

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 that the applicant is a bona fide dealer or intends to become a bona fide dealer, the application may be disapproved until such time as the applicant furnishes information satisfactory to the

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State FSA committee that the application is bona fide. An application shall also be disapproved for any person who has failed to file reports or permit inspections required in § 723.404(d)(9). A person whose application is disapproved shall be provided with the opportunity to appeal the disapproval and to furnish information to substantiate the application or to comply with other requirements in § 723.404.

(d) *Letter of credit or bond*—(1) *General requirements.* Effective with the beginning of the 1992 marketing year for burley tobacco and with the 1993 marketing year for flue-cured tobacco, in order to secure the payment of penalties as may be incurred by a dealer during the marketing year for which approval as a dealer is sought, each dealer, as a condition for final approval to handle tobacco, must present a letter of credit or bond which is determined by the Deputy Administrator to be acceptable security and which meets the dollar requirements of this section. The letter of credit or bond shall be submitted to the State FSA office where the dealer is registered. A letter of credit must have been issued by a commercial bank insured by the Federal Deposit Insurance Corporation. A bond must be a surety bond insured by a bonding company or agent licensed in the State where the dealer is registered. The letter of credit or bond must be in the form and have the content specified by the Deputy Administrator. A letter of credit or bond shall be furnished annually after initial approval of the dealer's application and notification of the amount required. The dealer identification card shall not be issued until it is determined that acceptable security has been presented.

(2) *Amount required.* The base amount of the letter of credit or bond shall be the larger of:

(i) \$25,000 or

(ii) the sum of the amounts determined by multiplying the respective pounds of burley and flue-cured tobacco purchased by the dealer during the preceding marketing year by 10 percent of the marketing year penalty rate for the respective kind of tobacco involved for the relevant year with the resulting amount not to exceed \$100,000.

A dealer shall submit the letter of credit or bond for the base amount plus an amount equal to the amount of any unpaid tobacco marketing quota penalty owed by such dealer. The amount shall also be increased by \$5,000 for each 10,000 pounds of tobacco for which the dealer has failed to file reports or filed false reports in violation of § 723.404 for the 3 previous marketing years. The Deputy Administrator may reduce the amount of security required in order to avoid undue hardship and shall make provision for release of the letter of credit or bond at the appropriate time.

(e) *Suspension and surrender of dealer card.* The dealer identification card shall be surrendered upon demand of the FSA. Failure to comply with the provisions of §§ 723.404 or 723.414 or with other material provisions of this part shall be cause for suspension of the dealer identification card and the dealer shall be given 15 days to complete all necessary compliance measures or to show cause why the card should not remain suspended.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991; 57 FR 43581, Sept. 21, 1992]

**§ 723.402 Warehouse authorized to retain producer marketing cards between sales.**

(a) *General.* Notwithstanding any other provisions of this part, to facilitate the scheduling of farmer's tobacco to the warehouse, marketing cards, with the permission of the producer, may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(b) *Warehouse eligible to retain producers marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by FSA a written request with the State FSA committee (or county FSA committee if designated by the State FSA committee).

(2) Agree to be responsible to FSA for an amount of money equal to that amount that may be assessed against