ 725.58 and 725.60 for the forfeiting farm.

(g) *Forfeiture pool.* (1) *Forfeiture pool required.* 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 so as to reflect forfeiture or reallocated amounts of:

(i) The farm acreage allotment for the current year and for the base period.

(ii) The farm marketing quota for the current year and for the base period.

(iii) The acres reduced for violation.

(iv) The quota transferred from the forfeiting farm by lease.

(v) The planted and considered planted acres for the base period.

(vi) The history acres for base period.

(vii) The previous year's effective farm marketing quota.

(viii) The previous year's marketings.

(2) *Farm yield for forfeiture pool.* For each year, 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 reallocated from the pool are to the pounds of quota in the pool before the reallocation.

(h) *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: *Provided,* That the State committee may establish an earlier date if notice is given to such earlier date in time for interested applicants to file by such date.

(iii) *Where to file.* At the county ASCS 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 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 four 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 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 date for filing an application for allotment and quota from the forfeiture pool.

(4) *Reallocation by county committee.* Reallocation of any allotment and quota shall be by the county committee. In making its determination of the amounts to reallocate, the county 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), previous leasing history of applicant, and other factors which in the judgment of the county 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 committee may reallocate all or part of the quota in the forfeiture pool. The minimum and maximum amounts of quota which may be reallocated to an eligible applicant are:

(i) *Minimum.* The total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* 1,000 pounds: *Provided,* That with State committee approval up to 2,500 pounds may be reallocated.

(7) *Data for receiving farm.* All quota 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 in 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 in accordance with §§ 725.58 and 725.60.

(i) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated to a farm under the provisions of this section shall be forfeited if the applicant to whom the allotment and quota is reallocated fails to share in the risk of production of tobacco produced under such allotment and quota during any of the five years

beginning with the crop year during which the allotment and quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner as is provided in paragraph (d)(4) of this section for forfeiture of purchased quota. Forfeiture shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco produced under such allotment and quota: *Provided,* That while the failure to utilize such allotment and quota shall not subject such allotment and quota to forfeiture, the five year period, as provided for in this paragraph, shall be extended by a year for each year in which the allotment and quota is not utilized.

(j) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions in 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 of farm.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota was purchased shall become the successor-in-interest to the buyer of the allotment and quota.

(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 which was not owned by such buyer if the buyer ceases to share in the risk of production of tobacco produced on the farm.

14. Section 725.86 is added to read as follows:

§ 725.86 Lien for penalty.

(a) *Lien on tobacco.* Until the amount of any penalty which is imposed in accordance with section 314 of the Act (7 U.S.C. 1314) is paid, a lien on the tobacco with respect to which such penalty is incurred, and on any other tobacco which is marketed in the same or a subsequent marketing year which is subject to marketing quotas in which the person liable for payment of the penalty has an interest, shall exist in favor of the United States for the amount of the penalty.

(b) *Lien precedence.* The lien on any other tobacco attaches at the time the debt is entered on a debt record in:

(1) *Indebted producers.* The county ASCS office for the county in which a subsequent crop of tobacco is grown.

(2) *Indebted warehouseman.* The State ASCS office for the State in which the warehouse is located.

(3) *Indebted dealer.* The State ASCS Office for the State to which the dealer is required to file reports.

(c) *List of tobacco marketing penalty debts.* Each county and State ASCS office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record for the respective office. The list shall be available for examination upon written request by any interested person.

15. In § 725.87, paragraph (d) is revised to read as follows:

§ 725.87 Issuance of marketing cards.

(d) *"No Price Support."* The notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* Any producer on the farm if the producers on the farm are ineligible for price support under the provisions of Part 1464 of this title.

(2) *Producer.* A producer on a farm if the producer is ineligible for price support under the provisions of Part 1464 of this title.

16. In § 725.88, paragraph (a) is revised to read as follows:

§ 725.88 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 placed under price support loan shall be paid to the "Agricultural Stabilization and Conservation Service, 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 executive director who issued the

marketing card shall issue a claim-free marketing card when the claim has been paid.

17. In § 725.94, paragraph (c) is amended by removing the second sentence and a new paragraph (h) is added to read as follows:

§ 725.94 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding producers.

