

Proposed Rules

Federal Register

Vol. 68, No. 8

Monday, January 13, 2003

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

Commodity Credit Corporation

7 CFR Part 1464

RIN: 0560-AG52

Tobacco Marketing Cards, Penalties, Identification of Marketings and Recordkeeping and Reporting Requirements

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) propose to amend regulations in order to provide for a system to electronically report non-auction purchases of burley and flue-cured tobacco at common delivery points known as receiving stations, and for the registration of these receiving stations. These changes are necessary because, with most burley and flue-cured tobacco currently being sold through private contract arrangements rather than the traditional auction system, meeting the current reporting requirements—manual reports on paper—would be extremely burdensome to the buyers of the tobacco. Also, an electronic reporting system will provide FSA with a nearly error-free method of tracking producer sales, because human error will be virtually eliminated. The proposed electronic reporting will permit the quick recording of large quantities of tobacco purchased and the equally quick reporting of these purchases to FSA for purposes of monitoring the flow of marketed tobacco. This proposed reporting system is voluntary and therefore any buyer who might find the system burdensome may comply with the record keeping

and reporting requirements which are currently in place.

DATES: Submit comments about this proposed rule on or before February 12, 2003. Submit comments about the information collection (the paperwork burden) on or before March 14, 2003.

ADDRESSES: Mail or hand deliver public comments about the proposed rule or about the information collection to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750-S, STOP 0514, Washington, DC 20250-0514. Comments may be sent by facsimile to (202) 720-0549. Comments may be sent by e-mail to: tab_comments@wdc.usda.gov.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, (202) 720-2715.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This proposed rule 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 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the cost benefit assessment is included in the Background section explaining the actions this rule will take.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because USDA 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.

Unfunded Mandates

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Programs

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

Environmental Evaluation

FSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), neither an Environmental Impact Statement nor an environmental assessment is required.

Paperwork Reduction Act

Title: 7 CFR 723—Tobacco; 7 CFR 1464—Tobacco.

OMB Control Number: 0560-0182.

Type of Request: Request for approval of a revised information collection and for approval of new information collection activities.

Abstract: USDA will collect information from eligible tobacco producers by ballot referenda in order to determine such issues as whether marketing quotas will be in effect for certain kinds of tobacco or whether producers in certain states will be allowed to lease their tobacco quota across county lines. Such referenda, secured voluntarily from eligible voters, provide, for instance, for the continuation of a marketing quota system and thereby a price support program. Referenda are conducted by the Secretary of Agriculture (the Secretary) in accordance with the Agricultural Adjustment Act of 1938 as amended (1938 Act). The 1938 Act requires:

- A referendum of the farmers who were engaged in the production of the crop of tobacco immediately prior to the referendum in order to determine whether these farmers are in favor of, or opposed to, national marketing quotas for the upcoming 3 marketing years, section 312;

- A referendum of active flue-cured tobacco producers to determine whether they favor or oppose permitting the sale of flue-cured tobacco allotment or quota within their respective States, section 316; and

- A referendum which would permit the Secretary to allow for the lease and

transfer of burley tobacco across county lines within certain States, section 319.

Likewise, USDA will collect such information in the form of reports and record-keeping requirements which are necessary to meet the provisions of the 1938 Act which require that the tobacco marketing quota program resists both an excessive supply and the disorderly marketing of tobacco. The purchase information to be collected from receiving stations is to be used to maintain an orderly flow of tobacco by providing a reconcilable audit trail of tobacco allotted, grown, and then sold.

The information to be collected from receiving stations is the same information that dealers, purchasing tobacco directly from farmers outside the auction warehouse venue, are required to submit according to current regulations. Certain reporting modifications are proposed, however, in order to enable receiving stations to capture and transmit tobacco marketing information required by USDA using computer technology. Marketing data collected from receiving station purchases combined with that of dealer purchases and of auction market sales, provides a view of tobacco production throughout the nation. These total figures are available to Congress, and the USDA, Office of Inspector General (OIG), and National Agricultural Statistical Service (NASS).

Any new information collection requirements that result from this rule will be submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Estimate of Respondent Burden: The estimated average public reporting burden for the collection of information is as follows:

Respondents: Eligible Tobacco Farmers voting in a referendum and receiving station officials.

Estimated Number of Respondents: 239,535.

Estimated Annual Number of Responses: 246,087.

Estimated Total Annual Burden Hours on Respondents: 22,133.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information technology; or (d) ways to minimize the burden of the

information collection on those who are to respond. The information collection package may be obtained from the Tobacco Division, at the address listed below. Comments regarding the information collections may be sent to the Desk Officer for Agriculture, Office of Information and Regulator Affairs, OMB, Washington, DC 20503; and to Tobacco Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250-0514.

Public Participation

Interested persons are invited to participate in this proposed rule making by submitting written data, views, or arguments. Comments relating to the economic effects that might result from adoption of the proposals in this rule are also invited. All comments received on or before the closing date for comments will be considered before action is taken on this proposed rule. The proposals contained in this rule may be changed in light of comments received from the public. All comments should reference the Regulation Identifier Number (RIN) and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Director during regular business hours.

