

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560-AE96

Amendment to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes improving the administration of the tobacco marketing quota and price support program by amending program regulations to: provide for making quota "inequity adjustments" on a "common ownership unit" basis rather than strictly on a "farm" basis; eliminate unduly restrictive deadlines for the mailing of certain quota notices; permit, for burley and flue-cured tobacco, disaster transfers to be made by cash lessees, from cash rented farms, without the owner's signature; provide greater flexibility in the setting of penalty amounts for burley and flue-cured tobacco violations; eliminate a provision that requires yearly publication in the **Federal Register** of certain routine and noncontroversial penalty computations; remove regulations governing the 1994-calendar year only "domestic marketing assessment", which was applicable to the use by certain cigarette manufacturers of set percentages of domestic tobacco; codify certain statutory provisions concerning, and penalties related to, setting burley and flue-cured tobacco quotas; and add several technical changes, including changes to reflect a recent reorganization of the Department of Agriculture.

DATES: Comments must be received by May 20, 1997 to be assured of consideration.

ADDRESSES: Submit comments on the proposed rule to: Director, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, P.O. Box 2415, Washington, DC 20013-2415. Comments may be faxed to

202-690-2298. All written submissions made pursuant to this rule 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., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: Verner Grise, Director, Tobacco and Peanuts Analysis Staff, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-5291.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

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

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule are not retroactive and preempt State laws to the extent that such laws

are inconsistent with the provisions of this proposed rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR Part 780 and 7 CFR Part 711, as applicable, must be exhausted.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). The information collections required in 7 CFR Part 723 have previously been cleared under OMB control number 0560-0058.

Background and Discussion

The tobacco marketing quota and price support program is operated by the Department of Agriculture pursuant to provisions of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act) and the Agricultural Act of 1949, as amended (the 1949 Act). This proposed rule would, as described below, modify tobacco marketing quota regulations in 7 CFR Part 723. Related price support regulations are codified in 7 CFR Part 1464.

1. Allocation of Inequity Adjustments

The 1938 Act permits the FSA, out of limited national reserves, to make so-called "inequity adjustments" in old farm allotments or quotas in order to alleviate quota disparities between farms in a county. Current rules, at § 723.210, call for those adjustments to be made by "farm" as that term is defined for FSA commodity support purposes. However, for tobacco, there may, in effect, be "farms" within a farm when there are different common ownership units within the farm. For that reason, to allow for greater equity, it is proposed that the rules be modified to allow local FSA committees to choose, at their discretion, to make inequity adjustments by common ownership units in which case the quota adjustment would inure to the common ownership unit rather than to the whole farm. The rule would also add, in § 723.104, a definition of "common ownership unit" to facilitate the administration of the proposed change for allocating inequity adjustments and the transfer of quota by sale.

2. Mailing Notices of Farm Acreage Allotments and Marketing Quotas

Current rules, in § 723.213, require that quota notices be mailed by a certain date if the quota is to be modified because of a violation, a revision or adjustment in the allotment or quota for the farm, or a farm reconstitution. The deadline is April 1 for farms in Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia. Otherwise, the deadline is May 1. Those dates are not suitable in all instances since there may be transfers affecting the quota which have not occurred by those dates. For that reason, and because the regulation is strictly a matter of agency procedure, it is proposed that these deadlines be removed from the regulations. Because of the special considerations that accompany reductions for violations, it would remain the agency's intention with respect to notices concerning reductions in quota because of violations to meet the same deadlines as those that are now in the regulations.

3. Approval of Disaster Lease and Transfer Agreements—Cash Rented Farms

Burley and flue-cured tobacco are different from other kinds of tobacco in that they are subject to quotas on a poundage basis. All other tobaccos are limited by acreage only. Burley tobacco is limited by pounds only and flue-cured tobacco is limited both by acres and pounds. With respect to burley and flue-cured tobacco, disaster transfers of quota pounds can be made during the harvest season if, despite the producer's best efforts, the quota is not fully produced because of a natural disaster. Currently, all such transfers require the farm owner to sign the transfer documents. This rule proposes amending § 723.216 to provide that such owner's signature is not needed when the farm is cash-rented or leased by the farm operator. This would reflect that the owner does not have an interest in the current year's tobacco crop or marketing quota. This would effectively and conclusively, presume that the farm operator or tobacco producer has paid for the quota for the current year to use to market the crop or, as the case may be, to disaster lease and transfer the unused quota from the farm.

4. Producer Penalty Calculations

Penalties can be assessed against producers under the 1938 Act for excess marketings and other offenses. Section 314 of the 1938 Act provides that the penalty rate is equal to 75 percent of the average market price for the kind of

tobacco for the immediately preceding marketing year. That rate is applied, then, to the penalty quantity of tobacco. Generally, under section 314, that quantity is the amount of the excess marketings. However, section 317(g) of the 1938 Act provides, for the poundage quota tobaccos (burley and flue-cured) only, that no penalty shall be due or collected until 103 percent of the marketing quota has been marketed except that where a producer falsely identifies, or fails to account for the disposition of any tobacco, the Secretary, in lieu of assessing and collecting penalties based on the actual marketings of excess tobacco, may elect to assess a penalty computed by multiplying the full penalty rate by an amount of tobacco equal to 25 percent of the farm's effective marketing quota plus the farm yield for the number of acres harvested in excess of the farm acreage allotment. Thus for burley and flue-cured tobacco, two possible standards exist for determining the penalty quantity: (1) The excess-over-103-percent standard ("the 103-percent standard") and (2) the 25-percent-of-quota standard ("the 25-percent standard"). In some cases, however, the producer may have no excess marketings, but may have mis-marketed a small number of pounds on the farm's marketing card in which case the 25-percent standard may produce a penalty which a local FSA committee could feel is too harsh. This could lead, by use of the 103-percent standard, to no penalty at all which could be too lenient. Given that the use of the full 25-percent-of-quota standard is strictly discretionary, it would appear to follow that, in cases where the 25-percent standard could otherwise be applied, the Secretary could choose a penalty quantity "up to" 25-percent. Changing § 723.409 to add that flexibility is proposed in this notice. This would, if adopted, allow the penalty quantity to be, more appropriately, the actual amount of pounds in violation, which could better reflect the relative significance of different violations. This amendment will not affect the penalty quantity for buyers, dealers, or warehouse operators. Tobacco buyers, dealers, warehouse operators, and others will be required to collect the full penalty rate for each pound of invalid or suspicious marketings. In the event of an over-collection, the penalty can be refunded.

5. Elimination of Publication in the Federal Register of Certain Mathematical Computations

Also, it is proposed, with respect to penalties, that § 723.308 be modified to remove the provision that requires

publication in the **Federal Register** of the penalty rate calculations for the individual kinds of tobacco. Those rates are mathematical calculations based on market prices and the amounts should be, within a very close amount, well known by interested parties based on their knowledge of market conditions. As in the past, effective notice will be provided by press release. Further information, if needed, can be obtained by inquiry. For these reasons, publication in the **Federal Register** does not appear to be necessary.

6. Removal of Regulations Concerning the 1994 Domestic Marketing Assessment for Manufacturers Whose Use of Domestic Tobacco Fell Below 75 Percent

This rule also proposes removing the regulations that currently appear in Subpart E, as those regulations deal with an assessment that only applied with respect to activities which occurred in calendar year 1994. Specifically, budget legislation enacted in 1993 provided for a "domestic marketing assessment" (DMA) to be applied to certain manufacturers of cigarettes if their use of domestic tobacco did not, for certain cigarettes, over a calendar year, amount to 75 percent of their total tobacco use. Later legislation limited the application of the DMA to activities occurring in calendar year 1994. Accordingly, it does not appear worthwhile to continue the codification of the DMA regulations. Removal of the rules will not, however, affect liabilities with respect to the DMA for activities occurring in calendar year 1994.

7. Codification of Regulations Dealing With Establishing the National Marketing Quotas for Burley and Flue-Cured Tobacco

It is also proposed that a new subpart be added to codify provisions dealing with the annual establishment of the burley and flue-cured tobacco national marketing quotas. The quotas for burley and flue-cured tobaccos, unlike the allotments for other supported tobaccos, are set, as provided for by statute, in a manner that takes into account pre-announced purchase intentions of certain cigarette manufacturers. Specifically, the calculation takes into account the purchase intentions of those cigarette manufacturers who meet the 1938 Act definition of a "domestic manufacturer of cigarettes" by producing at least 1 percent of the cigarettes produced and sold in the United States. The 1938 Act provides, under section 317 for flue-cured tobacco, and section 319 for burley

tobacco, that the quota for each kind is the amount, computed separately which, with an allowance for the Secretary to make a discretionary upward or downward adjustment of up to 3 percent in the total, equals the sum of: (1) The aggregate, for the upcoming year, of the stated intentions of the manufacturers to purchase eligible tobacco of the relevant kind from regular auction markets, producers, or from the inventories of the relevant producer loan associations; (2) the average annual exports of that kind of domestic tobacco for the past 3 years; and (3) the amount the Secretary deems, in his discretion, is needed to adjust the current inventories of the producer loan associations to establish stocks at the reserve stock level for the respective kind of tobacco. The reserve stock level is defined in section 301 of the 1938 Act to be, for burley tobacco, the greater of 50 million pounds or 15 percent of the previous year's quota. For flue-cured tobacco that level is defined to be the greater of 100 million pounds or 15 percent of the previous year's quota. Section 319 of the 1938 Act provides, however, that the reserve stock level downward adjustment for burley tobacco may not exceed the greater of 35 million pounds or 50 percent of the quantity by which loan inventories exceed the reserve stock level. Section 320A of the 1938 Act requires that the statement of purchase intentions be filed by all manufacturers who meet the "domestic manufacturer of cigarettes" definition and provides that if a manufacturer fails to file such a statement the Secretary must estimate the purchases for the manufacturer based on the manufacturer's previous submissions. The statements of intention are due before the marketing year. Section 320A of the 1938 Act sets December 1 as the deadline for flue-cured purchase intentions. For burley, section 320A sets January 15 as the deadline. Also, section 320A contains confidentiality provisions to protect the statements filed by manufacturers.

Further, section 320B of the 1938 Act provides that cigarette manufacturers must report their tobacco purchases at the end of the year so that a comparison can be made with their statement of intentions. Under section 320B, the manufacturer must pay a per pound penalty, equal to twice the purchaser's share of the no-net-cost assessment rate for the relevant marketing year, if their purchases do not amount to 90 percent of their stated intentions. Section 320B provides that the penalty will be assessed on the full amount of the shortage except that 320B also provides

that the statements of intention will be adjusted downward if producers do not, counting price support loan placements, produce, in the aggregate, the total national quota for the relevant kind of tobacco (burley or flue-cured) for the relevant marketing year.

These provisions have been in place for many years. This rule proposes, however, to codify current policy to allow for comment and modification as needed. As with current practice, the rule provides for counting indirect and direct purchases for statement of purchase intentions and for calculations of compliance with those intentions. Also, the rule, for these purposes, as with current practice, specifies that purchases of leaf, stems, trimmings, and scrap tobacco for export should be excluded from the purchase intentions and from the purchases that are countable toward meeting the manufacturer's obligations.

8. Technical Changes in the Regulations

This rule would also make certain technical changes, including changing references from "ASC" to "FSA" to reflect that under a recent reorganization, many of the functions of the former Agricultural Stabilization and Conservation Service are now handled by the USDA's Farm Service Agency.