(h) *Floor sweepings.* Effective for the 1982 and subsequent crops of tobacco, 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, as specified in § 725.92, for the immediately preceding marketing year. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 15 days after the warehouse closes for the auction season shall be considered as marketed. The floor sweepings on hand shall be weighed by the warehouseman and the weight shall be certified by the warehouseman, such weighing to be done in the presence of a representative of either the county committee or the State committee. Floor sweepings which are destroyed in the presence of a representative of the county committee within 15 days after the warehouse closes for the season shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county committee determines, after the warehouse has been closed for the auction season for more than 15 days, 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 to 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 "Agricultural Stabilization and Conservation Service, USDA" within 15 days after the date of mailing of the notice.

18. In § 725.95, paragraph (d) is corrected by removing "(c)" in the first

sentence after the proviso and inserting "(d)" in its place, and paragraph (f) is added to read as follows:

§ 725.95 Producer penalties; false identification; failure to account; canceled allotments; overmarketing proportionate share.

(f) *Ineligible for price support.*

Effective for the 1983 and subsequent crops, a penalty at the basic rate as specified in § 725.92 for the current marketing year shall be assessed on any marketings of flue-cured tobacco by any producer on a farm if such producer is ineligible for price support because the farm operator or other producer on the farm has not agreed to make contribution to the No Net Cost Fund as provided in Part 1464 of this title.

19. In § 725.98, paragraph (g) is amended by removing the word "effective" from the first sentence, paragraph (n) is revised, and paragraph (p) is added to read as follows:

§ 725.98 Producer's records and reports.

(n) *Correction of farm records.* If the farm marketing records for a farm are determined to be incorrect, the records shall be corrected.

(p) *Effect of false identification on establishing future farm marketing quotas.* Notwithstanding any other provision of this section, if a producer falsely identifies 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.

20. In § 725.99, paragraph (a)(4)(xvii) is amended by removing the words "Data Systems Field Office (DSFO)" and inserting, in their place, the words "Kansas City Field Office (KCFO)"; paragraph (d)(2) is amended by removing "DSFO" and inserting, in its place, "KCFO"; and paragraphs (g)(12) and (k) are revised to read as follows:

§ 725.99 Warehouseman's records and reports.

(12) The totals of the resales column on Form MQ-79 representing the nonauction resales (including floor

sweepings nonauction sales) by the warehouse.

(k) *Basket ticket and bill-out invoice.* At the time tobacco is weighed for marketing, the warehouseman shall record the weight of the basket or sheet of tobacco on the tobacco sale bill and on the basket ticket. The sale bill number on which the basket or sheet of tobacco is recorded shall be recorded on the basket 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 warehouseman on the basket ticket for each basket or sheet of tobacco which is identified with the same marketing card. 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 basket or sheet of tobacco was recorded on the sale bill.

21. In § 725.100, paragraphs (a), (b), (c)(1), (c)(2) and (c)(3) are revised and paragraph (c)(7) is added to read as follows:

§ 725.100 Dealer's records and reports.

(a) *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 warehouseman or dealer.
- (ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.
- (iii) The address, FC number if known, 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 amount deducted for the "No Net Cost Tobacco Fund".

(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:

- (a) The warehouse through which the tobacco was sold, if sold at a warehouse auction, or
- (b) The buyer if the tobacco was sold as a nonauction sale.
- (ii) The date of sale.
- (iii) The pounds of tobacco sold.
- (iv) The gross sale price.

(b) *Nonauction purchase.* Each purchase of tobacco from a flue-cured tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless an AMS inspection certificate is obtained prior to purchase which shows that the tobacco being offered for sale is a kind of tobacco which is not subject to marketing quotas.

(1) After each nonauction purchase, the dealer shall enter a declining balance of "110 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "110 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.

(2) After each nonauction purchase, the dealer shall prepare a Form MQ-72-2 which shall set forth the following:

- (i) The date of the purchase.
- (ii) The registration number of the dealer.
- (iii) The name and address of the person selling the tobacco.
- (iv) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.
- (v) The pounds of tobacco purchased.
- (vi) The amount of penalty collected.
- (vii) The method (estimating or weighing) of determining the pounds of tobacco marketed.
- (viii) The signature of the seller and the date signed.

(3) The dealer shall make deductions for producer contributions to the No Net Cost Tobacco Fund as provided for in Part 1464 of this title. For nonauction purchases during the 1982-83 marketing year, the dealer shall deduct three cents per pound from the price paid to the producer for the tobacco, except for a purchase which is identified with a marketing card bearing the notation "No Price Support." For nonauction purchases from producers during the 1983-84 and subsequent marketing years, the dealer shall make a deduction

in accordance with Part 1464 of this title from the price paid to the producer for the tobacco; however, a deduction shall not be made if the original "110 percent of quota" entry on the marketing card used to identify the tobacco was zero pounds. The amount of the deduction which is applicable to flue-cured tobacco marketed during each marketing year will be that amount per pound which is approved and announced by the Secretary as the producer contribution to the No Net Cost Tobacco Fund for each such marketing year.

(c) *Record and report of purchases and resales.* (1) 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 by the dealer from a crop of tobacco produced 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.

(2) 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 ASCS 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 ASCS 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 ASCS office not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(3) The data to be entered on Form MQ-72 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (b)(2) of this section.

(7) In addition to Form MQ-79 and MQ-72-2, a Form MQ-79 (Supplemental) shall be executed to record information relating to each

purchase of tobacco for which a contribution to the No Net Cost Tobacco Fund is deducted from the price paid to the producer for the tobacco. The Form MQ-79 (Supplemental) shall be forwarded to the State ASCS office at the same time the Form MQ-79 on which the purchase is recorded is forwarded. A check, draft, or money order in the amount of the deduction recorded on Form MQ-79 (Supplemental) and drawn payable to Flue-Cured Stabilization Corporation shall be forwarded to the State ASCS office at the same time as Forms MQ-79 and MQ-79 (Supplemental).

§ 725.102 [Amended]

22. Section 725.102 is amended by removing, in paragraphs (a) and (b), the words "Director, Production Adjustment Division" and inserting, in their place, the word "Director."

23. In § 725.103, the first sentence in paragraph (a) is revised to read as follows:

§ 725.103 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* This section shall not be applicable to 1979 and subsequent crops of tobacco, except for the 1982 crop for which the Flue-Cured Tobacco Cooperative Stabilization Corporation may process and store producer carryover tobacco and may act as the producer's marketing agent in marketing the producer's tobacco during the 1983-84 marketing year.

24. Section 725.109 is revised to read as follows:

§ 725.109 Duties of Kansas City ASCS Field Office.

The Kansas City ASCS Field Office (KCFO) has responsibility for processing certain data and making such reports as may be required by the Deputy Administrator.

§ 725.110 [Amended]

25. Section 725.110 is amended by removing the words "Program Operations, Division and".

26. Section 725.112 is revised to read as follows:

§ 725.112 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 employees of the U.S. Department of Agriculture, by all members of county and community committees, and all county 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. Nothing in this section shall 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.

§ 725.116 [Removed]

27. Part 725 is amended by removing § 725.116.

Signed at Washington, D.C., on December 3, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82-34209 Filed 12-13-82; 4:52 pm]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 1046 and 1098

[Docket Nos. AO-123-A48, and AO-184-A43]

Milk in the Louisville-Lexington-Evansville and Nashville, Tenn., Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Louisville-Lexington-Evansville Federal milk order to permit operators of country supply plants to count shipments directly from farms to pool city distributing plants toward meeting up to one-half of the shipments required to maintain pool status for country plants. Also, the Nashville, Tennessee, order is amended to allow diversions of milk between pool plants and to provide a procedure whereby proprietary handlers can make payments to independent producers rather than having such payments made by the market administrator.

These changes, which are based on the record of a public hearing held at Louisville, Kentucky, October 21-23, 1981, are necessary to maintain orderly conditions for the marketing of milk in these areas.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447-4829).

SUPPLEMENTARY INFORMATION: This administrative action is governed by the

provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding: Notice of Hearing: Issued September 4, 1981; published September 11, 1981 (46 FR 45354).

Correction: Published September 22, 1981 (46 FR 46813).

Notice of Rescheduled Hearing: Issued September 24, 1981; published September 29, 1981 (46 FR 47588).

Suspension of Rule: Issued November 24, 1981; published November 30, 1981 (46 FR 58064).

Emergency Partial Final Decision: Issued January 15, 1982; published January 21, 1982 (47 FR 2999).

Final Order: Issued January 26, 1982, published January 29, 1982 (47 FR 4228).

Recommended Decision: Issued June 14, 1982; published June 21, 1982 (47 FR 26656).

Extension of Time: Issued July 6, 1982; published July 12, 1982 (47 FR 30080).

Final Decision: Issued November 5, 1982; published November 10, 1982 (47 FR 50888).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth below.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand