

sale day of the local auction markets). The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(d) *Non auction sale, except burley, flue-cured, and cigar tobacco.* For dark air-cured, fire-cured, or Virginia sun-cured tobacco, any Non-auction sale of tobacco which:

(1) Is not identified by an MQ-76 or MQ-77 (including a valid sale memo); and

(2) Is not recorded on MQ-79, Dealer's Record, on or before the end of the calendar week in which the tobacco was purchased; or

(3) If purchased prior to the opening of the local auction market for the current year, is not identified by an MQ-76 or MQ-77 (including a valid sale memo), and recorded on MQ-79 on or before the end of the calendar week (which includes the first day of the local auction markets). The penalty thereon shall be paid by the purchaser of such tobacco.

(e) *Burley and flue-cured tobacco sold at a receiving station.* For burley and flue-cured tobacco, any receiving station 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-80-C, MQ-76-C and MQ-72-C, on or before the day of the purchase. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-80-C unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(f) *Failure to obtain an MQ-76 and sale memo, and failure to record a sale on MQ-76-cigar tobacco.* Any sale of cigar tobacco for which a dealer:

(1) If within quota, fails to record the sale on the marketing card issued for the farm; or

(2) If the tobacco was produced on a farm for which an excess marketing card was issued, fails to obtain a valid sale memo by the end of the sale date. The penalty thereon shall be paid by the buyer who fails to make the record.

(g) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouse operator furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, acceptable evidence shall not be based on the warehouse

operator's proof of purchases of tobacco that is not in the form normally marketed by producers. Such evidence is not acceptable even though it may indicate that the resales exceed prior leaf account purchases because of the blending of tobacco with the warehouse operator's prior purchases.

(h) *Dealer tobacco—burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on MQ-79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco, shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office.

(i) *Receiving Station Tobacco—burley and flue-cured.* The burley and flue-cured tobacco resales by a receiving station which are in excess of such buying company's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and penalty thereon shall be due at the time of the marketing which results in the excess. If the resale which results in a penalty due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at non-auction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State FSA office, unless such buying company furnishes evidence acceptable to the State FSA committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State FSA committee shall not be based on the receiving station's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence may indicate that resales exceed prior purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the receiving station official's prior purchases of tobacco. Multiple receiving stations purchasing as a single buying company may transfer pounds purchased at individual receiving stations that will be resold, to the buying company's dealer record for

resale. A receiving station registration number cannot be used to resell tobacco at auction.

(j) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouse operator, receiving station official or dealer, but which is not reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouse operator, receiving station official or dealer furnishes proof of such resale which is acceptable to the Director, TPD. The penalty thereon shall be paid by the warehouse operator, receiving station official or dealer who fails to make the report as required.

(k) *Marketing falsely identified by a person other than the producer of the tobacco.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which the tobacco was produced, and the source of production of the tobacco is unknown, such marketing shall be presumed to be a marketing of excess tobacco. The marketing quota penalty shall be paid by the person who marketed the tobacco.

(l) *Carryover tobacco, except cigar tobacco.* Any tobacco on hand, except for cigar tobacco, and reported or due to be reported under § 723.403 of this part for warehouse operators, § 723.417 of this part for receiving station officials, and § 723.404 of this part for dealers shall, be included as a resale in determining whether an account for a kind of tobacco has excess resales. Unless the warehouse operator or receiving station official furnishes proof acceptable to the State FSA committee, and unless the dealer furnishes proof acceptable to the State FSA executive director, showing that such account does not represent excess tobacco, penalty at the full rate for the respective kind of tobacco shall be paid thereon by such warehouse operator, receiving station official or dealer.

(m) *Unrecorded sale of cigar tobacco.* Any sale of cigar tobacco which is not recorded on MQ-79 CF&B, Buyer's Record Book, by the 10th day of the month following the month during which the sale occurred, shall be presumed to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who fails to make the record.

(n) *Floor scrap.* Any receiving station official who markets floor scrap shall be subject to a civil penalty of 150 percent of the average market price for the immediately preceding marketing year, as determined by the U.S. Department of