List of Subjects in 7 CFR Part 723

Acreage allotments, Dealers, Domestic cigarette manufacturers, Marketing quotas, Penalties, Tobacco

Proposed Rule

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 723 be amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

2. Section 723.104 is to be amended by adding definitions for "common ownership unit", "Farm Service Agency", and "FSA" in their proper alphabetical order to read as follows:

§ 723.104 Definitions.

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

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

FSA. The Farm Service Agency.

* * * * *

3. Section 723.210 is amended by adding a new paragraph (d) to read as follows:

§ 723.210 Corrections of errors and adjusting inequities in acreage allotments and marketing quotas for old farms.

* * * * *

(d) *Making certain adjustments on a common ownership unit basis.* Notwithstanding other provisions of this section, inequity adjustments may be allotted by common ownership unit rather than by farm when it is determined by the county FSA committee that the making of the determination on that basis provides greater equity.

§ 723.213 [Amended]

4. Section 723.213 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

5. Section 723.216(a) is amended by revising paragraph (a) introductory text and by revising paragraphs (a)(2)(ii)(A) and (a)(2)(iii)(A), to read as follows:

§ 723.216 Transfers of tobacco acreage allotment or marketing quota by sale, lease, or owner.

(a) *General.* The allotment or quota established for a farm may be transferred to another farm to the extent provided for in this section. For transfers by sale, common ownership units on a farm may be considered to be separate farms. Transfers are not permitted for cigar binder (types 54 and 55) tobacco allotments.

* * * * *

(2) * * *

(ii) * * *

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

* * * * *

(iii) * * *

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner will not be required if the FSA determines that the farm is cash leased for the crop year and that the owner does not share in the crop.

* * * * *

§ 723.308 [Amended]

6. Section 723.308 is amended by adding "and announced annually" after "determined" in the first sentence and removing the second sentence.

7. Section 723.409 is amended by revising paragraphs (a), (b), (e)(1), (e)(2) introductory text, and (f) and by removing paragraph (g), such that the revised paragraphs in § 723.409 will read as follows:

§ 723.409 Producer violations, penalties, false identification and related issues.

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

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

(ii) made without a valid marketing card;

(iii) made under circumstances where the buyer or dealer, or their agents, know, or have reason to know, that the tobacco was, or is, marketed in a manner which by itself or in combination with other marketings is designed to, or has the effect of, defeating the purposes of the tobacco price support and production adjustment program, avoiding marketing quota limitations, or otherwise avoiding provision of this part or part 1464;

(iv) falsely identified; or,

(v) marketings for which the producer fails to make a proper account as required by the provisions of this part.

(2) *Amount of the penalty.* The amount of the penalty shall be the amount computed by multiplying the penalty rate by the penalty quantity.

(3) *Penalty rate.* The penalty rate for purposes of this section is that rate which is computed as the penalty rate per pound for the applicable kind of tobacco under § 723.308, except to the extent that a converted penalty rate may be used as provided for in this section.

(4) *Penalty quantity.* The quantity of tobacco that is determined by the county FSA committee to be subject to penalty, provided further that:

(i) *For burley and flue-cured tobacco,* the penalty quantity for purposes of this section shall be the amount of marketings from the farm in excess of 103 percent of the farm's effective marketing quota for that year, except that if the violation involves false identification or a failure to account for tobacco, the FSA may, in its discretion, depending on the nature of the violations, use as the penalty quantity an amount up to 25 percent of the farm's effective marketing quota plus 100 percent of the farm yield on any excess acreage for the farm (acreage planted in

excess of the allotted acres, as estimated or determined).

