USDA

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Office of Inspector General
Southeast Region
Audit Report

FARM SERVICE AGENCY
TOBACCO IMPORTER ASSESSMENT PROGRAM - MARKETING PENALTY ASSESSMENTS AND COLLECTIONS
WASHINGTON, D.C.

OFFICE OF INSPECTOR GENERAL • USDA •

Report No.
03099-164-At
SEPTEMBER 2002

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL
Washington D.C. 20250

DATE: September 30, 2002

REPLY TO
ATTN OF: 03099-164-At

SUBJECT: Farm Service Agency - Tobacco Importer Assessment Program
Marketing Penalty Assessments and Collections, Washington, DC

TO: James R. Little
Administrator
Farm Service Agency

ATTN: T. Mike McCann
Director
Operations Review and Analysis Staff

This report presents the results of our audit of the Tobacco Importer Assessment Program. Your September 30, 2002, written response to the draft report is included as exhibit B with excerpts and the Office of Inspector General's position incorporated into the relevant sections of the report.

Management decisions were not reached for any of the reports recommendations. Management decisions can be reached once you provide the additional information outlined in the report section, OIG Position.

In accordance with Department Regulation 1720-1 please furnish a reply within 60 days describing the correction actions taken or planned, and the timeframes for implementation of the remaining recommendation. Note that the regulation requires management decisions to be reached on all recommendations within 6 months of report issuance.

We appreciate the cooperation and assistance of your staff during our audit.

/s/

RICHARD D. LONG
Assistant Inspector General
for Audit

EXECUTIVE SUMMARY

TOBACCO IMPORTERS ASSESSMENT PROGRAM – MARKETING PENALTY ASSESSMENTS AND COLLECTIONS WASHINGTON, D.C. AUDIT REPORT NO. 03099-164-AT

RESULTS IN BRIEF

This report presents the results of our audit of the Tobacco Importers Assessment Program administered by the Farm Service Agency (FSA) for the Commodity Credit Corporation (CCC). FSA's Tobacco and Peanuts Division (TPD) is responsible for carrying out the tobacco program, which includes ensuring that importers remit marketing assessments timely and determining claims for marketing penalties and late payment interest charges for importers who fail to remit assessments within prescribed timeframes.

The objectives of our audit were to follow up on prior Office of Inspector General (OIG) Audit Report No. 03001-2-At, "Assessments on Imported Tobacco Calendar Years 1994 through 1996," dated September 23, 1997, to determine whether FSA implemented internal controls to ensure collections of marketing penalties and late payment interest charges for untimely remittance of imported tobacco assessment fees.

The audit focused on importers who were subject to TPD's marketing penalty determinations. FSA's Calculated Late Payment Reports[1] (CLPR) showed that from January 1, 1997 through July 31, 2001, about $952,811 in imported tobacco assessment fees were not paid within prescribed timeframes. During this same period, FSA collected over $41.2 million in assessments from importers of tobacco.

Our review disclosed that FSA did not comply with the requirements of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66, dated August 10, 1993) to charge tobacco importers marketing penalties and late payment interest for untimely remittance of imported tobacco assessment fees even though this issue was reported in the prior OIG audit report. During the prior audit, CCC issued a policy memorandum, dated June 4, 1997, which outlined steps taken to assess marketing penalties against tobacco importers who failed to timely remit

[1]CLPR's are twice-monthly status reports generated by FSA's Tobacco Importer Assessment System to notify FSA management of any discrepancies, late, or insufficient assessment remittances by companies that import tobacco.

marketing assessments. However, current TPD staff was unaware of the June 4, 1997, memorandum or the process to assess and collect marketing penalties. CCC's policy memorandum was not documented in a directive to help ensure that staff continues to follow its instructions. As a result, claims were not made against nine importers for about $4.6 million in potential marketing penalties and late payment interest charges for late remittance of about $224,681 in tobacco assessment fees.

KEY RECOMMENDATIONS

We recommend that FSA document procedures for assessing and collecting marketing penalties and late payment interest charges from tobacco importers in a directive to help ensure adherence by current and future staff. Further, FSA should immediately take action to assess the importers we identified as having combined potential liabilities totaling about $4.6 million.

AGENCY RESPONSE

In its response to the draft report, dated September 30, 2002, FSA stated that it was in agreement with the report's finding and two recommendations.

FSA's response to the draft report is included as exhibit B of the audit report.

OIG POSITION

We agree with FSA's response to the report. Actions necessary to achieve management decisions are provided in the Findings and Recommendations section.

