

(v) *Producer tobacco.* Producer tobacco (first sale) in possession of a warehouse operator, resulting from long weights and long lots, which has not previously been identified by a sale shall be recorded and reported in the same manner as a nonauction sale to a warehouse operator who does not prepare a warehouse bill (floor sheet) and shall be reported on MQ-79, Dealer's Record. Penalty shall be due on this tobacco at the full penalty rate for the respective kind of tobacco or, if the kind is not known, at the penalty rate for the kind of tobacco generally marketed through the warehouse.

[55 FR 39914, Oct. 1, 1990, as amended at 57 FR 43582, Sept. 21, 1992]

**§ 723.404 Dealer's records and reports, excluding cigar tobacco buyers.**

(a) *General.* This section is applicable to all kinds of tobacco except cigar tobacco.

(1) Each dealer, except as provided in § 723.405 of this part shall keep by kinds of tobacco the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided in this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number (if applicable) and the reporting dealer's identification number (if applicable) as well as the names of the warehouse and dealers involved in the transaction.

(2) Each dealer shall properly execute the "Receipt for Dealer's Record" contained in MQ-79, which is issued to the dealer, and shall transmit such receipt to the applicable State FSA office.

(b) *Record of marketings.* A dealer shall keep records which provide the following information for each lot of tobacco, including scrap tobacco, purchased or sold by the dealer:

(1) *Purchases.* (i) The name of:

(A) The warehouse through which the tobacco was purchased, if purchased at a warehouse auction; or

(B) The operator of the farm on which the tobacco was produced, if purchased from a producer as a nonauction purchase, and the name of the producer

of the tobacco, if different from the operator; or

(C) The seller if purchased as a non-auction purchase from a warehouse operator or dealer.

(ii) The identification number of the warehouse, farm, or dealer, as applicable, at/from which the tobacco was purchased.

(iii) The address, the producer association number, if applicable, and percentage share of the proceeds of the farm operator and any other producer from whom tobacco was purchased as a nonauction purchase.

(iv) The date of purchase.

(v) The pounds of tobacco purchased.

(vi) The gross purchase price.

(vii) The amount of penalty.

(viii) The amounts remitted for the No Net Cost and the Tobacco Marketing Assessments.

(ix) The quantity of tobacco purchased from a prior crop and carried over for marketing in a subsequent crop year.

(2) *Sales.* (i) The name and identification number of the:

(A) Warehouse through which the tobacco was sold, if sold at a warehouse auction, or

(B) Buyer if the tobacco was sold at a nonauction sale.

(ii) The date of sale.

(iii) The pounds of tobacco sold.

(iv) The gross sale price.

(c) *Nonauction purchase.* (1) Each purchase of tobacco from a producer from a quota producing area shall be identified by a marketing card, issued for the farm on which the tobacco was produced unless an AMS inspection is obtained prior to purchase which shows that tobacco being offered for sale is a kind not subject to marketing quotas.

(2) For burley and flue-cured tobacco:

(i) After each nonauction purchase, the dealer shall enter a declining balance of "103 percent of quota" on the reverse side of the marketing card. The declining balance shall be determined by reducing the previous "103 percent of quota" entry on the marketing card by the number of pounds of tobacco purchased. The date the tobacco was purchased also shall be entered on the marketing card at the time each lot of tobacco is purchased.

(ii) After each nonauction purchase, the dealer shall prepare a form MQ-72-2 which shall set forth the following:

- (A) The date of the purchase.
- (B) The registration number of the dealer.
- (C) The name and address of the person selling the tobacco.
- (D) The identification number (farm number, warehouse code, or dealer number, as applicable) of the person selling the tobacco.
- (E) The pounds of tobacco purchased.
- (F) The amount of penalty collected.
- (G) The method (estimating or weighing) of determining the pounds of tobacco marketed.
- (H) The signature of the seller and the date signed.

(iii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(3) For all other kinds of tobacco:

(i) When a Form MQ-77 Marketing Card is used to identify a nonauction sale, the producer's signature shall be obtained on the reverse side of a sale memo which is a part of the Form MQ-77. A nonauction sale not identified by a marketing card shall be identified by a Form MQ-82 executed by a marketing recorder or other representative of the State FSA committee. The dealer shall record each nonauction purchase of tobacco on Form MQ-79, Dealer's Record.