(ii) *For tobaccos other than burley and flue-cured tobacco,* the penalty quantity shall be the amount of marketings from the farm in excess of the farm's marketing quota provided further, that in order to aid in the collection of the penalty the FSA shall endeavor, to the extent practicable, to apply the penalty to all of the farm's marketings by converting the full penalty rate to a converted proportionate penalty rate which rate may be identified on the producer's marketing card and collected and remitted accordingly. In making the calculation of the converted penalty rate, the agency shall take into account any carryover tobacco applicable for the farm. If an erroneous penalty rate is shown on the marketing card, then the producer of the tobacco and the producer who marketed the tobacco shall be liable for any balance due.

(5) *Limitations on reduced penalty quantities.* No penalty shall, to the extent that there is discretion to do otherwise, be assessed at an amount which is less than the amount equal to the full penalty rate multiplied by the full number of pounds that are, or are estimated to be, subject to penalty, unless it is determined by the county FSA committee, with the concurrence of the State FSA committee, that all of the following exist with respect to such violation:

(i) The violation was inadvertent and unintentional;

(ii) All of the farm's production has been accounted for and there are no excess marketings for which there are penalties outstanding;

(iii) The records for all involved farms have been corrected to show the marketings involved; and

(iv) The false identification or failure to account did not give the producer an advantage under the program.

(6) *Effect of improper, invalid, deceptive or unaccounted for marketings on penalty quantity calculation.* Any marketing made without a valid marketing card, falsely-identified, or unaccounted for in accordance with the requirements of this part, or made under circumstances which are designed to, or have the effect of, defeating the purpose of the tobacco marketing quota and price support program, avoiding any limitation on marketings, avoiding a penalty, or avoiding compliance with, or the requirements of, any regulation under this part or under part 1464, shall be considered an excess marketing of tobacco. Further, such marketings shall, unless shown to the satisfaction of the

county FSA committee to be otherwise, be considered, where relevant, to be in excess of 103 percent of the applicable marketing quota for the farm, and shall be subject to a penalty at the full penalty rate for each pound so marketed.

(7) *Pledging of tobacco by an ineligible producer.* In addition to any other circumstances in which a penalty may be assessed under this part, the marketing or pledging for a price support loan of any tobacco when the producer is not considered to be an "eligible producer" under the provisions of part 1464 of this title, shall be considered to be a false identification of tobacco and shall be dealt with accordingly. This remedy shall be in addition to all others as may apply.

(8) *Failures to make certain reports.* If any producer who manufactures tobacco products from tobacco produced by or for such person fails to make the report required by § 729.408, or otherwise required by this part, or makes a false report, the producer shall be deemed to have failed to account for the disposition of tobacco produced on the farms(s) involved. The filing of a report by a producer under § 723.408 of this part which the State FSA committee finds to be incomplete or incorrect shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Special provisions for tobacco buyers, dealers, and warehouse operators and others who acquire tobacco.*

(1) Notwithstanding the provisions of paragraph (a) of this section, a dealer, buyer or warehouse operator shall collect an amount of penalty equal to the applicable per pound penalty rate times the quantity of tobacco acquired or handled by the buyer, dealer or warehouse operator when the tobacco is not identified with a valid producer marketing card, the tobacco is being sold under suspicious circumstances, or when there is any reason to suspect the tobacco may be subject to penalty. The provisions of this paragraph apply to all purchases by a dealer, buyer or warehouse operator including those from another dealer, buyer or warehouse operator. The dealer, buyer, warehouse operator, or their agent, shall also collect the full amount of the marketing quota penalty for each pound of tobacco involved in any case in which a buyer, dealer or warehouse operator knows, or has to reason to suspect, that the marketing is, or has been, made without a proper marketing card or is, or has been, made with a card which the dealer, buyer, warehouse operator, or their agents have reason to suspect, is not a valid marketing or is made under

circumstances which give cause to suspect that the marketing is not valid or is made in derogation of the tobacco marketing quota and price support program.

(2) The amount of penalty collected may be deducted from the proceeds of the sale of the tobacco. All such penalty collections shall be the responsibility of each buyer dealer, or warehouse operator involved, and their agents, and shall be remitted to FSA as provided for in this part.