Background

The Agricultural Adjustment Act of 1938 (the 1938 Act) requires farmers growing burley and flue-cured tobacco, in states in which marketing quotas for those kinds of tobacco are in effect, to have a marketing allotment, or quota, system. Annually, the Secretary determines and announces the amount of these kinds of tobacco which may be marketed during the marketing year. The total marketing quota for burley and flue-cured tobaccos for 2001 were 880,900,000 pounds (548,900,000 flue-cured and 332,000,000 burley). These national quotas are then apportioned among the States for allocation to the farms on which the quota is produced, thus establishing individual farm marketing quotas. Further, the Secretary requires collection of penalties upon those pounds of tobacco marketed from any farm in excess of that farm's marketing quota. In order to monitor tobacco marketing, certain procedures have been established to collect the following information for each marketing year:

- The amount of tobacco allotted to each farm for sale; and the amount of tobacco actually sold from each farm. The primary methods of collecting and verifying this data are:

- A marketing card issued for each farm which carries on the reverse side the total number of pounds of tobacco which may be sold from that farm without incurring a penalty; and
- A separate sale bill for each market transaction itemizing the number of pounds purchased.

There are two ways to buy tobacco:

- A buyer goes to a tobacco auction warehouse and competitively bids for displayed tobacco; or
- A buyer goes to a tobacco farm and buys directly from the grower.

At each of these market venues, notations are made on the marketing card to reflect the amount of tobacco sold or purchased in the transaction, and a sale bill is prepared. At the close of the market season, a reconciliation is done for each farm: the totals on a farm's marketing card are compared to the totals of a farm's sale bills.

At an auction warehouse, a tobacco grower presents a stiff, embossed, plastic marketing card which is put into a machine that is provided and serviced by FSA (similar to those used in early credit card days) which imprints farm-specific information necessary to track tobacco marketings directly onto each sales bill. However, a buyer who purchases directly from a grower does not have access to the imprint machine and must complete all farm-specific information by hand. Historically, 97% of tobacco has been sold at auction; and 3% purchased directly from the growers. The 2001 marketing year almost reversed these proportions and thus put an extreme reporting burden on those who purchase directly from the growers.

The Current Reporting Rule

This rule proposes to reduce the burden by allowing reports to be submitted electronically. Current rules do not provide for electronic reporting. Customers who buy large quantities of tobacco at receiving stations may submit farm-specific marketing information electronically under this rule. A marketing card with a thermal imprinted bar code will be provided to growers who will deliver tobacco to receiving station(s). The bar code will provide the same farm-specific information necessary to track tobacco marketings that is currently included in the traditional embossed card. These proposed changes will allow each buyer to develop a tobacco purchasing practice tailored to its needs while allowing FSA to track marketed quota. Further, FSA will benefit by obtaining market information within 48 hours, rather than weeks after the close of a market season as is the case with the old

paper based system. Also, it will reduce the amount of human error inherent in manually entering data. Thus, electronic reporting of tobacco sales will provide a more effective method of monitoring quota and greatly reduce the likelihood of fraud.

Economic Evaluation

Electronic reporting is expected to save approximately \$500,000 annually by eliminating manual processing of reports and the related printing, delivery, handling, and storage expenses. In addition, personnel at the receiving stations may save as much as 20,000 hours of labor annually by not having to manually report each purchase. Thus, this proposed rule will cost buyers substantially less than complying with current requirements for manually reporting tobacco purchases.

Conclusion

Reports from receiving stations will be maintained separately from those of "auction warehouses" and "dealers," in addition to the reporting being done electronically. The proposed reporting changes will benefit both the buyer and FSA:

- Buyers will not have to maintain both a manual and an electronic accounting of the purchase; and
- FSA will receive more timely reports of tobacco marketings and not have to manually input sales information.

The Proposed Rule

For the reasons stated in the preamble, the Farm Service Agency proposes to amend Part 723 and Part 1464 of the Regulations of the Department of Agriculture as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR Part 723 will continue to read as follows:

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

2. Amend § 723.104 by adding the following terms to paragraph (b) in the proper alphabetical order:

§ 723.104 Definitions.

* * * * *

Contract Purchase. A non-auction purchase of tobacco between a buying tobacco company and a producer, who have previously entered into a contract describing conditions of the purchase.

Contract Tobacco. Non-auction tobacco purchased by a tobacco buying

company from a producer in accordance with a contract describing conditions of the purchase.

* * * * *

Floor Scrap. Scrap or leaves of tobacco that accumulate on a receiving station floor before purchase during the regular course of business.

* * * * *

Purchase Date. Date on which the gross amount of the purchase price of first marketing of tobacco is determined.

Purchase Day. Calendar day the tobacco was marketed at a receiving station.

* * * * *

Receiving Station. A buying company-designated place where producers market tobacco under contract with the buying company.

Receiving Station Agent. A representative of the receiving station.

