

county Agricultural Stabilization and Conservation committees ("State and county FSA committees").

(b) State and county FSA committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State FSA committee shall take any action required by these regulations which has not been taken by the county FSA committee. The State FSA committee shall also:

(1) Correct, or require a county FSA committee to correct any action taken by such county FSA committee which is not in accordance with the regulations of this part, or

(2) Require a county FSA committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county FSA committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county FSA committee. Further, the Administrator or the Administrator's designee may modify any deadline or other provisions of this part to the extent that doing so is determined by such person to be appropriate and not inconsistent with the purposes of the program administered under this part.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 9128, Feb. 24, 1998]

#### § 723.104 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration for all kinds of tobacco except as may otherwise be indicated. The definitions in and provisions of parts 718 and 720 of this chapter are hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

*Act.* The Agricultural Adjustment Act of 1938, as amended.

*Active burley and flue-cured tobacco producer.* (1) Any person who shared in the risk of producing a crop of burley or flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a burley or flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator.

*Allowable floor sweepings.* The quantity of floor sweepings determined by multiplying 0.0024 times the total producer first sales of the respective kind of tobacco at auction for the season for the warehouse involved.

*Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business including sale of all lots of tobacco at public auction in sequence at a given time.

*Base Period.* The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established. For burley tobacco marketing quotas established effective for the 1994 and subsequent crop years, the base period shall be the 3 calendar years immediately preceding the year for which farm marketing quotas are currently being established. For all other kinds of tobacco the five year base period shall remain in effect.

*Buyer.* A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

*Buyers corrections account.* The warehouse account of tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouse operator and supported by an adjustment invoice from the buyer. This account shall include the pounds deducted resulting from returned lots, short lots, and short weights, and pounds added resulting from long lots and long weights, which buyers debit or credit to the warehouse operator and support with adjustment invoices.

*Carryover tobacco.* Tobacco produced prior to the current calendar year which has not been marketed or otherwise disposed of prior to the beginning of the marketing year for the current crop.

*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.

*Considered planted acreage.* An acreage that is used for determining an old farm's history acreage for a kind of tobacco when the acreage planted on the farm to the kind of tobacco in the current year is less than the farm acreage allotment established for such farm in the current year. With respect to:

(1) *Flue-cured tobacco.* If flue-cured tobacco was marketed from the farm during the current year, the considered planted acreage is an acreage determined by subtracting the planted acres from the farm acreage allotment. If flue-cured tobacco was not marketed from the farm in the current year, the considered planted acreage is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

- (i) That could not be planted to flue-cured tobacco because of a natural disaster,
- (ii) Computed for pounds leased from the farm,
- (iii) In the eminent domain pool,
- (iv) Reduced for overmarketing,
- (v) Reduced for violation of marketing quota regulations, and
- (vi) Converted from the production of flue-cured tobacco during the respective crop year in accordance with part 704 of this chapter.

(2) *A kind of tobacco other than burley or flue-cured tobacco.* The considered planted acreage for a farm is an acreage, not to exceed the farm's acreage allotment, that is equal to the sum of the acreage:

- (i) That could not be planted to the kind of tobacco because of a natural disaster.
- (ii) Temporarily transferred from the farm.
- (iii) Temporarily released.
- (iv) Converted from production of the kind of tobacco in accordance with part 704 of this chapter.

(v) In the eminent domain pool.

(vi) Reduced for violation of the regulations set forth in this part.

*Container.* A package in which tobacco is marketed, packed, and stored.

*Current crop.* The crop planted in the current year.

*Current year.* The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

*Damaged tobacco.* Any tobacco that has suffered a loss of value due to deterioration resulting from a cause such as rot, separation of leaves from stems, fire, smoke, water, or other conditions that would cause such tobacco to be distinguishably different from that normally marketed in trade channels.

*Dealer.* A person who engages to any extent in acquiring or marketing tobacco in the form normally marketed by producers.

*Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

*Effective farm acreage allotment.* The effective farm acreage allotment for flue-cured tobacco is the allotment determined under § 723.205 of this part.

