

§ 723.405

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

damaged tobacco for the next marketing year.

(8) 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).

(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ-79-2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured and April 1 for burley tobacco.

(e) *Daily report to warehouse operator for buyers correction account.* Notwithstanding the provisions of § 723.405 of this part, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouse operator at an auction sale or otherwise, which is not invoiced to such person or which is incorrectly invoiced to such person by the warehouse operator, shall furnish to the warehouse operator on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with

the warehouse operator for that sale day.

(3) Such reports as required under paragraphs (d)(1) and (2) of this section shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the warehouse where the purchase was made.

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall, by the end of the week in which such tobacco was delivered, report to the State FSA office on MQ-79, Dealer's Report:

(1) The date delivered;

(2) Name and address of the firm to which the tobacco was delivered; and

(3) Pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be a nonquota kind.* Any dealer who plans to purchase tobacco that was produced on a farm in a quota area shall treat such tobacco as a quota kind of tobacco according to the provisions of this part 723 unless prior to the purchase a certification is obtained from an AMS inspector to indicate that such tobacco is a nonquota kind of tobacco. In such case, the dealer shall mail or otherwise deliver to the State FSA office, on the date of the purchase, a copy of the AMS certification and a statement signed by the AMS inspector, the producer, and the dealer to indicate the:

(1) State and county code and farm number of the farm on which the tobacco was produced.

(2) Name and address of the producer.

(3) Name and address of the dealer.

(4) Weight of the tobacco.

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

§ 723.405 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco

ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 723.404 of this part except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of § 723.404(e) of this part. A dealer or buyer whose resales in the form normally marketed by producers farmers exceed 5 percent of their purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 723.404 of this part (except for requirements which relate to non-auction purchases from producers and requirements of § 723.404(e) of this part.

(b)(1) This paragraph is applicable only to burley and flue-cured tobacco. Each dealer or buyer shall make a report to the Director, not later than February 1 of each year for flue-cured and April 1 for burley tobacco, showing by States where acquired, source and pounds of all tobacco, in the form normally marketed by producers, purchased at auction or nonauction including tobacco received which was not billed to the dealer or buyer. Any acquisition of tobacco in the form normally marketed by producers by the dealer or buyer during the marketing year (October 1 through September 30 for burley tobacco and July 1 through June 30 for flue-cured tobacco) which is not included in the initial report shall be reported in like manner no later than the end of the calendar week following the week in which the tobacco was acquired. The report shall show:

(2) For purchases at auction for each warehouse;

- (i) USDA registration number (warehouse code),
- (ii) Name and address of warehouse,
- (iii) Gross pounds originally billed to the buyer,
- (iv) Gross pounds billed to the buyer for which payment was made,
- (v) Gross pounds from the company correction account deducted for short lots and short weights and returned lots, and
- (vi) Gross pounds from the company correction account added for long lots and long weights.

(3) For purchases at nonauction;

(i) Name and address of seller (dealer or farmer),

(ii) Seller's number (dealer's registration number or farm number, including State and county code), and

(iii) Pounds purchased.

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufacturers.

(a) *Damaged tobacco.* Any dealer, warehouse operator, or other person who intends to purchase damaged tobacco shall notify the State FSA office where the warehouse operator or dealer is registered or should be registered. Such report must be made at least 2 business days in advance of the purchase so as to allow for inspection arrangements to be made. The inspection shall be conducted by an FSA representative and no purchase credit shall be allowed the buyer for the quantity determined to be damaged tobacco. Damaged tobacco may be disposed of without incurring a penalty only if the tobacco is destroyed and the destruction is witnessed by an FSA representative or the tobacco is sold directly to a processor or manufacturer and such sale is reported to the same State FSA office. Any tobacco not disposed of in that manner shall be deemed to have been a marketing of excess tobacco and will be subject to a penalty at the full penalty rate for the quantity of tobacco involved.

(b) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouse operator, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to FSA that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouse operator, or other person on MQ-79, Dealer's Record Book, for any purchase of tobacco