Receiving Station Gross Pounds Purchased. Sum of the weight of all purchased producer tobacco on a receiving station floor.

Receiving Station Official. A buying company designee at the receiving station with legal authority to obligate the buying company and who will be a point of contact concerning the day-to-day operations of the receiving station.

* * * * *

Staging area. An area within the receiving station in which producer tobacco is unloaded and prepared to be marketed.

3. In § 723.305 revise paragraph (a)(1) introductory text to read as follows and remove paragraph (e)(4):

§ 723.305 Issuance of marketing cards.

(a) * * *

(1) A marketing card (MQ–76, MQ–76–C, or MQ–77) shall be issued for the current marketing year for each farm having quota tobacco available for marketing. Cards shall be issued in the name of the farm operator except that:

* * * * *

4. In § 723.309 revise paragraphs (b) and (c), and add paragraph (d) to read as follows:

§ 723.309 Persons to pay penalty.

* * * * *

(b) *Receiving station purchase.* The penalty due on marketings by a producer through a receiving station purchase shall be paid by the receiving station official, who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Non-auction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale or receiving station purchase, shall be paid by the person

acquiring the tobacco, who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(d) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

5. In § 723.310 revise paragraphs (a) and (c) to read as follows:

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State FSA office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Farm Service Agency may be used to pay any penalty, but any such draft, money order, or check shall be received subject to payment at par.

* * * * *

(c) *Receiving station purchases or non-auction sales.* Receiving station purchases or non-auction sales of excess tobacco shall be subject to the full rate of penalty, and such shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

6. In § 723.311 revise paragraphs (b)(3), (d)(2), (d)(2)(i), and (e) and add paragraph (b)(4) to read as follows:

§ 723.311 Lien for penalty; liability of persons who are affiliated with indebted person or who permit the indebted person to use their identification card.

* * * * *

(b) * * *

(3) In the case of an indebted dealer, the debt is entered on the debt record of the State FSA office for the State in which the dealer is required to file reports; and

(4) In the case of an indebted receiving station official, the debt is entered on the debt record of the State FSA office for the State in which the receiving station is located.

* * * * *

(d)(1) * * *

(2) A dealer, warehouse operator or receiving station official who permits an indebted person to use such dealer's or warehouse operator's identification card or receiving station official's identification number to market tobacco shall be liable for the amounts due by the indebted person to the United States

under this part up to the amount of the value of the tobacco so marketed. In addition, unless the Deputy Administrator determines otherwise, any persons or person, who as a warehouse operator, dealer, or receiving station official becomes affiliated with any person who at the time of affiliation is indebted under this part to the United States, shall be liable for the amount of the debt owed to the United States by the person with whom such person or persons become affiliated up to the amount of the value of any tobacco which is marketed by such affiliated warehouse operator, dealer, or receiving station official during the time of the affiliation with the indebted person. Affiliation may include any relationship in which the parties have a common interest in tobacco, or in an enterprise or entity involved in the marketing, processing, or handling of tobacco, or where the parties both hold a position of responsibility or ownership in such an enterprise or entity, or where there is common ownership of a business involved in the transaction, as determined by the Deputy Administrator. A warehouse operator, dealer, or receiving station official may also be considered to be affiliated with an indebted person when such warehouse operator, dealer, or receiving station official is associated with a person who is both:

(i) An employee or otherwise authorized to buy and sell tobacco for such warehouse operator, dealer, or receiving station official; and

(ii) * * *

(e) *TMQ lien notation.* Upon notification that a TMQ lien has been established, the producer marketing card (MQ-76 or MQ-76-C) or dealer identification card (MQ-79-2) shall be returned immediately to the issuing office for recording the TMQ lien. Failure to immediately return the applicable card will result in FSA notifying all registered warehouse operators, dealers, and receiving station officials of the TMQ lien information and of their responsibilities for collecting the TMQ lien. The card shall be promptly returned to the producer or dealer after it is annotated with the TMQ lien.

* * * * *

7. In § 723.313 revise paragraphs (a)(1) introductory text, (a)(2), (a)(3), (b), (e), and (f) to read as follows:

§ 723.313 Identification of marketings.

(a) * * *

(1) *Identification of producer marketings.* Each auction and non-auction marketing of burley or flue-cured tobacco shall be identified by a

valid marketing card, Form MQ-76 or MQ-76-C, issued for the farm. The reverse side of the marketing card shall show in pounds:

* * * * *

(2) *Cross-references of tobacco sale bill number to prior sale bill.* Each warehouse operator and receiving station official, for each lot of tobacco weighed in on the warehouse floor or receiving station floor for sale the same day, shall cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouse operator or receiving station official in the "Remarks" space on the tobacco sale bill, on all copies, at the time such tobacco is weighed at the warehouse.

(3) *Recording producer sale.* Each producer sale at auction shall be recorded on Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at a non-auction receiving station shall be electronically recorded in a format and transmitted according to standards issued by the Deputy Administrator. Receiving station officials may request approval from the Deputy Administrator to manually record on Form MQ-72-C, Report of Receiving Station Purchase, for producer sales. Dealer purchases shall be executed on Form MQ-72-2 and the data shall be entered on Form MQ-76-C. For producer sales at auction, Form MQ-72-1 and Form MQ-76 shall be executed only by the FSA marketing recorder. For producer sales at a receiving station, Form MQ-72-C and Form MQ-76-C shall be executed only by the FSA marketing recorder.

(4) * * *

(b) *Dark air-cured, fire-cured, or Virginia sun-cured tobacco.* With respect to dark air-cured, fire-cured, or Virginia sun-cured tobacco:

(1) *Identification of producer marketings.* Each marketing of such kind of tobacco from a farm shall be identified by a valid marketing card issued for the farm for the respective kind of a tobacco, either an MQ-76, MQ-76-C or MQ-77 (including sale memo). With respect to each non-auction sale from:

(i) A within quota farm a check mark shall be entered on the inside of MQ-76, and

(ii) An excess farm for which an MQ-77 is issued, an executed bill of nonauction sale shall be prepared, and such bill of nonauction sale shall be delivered to a marketing recorder or other person who is authorized to issue sale memos.

(2) *Other persons authorized to execute MQ-76, MQ-76-C or MQ-77 (including sale memo).*

(i) A warehouse operator who has been authorized during the current marketing year on MQ-78, Tobacco Warehouse Organization, may record a sale on MQ-76 or MQ-77 (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the warehouse when the marketing card is presented.

(ii) A receiving station official who has been so authorized by the Deputy Administrator during the current marketing year may record a sale on MQ-76-C (including the issuance of a sale memo) to identify a sale for a farm if a marketing recorder is not available at the receiving station when the marketing card is presented.

(iii) Any warehouse operator, receiving station official or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ-78 or MQ-78-C, may for each purchase of scrap tobacco execute an MQ-76, MQ-76-C or MQ-77 (including a sale memo if the bill of non-auction sale has been executed).

(3) *Verification of sales processed during the absence of marketing recorder.* Any person authorized on MQ-78 or MQ-78-C by the Deputy Administrator to act as a marketing recorder shall promptly present to a marketing recorder for verification each warehouse bill (floor sheet) or receiving station sales bill processed and identified by an MQ-76, MQ-76-C, or MQ-77 (including any sale memos) executed in the absence of a marketing recorder.

(4) *Authorization to act as marketing recorder.* The authorization on MQ-78 or MQ-78-C for persons may be granted by the Deputy Administrator or may be withdrawn by the Deputy Administrator if such action is determined to be necessary to properly enforce the regulations in this part.

(e) *Verification of penalties by warehouse operators, receiving station officials, or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator, receiving station official, or dealer to determine whether the amount of the penalty shown to be due has been correctly computed. Such warehouse operator or receiving station official shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator or receiving station official on the check register or check stub for the check written covering the sale of tobacco by a producer.

* * * * *

8. In § 723.401 revise the section title, re-designate paragraphs (b) through (e) as paragraphs (c) through (f), and add a new paragraph (b) to read as follows:

§ 723.401 Registration of burley and flue-cured tobacco warehouse operators, receiving station officials and dealers.

* * * * *

(b) *Receiving station registration.* For burley and flue-cured tobacco, any receiving station official purchasing either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture, and such registration shall be filed with the Director, Tobacco and Peanuts Division.

* * * * *

9. Revise § 723.402 to read as follows:

§ 723.402 Warehouse or receiving station authorized to retain producer marketing cards between sales.

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of a farmer's tobacco to the warehouse or receiving station, the marketing card, with the permission of the producer, may be retained at an eligible warehouse or receiving station between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse or receiving station eligible to retain producer marketing cards between sales.* A warehouse or receiving station shall be eligible to retain producer marketing cards between sales if the operator or official thereof shall:

(1) Execute and file on a form approved by FSA a written request with the State FSA committee (or county FSA committee if designated by the State FSA committee);

(2) Agree to be responsible to FSA for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse or receiving station was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco, for any over marketing resulting from errors made at the warehouse or receiving station in entering "balance after sale" pounds on the producer's marketing

card or failure to deduct pounds sold on producer's marketing card;

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card;

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card; or

(iv) Any burley or flue-cured tobacco marketed at the warehouse or receiving station in excess of 103 percent of quota as shown on the producer's marketing card;

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse or receiving station to facilitate the scheduling of farmers' tobacco. Such journals shall be maintained for the length of time and under the conditions required for other warehouse or receiving station records. The journal shall show for each card retained the:

(i) Name of the operator;

(ii) Serial number of farm (including state and county codes and farm number);

(iii) Marketing card number, if applicable;

(iv) Date marketing card was obtained from producer; and

(v) Date marketing card was returned to producer;

(4) Agree to return producer marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse or receiving station for the season; and

(5) Agree that this authorization may be terminated by FSA for failure to comply with provisions of this agreement.