*Effective farm marketing quota.* The effective farm marketing quota is the current year farm marketing quota plus or minus any temporary quota adjustments.

*Excess tobacco for a farm.* (1) For burley and flue-cured tobacco. The quantity of tobacco marketed above 103 percent of the effective farm marketing quota.

(2) *For kinds of tobacco other than burley or flue-cured.* That quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm times the number of acres harvested in excess of the farm acreage allotment, plus any carryover excess tobacco.

*Experimental tobacco.* Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

*False identification.* False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm when, in fact, it was produced on another farm; or

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm; or

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

*Family farm corporation.* A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (1)(ii)(B) and;

(2) One or more of the individuals specified in paragraph (1) participates in the direct management of the day to day operations of the corporation.

*Farm acreage allotment.* For flue-cured tobacco, the allotment established in accordance with § 723.205 of this chapter.

*Farm marketing quota.* (1) *For burley tobacco, old farms.* The pounds determined by multiplying the preliminary farm marketing quota by the national factor and adjusting the result for any permanent quota adjustment.

(2) *For burley tobacco, new farms.* The pounds for the farm determined by the county FSA committee with the approval of the State FSA committee.

(3) *For flue-cured tobacco.* The pounds determined by multiplying the farm acreage allotment by the farm yield.

(4) *For kinds of tobacco other than burley or flue-cured.* The actual production of tobacco on the farm acreage allotment, which shall be the average yield per acre for the entire acreage of to-

bacco harvested on the farm times the farm acreage allotment.

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

*Farm yield.* The yield determined as provided in § 723.204 of this part.

*Floor sweepings.* The scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business.

*FSA.* The Farm Service Agency.

*Green weight.* The weight of tobacco which is in the form normally marketed by farmers prior to being redried, or processed.

*Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouse operator, including floor sweepings purchased from another warehouse operator or dealer, as adjusted by the debits and credits to the buyers correction account. Such quantity shall not include tobacco in the form not normally marketed by producers, including tobacco pickings, and floor sweepings which accumulate on the warehouse floor.

*Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meaning to the term "market."

*Marketing recorder.* Any employee of the U.S. Department of Agriculture, or any employee of an Farm Service Agency county (FSA) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketing of tobacco.

*Marketing year.* (1) For flue-cured tobacco, the period beginning July 1 of the current year and ending June 30 of the following year.

(2) For kinds of tobacco other than flue cured. The period beginning October 1 of the current year and ending September 30 of the following year.

*New farm.* A farm for which an acreage allotment or marketing quota is established for the current year from the national reserve that is set aside for such purpose from the national acreage allotment or marketing quota established for the kind of tobacco.

*Nonauction sale.* Any marketing of tobacco other than at an auction sale.

*Old farm.* (1) *For burley tobacco.* A farm which had burley tobacco planted or considered planted in one or more years of the base period.

(2) *For tobacco other than burley.* A farm on which there is tobacco history acreage in one or more years of the base period.

*Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

*Planted or considered planted credit.* For burley tobacco, credit that is assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm.

(2) Burley tobacco could not be planted because of a natural disaster.

(3) Quota is:

(i) Leased and transferred from the farm, or

(ii) In the eminent domain pool.

(4) A restrictive lease on federally owned land is in effect prohibiting tobacco production.

(5) Effective quota is zero because of overmarketings or a violation of regulations, or

(6) Acreage is converted from production of burley tobacco in accordance with part 704 of this chapter.

*Pound.* The amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is normally marketed by a producer, would equal 1 pound standard weight.

*Preceding year.* The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

*Preliminary farm marketing quota.* For burley tobacco, the farm marketing quota for the preceding year.

*Preliminary farm yield.* For flue-cured tobacco, the yield determined for a farm as provided in § 723.203 of this part.

*Processed, Processing.* A method of preparing green weight tobacco for storage in which the tobacco may be redried, stemmed, tipped or threshed and the resulting product packed in a container.

*Production record.* A record prepared by a processor to account for the processing of tobacco.

