

§ 723.218

(i) From the eminent domain allotment pool if an application for transfer from the pool has been filed in accordance with part 718 of this chapter;

(ii) From a new farm; or

(iii) To the extent such acreage is designated for reduction under a Conservation Reserve Program contract.

(b) *Reapportionment of released acreage allotment.* The acreage voluntarily released on an annual or permanent basis for the current year may be reapportioned by the State FSA committee to any farm in any county in the State including a farm receiving a new farm allotment. The State FSA committee shall select the counties to which the released acreage will be reapportioned. The county FSA committee shall select the farms to which the released acreage will be reapportioned. The State FSA committee shall keep records on both an annual and permanent basis of the source of acreage released. Any acreage released for the current year on a permanent basis which is not reapportioned by the State FSA committee in the current year may be reapportioned in the following year. The county FSA committee for the county receiving released acreage may reapportion the tobacco allotment acreage on an annual or permanent basis to other farms in the county in amounts determined by the county FSA committee to be fair and reasonable on the basis of land, labor, and equipment available for production of Cigarfiller and binder (types 42, 43, 44, 54, and 55) tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Released acreage should not be reapportioned on a temporary or permanent basis to any farm unless there is assurance from the operator to the county FSA committee that the released acreage being received will be produced. Allotment reapportioned to a farm on an annual basis can only be used by the receiving farm for increased production during the current year. Allotment reapportioned to a farm on a permanent basis shall be added to the current year allotment or shall serve to establish an allotment for a farm without a current allotment. A farm shall be eligible to receive reapportionment of released

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acreage on either or both an annual or permanent basis only if a written request is filed by the farm owner or operator at the office of the county FSA committee not later than the final date for filing such requests established by the State FSA committee for the current year.

§ 723.218 Determining tobacco history acreage.

With respect to each respective kind of tobacco, the tobacco history acreage shall be determined for each farm for which a tobacco acreage allotment was established for such kind of tobacco for the current year.

(a) The history acreage shall be the same as the farm acreage allotment for the respective kind of tobacco if in the current year, or either of the two preceding years, the sum of the planted and considered planted acreage of such kind of tobacco was as much as 75 percent of the farm acreage allotment. Otherwise, the history acreage shall be the sum of the planted and considered planted acreage of such kind of tobacco.

(b) Notwithstanding any other provision of this section, for the respective kind of tobacco, the history acres for the current year and for each year of the base period shall be reduced to zero if:

(1) A new farm allotment was canceled;

(2) The allotment was in a pool established in accordance with the eminent domain provision of part 718 of this chapter and the period of eligibility has expired for transferring the allotment from the pool; or

(3) The county FSA committee determines that the farm has been retired from agricultural production and the allotment is not eligible for pooling in accordance with the eminent domain provisions of part 718 of this chapter.

§ 723.219 Forfeiture of burley tobacco marketing quota.

(a) *Determination of quota subject to forfeiture.* (1) For purposes of paragraph (b) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 718 of this chapter, if the entire farm shares a common ownership; or

(ii) All of the land within a farm which shares a common ownership if the parent farm consists of tracts of land having separate ownerships.

(2) For purposes of paragraph (b) of this section, the county FSA committee shall apportion, in accordance with the provisions of part 718 of this chapter, the burley tobacco quota assigned to a farm between the various tracts of land which are separately owned by:

(i) A person not using the land on the farm for which a burley tobacco marketing quota is established for agricultural purposes.

(ii) A person who uses the land on the farm for which the burley tobacco marketing quota is established for agricultural purposes or for educational, instructional, or demonstrational purposes.

(3) The farm marketing quota determined under this section for each farm or tract, as applicable, shall be the amount of quota subject to forfeiture under this section.

(b) *Person who does not use the land on the farm for which the marketing quota is established for agricultural purposes or does not use such marketing quota for educational, instructional, or demonstrational purposes.* For purposes of this paragraph, the term "person" means a person as defined in part 718 of this chapter, including any governmental entity, public utility, educational institution, religious institution or joint venture (but not including any farming operation involving only spouses), but excluding any individual.

(1) *Required forfeiture.* With respect to any person owning a farm for which a burley tobacco marketing quota is established, if the county FSA committee determines that such person does not use the land on such farm for agricultural purposes, or does not use such burley tobacco marketing quota for educational, instructional, or demonstrational purposes, such person shall forfeit such quota which is not sold on or before December 1 of the year after any year for which the county FSA committee makes such determination.