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INTRODUCTION

BACKGROUND

The Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66, dated August 10, 1993) required that tobacco importers pay marketing assessments on all tobacco imported into the country for domestic consumption. On September 13, 1995, the President proclaimed the Tariff-rate Quota limiting the assessments to six types of tobacco.[2]

The Commodity Credit Corporation (CCC) is a wholly-owned Government corporation created to stabilize, support, and protect farm income and prices; help maintain adequate supplies of agricultural commodities; and help in the orderly distribution of commodities. The U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) administers CCC tobacco activities through its Headquarters in Washington, D.C., and its Kansas City Financial Operation Division, in Kansas City, Missouri. FSA's Tobacco and Peanuts Division (TPD) is responsible for the day-to-day operations of the tobacco program, which includes ensuring that importers remit marketing assessments timely and determining claims for marketing penalties and late payment interest charges for importers who fail to remit the required amount of assessments within prescribed timeframes.

The Agricultural Act of 1949 gave USDA authority to support and stabilize prices that farmers received for domestic tobacco. These operations are carried out for the Department by producer-owned tobacco associations that make CCC-financed price support loans to tobacco producers. Because of severe criticism of tobacco programs, the No-Net-Cost Tobacco Program Act of 1982 (Public Law 97-128, dated July 20, 1982) was passed. The legislation required that tobacco price support and production adjustment programs be carried out at no net cost to the taxpayers. The payment of program costs is accomplished by assessments paid on domestic production by producers of all kinds of tobacco and by purchasers of burley and flue-cured tobacco[3]. The no-net-cost assessments apply to all tobacco subject to the marketing quota and price support programs. Public Law 103-66 extended the no-net-cost assessments to importers of all kinds of tobacco and required that they pay a nonrefundable marketing assessment beginning with each of the 1994 imported crops of tobacco. This marketing

[2]The six types include: flue-cured, burley, Kentucky/Tennessee fire-cured, dark air-cured, Virginia fire-cured, and Virginia sun-cured.

[3]Legislation required assessments be paid by purchasers of burley and flue-cured tobacco since the enactment of the Consolidated Omnibus Reconciliation Act of 1985.

assessment is referred to herein as the importers no-net-cost assessment (INNCA).

The Agricultural Reconciliation Act of 1987 (Public Law 100-203, dated December 22, 1987) required that the support level for the 1988 and 1989 tobacco crops be reduced by 1.4 percent. The legislation allowed the Secretary to impose nonrefundable marketing assessment fees on producers and purchasers in lieu of reductions. This marketing assessment is referred to herein as the budget deficit marketing assessment (BDMA).

The Omnibus Budget Reconciliation Act of 1990 provided a BDMA for all kinds of tobacco subject to marketing quotas. BDMA was one percent of the applicable year's price support level, shared equally between producers and purchasers, and was used to reduce the national debt. Public Law 103-66 extended BDMA to importers of tobacco and required that they pay a nonrefundable marketing assessment fee for each of the 1994 through 1998 imported crops of tobacco.

Public Law 103-66 also provides that any importer who fails to timely remit any tobacco program assessments may be subject to a marketing penalty under the same provisions as stated in the Consolidated Omnibus Reconciliation Act of 1985. Public Law 103-66 set the marketing penalty liability at 75 percent of the average market price for the immediately preceding year for the kind of tobacco involved. Public Law 103-66 provides that the Executive Vice-President, CCC may reduce any marketing penalty for which a person otherwise would be liable upon a finding that failure to comply was unintentional or without knowledge on the part of the importer. USDA regulations provide that a marketing penalty be forgiven if the assessments are remitted no later than 15 calendar days after the CCC due date[4]. Also, the regulations do not provide for the forgiveness or reduction in late payment interest charges. Furthermore, the regulations provide that importers who fail to remit assessments within 10 work days from the date the tobacco is released by the U.S. Customs Service are liable for late payment interest charges at a rate equal to the higher of the Treasury Department's current value of funds or the rate of interest assessed under the Prompt Payment Act as of the date the remittance is past due.[5]

In the Office of Inspector General (OIG) Audit Report No. 03001-2-At, we determined that FSA had not complied with the requirements of Public Law 103-66, Section 1106, for assessing marketing penalties and late payment interest charges for untimely remittance of imported tobacco

[4]Title 7 Code of Federal Regulations (CFR), part 1464.106(b), dated January 1, 1995.
[5]Title 7 CFR, parts 1464.104(e) and 1403.9(c), dated January 1, 1995.

assessments. We found that for calendar years (CY) 1994 through 1996, approximately $123.5 million had not been timely identified and collected. Most of this, $123,467,981, was for potential marketing penalties, and the remainder, $13,844 was for potential late payment interest charges. FSA attributed the delays in identifying and collecting these fees to its Tobacco Importers Assessment System (TIAS), which was not operational at that time.