(ii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net

Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable for each kind of tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

(d) *Record and report of purchases and resales.* (1) For burley and flue-cured tobacco, each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales, excluding tobacco not in the form normally marketed by producers. After each transaction is entered on the Form MQ-79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ-79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ-79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(2) For all other kinds of tobacco, each dealer shall keep a record and make reports on Form MQ-79 showing all purchases and resales of tobacco made by or for the dealer and, in the event of a purchase or resale of tobacco which is purchased prior to the current crop, the fact that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

(3) A Form MQ-79 shall be prepared and a copy (together with executed

copies of Form MQ-72-2 for all nonauction purchases of burley and flue-cured tobacco) shall be forwarded to the State FSA office not later than the end of the calendar week in which such tobacco was purchased or resold. However, if tobacco is purchased prior to the opening of the local auction market, a Form MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, shall be forwarded to the State FSA office not later than the end of the calendar week which would include the first sale date of the local auction markets. In addition, if tobacco is resold in a State other than where the tobacco is produced and the auction markets at such location open earlier than the auction market where the tobacco normally would be sold at auction by farmers, reports together with executed copies of Form MQ-72-2 for all nonauction purchases shall be prepared and forwarded to the State FSA office not later than the end of the calendar week which would include the first day of the local auction market where the resale takes place.

(4) The data to be entered on Form MQ-72-2 for nonauction purchases from a producer shall be the data which is enumerated in accordance with the provisions of paragraph (c)(2) of this section.

(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and January 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:

(i) Show the word "final" on the Dealer's Report, MQ-79, for the season,

(ii) Report on such "final" MQ-79 for the season the quantity of tobacco on hand and its location,

(iii) Permit its inspection by a representative of FSA, and

(iv) Provide for weighing of such tobacco (to be witnessed by a representative of FSA) and furnish a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(v) If upon inspection by a representative of FSA, there is an amount of tobacco determined to be damaged tobacco according to § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such damaged tobacco for the next marketing year.

(6) Notwithstanding the provisions of paragraph (d)(5) of this section, any dealer having tobacco transactions after January 15 for flue-cured and April 1 for other than flue-cured shall make reports on Form MQ-79 at the end of each week, as provided in paragraph (d)(3) of this section.

(7) For burley and flue-cured tobacco, before the next marketing season begins, carryover tobacco reported by the dealer as provided in paragraph (d)(5) of this section shall be reinspected by a representative of FSA. When the reinspection indicates an amount of carryover tobacco different from that amount determined by the initial inspection, the dealer shall provide for the weighing of such tobacco which shall be witnessed by an FSA representative. The dealer shall furnish to such representative at the time of weighing a certification as to the actual weight of such tobacco. If an FSA representative determines that the weight of the tobacco is different, by reweighing, than the amount reported on the initial weight together with the reweighed quantity after taking into consideration any purchases and resales that occurred subsequent to the initial certification as provided in paragraph (d)(5) of this section shall be used for the purpose of determining penalty, if penalty is due. Penalty shall be assessed, after the initial certification and reconciliation, when the redetermined pounds exceed the amount determined by taking the initial pounds of carryover tobacco plus purchases, minus resales. The redetermined pounds shall be the official pounds to be credited to the account as carryover. If upon reinspection by a representative of FSA, there is an amount of tobacco determined to be damaged tobacco under § 723.104, such amount of pounds shall be deducted from the purchase credit and no carryover credit shall be allowed for such

damaged tobacco for the next marketing year.

(8) In addition to forms MQ-79 and MQ-72-2, if applicable, form MQ-79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ-79 (Supplemental) shall be forwarded to the State FSA office at the same time as the purchase is reported on the MQ-79. A check, draft, or money order in the amount of the collections recorded on form MQ-79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State FSA office along with the forms MQ-79 and MQ-79 (Supplemental).

(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ-79-2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured and April 1 for burley tobacco.

(e) *Daily report to warehouse operator for buyers correction account.* Notwithstanding the provisions of § 723.405 of this part, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouse operator at an auction sale or otherwise, which is not invoiced to such person or which is incorrectly invoiced to such person by the warehouse operator, shall furnish to the warehouse operator on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with

the warehouse operator for that sale day.

(3) Such reports as required under paragraphs (d)(1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the warehouse where the purchase was made.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State FSA office on MQ-79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered; and

(3) Pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be a nonquota kind.* Any dealer who plans to purchase tobacco that was produced on a farm in a quota area shall treat such tobacco as a quota kind of tobacco according to the provisions of this part 723 unless prior to the purchase a certification is obtained from an AMS inspector to indicate that such tobacco is a nonquota kind of tobacco. In such case, the dealer shall mail or otherwise deliver to the State FSA office, on the date of the purchase, a copy of the AMS certification and a statement signed by the AMS inspector, the producer, and the dealer to indicate the:

(1) State and county code and farm number of the farm on which the tobacco was produced.

(2) Name and address of the producer.

(3) Name and address of the dealer.

(4) Weight of the tobacco.

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**§ 723.405 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.**

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco