

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Allotment and quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for the receiving farm according to §§ 723.205 and 723.206, respectively, of this part.

(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (e)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

(l) *Successor-in-interest.* The successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest was assumed.

(1) *New owner.* The new owner of a farm on which a portion or all of the

farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and quota instead of being considered as a successor-in-interest to the previous owner of the farm. However, the new owner must furnish to the county FSA committee on or before June 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota, which is acquired by a new owner who is considered to be the buyer of the allotment and quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the allotment and quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of allotment and quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of the production of tobacco produced on the farm.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21442, May 9, 1991]

Subpart C—Tobacco Subject to Quota, Exemptions From Quotas, Marketing Cards, and General Penalty Provisions

§ 723.301 Identification of tobacco subject to quota.

(a) Except as provided in paragraphs (b) and (c) of this section, any tobacco

which is determined by a representative of the State FSA committee or county FSA committee to have the same appearance and characteristics as a kind of tobacco for which marketing quotas are in effect shall be deemed to be a quota kind of tobacco. Such tobacco shall continue to be deemed a quota kind of tobacco unless it has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511) and implementing regulations (7 CFR part 30), prior to removal of the tobacco from the State where it was produced, as a kind of tobacco not subject to marketing quotas.

(b) Any kind of tobacco for which marketing quotas are not in effect that is produced in a State where marketing quotas are in effect for any kind of tobacco shall be subject to the quota for the kind of tobacco for which marketing quotas are in effect in that State. If marketing quotas are in effect in a State for more than one kind of tobacco, nonquota tobacco produced in the State shall be subject to the quota for the kind of quota tobacco produced in the State having the highest price support under the Agricultural Act of 1949.

(c) Paragraph (b) of this section shall not apply to:

(1) Maryland (type 32) tobacco when it is nonquota tobacco and produced on a farm for which a marketing quota for Maryland (type 32) tobacco was established when marketing quotas for such kind of tobacco were last in effect (1965);

(2) Cigar-filler (type 41) tobacco when it is nonquota tobacco and produced in Pennsylvania;

(3) Cigar-wrapper (types 61 and 62) tobacco when it is nonquota tobacco and produced in Connecticut, Massachusetts, Georgia or Florida;

(4) Tobacco produced in a quota State that is represented to be nonquota tobacco and that is readily and distinguishably different from all kinds of quota tobacco, as determined by the Agricultural Marketing Service, U.S. Department of Agriculture, through application of the standards issued by the Secretary for the inspection and identification of tobacco. Such inspec-

tion and identification shall be made prior to removal of the tobacco from the State where it was produced; and

(5) Tobacco which is nonquota tobacco and produced in a quota area in which the total of the acreage allotments for quota tobacco established for farms is less than twenty acres.

§ 723.302 Tobacco for experimental purposes.

For farms on which tobacco is being grown for experimental purposes by or under the direction of a publicly owned agricultural experiment station, such tobacco shall be exempt from any penalties otherwise required by this part 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 experiment 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:

§ 723.304

7 CFR Ch. VII (1-1-00 Edition)

(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 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 va-

riety 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,

§ 723.305

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 issued for the farm to market such producer's proportionate share of the crop, a separate marketing card shall be issued to such producer. With respect to burley and flue-cured tobacco, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 103 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market such producer's proportionate share of the crop and another card (or other cards if considered preferable by the county FSA committee) shall be issued showing 103 percent of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer in the current crop year.

(b) *Person authorized to issue marketing cards.* The county FSA executive director shall be responsible for the issuance of marketing cards. For kinds of tobacco other than burley and flue-cured tobacco, each marketing card shall bear the actual or facsimile signature of the county FSA executive director who issued the card.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a

share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing such producer's proportionate share.

(2) Any person who succeeds, other than a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same right to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *No price support-burley and flue-cured tobacco.* For burley and flue-cured tobacco, the notation "No Price Support" shall be entered on each marketing card issued for the use of:

(1) *Farm.* The farm if any producer on the farm is ineligible for price support under the provisions of part 1464 of this title.