OBJECTIVES

The objective of our audit was to follow up on prior OIG Audit Report No. 03001-2-At, "Assessments on Imported Tobacco Calendar Years 1994 through 1996," dated September 23, 1997, to determine whether FSA implemented internal controls to ensure collections of marketing penalties and late payment interest charges for untimely remittance of imported tobacco assessment fees.

SCOPE

The audit, performed in accordance with generally accepted government auditing standards, was conducted at FSA's Headquarters Office in Washington, D.C., and at its Kansas City Financial Operations Division in Kansas City, Missouri. We reviewed the Tobacco Importers Assessment Program (TIAP) administered by TPD. Our audit covered marketing penalty determinations, assessments, and collections for the period January 1, 1997, through July 31, 2001. We selected this period, as it was after CCC's response to OIG that corrective actions relating to marketing penalty determinations, establishing marketing penalties, and collecting the marketing penalties from importers who violated the timely remittance provisions were made and implemented. The fieldwork was performed during the period August 28, 2001, through December 6, 2001.

The audit primarily focused on those importers who were shown on the greater than $9.99 Calculated Late Payment Reports (CLPR) and were subject to TPD's marketing penalty determinations. These reports showed that during the period January 1, 1997, through July 31, 2001, about $952,811 in imported tobacco assessment fees were not paid within prescribed timeframes. During this same period FSA collected over $41.2 million in tobacco importer assessment fees. The untimely remittances involved 15 importers and 74 shipments. Each shipment was assigned a special identification number (SIN) by the importer. The TIAS records importers' tobacco shipments by the SIN. We reviewed all 74 SIN's shown on the greater than $9.99 CLPR's for the period of January 1, 1997, through July 31, 2001.

METHODOLOGY

To accomplish our audit objectives we:

- Interviewed officials and examined records, as applicable, at the TPD and Kansas City Financial Operation Division offices in Washington, D.C., and Kansas City, Missouri, respectively;
- Reviewed TIAP regulations, instructions, policies, and procedures, as applicable to imported tobacco;
- Reviewed TPD written notification letters to importers and related marketing penalty computation worksheets;
- Analyzed FSA's internal control procedures over the collection of tobacco importer assessments;
- Reviewed FSA's calculated late payment reports for the period January 1,1997, through July 31, 2001;
- Verified the accuracy of information on calculated late payment reports and TPD's marketing penalty computation worksheets;
- Verified collections of importer tobacco assessment fees; and
- Prepared schedules showing the untimely and insufficient remittances, late payment interest charges, and marketing penalties that importers owed and actually paid to CCC.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1

MARKETING PENALTY ASSESSMENTS AND COLLECTIONS WERE NOT MADE

Our review disclosed that FSA did not comply with requirements of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66, dated August 10, 1993) to charge tobacco importers marketing penalties and late payment interest for untimely remittance of imported tobacco assessment fees even though this issue was reported in the prior OIG audit report. During the prior audit, CCC issued a policy memorandum, dated June 4, 1997, which outlined steps taken to assess marketing penalties against tobacco importers who failed to timely remit marketing assessments. However, current TPD staff was unaware of the June 4, 1997, memorandum or the process to assess and collect marketing penalties. CCC's policy memorandum was not documented in a FSA directive to help ensure that staff continues to follow its instructions. As a result, claims were not made against nine importers for about $4.6 million in potential marketing penalties and late payment interest charges for late remittances of about $224,681 in tobacco assessment fees.

Title 7 CFR, part 1464.106 (a1 and a2), dated January 1, 1995, provides, in part, that any importer who fails to timely remit an assessment (BDMA and INNCA) shall be subject to marketing penalties. Title 7 CFR, part 1464.104(e), January 1, 1995, provides that any importer who fails to timely remit any assessments shall be subject to a late payment interest charge. Such late payment interest charges shall be calculated and assessed in accordance with the Prompt Payment Act and shall be in addition to any penalty due or other charge due.

In a June 4, 1997, memorandum, CCC outlined actions to be followed in assessing marketing penalties against tobacco importers who untimely or insufficiently remit BDMA and INNCA assessments. The actions included TPD (1) reviewing twice-monthly CLPR for discrepancies and/or late assessment remittances; (2) notifying importers by letter that their required tobacco assessments were remitted late and/or insufficient and the importer is subject to a marketing penalty; and (3) assessing and maintaining a penalty in full unless the CCC Executive Vice-President determined that the remittance of assessments were unintentional or without the importer's knowledge.