(2) *Agricultural purposes.* Land on the farm for which a burley tobacco marketing quota is established shall be

considered to be used for agricultural purposes if the county FSA committee determines that:

(i) In the current year or either of the 2 preceding years such land is used for the production of:

(A) Row crops of any type;

(B) Livestock or poultry (including pasture and forage for livestock);

(C) Trees (including orchards and vineyards); or

(D) Hay or native grasses on open land; or

(ii) In the current year such farm is owned by an educational institution which uses such burley tobacco marketing quota solely for educational, instructional, or demonstrational purposes.

(3) *Documentation.* Within 30 days after a written request is made by the county FSA committee, or within such extended time as may be granted by the county FSA committee, a person must submit such documentation as may be requested to support a determination that the provisions of paragraph (b)(1) of this section have been met with respect to such person. Upon failure of such person to timely respond to this request, the county FSA committee shall determine that the person does not use the land on the farm for agricultural purposes, or does not use the burley tobacco marketing quota for educational, instructional, or demonstrational purposes.

(c) *Buyers of quota fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 3 crop years beginning with the crop year for which the purchase became effective, such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted. However, any purchaser or subsequent purchaser of quota required to be sold under the mandatory sale to prevent forfeiture, provisions of paragraph (b) of this section shall be required to share in the risk of production of such quota for five crop years beginning with the crop year for which the purchase became effective.

(2) Failure to utilize purchased quota for the production of tobacco shall not result in the forfeiture of such quota, but the three year period and the five year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.

(3) *Reduction for failure to share in the risk of production.* The effective quota shall be reduced, but not below zero pounds, for leasing and marketing quota purposes only, to the extent of the purchased quota for each crop after the crop year in which the buyer of such quota fails to share in the risk of producing a crop of tobacco which is subject to such quota.

(4) *Determining forfeited amount.* If only part of the quota on a farm is attributable to a purchased quota, the amount of the farm marketing quota which must be forfeited under paragraph (c) of this section shall be determined by increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect changes in national quota factors since the purchase occurred and subtracting the pounds of quota which have been sold to prevent forfeiture.

(d) *Hearing.* Before any forfeiture of quota becomes effective under the provisions of this section, the county FSA committee shall:

(1) Schedule a hearing for the affected person.

(2) Notify the affected person of the hearing at least 10 days in advance of the hearing.

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county FSA committee as to whether or not:

(i) Any of the conditions for forfeiture specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of allotment and quota when such forfeiture conditions have been determined to exist with respect to the provisions of paragraph (b) of this section.

(iii) The affected person knowingly failed to take steps to prevent forfeiture of burley tobacco quota.

(4) Notify the affected persons of the county FSA committee determination and, if forfeiture of quota is to be required, afford such person an opportunity to appeal to a review committee in accordance with the provision of part 711 of this chapter.

(e) *Apportionment of data and determination of quota after forfeiture.* (1) *Apportionment of data.* The pounds of farm marketing quota retained on the forfeiting farm after the forfeiture shall be divided by the farm marketing quota established for the farm before the forfeiture to determine a factor for apportioning farm data. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data for the forfeiting farm:

(i) Overmarketings which have been subtracted when determining the effective farm marketing quota of the forfeiting farm.

(ii) Pounds of quota transferred from the forfeiting farm by lease or by the owner in the current year.

(iii) Pounds of quota reduced in the current year for a marketing quota violation in a prior year.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(vi) Previous year's farm marketing quota.

(vii) Pounds of quota transferred to the farm by lease or by owner in the previous year.

The portion of the forfeiting farm data which shall be included in a forfeiture pool for the county shall be determined by subtracting the pounds of each respective item of farm data which are retained on the forfeiting farm from the pounds of the respective item of data which were established for the forfeiting farm before forfeiture.

(2) *Forfeiture pool.* The data for the forfeiture pool shall be added to any previous data in the forfeiture pool.

(3) *Quota after forfeiture.* After adjustment of data, the effective farm marketing quota shall be determined in accordance with the provisions of §723.206 of this part for the forfeiting farm.

(f) *Forfeiture pool.* (1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a

forfeiture of quota occurs. The forfeiture pool shall be increased to include data for each forfeiture and shall be decreased for each reallocation in order to reflect any forfeited or reallocated amounts of:

(i) Farm marketing quota for the current year.

(ii) Quota reduced for marketing quota violations.

(iii) Quota transferred from the forfeiting farm by lease or by the owner.

(iv) Previous year's effective farm marketing quota.

(v) Previous year's marketings.

(2) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factor used in determining quotas for old farms. Quota data in the forfeiture pool shall be decreased each time any burley tobacco quota is reallocated from the forfeiture pool. Such decrease in the quota data will be made in the same proportion as the pounds of quota which are reallocated from the pool are to the pounds of quota which were in the pool before the reallocation.

(g) *Reallocation of quota from forfeiture pool.* (1) *Application.* In order to establish eligibility to receive quota from the forfeiture pool in the current year, an application must be made on a form approved by the Deputy Administrator. Such application must be filed:

(i) *Who may file.* By an active producer.

(ii) *When to file.* On or before April 30. The State FSA committee may establish an earlier date if notice of such earlier date is given in time for interested applicants to file an application by the earlier date.

(iii) *Where to file.* At the county FSA office which serves the farm for which the application is filed.

(2) *Eligibility of applicant.* In order for an applicant to be eligible for quota from the forfeiture pool, the county FSA committee must determine that:

(i) The application was filed timely.

(ii) The applicant is an active tobacco producer.

(iii) During the current year or during the 4 years preceding the current year, the applicant has not sold or forfeited quota from any farm.

(3) *Time to reallocate.* The county FSA committee shall:

(i) Not reallocate any quota from the forfeiture pool until the time has passed for filing an application for forfeited quota for the current year.

(ii) Reallocate any quota from the forfeiture pool only during the 30-day period beginning on the day after the final day for filing an application for quota from the forfeiture pool.

(4) *Reallocation by county FSA committee.* Reallocation of any burley tobacco quota shall be made by the county FSA committee. In making its determination of the amounts of quota to reallocate, the county FSA committee may consider the size of the current quotas on the farms of the eligible applicants, the length of time the applicants have been farming tobacco, the type of farming done by the applicants (i.e., livestock, grain, or other commodities), previous leasing history of the applicants, and such other factors which in the judgment of the county FSA committee should be considered. A burley tobacco quota may be reallocated to a farm which currently does not have a burley tobacco quota. A factor shall not be used to reallocate quota between all eligible applicants.

(5) *Basis for reallocation from forfeiture pool.* Reallocation from the forfeiture pool shall be on the basis of pounds of farm marketing quota.

(6) *Amount of quota to be reallocated.* The county FSA committee may reallocate all or part of the quota in the forfeiture pool. The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 100 pounds, whichever is less. The maximum amount is 500 pounds. However, up to 1,500 pounds may be allocated with State FSA committee concurrence.

(7) *Data for receiving farm.* All data for the forfeiture pool shall be apportioned to the receiving farm in the proportion that the reallocated farm marketing quota is to the total farm marketing quota in the forfeiture pool before the reallocation. The data determined for the receiving farm in accordance with the provisions of this paragraph shall be added to any previous data for the receiving farm.

(8) *Quota for receiving farm.* After any adjustments which are made in accordance with the provisions of this section, the effective farm marketing quota shall be determined for the receiving farm.

(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.

(i) *Successor-in-interest.* A successor-in-interest shall be subject to the provisions of this section in the same manner and to the same extent as would be applicable to the person whose interest has been assumed by such successor-in-interest.

(1) *New owner of farm.* The new owner of a farm on which a portion or all of the farm marketing quota for such farm was either purchased and/or was reallocated from forfeited quota shall become the successor-in-interest to the previous owner of the farm. However, if a farm is acquired by a new owner on or before June 30 of the current crop year and such owner would otherwise be required to sell or forfeit the farm marketing quota because in the preceding crop year the owner of such quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated quota, the new owner may be considered the buyer of the quota instead of being considered as a successor-in-interest to the previous

owner of the farm. However, the new owner must furnish to the county FSA committee on or before June 30 of the current year a certification that such owner intends to become an active burley tobacco producer. Any purchased or reallocated quota, which is acquired by a new owner who is not considered to be the buyer of the quota in accordance with the provisions of this paragraph, shall be subject to the same terms and conditions with respect to forfeiture which would be applicable if the new owner actually had purchased the quota at the time the farm was acquired.

(2) *Buyer no longer shares in risk of production.* The owner of a farm shall become the successor-in-interest to the buyer of burley tobacco quota which was transferred to a farm but which was not owned by such buyer if the buyer ceases to share in the risk of production of burley tobacco produced on the farm.

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§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

(a) *Determination of allotment and quota subject to forfeiture.* (1) For purposes of paragraphs (b) and (c) of this section, the phrase "owns a farm" means ownership of:

(i) A farm as constituted under part 718 of the chapter if the entire farm shares a common ownership; or

(ii) All of the land within a common ownership if the parent farm consists of separate ownership tracts of land.

(2) For purposes of paragraphs (b) and (c) of this section, the county FSA committee shall, in accordance with the provisions of part 718 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.