(2) *Producer.* The producer on a farm if the producer is ineligible for price support under the provisions of part 1464 of this title.

(e) *Farm quota data entered on marketing card and supplemental card for burley or flue-cured tobacco:*

(1) Any marketing card issued to market burley or flue-cured tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 103 percent times the effective farm marketing quota.

(2) Notwithstanding paragraph (e)(1) of this section, if the tobacco available for marketing from the farm is determined by the county FSA committee or the county FSA executive director to be less than the effective farm marketing quota, for purposes of issuing a marketing card and showing thereon the farm's 103 percent of the effective quota, the effective farm marketing quota for the farm shall be considered to be the pounds determined to be available for marketing from the farm. If any producer on the farm satisfies the county FSA committee or county FSA executive director that the quantity of tobacco produced on the farm in the current year, plus any carryover tobacco from a prior year, is greater than the previously determined pounds of tobacco available for marketing from the farm, the pounds shown on

the marketing card shall be increased accordingly, but not to exceed an amount which would cause the total pounds shown on the marketing card to equal 103 percent of the effective farm marketing quota.

(3) Upon request by the farm operator, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county FSA office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 103 percent of quota from a prior marketing card shall be shown in the first space on the reverse side of the marketing card.

(4) Upon written request of the farm operator two or more marketing cards may be issued for a farm if the farm operator specifies the number of pounds of quota to be assigned to each marketing card. In such case, the total pounds of quota specified in the entry, "103 percent of quota," on all marketing cards issued for the farm may not exceed 103 percent of the effective farm marketing quota.

(f) *Farm quota data entered on marketing card and supplemental card for any kind of tobacco other than burley or flue-cured:* (1) Within quota marketing card. A within quota marketing card, MQ-76, indicating the tobacco is eligible for price support shall be issued for use in identifying the kind of tobacco that is available for marketing from a farm when such tobacco:

(i) Is eligible for price support according to the provisions of part 1464 of this title.

(ii) Was grown for experimental purposes by a publicly owned agricultural experiment station.

(2) *Excess marketing card.* An excess marketing card (MQ-77) shall be issued for a farm for marketing a kind of tobacco that is ineligible for price support. Before the MQ-77 is issued the county FSA executive director shall enter on such marketing card the rate of any penalty that is to be deducted from the proceeds from any marketing of tobacco identified by such marketing card. An MQ-77 shall be issued for each farm for each kind of tobacco for which:

§ 723.306

7 CFR Ch. VII (1-1-00 Edition)

(i) There is excess tobacco available for marketing from the farm; or

(ii) The producer is not an eligible producer or the tobacco is not eligible tobacco as determined in accordance with part 1464 of this title.

(3) *Full penalty rate.* The full penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm for which:

(i) An acreage allotment was not established;

(ii) The farm operator or another producer on the farm prevents the county FSA committee from obtaining information necessary to determine the correct acreage of tobacco on the farm;

(iii) The farm operator fails in accordance with part 718 of this chapter to provide a certification of acreage planted to tobacco, or

(iv) The farm operator or another producer on the farm has not agreed to make contributions to the No Net Cost Fund or pay assessments to the No Net Cost Account, as applicable, in accordance with part 1464 of this title.

(4) *Converted penalty rate.* Except as provided in paragraph (f)(3) of this section, a converted penalty rate shall be entered on each MQ-77 issued to identify tobacco produced on a farm from which there is excess tobacco available for marketing and the percentage of excess is less than 100 percent. For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty for the current crop by the percent excess determined according to this paragraph. For a farm without carryover tobacco from a prior year, the percent excess shall be determined by dividing the excess acreage of tobacco by the harvested acreage of tobacco for the farm. For a farm having carryover tobacco from a prior year, the percent excess shall be determined as follows:

(i) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior year by the normal yield for the farm for that year. Reduce such "carryover" acres by the amount determined by subtracting the harvested acreage from the allotment in the cur-

rent year. If the "carryover" acres are entirely offset by the underharvested acreage, the percent excess will be zero and a MQ-76 may be issued if the farm otherwise is eligible for price support and the remainder of this paragraph (f)(4) of this section are inapplicable.

