

§ 723.407

7 CFR Ch. VII (1-1-05 Edition)

which is not in the form normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(c) *Report by dealer or warehouse operator.* Any dealer, warehouse operator or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State FSA office issuing form MQ-79, Dealer's Record Book, to such person. Such report shall be made timely so that a representative of FSA may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before such plans are reported to the state FSA office and before the tobacco is inspected by an FSA representative or an inspection is declined by an FSA representative shall be deemed excess tobacco and the penalty at the full rate shall be due.

(d) *Report by processor or manufacturer.* Each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processor or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

(e) *Dealer records and reports.* (1) Any dealer, warehouse operator or other persons who purchased tobacco classified as not in the form normally marketed by producers shall keep such records as will enable such person to report to the State FSA office the following:

(i) Name of seller, pounds purchased, and date of purchase.

(ii) The disposition of such tobacco including name of buyer, pounds sold, date of sale,

(2) Upon request by the State FSA office such person shall provide for the inspection and weighting of the to-

bacco to be witnessed by an FSA representative.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991; 57 FR 43582, Sept. 21, 1992]

§ 723.407 Cigar tobacco buyer's records and reports.

(a) *This section is applicable to buyers of cigar tobacco—(1) Definition of cigar buyer.* With respect to this section, a buyer is any person who buys cigar tobacco including an association or cooperation that receives tobacco from producers for the purpose of:

(i) Selling it for the producers, or

(ii) Placing it under price-support loan through Commodity Credit Corporation.

(2) *Report of buyer's name and address.* Each buyer shall properly execute, detach, and promptly forward to the State FSA office, "Receipt for Buyer's Record" contained in MQ-79 (CF&B), which is issued to the buyer.

(b) *Record of purchases.* A buyer shall keep records which provide the following information for each lot of each kind of tobacco purchased or sold by the buyer, including tobacco obtained from grading tobacco for producers or furnishing curing space, or stripping space:

(1) The name of:

(i) The operator of the farm on which the tobacco was produced; or

(ii) The name and address of the seller, in the case of a sale by a person other than the farm operator.

(2) The identification number of the farm at/from which the tobacco was purchased.

(3) The date of purchase.

(4) The pounds of tobacco purchased.

(5) The gross purchase price.

(6) The amount of penalty.

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

(c) *Report of sales.* Each buyer shall maintain records which will show, by kind of tobacco, the disposition of tobacco purchased under paragraph (b) of this section.

(d) 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. The No Net Cost Assessment shall not be collected from a producer who identifies the tobacco for marketing with a marketing card which has a converted penalty rate of 100 percent 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.

(e) *Identification of sale or marketing card memo and buyers records.* Each MQ-76 and each sale memo from an MQ-77 used to identify each sale of tobacco by a producer shall be properly executed by the buyer. The serial number of the MQ-76 marketing card or sale memo from an HQ-77 to identify such tobacco, shall be recorded on the buyer's copy of the MQ-79 (CF&B) and on the check register or check stub for the check written with respect to such tobacco.

(f) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ-79 (CF&B), Buyer's Record, showing by kinds of tobacco purchased by or for such buyer from producers. Such record and report shall show for each sale the sale date, the name of the farm operator, (and the name and address of the person selling the tobacco if other than the operator), the serial number of the within quota marketing card (MQ-76), and from each excess card (MQ-77), the sale memo number used to identify the sale, the pounds of tobacco represented in the sale, the rate of penalty shown on the sale memo (MQ-77), and the amount of penalty. If a marketing card is not presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "None" in the space for the serial number of the marketing card (MQ-76) or sale memo (MQ-77), the applicable rate of penalty per pound in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ-79 (CF&B), excess sale memos (MQ-77), and a remit-

tance for all penalties shown by entries on MQ-79 (CF&B) and on the excess sale memos (MQ-77) to be due shall be forwarded to the State FSA office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(3) 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).

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21443, May 9, 1991]

§ 723.408 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* (1) With respect to any kind of tobacco, if the producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of such kind of tobacco produced on or marketed from the farm, applicable tobacco acreage allotment or burley farm marketing quota next established for such farm shall be reduced, unless the county and State FSA committees determine, according to instructions issued by the Deputy Administrator, that such reduction is not required.

(2) For all kinds of tobacco except burley tobacco, if a farm operator files a report of acreage of the applicable kind of tobacco on the farm and, after a determination of the acreage, it is determined by the county FSA committee (with approval of the State FSA committee) that the report was false (either significantly under reported or significantly over reported by more than the tolerance for reporting as provided in part 718 of this chapter) in what amounts to a scheme or device to