(c) *Penalties are considered to be the responsibility of warehouse operators and receiving station officials.*

Notwithstanding any other provision of this part, a warehouse operator or receiving station official who executes and files a written request with the Director, Tobacco and Peanuts Division for authorization to retain producers' marketing cards at the warehouse or receiving station, with producer's permission, shall be responsible to FSA for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse or receiving station was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco, for any over marketing resulting from errors made at the warehouse or receiving station in entering "balance

after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator or receiving station official shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with § 723.409(e) of this part;

(2) Tobacco falsely identified for marketing by use of the producer's marketing card;

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card; or

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse or receiving station in excess of 103 percent of quota as shown on the producer's marketing card.

10. In § 723.403 revise the section title, remove paragraph (h), re-designate paragraphs (i) through (v) as paragraphs (h) through (u), and revise paragraphs (d)(1)(ii), (d)(1)(iv), (e)(2), (e)(10)(iii), and newly redesignated (l) to read as follows:

§ 723.403 Auction warehouse operators and receiving station officials; records and reports.

* * * * *

(d)(1) * * *

(ii) For flue-cured and burley tobacco, registration number assigned the warehouse by the Department;

(iii) * * *

(iv) For flue-cured and burley tobacco, the identification of other producers having an interest in the tobacco;

* * * * *

(e) * * *

(2) *Recording farm identification.* For burley and flue-cured tobacco, at the time the tobacco is weighed in, the warehouse operator or receiving station official shall record on the tobacco sale bill, the State and county codes and the farm serial number from the marketing card (MQ-76 or MQ-76-C) issued for the farm from which the tobacco is to be marketed.

* * * * *

(10) * * *

(iii) *Non-auction purchase by a warehouse operator.* The warehouse operator shall deduct, from the balance of the "103 percent of quota" entry on the marketing card (MQ-76-C), the pounds of tobacco purchased as a non-auction purchase. In addition, each warehouse operator shall record on Form MQ-79 and on Form MQ-72-2, Report of Tobacco Non-auction Purchase, each non-auction purchase of tobacco made by such warehouse operator. The data to be reported on

Form MQ-72-2 is set forth in Sec. 723.404 of this part.

* * * * *

(l) *Bill-out invoice.* For flue-cured and burley tobacco, when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number on which the lot of tobacco was recorded on the sale bill.

* * * * *

11. In § 723.404 revise the section title and paragraph (c)(2)(iii) to read as follows:

§ 723.404 Dealer's and receiving station's records and reports, excluding cigar tobacco buyers.

* * * * *

- (c) * * *
- (2) * * *

(iii) For non-auction purchases which are made from producer by the dealer or the receiving station official, the dealer or receiving station official shall remit the producer's and the dealer's or receiving station's share of the No Net Cost Assessment as provided in part 1464 of this title. The dealer may deduct the producer's share of the assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card; a marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost Assessment which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

12. In § 723.405 revise the section title and add a new paragraph (c) to read as follows:

§ 723.405 Dealers exempt from regular records and reports on MQ-79; season report for dealers; and receiving station resale records and reports exempt from daily reporting.

* * * * *

(c) Any receiving station who acquires tobacco in the form in which tobacco ordinarily is sold by producers and resells such tobacco shall be subject to the requirements of this part.

(1) This paragraph is applicable only to burley and flue-cured tobacco. Each receiving station official shall make a report to the Director, TPD not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing:

- (i) The receiving station's USDA identification number;
- (ii) Source;

(iii) Dealer USDA identification number; and

(iv) Pounds of all tobacco, in the form normally marketed by producers, purchased or sold through resale.

(2) For resale purchases for each receiving station, the report shall include the following information:

- (i) USDA registration number (receiving station code),
- (ii) Name and address of receiving station,
- (iii) Gross pounds purchased,
- (iv) Name and address of seller, and
- (v) Seller's number (dealer's registration number, receiving station code, or farm number, including State and county code).

(3) For resale sales for each receiving station, the report shall include the following information:

- (i) USDA registration number (receiving station code),
- (ii) Name and address of receiving station,
- (iii) Gross pounds sold,
- (iv) Name and address of purchaser, and
- (v) Purchaser's number (dealer registration number, receiving station code, or farm number, including State and county code).

13. In § 723.408 revise paragraph (d) (2)(i)(B) to read as follows:

§ 723.408 Producer's records and reports.

* * * * *

(d) * * *

(B) MQ-76 or MQ-76-C, to the accuracy of the Record of Sales recorded on the card.

* * * * *

14. In § 723.409 revise the section title and paragraphs (b) introductory text and (b)(4) to read as follows:

§ 723.409 Producer violations, penalties, false identification collections and remittances by dealers, buyers, handlers, warehouses, receiving stations and other parties; related issues.

* * * * *

(b) *Special provisions for tobacco buyers, dealers, handlers, warehouse operators, receiving station officials and others who acquire, handle, or facilitate the marketing of tobacco.*

Notwithstanding the provisions of paragraph (a) of this section and other provisions of this part:

* * * * *

(4) If a penalty is collected and remitted by a buyer, dealer, receiving station official 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 who collected the penalty and

the person who sold the tobacco involved to show to the satisfaction of FSA that such penalty is not due in the full amount collected.

