

§ 723.303

if, before the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, the director of such publicly owned agricultural experimental station furnishes a report, to the State Executive Director for the State in which the farm is located, that includes the following information:

(a) Name and address of the publicly owned agricultural experiment station.

(b) Name of the owner, and name of the operator if different from the owner, and the farm number of each farm on which tobacco is grown for experimental purposes only.

(c) The acreage or poundage of tobacco that is to be grown on each farm for experimental purposes only.

(d) A certification signed by the director of the publicly owned agricultural experiment station to the effect that such acreage or poundage of tobacco is being grown for each farm for experimental purposes only, the tobacco is being grown under the auspices of such director, and the acreage of each plot was considered necessary for carrying out the experiment.

§ 723.303 Production of registered or certified flue-cured tobacco seed.

Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage in excess of the effective allotment to seed production without such acreage of tobacco causing a "No Price Support" entry on the marketing card issued for the farm if an agreement is signed by the farm operator, and the producer, if different from the operator, which provides:

(a) *Destruction prior to harvest.* For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(b) *Producer payment of compliance costs.* That the producers shall pay the cost of compliance visits to a farm by representatives of the county FSA committee for the purposes of:

(1) Designating and determining the acreage of seed production, and

(2) Determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of tobacco leaves.

(c) *Agreement.* That the producer(s) signing the agreement shall agree to

7 CFR Ch. VII (1-1-02 Edition)

timely notify the county FSA office when the tobacco seed has been harvested.

(d) *No history credit.* That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(e) *Cancellation of marketing cards.* That if the county FSA committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that tobacco produced on the farm is not eligible for price support.

§ 723.304 Determination of discount varieties.

(a) *Definition.* *Discount variety* means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XyZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244. However, where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco variety which is not certified to be discount variety shall be considered as "acceptable variety."

(b) *Producer report.* The operator, or any producer, on each farm producing flue-cured tobacco shall file with the county FSA office a report on MQ-32 showing whether or not discount variety tobacco was planted on the farm.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county FSA committee on MQ-34-1, Notice of Action Required Regarding Determination of

Seed Varieties of Flue-Cured Tobacco, to file a report on MQ-32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county FSA committee to be discount variety tobacco unless the county FSA committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ-34-2, Notice of Determination of Discount Variety of Flue-Cured Tobacco. This notice to the farm operator shall constitute notice to all persons who, as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ-34-2 notifying such producer that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ-32.

(f) *Issuance of marketing cards.* (1) If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county FSA executive director shall issue MQ-76, bearing the notation "Discount Variety-Limited Price Support." If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county FSA executive director shall issue MQ-76, bearing the notation "Discount Variety-No Price Support."

(2)(i) Where an MQ-76, bearing the notation, "Discount Variety-Limited Price Support" is issued for a farm, the card may be exchanged at the county FSA office for an MQ-76, without the notation, or

(ii) Where an MQ-76, bearing the notation "Discount Variety-No Price Support" is issued for a farm the card may be exchanged at the county FSA office for MQ-76 with the notation "No Price Support." However, the farm operator shall establish to the satisfaction of the county FSA committee that there has been no commingling or substitution of discount variety tobacco

produced on the farm or on any other farm operated by such operator, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) MQ-76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety-Limited Price Support" if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety*—(1) Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year, the Director may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when it is determined that no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehouse operators of action required under this paragraph shall be by the State FSA executive director.

(2)(i) Each warehouse operator who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than such operator's own floor, and who requests the other warehouse operator to identify such tobacco as being "acceptable variety" shall execute MQ-79-1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each warehouse operator who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco indicating that such tobacco with a "certified" lot ticket indicating that such tobacco is covered by an executed MQ-79-1.

(iii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

- (A) Crop year.
- (B) Name and address of warehouse where the tobacco is being offered for sale.
- (C) Tobacco sale bill number and date.
- (D) Date, signature of dealer and current address, and dealer identification number.

(3)(i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" lot ticket, and who requests the warehouse operator to identify such operator's tobacco as being an "acceptable variety," shall execute MQ-79-1 (Flue-Cured), Dealer's Certification-Resale Tobacco.

(ii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(A) Crop year.

(B) Name and address of warehouse where the tobacco is being offered for sale.

(C) Date, signature of dealer and current address and dealer identification number.

(D) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it eligible for certification on MQ-79-1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State FSA executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) Estimate of production. For any farm on which discount variety tobacco is being grown, a Form MQ-92, Estimate of Production, shall be obtained.

§ 723.305 Issuance of marketing cards.

(a) *General.* Each marketing of tobacco from a farm in a quota area shall be identified by a valid marketing card unless prior to marketing an AMS certification is issued for such tobacco to indicate that such tobacco is a nonquota kind of tobacco.

(1) A marketing card (MQ-76 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:

(i) Cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station,

(ii) Cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest,

(iii) For kinds of tobacco other than flue-cured and burley, if a part of a farm which includes the tobacco acreage on the farm is cash leased to such producer, cards shall be issued in the name of such producer. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county FSA committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market such producer's proportionate share of the crop.

(2) If the county FSA committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market such producer's proportionate share of the crop, a hearing shall be scheduled by the county FSA committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county FSA committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county FSA committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county FSA committee shall make its decision on the basis of information available to such committee. If the county FSA committee finds that any producer on the farm has been or likely will be deprived of the right to use the marketing card