*Quota adjustments.* For burley tobacco:

(1) *Temporary.* Adjustments for:

(i) Effective undermarketings,

(ii) Overmarketings from any prior year,

(iii) Reapportioned quota from quota released from farms in the eminent domain pool,

(iv) Quota transferred by lease or by owner,

(v) Pounds in violation of the regulations for a prior year, and

(vi) Pounds reduced from the burley tobacco quota during the current year in accordance with part 704 of this chapter.

(2) *Permanent.* Adjustments for:

(i) Old farm adjustment from reserve,

(ii) Pounds of quota transferred to the farm from the eminent domain pool,

(iii) Pounds of quota transferred to or from the farm by sale,

(iv) Pounds of quota transferred to the farm from the forfeiture pool, or

(v) Pounds of forfeited quota.

*Resale.* The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

*Sale.* The first marketing of tobacco on which the gross amount of the sale price therefore has been or could be readily determined.

*Sale date.* The date on which the gross amount of the sale price of tobacco is determined.

*Sale day.* The period at the end of which the warehouse operator bills to buyers the tobacco purchased by them during such period.

*Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

*Shared in the risk of production.* For burley or flue-cured tobacco, involvement in the production of the respective kind of tobacco by a person who:

(1) Invests in the production of a crop of the respective kind of tobacco in an amount which is not less than 20 percent of the proceeds of the sale of the crop;

(2) Depends solely on a share of the proceeds from the marketing of the tobacco for the return on the investment;

(3) Waits until such crop of tobacco is marketed to receive any return on the investment; and

(4) Maintains records, for a period of 3 years after the end of the marketing year in which the tobacco is sold, which may be used to verify that the provisions of this definition have been met.

*Strip, scrap, stem.* Types of products resulting from processing of tobacco.

*Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

*Tillable cropland.* With respect to flue-cured tobacco only, cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for non-agricultural uses) which the county FSA committee determines can be planted to crops without unusual preparation or cultivation.

*Tobacco.* Kinds of tobacco that are subject to marketing quotas as follows: Burley tobacco, (type 31); Flue-cured tobacco, (types 11, 12, 13, and 14); Fire-cured tobacco (types 21, 22, and 23); Dark air-cured tobacco (types 35 and 36); Virginia sun-cured tobacco (type 37); Cigar filler (type 46); and Cigar-filler and binder tobacco (types 42, 43, 44, 54, and 55) as classified by the Agricultural Marketing Service at part 30 of this title.

*Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

*Tobacco in the form not normally marketed by producers.* Tobacco leaves, stems, strips, scrap or parts thereof that are the result of green tobacco having been redried, stemmed, tipped, threshed or otherwise processed.

*Tobacco pickings.* The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality shall be considered to be tobacco in the form not normally marketed by producers.

*Trucker.* A person who trucks, or who otherwise hauls tobacco for a producer, or for any other person.

*Undermarketings.* For burley or flue-cured tobacco, the actual undermarketings are the pounds by which the effective farm marketing quota is more than the pounds of the respective kind of tobacco marketed, and the effective undermarketings are the smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds of quota temporarily transferred to the farm for the previous year. However, with respect to the 1989 crop, actual undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds of tobacco marketed and number of pounds for which a disaster payment was made on the 1989 crop of tobacco under part 1477 of this title.

*Warehouse operator.* A person who engages in the business of conducting a sale of tobacco at public auction.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991; 57 FR 43581, Sept. 21, 1992; 63 FR 11582, Mar. 10, 1998]

EDITORIAL NOTE: At 65 FR 7953, § 723.104(h) was amended by removing the definition of *Tillable cropland*. However, there is no paragraph (h) in § 723.104.

#### **§ 723.105 Extent of determinations, computations, and rule for rounding fractions.**

(a) *General.* All rounding herein shall be in accordance with the provisions of part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of acres.

(c) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be determined in tenths of a percent.

(d) *Converted rate of penalty.* For tobacco other than burley or flue-cured, the amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be determined in tenths of a cent.

(e) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.