In accordance with the June 4, 1997, CCC memorandum, the FSA Kansas City Financial Operations Division provided TPD with twice-monthly copies of the greater than $9.99 CLPR's. We reviewed all 74 SIN's shown on these reports for the period January 1, 1997, through July 31, 2001. These reports showed that during the period 15 importers did not pay about $952,811 in imported tobacco assessment fees within prescribed timeframes. During 1997, FSA made marketing penalty and late payment interest charge determinations and collected the appropriate amount due from six importers. However, some time in 1998, because of staff turnover, TPD discontinued making these determinations.

CLPR's for the period January 1, 1998, through July 31, 2001, showed that nine importers did not pay about $232,850 in imported tobacco assessment fees within prescribed timeframes. The potential marketing penalties and late payment interest charges were about $5.8 million for untimely remittances of $232,850 in assessment fees. TPD only notified one importer (Importer B) for the untimely remittance of about $8,169 in assessment fees for one shipment. TPD did not make marketing penalty and late payment interest determinations for $224,681 ($232,850 - $8,169) in untimely remittances for the other importers (including Importer B's shipments in 1999, 2000, and 2001) or send them notification letters. Consequently, TPD did not comply with procedures outlined in the 1997 CCC memorandum that would have resulted in assessing about $4.6 million in potential marketing penalties and late payment interest charges for the importers. Table 1 shows potential marketing penalties and late payment interest charges information for all nine importers as shown on the CLPR.

TABLE 1

IMPORTERS	CY 1998 TOTAL MP's & LPIC's	CY 1999 TOTA MP's & LPIC's	CY 2000 TOTAL MP's & LPIC's	CY 2001[1] TOTAL MP's & LPIC's	CY 1998 – 2001[1] TOTAL MP's & LPIC's
A	$273.61	$0.00	$0.00	$0.00	$273.61
B	1,174,776.30	169,811.47	310,125.66	282,690.83	1,937,404.26
C	277,102.06	0.00	0.00	0.00	277,102.06
D	0.00	2,311.08	1,161,849.44	161.46	1,164,321.98
E	0.00	18.81	0.00	0.00	18.81
F	0.00	62,215.01	0.00	0.00	62,215.01
G	0.00	0.00	1,152,863.72	0.00	1,152,863.72
H	0.00	0.00	284,157.21	0.00	284,157.21
I	0.00	0.00	880,202.83	0.00	880,202.83
Total Potential MP's & LPIC's	$1,454,149.97	$234,356.37	$3,789,198.86	$282,852.29	$5,758,559.49
Less FSA's Determinations	(1,174,762.82)	0.00	0.00	0.00	(1,174,762.82)
Net FSA Undetermined BDMA & INNCA MP's & LPIC's	$277,389.15	$234356.37	$3,789,198.86	$282,852.29	$4,583,796.67
Note: MP = marketing penalties and LPIC = late payment interest charges					
[1]The actual period of review was January 1 through July 31, 2001.					

Importer B, shown in the table above, imported 185,280 kilos of tobacco into the United States on November 25, 1997, (SIN 97-0093). Importer B's remittance of required $8,169.37 in assessment fees were paid 58 days past the due date. The CLPR showed that because of the untimely remittance Importer B was potentially liable to CCC for over $1 million in marketing penalties and late payment interest charges. TPD sent Importer B a written notification letter dated March 23, 1998, regarding the untimely remittance of $8,169.37 in assessment fees. The letter stated that Importer B was liable to CCC for late payment interest charges of $87.62 and potential marketing penalties of $1,174,763. Subsequently, CCC determined that Importer B's late remittance was unintentional and the company had taken steps to prevent reoccurrences. TPD informed Importer B in a June 5, 1998, letter that the marketing penalties were being reduced to $2,990.83. Importer B paid CCC the late payment interest charges ($87.62) and marketing penalties ($2,990.83) for a total of $3,078.45.

In contrast, TPD did not send written notification to Importer G for untimely remittance of assessment fees. Importer G, shown in the table above, imported 396,000 kilos of tobacco into the United States on August 30, 1999 (SIN 99-0002). Importer G's remittance of required assessment fees of about $17,460 were paid 162 days past the due date. The CLPR showed that because of the untimely remittance, Importer G was potentially liable to CCC for over $1 million in marketing penalty and late payment interest charges. However, TPD did not review the CLPR to make a marketing penalty determination nor did it send written notification to Importer G for the untimely remittance.

TPD officials could not provide us with an explanation regarding why marketing penalty determinations and collection efforts were discontinued. However, the current acting director told us that staff that was responsible for monitoring the TIAP was no longer employed by the agency. In addition, current TPD staff was unaware of the June 4, 1997 CCC policy memorandum or the process to assess and collect marketing penalties.

