

report, but not so furnished, any warehouse operator, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State FSA executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Farm Service Agency, U.S. Department of Agriculture upon written request by the State FSA executive director, all such books, papers, records, lot tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State FSA executive director has reason to believe are relevant and are within the control of such person.

§ 723.416 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and community committees, and all county FSA office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Subpart E—Establishing Burley and Flue-Cured Tobacco National Marketing Quotas

SOURCE: 63 FR 11583, Mar. 10, 1998, unless otherwise noted.

§ 723.501 Scope.

This subpart sets out regulations for setting annual national marketing

quotas for burley and flue-cured tobacco based on the purchase intentions of certain manufacturers of cigarettes and on other factors. It also sets out penalty provisions for manufacturers who fail to purchase, within the tolerances set in this part, the amount of domestic tobacco, by kind, reflected in the stated intention as accounted for in accordance with this subpart.

§ 723.502 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A manufacturer, who as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States annually.

Price support inventory. The inventory of tobacco which, with respect to a particular kind of tobacco, has been pledged as collateral for a price support loan made by CCC through a producer-owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations or their successors, which by law act as agents for producers for price support loans for tobacco, and which were, as of January 1, 1996, for burley and flue-cured tobacco, the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

Unmanufactured tobacco. Stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco.

§ 723.503 Establishing the quotas.

(a) *General.* Subject to the 3-percent adjustment provided for in paragraph (b) of this section, the annual marketing quotas for burley and flue-cured tobacco shall be calculated for each marketing year for each kind separately as follows:

(1) *Domestic manufacturer purchase intentions.* First, for each kind and year,

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the Director shall calculate the aggregate relevant purchaser intentions as declared or set under this section.

(2) *Exports.* Next, the Director shall add to the total determined under paragraph (a)(1) of this section the amount which is equal to the Director's determination of the average quantity of exported domestic leaf tobacco of the applicable kind for the past 3 marketing years. For this purpose, exports include unmanufactured tobacco only, including, but not limited to, stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco, and excludes tobacco contained in manufactured products including, but not limited to, cigarettes, cigars, smoking tobacco, chewing tobacco, snuff and semi-processed bulk smoking tobacco. The quantity of exports for the most recent year, as needed, may be estimated.

(3) Reserve stock level adjustment. The total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section may be adjusted by the Director as necessary to maintain inventories of producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley, the reserve stock level is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured, the reserve stock level is the larger of 60 million pounds or 10 percent of the previous year's quota. The Director shall consider supply conditions when making any adjustment and a downward adjustment for burley tobacco may not exceed either 35 million pounds farm sales weight or 50 percent of the amount by which loan inventories exceed the reserve stock level, whichever is larger. If the uncommitted pool stocks of burley tobacco for 2001 and subsequent crops equal or are less than the reserve stock level, then the downward adjustment in quota for that year may be made based on the reserve stock level for that kind of tobacco, with no downward limitation.

(b) *Additional 3-percent adjustment.* The amount otherwise calculated under paragraph (a) of this section may be adjusted by the Director by 3 percent of the total. This adjustment is discretionary and may be made irre-

spective of whether any adjustment has been made under paragraph (a)(3) of this section and may be made to the extent the Director deems such an adjustment is in the best interest of the program.

(c) *Dates of announcement.* For flue-cured tobacco, the quota determination should be announced by December 15 preceding the marketing year. For burley, the announcement should be made by February 1 preceding the marketing year.

[63 FR 11583, Mar. 10, 1998, as amended at 66 FR 53509, Oct. 23, 2001; 67 FR 62871, Oct. 9, 2002]

§ 723.504 Manufacturers' intentions; penalties.

(a) *Generally.* Each domestic manufacturer shall, for each marketing year, for burley and flue-cured tobacco separately, submit a statement of its intended purchases of eligible tobacco by the date prescribed in paragraph (d) of this section; further, at the end of the marketing year, each such manufacturer shall submit a statement of its actual countable purchases of eligible tobacco for that marketing year, by kind, for burley and flue-cured tobacco. For these purposes, countable purchases of eligible tobacco shall be as defined in, and determined under, paragraph (b) of this section. If a domestic manufacturer fails to file a statement of intentions, the Director shall declare the amount which will be considered that manufacturer's intentions for the marketing year. That declaration by the Director shall be based on the domestic manufacturer's previous reports, or such other information as is deemed appropriate by the Director in the Director's discretion. Notice of the amount so declared shall be forwarded to the domestic manufacturer. If the domestic manufacturer fails to file a year-end report or files an inaccurate or incomplete report, then the Director may deem that the manufacturer has no purchases to report or take such other action as the Director believes is appropriate to fulfill the goals of this section. Intentions and purchases of countable tobacco will be compared for purposes of determining whether a penalty is due from the domestic manufacturer.