(3) The collection and remittance of penalty shall be in addition to any other obligations that such person may have to collect other amounts, including other penalties or assessments due on such marketings.

(4) If a penalty is collected and remitted by a buyer, dealer, or warehouse operator that is shown not to be due or only partially due, then the overpayment shall be refunded to the appropriate party. It is the responsibility of the person that collected the penalty and the person that sold the tobacco involved to show to the satisfaction of the FSA that such penalty is not due in the full amount collected.

* * * * *

(e) * * *

(1) For amounts of \$100 or less, the county FSA committee, and

(2) For amounts over \$100, the county FSA committee with approval of the State FSA committee determines that each of the following conditions is applicable:

* * * * *

(f) *Refusal to contribute required assessments.* A marketing penalty at the full rate per pound is due on each pound of tobacco marketed from a farm when the farm operator or producers refuse to pay no-net-cost or marketing assessments as provided in part 1464 of this title. In all such cases, the farm from which the tobacco has been produced shall be considered to have a marketing quota of zero pounds and an allotment of zero acres.

9. Part 723 subpart E is revised to read as follows:

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

Sec.

723.501 Scope.

723.502 Definitions.

723.503 Establishing the quotas.

723.504 Manufacturer's intentions; penalties.

§ 723.501 Scope.

This subpart sets out regulations for setting annual national marketing quotas for burley and flue-cured tobacco

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

§ 723.502 Definitions.

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

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

Domestic manufacturer. A domestic manufacturer of cigarettes.

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

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

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

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

§ 723.503 Establishing the quotas.

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

(1) *Domestic manufacturer purchase intentions.* First, for each kind and year, the Director shall calculate the aggregate relevant purchaser intentions as declared or set under this section.

(2) *Exports.* Next, the Director shall add to the total determined under paragraph(a)(1) of this section the amount which is equal to the Director's determination of the average quantity of exported domestic leaf tobacco of the applicable kind for the past 3 marketing

years. For this purpose, exports include unmanufactured tobacco only, including, but not limited to, stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco, and excludes tobacco contained in manufactured products including, but not limited to cigarettes, cigars, smoking tobacco, chewing tobacco, snuff and semi-processed bulk smoking tobacco. The quantity of exports for the most recent year, as needed, may be estimated.

(3) *Reserve stock level adjustment.* The Director may then adjust the total calculated by adding the sums of paragraph(a)(1) and (a)(2) of this section, by making such adjustment which the Director, in his discretion, determines necessary to maintain inventory levels held by producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley tobacco, the reserve stock level for these purposes is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national marketing quota. For flue-cured tobacco, the reserve stock level for these purposes is the larger of 100 million pounds farm sales weight or 15 percent of the previous year's national marketing quota. Any adjustment under this clause shall be discretionary taking into account supply conditions; however, for burley tobacco no downward adjustment under this clause may exceed the larger of 35 million pounds (farm sales weight) or 50 percent of the amount by which loan inventories exceed the reserve stock level.

(b) *Additional 3 percent adjustment.* The amount otherwise calculated under paragraph(a) of this section may be adjusted by the Director by 3 percent of the total. This adjustment is discretionary and may be made irrespective of whether any adjustment has been made under paragraph(a)(3), of this section and may be made to the extent the Director deems such an adjustment is in the best interest of the program.

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

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

(b) *Eligible tobacco for statements of intentions and countable purchases toward those intentions.* For reports and determinations under this section, eligible tobacco for purposes of determining the countable purchases under paragraph (a) of this section will be unmanufactured domestic tobacco of the relevant kind for use to manufacture, for domestic or foreign consumption, cigarettes, semi-processed bulk smoking tobacco, and other tobacco products. Eligible tobacco for these purposes does not include tobacco purchased for export as leaf tobacco, stems, trimmings, or scrap. Countable purchases of eligible tobacco shall include purchases of eligible tobacco made by domestic manufacturers directly from the producers, from a regular auction market, or from the price support loan inventory and shall also include purchases by the manufacturer where the manufacturer purchases or acquires the tobacco from dealers or buyers who purchased the tobacco for the domestic manufacturer during the relevant marketing year directly from a producer, at a regular auction market, or from the price support loan inventory.