* * * * *

15. Revise § 723.410 to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, receiving station officials, dealers, buyers and others excluding the producer.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, any marketing of tobacco under one of the following conditions shall be considered, subject to rebuttal, to be a marketing of excess tobacco:

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless, prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ-76 or MQ-77, including sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ-82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

(c) *Burley or flue-cured tobacco non-auction sale.* For burley and flue-cured tobacco, any non auction marketing of tobacco which:

(1) Is not identified by a valid marketing card (MQ-76-C) and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card, and MQ-72-2, Report of Tobacco Non-auction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2, Report of Tobacco Non-auction Purchase on or before the end of the calendar week (which includes the first

sale day of the local auction markets). The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) *Non auction sale, except burley, flue-cured, and cigar tobacco.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any Non-auction sale of tobacco which:

(1) Is not identified by an MQ-76 or MQ-77 (including a valid sale memo); and

(2) Is not recorded on MQ-79, Dealer's Record, on or before the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ-76 or MQ-77 (including a valid sale memo), and recorded on MQ-79 on or before the end of the calendar week (which includes the first day of the local auction markets). The penalty thereon shall be paid by the purchaser of such tobacco.

(e) *Burley and flue-cured tobacco sold at a receiving station.* For burley and flue-cured tobacco, any receiving station marketing of tobacco which:

(1) Is not identified by a valid marketing card (MQ-76-C) and recorded at the time of marketing on MQ-80-C, MQ-76-C and MQ-72-C, on or before the day of the purchase. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-80-C unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(f) *Failure to obtain an MQ-76 and sale memo, and failure to record a sale on MQ-76-cigar tobacco.* Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm; or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date. The penalty thereon shall be paid by the buyer who fails to make the record.

(g) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, acceptable evidence shall not be based on the warehouse

operator's proof of purchases of tobacco that is not in the form normally marketed by producers. Such evidence is not acceptable even though it may indicate that the resales exceed prior leaf account purchases because of the blending of tobacco with the warehouse operator's prior purchases.

(h) *Dealer tobacco—burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on MQ-79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco, shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office.

(i) *Receiving Station Tobacco—burley and flue-cured.* The burley and flue-cured tobacco resales by a receiving station which are in excess of such buying company's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time of the marketing which results in the excess. If the resale which results in a penalty due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office, unless such buying company furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State FSA committee shall not be based on the receiving station's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence may indicate that resales exceed prior purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the receiving station official's prior purchases of tobacco. Multiple receiving stations purchasing as a single buying company may transfer pounds purchased at individual receiving stations that will be resold, to the buying company's dealer record for

resale. A receiving station registration number cannot be used to resell tobacco at auction.

(j) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouse operator, receiving station official or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator, receiving station official or dealer furnishes proof of such resale which is acceptable to the Director, TPD. The penalty thereon shall be paid by the warehouse operator, receiving station official or dealer who fails to make the report as required.

(k) *Marketing falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(l) *Carryover tobacco, except cigar tobacco.* Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators, § 723.417 of this part for receiving station officials, and § 723.404 of this part for dealers shall, be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator or receiving station official furnishes proof acceptable to the State FSA committee, and unless the dealer furnishes proof acceptable to the State FSA executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator, receiving station official or dealer.

(m) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ-79 CF&B, Buyer's Record Book, by the 10th day of the month following the month during which the sale occurred, shall be presumed to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(n) *Floor scrap.* Any receiving station official who markets floor scrap 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 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.

Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

17. Revise § 723.412 to read as follows:

§ 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, receiving station official, dealer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco and who is engaged in more than one such business, shall keep such records as will enable such person to make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

18. In § 723.414 revise the section title and paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (b), and (c) to read as follows:

§ 723.414 Failure to keep records and make reports or making false reports or records.

(a) * * *

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer, receiving station official, or warehouse operator to obtain either of the following shall constitute a failure to make a report:

(i) Producer's marketing card, MQ-76, MQ-76-C, or MQ-77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ-79-2, to cover a resale of tobacco.

(b) *False representation—warehouse operators, receiving station officials, dealers, and processors.* The monetary penalties described in this part are in addition to penalties prescribed by other criminal statutes including 18 U.S.C. 231, which provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "103 percent of quota poundage" on marketing cards.

(c) *Misrepresentation and scheme or device.* A warehouse operator, receiving station official, or dealer who is determined by FSA to have knowingly done one or more of the following, shall pay a marketing quota penalty as prescribed in this part:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program;

(2) Made any fraudulent representation;

(3) Misused a MQ-76, MQ-76-C or MQ-79-2; or

(4) Sold excess tobacco.

19. Add § 723.417 to read as follows:

§ 723.417 Receiving station official's records and reports.

