

§ 1464.103

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importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995.* Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

[62 FR 3198, Jan. 22, 1997]

§ 1464.103 **Importer no-net-cost assessments.**

(a) *General.* The importer of any unmanufactured imported burley or flue-cured tobacco shall pay a no-net-cost assessment on each kilogram of such tobacco that is imported after December 31, 1993, regardless of the form in which it is imported and regardless of whether it is mixed or blended with other tobacco, except for *de minimis* special entries.

(b) *Amount of assessment.* The amount of the no-net-cost assessment which shall apply under this section shall be the amount determined by multiplying:

(1) For imported burley tobacco, the number of kilograms of such tobacco by the sum, converted to per kilogram basis, of the no-net-cost producer and purchaser contributions or assessments as implemented pursuant to subpart A for domestic burley tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

(2) For imported flue-cured tobacco, the number of kilograms of such tobacco by the sum, converted to a per kilogram basis, of the no-net-cost producer and purchaser contribution or assessments as implemented pursuant to subpart A for domestic flue-cured tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

§ 1464.104 **Remittance of importer assessments.**

(a) *Where to remit.* A person making a remittance shall follow instructions on the reverse side of form CCC-100.

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

(c) *Instructions.* Remittances must be made in accordance with instructions on form CCC-100.

(d) *Documentation.* Unless the Director shall direct otherwise, in writing, each remittance of an importer assessment shall be accompanied by form CCC-100, Importer Entry and Assessment Worksheet, and as applicable, Customs Service Form CF7501 or CF7505, or other Customs Service documentation that, based on the documentation and codes normally required or used by the Customs Service, includes the following with respect to each entry of imported tobacco:

- (1) Entry filer code/entry number,
- (2) Importer of record number,
- (3) Importer of record name and address,
- (4) Ultimate consignee number,
- (5) Entry date,
- (6) District/port of entry,
- (7) Harmonized Tariff Schedule Number,
- (8) Quantity entered (net weight in kilograms),
- (9) Entry type (formal or informal), and
- (10) Amount remitted.

(e) *Late payment charge.* Any importer who fails to timely remit any assessment required by this subpart shall be subject to a late payment charge. Such late payment charge shall be calculated and assessed in accordance with part 1403 of this chapter, or successor regulations, and shall be in addition to any penalty due or other charge due.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.105 **Refund of assessments.**

Assessments paid on imported tobacco may be refunded if the person

importing such tobacco establishes, to the satisfaction of the Director, that the tobacco on which the assessment was paid has been reexported as unmanufactured tobacco or destroyed in an unmanufactured state. Assessment refunds will be based on entry weight as identified on Customs Service Form CF7501 or CF7505, or other documentation or data as required by the Director or found by the Director to be appropriate. Additional refund documentation, including proof of export, will be required consistent with the "duty drawback" provisions administered by the Customs Service pursuant to section 313(a) of the Tariff Act of 1930, as amended. Persons seeking a refund shall submit their request and documentation to the Director, Tobacco Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415. Where deemed appropriate, the Director may, in writing, allow the use of substitute documentation and permit payments to successors in interest where the re-exporter and importer are not the same. Where exporter and importer are not the same, refunds shall be to the importer unless the importer, in writing, notifies the Director that the payment should be made to the exporter.

[59 FR 10944, Mar. 9, 1994, as amended at 68 FR 65385, Nov. 20, 2003]

§ 1464.106 Marketing penalties.

(a) *Failure to remit assessments.* An importer who fails to timely remit an assessment in accordance with this subpart shall be subject to a marketing penalty.

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in §1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on

which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the amount due for the BDMA itself, or any applicable late fees, charges, or interest.

(2) *Importer no-net-cost assessment.* With respect to assessments referred to in §1464.103, if an importer of burley or flue-cured tobacco fails to timely remit a no-net-cost assessment in accordance with the provisions in this subpart, such importer shall be liable, in addition to any no-net-cost assessment or other sum due and any late payment charges, to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of domestic tobacco (burley or flue-cured) for the respective domestic tobacco marketing year in which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(b) *Exception to marketing penalty.* A marketing penalty otherwise required by this paragraph may be forgiven if the assessment for which nonpayment of the penalty could be assessed is remitted not later than 15 calendar days after the date otherwise required for the remittance by this subpart.

(c) *Notification of marketing penalty.* Before a marketing penalty is assessed, the importer shall be notified of the pending assessment and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be before, the Director or designee.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable under the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and that such reduction would not damage the tobacco program or the administration of this part.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; other remedies.* The knowing use, processing, or marketing of tobacco in the commerce of