

which the dealer is required to file reports.

(c) *Availability of list of marketing quota penalty debts.* Each county and State FSA office shall maintain a list of tobacco marketing penalty debts which have been entered on the debt record in their office. The list shall be available for examination upon request by any interested person.

(d) *Liability for penalty owed by another person.* (1) When a penalty in excess of \$10,000 is incurred under this part by an entity, all persons who have a substantial ownership interest in the entity shall be jointly and severally liable with the entity for the payment of such penalty, unless it is demonstrated to the satisfaction of the Deputy Administrator that the violation was inadvertent. Substantial ownership interest shall be deemed to be 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 documentation 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 weighed in on the warehouse 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 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 nonauction shall be recorded on a Form MQ-72-2, Report of Tobacco Non-auction Purchase. For producer sales at nonauction, the dealer purchaser shall execute Form MQ-72-2 and shall enter the data on Form MQ-76. For producer sales at auction, Form 72-1 and Form MQ-76 shall be executed only by the FSA marketing recorder.

(4) *Identification of dealer marketings of resale tobacco.* Each auction and non-auction marketing of resale tobacco in the current year, such tobacco shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer for use in the current marketing year.

(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 or MQ-77 (including sale memo). With respect to each nonauction 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) *Suspended sale and sales without marketing cards.* Any suspended sale, which is not identified by an MQ-76 or MQ-77 (including a sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks after the date of marketing, whichever comes first, shall be identified by MQ-82, Sale Without Marketing Card, as a marketing of excess tobacco. Form MQ-82 shall be executed only by a marketing recorder or other representative of the State FSA executive director.

(3) *Other persons authorized to execute MQ-76 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) Any warehouse operator, or dealer, who engages in the business of acquiring scrap tobacco from farmers, and who has been authorized on MQ-78, may for each purchase of scrap tobacco execute an MQ-76, or MQ-77 (including a sale memo if the bill of nonauction sale has been executed).

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