

§723.412

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(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

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

report, but not so furnished, any warehouse operator, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State FSA executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the Farm Service Agency, U.S. Department of Agriculture upon written request by the State FSA executive director, all such books, papers, records, lot tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State FSA executive director has reason to believe are relevant and are within the control of such person.

§ 723.416 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and community committees, and all county FSA office employees. Only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the Act. The provisions of this section shall not be deemed to prohibit the issuance of general statements based upon the report of a number of parties which statements do not identify the information furnished by any person.

Subpart E—Establishing Burley and Flue-Cured Tobacco National Marketing Quotas

SOURCE: 63 FR 11583, Mar. 10, 1998, unless otherwise noted.

§ 723.501 Scope.

This subpart sets out regulations for setting annual national marketing

quotas for burley and flue-cured tobacco based on the purchase intentions of certain manufacturers of cigarettes and on other factors. It also sets out penalty provisions for manufacturers who fail to purchase, within the tolerances set in this part, the amount of domestic tobacco, by kind, reflected in the stated intention as accounted for in accordance with this subpart.

§ 723.502 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A manufacturer, who as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States annually.

Price support inventory. The inventory of tobacco which, with respect to a particular kind of tobacco, has been pledged as collateral for a price support loan made by CCC through a producer-owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations or their successors, which by law act as agents for producers for price support loans for tobacco, and which were, as of January 1, 1996, for burley and flue-cured tobacco, the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

Unmanufactured tobacco. Stemmed and unstemmed leaf tobacco, stems, trimmings, and scrap tobacco.

§ 723.503 Establishing the quotas.

(a) *General.* Subject to the 3-percent adjustment provided for in paragraph (b) of this section, the annual marketing quotas for burley and flue-cured tobacco shall be calculated for each marketing year for each kind separately as follows:

(1) *Domestic manufacturer purchase intentions.* First, for each kind and year,