(ii) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" by the "percent within quota" (i.e., 100 percent minus the percent excess) for the year in which the carryover tobacco was produced.

(iii) Determine the "total acres" of tobacco by adding the "carryover acres" and the acreage of tobacco harvested in the current year.

(iv) Determine the "excess acres" by subtracting from the "total acres" the sum of the current year's allotment and the "within quota carryover acres."

(v) Determine the percent excess by dividing the "excess acres" by the "total acres."

(5) Except as provided in paragraphs (f)(3) and (4) of this section, a zero penalty rate shall be entered on any MQ-77 issued in accordance with this section.

(g) *Other marketing card data.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

§ 723.306 Claim stamping and replacing marketing cards.

(a) *Claim stamping.* If a person is indebted to the United States and such indebtedness has been recorded on the county debt record, any marketing card issued for the farm on which the person has a producer interest shall bear the notation "U.S. Claim" followed by the amount of the indebtedness. The name of the debtor-producer, if different from the farm operator, shall be recorded directly under the claim notation. The notation "TMQ" indicating tobacco marketing quota as the type of indebtedness shall constitute notice to any buyer that until the amount of penalty is paid, the United States has a lien with respect to any crop of tobacco in which the debtor-producer has an interest. A claim notation other than "TMQ" shall constitute notice to any buyer that

Farm Service Agency, USDA

§ 723.310

subject to prior liens, the net proceeds from any tobacco pledged as collateral for a price support loan shall be paid to the "Farm Service Agency, USDA" to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notation and information concerning an indebtedness to the United States shall not constitute a waiver by the debtor-producer of any right to contest the validity of such indebtedness by appropriate appeal. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance. If requested by the producer, the county FSA executive director who issued the marketing card shall issue a claim-free marketing card when the claim has been paid.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county FSA executive director, two or more marketing cards may be issued for any farm. Upon the return to the county FSA office of a marketing card which had been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county FSA executive director who issued the card to have been lost, destroyed, or stolen.

§ 723.307 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid if:

(1) It is not issued or delivered in the manner prescribed;

(2) An entry is omitted or is incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or,

(4) Any erasure or alteration has been made and not properly initialed by the county FSA executive director.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county FSA executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county FSA executive director who issued the card, or by a marketing recorder), the farm operator, or the person in possession of the card, shall return it to the county FSA office at which it was issued.

§ 723.308 Rate of penalty.

The rate of penalty for a marketing year shall be equal to seventy-five (75) percent of the average market price for the kind of tobacco for the immediately preceding marketing year as determined and announced annually by the U.S. Department of Agriculture.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 11582, Mar. 10, 1998]

§ 723.309 Persons to pay penalty.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, the persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer or dealer through an auction sale shall be paid by the warehouse operator who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer or dealer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer or dealer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer or dealer directly to any person outside the United States shall be paid by the producer or dealer making the sale.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 11582, Mar. 10, 1998]

§ 723.310 Date penalty is due.

(a) *Payment of penalty.* Penalties shall become due at the time the tobacco is

§723.311

7 CFR Ch. VII (1-1-00 Edition)

marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State FSA office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Farm Service Agency may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include the following:

- (1) Advances to producers,
- (2) Charges for hauling, or
- (3) Any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sales.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§723.311 Lien for penalty; liability of persons who are affiliated with indebted person or who permit the indebted person to use their identification card.

