

any ownership interest greater than ten percent.

(2) A dealer or warehouse operator who permits an indebted person to use such dealer's or warehouse operator's identification card 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 or dealer 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 or dealer 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. A warehouse operator or dealer may also be considered to be affiliated with an indebted person when such warehouse operator or dealer is associated with a person who is both:

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

(ii) An indebted person or at the time of indebtedness incurred by an entity was a substantial owner or an officer of the indebted entity.

Affiliation may also be deemed to occur where parties have traded in tobacco under circumstances which indicate that there may be a lack of arm's length trading between the parties such as where the parties engage in casual or undocumented transactions in significant quantities of tobacco, or where the parties have traded in tobacco with each other without a movement of the tobacco, or where there is a trading in tobacco without docu-

mentation of a significant exchange of money, or other circumstances which indicate an affiliation. Where questions of affiliation arise, it shall be the burden on the parties involved to show that trading in such tobacco was conducted in accordance with normal trade practices and was not part of a scheme or device to avoid payments of sums due the United States or the CCC.

(e) *TMQ lien notation.* Upon notification that a TMQ lien has been established, the producer marketing card (MQ-76) 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 and dealers 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.

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§ 723.312 Request for refund of penalty.

Any person who paid any penalty may request the return of the amount of any such payment which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county FSA office within 2 years after the payment of the penalty. Approval of return shall be by the county FSA committee, subject to the approval of the State FSA executive director.

§ 723.313 Identification of marketings.

(a) *Burley or flue-cured tobacco.* With respect to:

(1) *Identification of producer marketings.* Each auction and nonauction marketing of burley or flue-cured tobacco shall be identified by a valid marketing card, Form MQ-76, issued for the farm. The reverse side of the marketing card shall show in pounds:

- (i) 103 percent of quota,
- (ii) Balance of 103 percent of quota after each sale, and
- (iii) Date of each sale.

(2) *Cross-references of tobacco sale bill number to prior sale bill.* Each warehouse operator, for each lot of tobacco