(c) *Weight basis and nature of reports.* The weight basis used for all reports and comparisons shall be a farm sales

weight basis unless the Director permits otherwise and all reports will be considered to have been made on that basis unless the report clearly states otherwise. Submitted reports shall be deemed to cover countable purchases of eligible tobacco only.

(d) *Due dates and addresses for reports.* For flue-cured tobacco the domestic manufacturer's statement of intentions shall be submitted by December 1 before the marketing year and the year-end report shall be submitted by August 20 following the end of the marketing year. Those dates for burley tobacco are January 15 and November 20, respectively. Reports shall be mailed or delivered to the Director, Tobacco and Peanuts Division, STOP 0514, P.O. Box 2415, Washington, DC 20013-2415.

(e) *Penalties.* A domestic manufacturer shall be liable for a penalty equal to twice the purchaser's no-net-cost assessment rate per pound for the applicable kind of tobacco for the relevant marketing year, if the manufacturer's purchases of either burley or flue-cured tobacco for the marketing year do not equal or exceed, as determined by the Director, 90 percent of their stated purchase intentions for that kind of tobacco for the relevant marketing year. The Director shall adjust the domestic manufacturer's intentions, however, to the extent, that producers have not produced the full amount of the national quota for the relevant marketing year for the particular kind of tobacco. The burden of establishing all purchases shall be with the domestic manufacturer and the Director may, in the case of indirect purchases for the manufacturer, require that the manufacturer obtain verification of the purchases by the dealer who made the purchase from the producer, at a regular auction market, or from the price support loan inventory, in order to assure that the tobacco was countable tobacco. The Director may require such additional information as determined needed to enforce this subpart.

(f) *Penalty notice and penalty remittance.* Penalties will be assessed after notice and an opportunity for a hearing before the Director. Remittances are to be made to the CCC and will be credited to the applicable producer loan association's no-net-cost fund or account as provided for in part 1464 of this title.

(g) *Maintenance and examination of records.* Each domestic manufacturer shall keep all relevant records of purchases, by kind, of burley and flue-cured tobacco for a period of at least 3 years. The Director, Office of Inspector

General, or other duly authorized representative of the United States may examine such records, receipts, computer files, or other information held by a domestic manufacturer that may be used to verify or audit such manufacturer's reports. The reasonable cost of such examination or audit may be charged to the domestic manufacturer who is the subject of the examination or audit. All records examined or received under this part by officials of the Department of Agriculture shall be kept confidential to the extent required by law.

§§ 723.1 through 723.504 [Amended]

10. Part 723 sections 723.1 through 723.504 are further amended by removing "ASC" wherever it appears and substituting "FSA" in its place.

Signed at Washington, DC, on March 11, 1997.

Bruce R. Weber,

Administrator, Farm Service Agency

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Agricultural Marketing Service

7 CFR Part 1215

[FV-96-706PR]

Proposed Popcorn Promotion, Research, and Consumer Information Order; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This proposed rule would establish an industry-funded promotion, research, and consumer information program for popcorn. An order for the proposed program—the Popcorn Promotion, Research, and Consumer Information Order (Order)—was submitted to the Department by the Popcorn Institute. Under the proposed Order, processors would pay an assessment rate of 5 cents per hundredweight of popcorn to the proposed Popcorn Board (Board). Composed of popcorn processors, the Board would use the assessments collected to conduct a generic program of promotion, research, and consumer information to maintain and expand markets for popcorn. In addition, the U.S. Department of Agriculture is announcing that a referendum will be conducted among eligible popcorn processors to determine whether they favor the implementation of the program.