

of tobacco by which a warehouse operator's or dealer's resales exceed prior purchases.

(n) *Advances and other cases in which the producer's marketing card is used improperly.* For tobacco of any kind to which this part applies, if tobacco is marketed by a person by using the producer's marketing card or the tobacco is pledged for a price support loan by using that card, but under the provisions of part 1464 of this title, the producer is deemed to have not been an "eligible producer" with respect to the disposition of that tobacco at the time because of an advance or other preauction arrangement, such disposition of the tobacco shall be considered a false identification of the tobacco and may be considered to be a marketing of excess tobacco. In such cases, the person who paid the advance, took possession of the tobacco, or made the agreement with the producer which made the producer no longer an "eligible producer" with respect to the tobacco, shall be jointly and severally liable with the producer for any penalty with respect to such disposition which is levied against the producer under the provisions of this part and additionally, if such disposition is determined to be a marketing of excess tobacco, shall be liable for a penalty calculated by using the penalty rate for the tobacco involved multiplied by the pounds of tobacco involved. These remedies shall be in addition to any other remedies which may apply, including but not limited to, any liability for a refund of any price support loan advances which were paid in the name of, or for the account of, the producer of the tobacco.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21444, May 9, 1991; 57 FR 43583, Sept. 21, 1992; 63 FR 11583, Mar. 10, 1998]

**§ 723.411 Records and reports regarding hauling, processing, and storage of tobacco.**

(a) *Trucker records.* Each trucker shall keep such records as will enable such trucker to furnish the State FSA office a report with respect to each lot of tobacco received by such trucker showing.

(1) The name and address of the producer;

(2) The date of receipt of the tobacco;  
 (3) The number of pounds received;  
 (4) The location where received; and  
 (5) The name and address of the person to whom it was delivered.

(b) *Processor records.* Each firm engaged in the business of processing tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying or stemming).

(5) The amount of any advance or loan made by such person on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco processed and the number of containers by classification (strips, stems, scrap or leaf).

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased at auction or tobacco which was previously reported on Form MQ-79. Where such firm qualifies for the exemption in § 723.405 of this part, such firm is required to report only such tobacco received that does not belong to such firm.

(c) *Records for stored tobacco.* Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouse operator, marketing agent or other person for whom the tobacco was received;

(2) The date and receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by such firm;

(5) The disposition of the tobacco; and

## § 723.412

(6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State FSA office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by such firm at auction or for which such firm had previously reported on Form MQ-79. Where such firm qualifies for the exemption in § 723.405 of this part, the firm is only required to report such tobacco received for storage that does not belong to such firm.

### § 723.412 Separate records and reports from persons engaged in tobacco related businesses.

Any person who is required to keep any record or make any report as a warehouse operator, dealer, buyer, trucker, or as a person engaged in the hauling, processing, or storage of tobacco, and who is engaged in more than one such business, shall keep such records as will enable such person to make separate reports for each such business in which such person is engaged to the same extent for each such business as if the person were engaged in no other business.

### § 723.413 Length of time records and reports are to be kept.

Records to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State FSA executive director, or the Director.

### § 723.414 Failure to keep records and make reports or making false report or record.

(a)(1) *Failure to keep records and make reports.* Under the provisions of section 373(a) of the Act, any warehouse operator, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any

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

record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$500 for each offense. In addition, any tobacco warehouse operator, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed \$5,000.

(2) *Failure to obtain producer marketing card or sale memo.* The failure of any dealer or warehouse operator to obtain a:

(i) Producer's marketing card, MQ-76 and MQ-77, to identify a sale of producer tobacco, or

(ii) Dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representation—warehouse operators, dealers, and processors.* The monetary penalties described in this part are in addition to penalties prescribed by other criminal statutes including 18 U.S.C. 231 which provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "103 percent of quota poundage" on marketing cards.

(c) *Misrepresentation and scheme or device.* A warehouse operator or dealer who is determined by FSA to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(2) Made any fraudulent representation,

(3) Misused a MQ-76 or MQ-79-2, or

(4) Sold excess tobacco, shall pay a marketing quota penalty as prescribed in this part.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21444, May 9, 1991]

### § 723.415 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any