(a) *Report on Form MQ-78-C, Tobacco Receiving Station Registration.* Each receiving station official shall annually, prior to the beginning of the marketing year, furnish the Director, TPD an executed Form MQ-78-C showing:

(1) Form of business organization, buying company name, street address, including city, state and zip code;

(2) Names, street addresses and phone numbers of receiving station official and bookkeeper;

(3) Names, physical addresses and phone numbers of receiving station officials having financial interests in other dealer operations, auction warehouses and other receiving stations; and

(4) Names, addresses and phone numbers of custodians of receiving station records and their locations.

(b) *Separate records and reports.* Each receiving station official shall keep the records and make the reports separately for each quota kind of tobacco as provided in this section.

(c) *Record of marketing.* Each receiving station official shall:

(1) For non-auction receiving station purchases, keep such records as will enable the receiving station official as applicable, to furnish the following information to FSA with respect to each purchase of tobacco made at such receiving station:

(i) The name of the operator of the farm on which the tobacco was produced, including farm serial number, state and county code and the name of the producer, in the case of a sale by a producer;

(ii) Date of purchase;

(iii) Number of pounds purchased; and

(iv) Amount of any penalty.

(2) Reserved.

(d) *Tobacco sale bill for burley and flue-cured tobacco.*

(1) Each receiving station shall use tobacco sale bills furnished at the receiving station's expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Registration number assigned to the receiving station by the Department;

(iii) Name and street address of receiving station where purchase occurred;

(iv) The identification of other producers having an interest in the tobacco;

(v) Date of purchase;

(vi) Number of pounds in each lot;

(vii) Name and address of producer;

(viii) Farm number (including State and county codes) for producer tobacco;

(ix) Poundage balance before purchase for producer tobacco based on 103 percent of farm quota;

(x) Gross number of pounds purchased and balance available for sale after purchase;

(xi) Sale price for each lot and gross purchase price for all lots sold;

(xii) Marketing quota penalty collected; and

(xiii) Amount withheld from purchase price to cover liens due the United States.

(2) At the end of each purchase day, the tobacco sales bills shall be sorted and filed in numerical order by purchase date, and lot tickets shall be filed in an orderly manner by sale dates and by numerical order.

(e) *Identification of tobacco for marketing.*

(1) *Marketing card.* Each marketing of tobacco from a farm in any State for which a farm marketing quota has been established for any kind of tobacco shall be identified by a marketing card (MQ-76-C) issued for the farm on which such tobacco was produced (unless prior to the marketing of such tobacco an Agricultural Marketing Service inspection certification is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

(2) *Recording farm identification.* For burley and flue-cured tobacco, at the time the tobacco is staged to be weighed, the receiving station official shall affix a lot ticket containing the operator's name, address, the farm serial number (including the state and county codes) from the marketing card (MQ-76-C) for the farm from which the tobacco is marketed and a unique lot ticket number assigned by the receiving station to the lot of tobacco, provided:

(i) The receiving station official, in order to facilitate scheduling, may stage producer tobacco one purchase day prior to purchase; and

(ii) The receiving station official shall record the unique lot ticket number, the farm serial number (including state and county codes), and the weight of tobacco on the sales bill for the farm at the time of weighing. The price and grade shall be entered at the time of purchase.

(3) *Return of marketing card.* For tobacco that is to be purchased by the receiving station, the receiving station

official shall retain the marketing card (MQ-76-C) until the producer has been paid and the FSA marketing recorder has recorded the sale on the reverse side of the MQ-76-C or the tobacco is removed from the receiving station by the producer, at which time the marketing card (MQ-76-C) shall be returned to the producer. In any case where a producer's marketing card (MQ-76-C) is found in the possession of a receiving station official, and there is no producer from the farm for which the card is issued with tobacco on the floor for sale, or with tobacco for which settlement is not yet complete, such card will be picked up by an FSA representative and returned to the producer. The receiving station official shall be responsible for the safekeeping and proper use of the marketing card during such person's retention of the marketing card.

(4) *Copy of sale bill.* The receiving station official shall furnish to the producer a copy of the tobacco sale bill for any tobacco purchased.

(5) *Lot ticket.* At the time the tobacco is weighed for marketing, the receiving station official shall record the weight of the lot of tobacco on both the tobacco sale bill and the lot ticket. The lot ticket number shall be recorded on the sale bill.

(f) *Non-auction sale to a receiving station.* If the total pounds purchased by a receiving station exceed the balance of the "103 percent of quota" on the farm marketing card, the sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(g) *Payee name to be shown on receiving station check.* Any receiving station which issues a check to cover the purchase of tobacco, shall issue such check only in the name of the payee. A receiving station check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer."

(h) *Receiving station data for burley and flue-cured tobacco.*

(1) Each official of a burley or flue-cured receiving station shall prepare, at the end of each sale day, an MQ-80-C, Daily Receiving Station Sales Summary, which is to include the following information:

- (i) Total pounds purchased,
- (ii) Total gross dollar amount of purchases,
- (iii) Total penalty pounds,
- (iv) Total amount of penalty,
- (v) The applicable farm serial number (including state and county codes) for penalty purchases,
- (vi) Beginning sale's bill number (numbers must be sequential during the

season and all sale bill numbers must be accounted for),

- (vii) Ending sale bill number, and
- (viii) Daily weights of producer floor scrap.