(a) *Lien on tobacco.* Until the amount of any marketing quota penalty imposed under this part is paid, a lien shall exist in favor of the United States for the amount of the penalty on:

- (1) The tobacco with respect to which such penalty is incurred; and
- (2) Any other tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest and which is marketed in the same or a subsequent marketing year.

(b) *Lien precedence.* The lien, described in paragraph (a) of this section, attaches at the time that the penalty is assessed. As to third parties, in the event of a lack of actual notice of the

lien, then notice shall be deemed to occur when:

(1) In the case of indebted producers, the debt is entered on the debt record maintained by the county FSA office of the county in which the tobacco was grown;

(2) In the case of an indebted warehouse operator, the debt is entered on the debt record of the State FSA office for the State in which the warehouse is located; and

(3) In the case of an indebted dealer, the debt is entered on the debt record of the State FSA office for the State in 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.

[57 FR 43581, Sept. 21, 1992]

§ 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 ac-

quiring 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 memos) executed in the absence of a marketing recorder.

(5) *Withdrawal of approval to act as marketing recorder.* The authorization on MQ-78 for persons may be withdrawn by the State FSA executive director if such action is determined to be necessary to properly enforce the regulations in this part.

(c) *Separate display on auction warehouse floor.* Any warehouse operator upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each respective kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Use a lot ticket that is distinguishably different from the lot ticket used to identify any other kind of tobacco.

(3) Identify each lot by a lot ticket clearly showing the kind of tobacco. However, if where the tobacco is represented to be a nonquota kind the lot ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(4) Make and keep records that will ensure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(d) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouse operator, it shall be identified as leaf account resale tobacco.

(e) *Verification of penalties by warehouse operators or dealers.* Each sale of tobacco by a producer which is subject

to penalty and which has been recorded by a marketing recorder shall be verified by a warehouse operator or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouse operator shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(f) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouse operator on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(g) *Marketing card and sale memo for cigar tobacco.* With respect to cigar tobacco:

(1) If a sale of producer's cigar tobacco to a buyer is not identified with a marketing card (MQ-76 or MQ-77) issued for the farm, including a sale memo from MQ-77, by the end of the sale day and recorded and reported on MQ-79 (CF&B), Buyers Record, by the tenth day of the calendar month next following the month during which the sale occurred, the marketing shall be identified on MQ-79 (CF&B) as a marketing of excess tobacco and reported not later than the tenth day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ-79 (CF&B) as a marketing of excess tobacco, and reported not later than the tenth day of the calendar month next following the month during which the sale day occurred.

(2) *Verification of penalty by buyer.* Each excess sale memo issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the sale memo.

Subpart D—Recordkeeping, Reporting Requirements, Marketing Penalties, and Other Penalties

§ 723.401 Registration of burley and flue-cured tobacco warehouse operators and dealers.

(a) *Warehouse registration.* For burley and flue-cured tobacco, any warehouse operator dealing in either flue-cured or burley tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State FSA Office, Raleigh, North Carolina.

(b) *Dealer registration.* Each person who expects to deal in burley or flue-cured tobacco during a marketing year shall complete a Dealer Application and Agreement (MQ-79-2-A) annually, except dealers who are exempt from maintaining or filing records and reports as provided in § 723.405. The application must be filed after March 1 of the calendar year in which the marketing year begins, and shall be filed with the State FSA office or, if designated by the State Executive Director, the county FSA office for the county where the dealer resides or where the dealer's principal business is located. The applicant shall provide the names, and such other information as required by the Deputy Administrator, of all other persons who will be authorized to use the dealer identification card (MQ-79-2). A dealer entity is limited to one dealer registration number. Persons affiliated with another dealer of the same household shall not be eligible for a dealer registration number unless the Deputy Administrator determines that the entities or individuals are separate and independent.

(c) *Approval of application and agreement.* The State Executive Director of the State FSA office shall, under the direction of the Deputy Administrator, be the approving official for the Dealer Application and Agreement. If the approving official has reason to doubt