

Agriculture. The calculated penalty shall be rounded to the nearest whole cent. Any floor scrap on hand more than 30 days shall be considered sold. The floor scrap on hand shall be weighed, and the weight certified to, by the receiving station official, with such weighing to be done in the presence of a representative of either the county or the state FSA committee. Floor scrap which is destroyed within 30 days in the presence of an FSA representative shall not be considered as marketed when determining the total quantity of floor scrap marketed. If the County FSA Committee determines that floor scrap was marketed in the current year, the person responsible for such marketing shall be notified of the determination and afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 750 of this chapter. A determination that a civil penalty is due for marketing floor scrap shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. Notice of assessment shall require such person to pay the civil penalty to "Farm Service Agency, USDA" within 15 days after the mailing date of said notice.

(o) *Floor sweepings.* Any person who markets floor sweepings in excess of allowable floor sweepings shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of Agriculture. The calculated penalty rate shall be rounded to the nearest whole cent. Any floor sweepings on hand more than 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes for the auction season shall be considered marketed. The floor sweepings on hand shall be weighed by the warehouse operator and the weight shall be certified by the warehouse operator, such weighing to be done in the presence of a representative of either the county FSA committee or the State FSA committee. Floor sweepings which are destroyed in the presence of a representative of the county FSA committee, within 30 days (15 days with respect to flue-cured tobacco) after the warehouse closes shall not be considered as marketed when determining the quantity of floor sweepings marketed. If the county FSA committee determines, after the warehouse has been closed for the auction season for more than 30 days (15 days with respect to flue-cured tobacco), that the cumulative quantity of

floor sweepings marketed and considered marketed in the current marketing year is in excess of the allowable floor sweepings, the person responsible for such marketings shall be given notice of the determination and shall be afforded an opportunity to request reconsideration of such determination in accordance with the provisions of part 780 of this chapter. A determination that a civil penalty is due for marketing floor sweepings in excess of the allowable floor sweepings shall not become final and shall not be assessed until such person has been afforded an opportunity for a hearing and such person has exhausted the applicable administrative remedies. The notice of assessment shall require such person to pay the civil penalty to the "Farm Service Agency, USDA" within 15 days after the mailing of the notice.

(p) *Blending tobacco not in the form normally marketed by producers—burley and flue-cured tobacco.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers, and which is blended with tobacco in the form normally marketed by producers, shall not be credited as a purchase to the dealer's or warehouse operator's account by the State FSA committee when reconciling the warehouse operator's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers, and which is blended with other tobacco, shall be deemed to be excess tobacco and penalty shall be due on the pounds of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

(q) *Advances and other cases in which the producer's marketing card is used improperly.* For tobacco of any kind to which this part applies, if tobacco is marketed by a person by using the producer's marketing card, or the tobacco is pledged for a price support loan by using that card, but under the provisions of part 1464 of this title, the producer is deemed to have not been an "eligible producer" with respect to the disposition of that tobacco at the time because of an advance or other pre-auction arrangement, then such disposition of the tobacco shall be considered a false identification of the tobacco and may be considered to be a marketing of excess tobacco. In such cases the person who paid the advance, took possession of the tobacco, or made the agreement with the producer which made the producer no longer an "eligible producer" with respect to the tobacco, shall be jointly and severally liable with the producer for any penalty with respect to such disposition which

is levied against the producer under the provisions of the part. Furthermore, if such disposition is determined to be a marketing of excess tobacco, this person shall be liable for a penalty calculated by using the penalty rate for the tobacco involved multiplied by the pounds of tobacco involved. These remedies shall be in addition to any other remedies which may apply, including but not limited to, any liability for a refund of any price support loan advances which were paid in the name of, or for the account of, the producer of the tobacco.

16. In § 723.411:

a. Redesignate paragraph (b) introductory text as (b)(1) and paragraphs (b)(1) through (7) and (b)(1)(i) through (vii) respectively.

b. Designate the undesignated paragraph following newly redesignated (b)(1)(vii) as (b)(2).

c. Revise newly redesignated paragraphs (b)(1)(vii) and (b)(2).

d. Redesignate paragraph (c) introductory text as (c)(1) and paragraphs (c)(1) through (c)(6) as (c)(1)(i) through (vi) respectively.

e. Designate the undesignated paragraph following newly redesignated (c)(1)(vi) as (c)(2).

f. Revise newly redesignated paragraphs (c)(1)(vi) and (c)(2).

The revisions read as follows:

**§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.**

\* \* \* \* \*

(b)(1) \* \* \*

(vii) *Persons to whom delivered and pounds involved.*

(2) Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and for tobacco purchased at auction or tobacco which was previously reported on Form MQ-79 or MQ-80-C. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c)(1) \* \* \*

(vi) *The person to whom delivered and pounds involved.*

(2) Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ-79 or MQ-80-C.