

§ 723.402

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

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

any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Burley or flue-cured tobacco for any overmarketing resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Any burley or flue-cured tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

- (i) Name of the operator;
- (ii) Serial number of farm;
- (iii) Marketing card number, if applicable;
- (iv) Date marketing card obtained from producer; and
- (v) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request, or in the absence of a request, return it to the producer within 7 days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by FSA for failure to comply with provisions of this agreement.

(c) *Penalties considered to be the responsibility of warehouse operators.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State FSA committee (or county FSA committee if designated

by the State FSA committee) for authorization to retain producer's marketing cards at the warehouse, with grower permission, shall be responsible to FSA for an amount of money equal to the amount that may be assessed against the producer as marketing quota penalties if the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Any burley or flue-cured tobacco overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the burley or flue-cured producer's marketing card or failure to deduct pounds sold on the producer's marketing card. However, the warehouse operator shall not be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with § 723.409(e) of this part.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of such producer's marketing card.

(4) With respect to burley or flue-cured producers, tobacco marketed at the warehouse in excess of 103 percent of quota as shown on the producer's marketing card.

§ 723.403 Auction warehouse operators' records and reports.

(a) *Report on Form MQ-78, Tobacco Warehouse organization.* Each warehouse operator shall annually, prior to opening of auction markets, furnish FSA an executed Form MQ-78 showing:

- (1) Form of business organization.
- (2) Names and addresses of warehouse officials and bookkeeper.
- (3) Names and addresses of other warehouses in which the officials and bookkeepers have a financial interest.
- (4) Names and addresses of custodians of warehouse records, including their location.

(b) *Separate records and reports.* Each auction warehouse operator shall keep the records and make the reports separately for each quota or nonquota kind of tobacco as provided in this section.