

§ 723.205 Determination of farm acreage allotments and effective farm acreage allotments for flue-cured tobacco.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the national acreage factor as determined by the Secretary for the current year by the preliminary farm acreage allotment for the current year and adjusting the result by:

(1) *Upward adjustment.* Adding the:

(i) Acreage approved in accordance with the provisions of §723.210 of this part in order to adjust for an inequity or to correct an error;

(ii) Acreage determined by dividing the pounds of quota which are purchased in the current year by the farm yield; and

(iii) Acreage determined by dividing the pounds of forfeited quota which are approved for adjustment from the forfeiture pool by the farm yield.

(2) *Downward Adjustment.* Subtracting the:

(i) Acreage determined by dividing the pounds of quota sold in the current year by the farm yield; and

(ii) Acreage of forfeited allotment.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by dividing by the effective farm marketing quota by the farm yield.

§ 723.206 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Burley tobacco.* The burley farm marketing quota shall be determined by multiplying the national factor as determined by the Secretary for the current year by the preliminary farm marketing quota for the current year and adjusting the result for permanent quota adjustments.

(b) *Flue-cured tobacco.* The flue-cured farm marketing quota shall be determined by multiplying the farm acreage allotment by the farm yield.

(c) *Burley or flue-cured tobacco.* The effective farm marketing quota shall be the farm marketing quota adjusted by:

(1) *Upward adjustments.* Adding the:

(i) Effective under marketings from the preceding marketing year, but effective for the 2002 and subsequent

marketing years, the aggregate amount for all farms of under marketings of burley tobacco for all farms that can be carried over shall be limited to 10 percent of the national basic quota of the preceding year. If needed, factoring will be undertaken to insure that the limit of the preceding sentence is not exceeded.

(ii) The pounds of quota which are temporarily transferred to the farm in the current year.

(2) *Downward adjustments.* Subtracting the pounds of quota that are:

(i) Overmarketed from the preceding marketing year,

(ii) Overmarketed from any year before the preceding year but have not been subtracted when determining the effective farm marketing quota in a prior year.

(iii) Temporarily transferred from the farm in the current year.

(iv) Reduced in the current year as a result of a violation in a prior year as provided for in §723.408 of this part.

(v) [Reserved]

(vi) Determined, for flue-cured tobacco only, by multiplying the farm yield by the acres reduced from the flue-cured tobacco acreage allotment during the current year in accordance with part 704 of this chapter.

(vii) For burley tobacco only, designated for reduction under a Conservation Reserve Program contract in accordance with part 704 of this chapter.

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§ 723.207 Determination of acreage allotments or burley marketing quotas for new farms.

(a)(1) *All kinds of tobacco.* The acreage allotment or burley marketing quota established in any crop year for all new farms shall not exceed the national acreage or poundage, as applicable, reserved for new farms for the respective kind of tobacco. The acreage allotment or burley marketing quota for a new farm shall be that acreage or burley marketing quota which the county FSA committee, with the approval of the State FSA committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the

land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Such acreage allotments or burley marketing quota shall not exceed 50 percent (75 percent for Cigar-filler and Binder tobacco) of the average of the applicable acreage allotments or burley marketing quotas established for at least two but not more than five old farms which are similar with respect to land, labor; and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco; and with respect to flue-cured tobacco acreage allotments, shall not exceed one acre.

(2) *Kinds of tobacco, except burley and flue-cured.* If the acreage planted to tobacco on a new tobacco farm is less than 75 percent of the tobacco acreage allotment otherwise established for the farm pursuant to this section, such allotment shall be automatically reduced to the sum of the tobacco planted acreage and the prevented planted tobacco acreage as determined under part 718 of this chapter for the farm.

(b)(1) *Written application.* The farm operator must file an application for a new farm acreage allotment or marketing quota at the office of the county FSA committee where the farm is administratively located on or before February 15 of the year for which the new farm acreage allotment or marketing quota is requested.

(2) *Operator requirements.* The operator requesting a new farm acreage allotment or marketing quota must be the sole owner of the farm, except for Cigar-filler and Binder tobacco, the operator need not own the farm. The farm operator shall not own or have an ownership interest in or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4)(i) *Income from farming.* The operator must expect to obtain during the current year more than 50 percent of the producer's income from the production of agricultural commodities or products. The following shall be considered in computing the operator's income:

(A) *Farm income.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm(s). The estimated return from the production of the requested new farm allotment or quota shall not be included.

(B) *Non-farm income.* Non-farming income shall include but not limited to salaries, commissions, pensions, social security payments, and unemployment compensation.

(C) *Spousal income.* The spouse's farm and non-farm income shall be included in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of their current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm(s). Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provisions for low-income farmers.* The county FSA committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and non-farm sources is so low that it will not provide a reasonable standard of living for the operator and the operator's family, and a State FSA committee representative approves such action. In making their determination, the county FSA committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents,

and other factors affecting the individual's ability to provide a reasonable standard of living.

(5) *Experience.* The operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least 2 of the 5 years immediately preceding the year for which the new farm allotment is requested. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application. However, for Cigar-filler and binder tobacco only, the operator must have experience in any prior year in the production of tobacco as a farm owner, farm operator, sharecropper, tenant, warehouse operator, or laborer on a farm which produced Cigar-filler and binder tobacco.

(6) *Operator has not sold or forfeited allotment.* For flue-cured tobacco only, during the current or the 4 preceding years, the operator must not have sold or forfeited any flue-cured tobacco allotment from any farm.

(c) *Eligibility requirements for the farm.* A new farm acreage allotment or marketing quota may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment, an allotment or quota for any kind of tobacco.

(2) *Availability of land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent domain for which the entire tobacco allotment was pooled pursuant to part 718 of this chapter, which is subsequently returned to agricultural production shall not be eligible for a new farm allotment or marketing quota for

a period of 5 years from the date the former owner was displaced.

(4) *Farm includes land previously having a tobacco acreage allotment.* A farm which includes land which has no tobacco allotment because the owner did not designate an allotment for such land when the parent farm was reconstituted pursuant to part 718 of this chapter shall not be eligible for a new farm acreage allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(5) *Entire quota sold.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the 4 preceding years, the farm was constituted as any part of a farm for which an acreage allotment or marketing quota had been established and for which the current or a former owner sold or permanently transferred all of the tobacco acreage allotment or marketing quota.

(d) *False information.* Any new farm acreage allotment or marketing quota which was determined by the county FSA committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant, shall be canceled by the county FSA committee as of the date the allotment or quota was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment or quota shall be canceled effective for the current crop year.

(e) *Failure to plant.* A new farm acreage allotment or marketing quota shall be reduced to zero if no tobacco is planted on the farm the first year.

§ 723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.

(a) *Flue-cured tobacco.* The farm acreage allotment for the divided farm shall be divided pursuant to the provisions of part 718 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in part 718 of this chapter.

(b) *Burley tobacco.* (1) *Division of farm marketing quota.* The farm marketing quota for the divided farm shall be divided according to part 718 of this