

Form MQ-72-2 is set forth in Sec. 723.404 of this part.

* * * * *

(l) *Bill-out invoice.* For flue-cured and burley tobacco, when the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number on which the lot of tobacco was recorded on the sale bill.

* * * * *

11. In § 723.404 revise the section title and paragraph (c)(2)(iii) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(iii) For non-auction purchases which are made from producer by the dealer or the receiving station official, the dealer or receiving station official shall remit the producer's and the dealer's or receiving station's share of the No Net Cost Assessment as provided in part 1464 of this title. The dealer may deduct the producer's share of the 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 Assessment which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

12. In § 723.405 revise the section title and add a new paragraph (c) to read as follows:

§ 723.405 Dealers exempt from regular records and reports on MQ-79; season report for dealers; and receiving station resale records and reports exempt from daily reporting.

* * * * *

(c) Any receiving station who acquires tobacco in the form in which tobacco ordinarily is sold by producers and resells such tobacco shall be subject to the requirements of this part.

(1) This paragraph is applicable only to burley and flue-cured tobacco. Each receiving station official shall make a report to the Director, TPD not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing:

(i) The receiving station's USDA identification number;

(ii) Source;

(iii) Dealer USDA identification number; and

(iv) Pounds of all tobacco, in the form normally marketed by producers, purchased or sold through resale.

(2) For resale purchases for each receiving station, the report shall include the following information:

(i) USDA registration number (receiving station code),

(ii) Name and address of receiving station,

(iii) Gross pounds purchased,

(iv) Name and address of seller, and

(v) Seller's number (dealer's registration number, receiving station code, or farm number, including State and county code).

(3) For resale sales for each receiving station, the report shall include the following information:

(i) USDA registration number (receiving station code),

(ii) Name and address of receiving station,

(iii) Gross pounds sold,

(iv) Name and address of purchaser, and

(v) Purchaser's number (dealer registration number, receiving station code, or farm number, including State and county code).

13. In § 723.408 revise paragraph (d) (2)(i)(B) to read as follows:

§ 723.408 Producer's records and reports.

* * * * *

(d) * * *

(B) MQ-76 or MQ-76-C, to the accuracy of the Record of Sales recorded on the card.

* * * * *

14. In § 723.409 revise the section title and paragraphs (b) introductory text and (b)(4) to read as follows:

§ 723.409 Producer violations, penalties, false identification collections and remittances by dealers, buyers, handlers, warehouses, receiving stations and other parties; related issues.

* * * * *

(b) *Special provisions for tobacco buyers, dealers, handlers, warehouse operators, receiving station officials and others who acquire, handle, or facilitate the marketing of tobacco.*

Notwithstanding the provisions of paragraph (a) of this section and other provisions of this part:

* * * * *

(4) If a penalty is collected and remitted by a buyer, dealer, receiving station official or warehouse operator that is shown not to be due or only partially due, then the overpayment shall be refunded to the appropriate party. It is the responsibility of the person who collected the penalty and

the person who sold the tobacco involved to show to the satisfaction of FSA that such penalty is not due in the full amount collected.

* * * * *

15. Revise § 723.410 to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, receiving station officials, dealers, buyers and others excluding the producer.

Subject to any additional requirements or provisions for remittances which are contained in § 723.409 of this part, any marketing of tobacco under one of the following conditions shall be considered, subject to rebuttal, to be a marketing of excess tobacco:

(a) *Auction sale without burley or flue-cured tobacco marketing card.* For burley and flue-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouse operator unless, prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Auction sale without dark air-cured, fire-cured, or Virginia sun-cured tobacco marketing card.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card (MQ-76 or MQ-77, including sale memo) on or before the last warehouse sale day of the marketing season, or within 4 weeks following the date of marketing, whichever comes first, shall be identified by an MQ-82, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouse operator.

(c) *Burley or flue-cured tobacco non-auction sale.* For burley and flue-cured tobacco, any non auction marketing of tobacco which:

(1) Is not identified by a valid marketing card (MQ-76-C) and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card, and MQ-72-2, Report of Tobacco Non-auction Purchase; or,

(2) If purchased prior to the opening of the local auction market for the current year, it is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2, Report of Tobacco Non-auction Purchase on or before the end of the calendar week (which includes the first