CLPR's are generated (twice-monthly) by TIAS and sent to TPD to notify management of late assessment remittances. Although, TPD received the twice-monthly CLPR's, it did not review them for marketing penalty determinations. CCC's policy memorandum should be documented in a directive, which would be a permanent agency record for current and future staff to follow.

RECOMMENDATION NO. 1

Document procedures for assessing and collecting marketing penalties and late payment interest charges on imported tobacco in a formal directive to help ensure adherence by current and future staff and establish a control mechanism to implement the procedures.

Agency Response

FSA agrees and is currently drafting a handbook, which will help ensure adherence by staff to procedures for assessing and collecting charges.

OIG Position

We agree with FSA's proposed action. However, to reach management decision, FSA needs to provide use with timeframes for completion of the handbook.

RECOMMENDATION NO. 2

Provide written notifications to the nine importers identified in this report regarding their $4,583,796.67 in potential marketing penalties and late payment interest charges and collect amounts determined to be appropriate.

Agency Response

FSA agrees and will provide written notification to the tobacco importers who were identified as owing potential marketing penalties and late payment charges and collect amount determined to be appropriate, by December 31, 2002.

OIG Position

We agree with FSA's proposed action. However, to reach management decision, FSA needs to provide us with documentation that the tobacco importers were notified and billed for their liabilities for marketing penalties and late payment interest charges.

EXHIBIT A – SUMMARY OF MONETARY RESULTS

Recommendation Number	Description	Amount	Category
2	BDMA and INNCA Marketing penalties and late payment interest charges were not assessed and collected	$4,583,796.67	Questioned Cost – Recovery Recommended

EXHIBIT B – AGENCY RESPONSE TO THE DRAFT REPORT

USDA

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United States Department of Agriculture

Farm and Foreign Agricultural Services

Farm Service Agency

Operations Review and Analysis Staff

Audits, Investigations, State and County Review Branch

1400 Independence Avenue, SW
Stop 0540
Washington, DC 20250-0540

TO: Director, Farm and Foreign Agriculture Division
Office of Inspector General

FROM: Philip Sharp, Chief
Audits, Investigations, and State and County Review Branch

SUBJECT: Response to Audit No. 03099-164-AT, Tobacco Importer Assessment Program – Marketing Penalty Assessments and Collections

Enclosed is a copy of a memorandum from FSA's Deputy Administrator for Farm Programs, which responds to your August 21 request for information regarding the subject audit.

Please direct any questions to Cindy Foister at 720-5463.

Enclosure

EXHIBIT B – AGENCY RESPONSE

USDA

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United States Department of Agriculture

Farm and Foreign Agricultural Services

Farm Service Agency

1400 Independence Avenue, SW
Stop 0514
Washington, DC 20250-0514

TO: T. Mike McCann, Director
Operations Review and Analysis Staff

SEP 30 2002

THROUGH: John A. Johnson
Deputy Administrator for Farm Programs

FROM: Solomon Whitfield SEP 27 2002
Acting Director, Tobacco and Peanuts Division

SUBJECT: Transmittal of Discussion Draft of OIG Report No. 03099-164-AT, Assessments of Imported Tobacco

The Executive Summary of the Discussion Draft of Audit Report No. 03099-164-AT states that the purpose of the audit is to determine whether the Farm Service Agency (FSA) implemented internal controls to ensure collections of marketing penalties and late payment interest charges for untimely remittance of imported tobacco assessment fees. The audit disclosed that FSA had not implemented such internal controls and as a result had not assured proper and timely collections of penalties and other charges. Two recommendations were made as a result of the audit and FSA agrees with both.

The first recommendation is that FSA document procedures for assessing and collecting marketing penalties and late payment interest charges from tobacco importers. FSA is currently drafting a handbook which will help ensure adherence, by current and future staff, to procedures for assessing and collecting charges. A formal directive such as a handbook will establish a control mechanism for implementing the policies and procedures for tobacco importer assessments and any penalties or interest which might accrue as a result of non compliance.

FSA is also in agreement with the second recommendation which is to provide written notification to eight tobacco importers who were identified by the audit as owing potential marketing penalties and late payment charges and collecting amounts determined to be appropriate. FSA has been provided the results of the audit naming these importers and information used in determining the amounts due from them. FSA is in the process of reviewing the information. Appropriate letters will be mailed to applicable importers by December 31, 2002.

If you have any questions, please contact Tom Burgess at (202) 720-0156.

ABBREVIATIONS