(2) As to the information required to be entered on MQ-80-C, Daily Receiving Station Sales Summary, by the marketing recorder, the receiving station official shall keep and make available such records as will enable the marketing recorder to enter thereon the total number of Forms MQ-72-C (manual and electronic) for the purchase day and the sum of the pounds purchased.

(3) At the end of the season, each receiving station official shall:

- (i) Report on the final MQ-80-C for the season the quantity of floor scrap on hand, if any, and its location;
- (ii) Producer floor scrap tobacco shall be destroyed within five days of the last purchase day and the destruction thereof witnessed by an FSA representative;
- (iii) Permit its inspection by an FSA representative; and
- (iv) Ship all purchased tobacco within five days of the last purchase day of the marketing season.

(i) *Ship-out record.* For flue-cured and burley tobacco, when the tobacco has been shipped from the receiving station to the processor, the ship-out bill of lading shall include the receiving station registration number, name and address, bill of lading number (must be sequential starting with the first ship-out record), lot ticket numbers for tobacco being shipped, date of shipment and delivery point name and address, and any other information deemed necessary by the Deputy Administrator.

(j) *Producer rejections.* When a producer rejects the sale of a lot of tobacco, and the tobacco has been authorized for payment and the sale bill presented to the producer for approval, the receiving station official shall not change the MQ-76-C or MQ-80-C on which the sale was reported.

(k) A remittance for all penalties shown by the entries on Form MQ-80-C shall be remitted to the marketing recorder on the date the penalty was assessed.

(l) *Producer tobacco.* Producer tobacco (first sale) in possession of a receiving station official which has not previously been identified as a purchase shall be recorded and reported on MQ-80-C as excess tobacco purchased by the receiving station. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco.

* * * * *

7 CFR Chapter XIV

20. Part 1464 is amended as follows:

PART 1464—TOBACCO

21. The authority citation for 7 CFR 1464 will continue to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445-1 and 1445-2; 15 U.S.C. 714b, 714c.

22. In § 1464.10 revise paragraphs (i)(1)(i), (i)(2), (i)(3)(i), (i)(5) and (j)(1) to read as follows:

§ 1464.10 No net cost tobacco fund or account.

* * * * *

(i) * * *

(1) * * *

(i) From any dealer, warehouse operator, or receiving station official who acquired the tobacco involved from the producer; or

* * * * *

(2) A dealer, warehouse operator, or receiving station official may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) * * *

(i) From the dealer, warehouse operator, or receiving station official who acquired the tobacco involved from the producer; or

* * * * *

(5) All dealers, warehouse operators, or receiving station officials who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in paragraphs (i)(5)(i) and (ii).

* * * * *

(j) * * *

(1) If any dealer, warehouse operator, or receiving station official fails to collect and remit any contributions or assessments according to the provisions of this section, such person shall be liable, in addition to that amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year, on the quantity of tobacco as to which failure occurs. Such a penalty shall only be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessments are collected and remitted

not later than 15 days after the date required by this part.

* * * * *

Signed at Washington, DC, on December 31, 2002.

Teresa C. Lasseter,

Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03-368 Filed 1-10-03; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-311-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2B19 (Regional Jet series 100) series airplanes, that currently requires repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. This action would add requirements for modifying the brake control valve assembly, and subsequent repetitive lubrications of the valve. Accomplishment of the modification would terminate the repetitive lubrications of the sliding shaft of the input plunger required by the existing AD. This proposal is prompted by reports of temporary loss of braking action upon landing. The actions specified by the proposed AD are intended to prevent temporary loss of braking action due to the freezing of moisture of the input plunger of the brake control valve during steep descent.

DATES: Comments must be received by February 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000NM-311-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal

holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-311-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York. **FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7505; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-311-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-311-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On January 12, 1994, the FAA issued AD 93-21-04, amendment 39-8801 (59 FR 2952, January 20, 1994), applicable to certain Bombardier Model CL-600-2B19 (Regional Jet series 100) series airplanes, to require repetitive lubrication with grease of the sliding shaft of the input plunger of the brake control valve assembly. That action was prompted by reports of temporary loss of braking action upon landing. The requirements of that AD are intended to prevent temporary loss of braking action due to the freezing of moisture on the input plunger of the brake control valve during steep descent.

Action Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, issued Canadian airworthiness directive CF-93-26R2, dated January 18, 1994, in order to assure the continued airworthiness of these airplanes in Canada. The Canadian airworthiness directive requires, among other things, modifying the brake control valve assembly by installing new greasing provisions, and subsequent repetitive lubrications of the valve using the newly installed grease fittings.

Bombardier has issued Service Bulletin S.B. 601R-32-017, dated November 9, 1993. The service bulletin describes procedures for modification of the brake control valve assembly, and subsequent repetitive lubrications of the valve. Accomplishment of the modification eliminates the need for the existing repetitive lubrications of the sliding shaft of the input plunger required by AD 93-21-04. The modification includes installing a new crossbeam assembly into the dual-brake