

§ 723.214

(3) For purposes of determining history acreage the correct acreage allotment shall be used, in determining whether or not 75 percent of the allotment has been planted.

[55 FR 39914, Oct. 1, 1990, as amended at 63 FR 11582, Mar. 10, 1998]

§ 723.214 Application for review.

Any producer who is dissatisfied with the farm acreage allotment and marketing quota established for the producer's farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the county FSA office to have such allotment and marketing quota reviewed by a review committee in accordance with part 711 of this chapter.

§ 723.215 Transfer of tobacco farm acreage allotment or farm marketing quota that cannot be planted or replanted due to a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The State FSA committee shall determine those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any of the tobacco acreage allotment or marketing quota for any farm in the county. The county FSA committee of each county affected by the determination shall publicize the determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage with the farm acreage allotment or marketing quota for such year to another farm or farms in the same county or in any other nearby county in the same or another State if such acreage cannot be planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county FSA committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to a nearby county, the county FSA committee for the nearby county shall be consulted before action is

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taken by the county FSA committee receiving the application.

(c)(1) *Amount of burley tobacco transfer.* The burley quota to be transferred shall not exceed the smaller of:

(i) The effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or

(ii) The quota requested to be transferred.

(2) *Amount of transfer for other than burley tobacco.* The allotment to be transferred shall not exceed the smaller of:

(i) The farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or

(ii) The allotment requested to be transferred.

(d) *County FSA committee approval.* The county FSA committee shall approve the transfer if it finds that:

(1) All or part of the farm acreage allotment or marketing quota for the transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

(e) *Cancellation of transfer.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county FSA committee, or the Deputy Administrator may cancel such transfer. Action by the county FSA committee to cancel a transfer shall be subject to the approval of the State FSA committee or its representative.

(f) *Acreage history credits.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments or quotas to have been planted to tobacco on the farm from which such allotment or quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county FSA committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county FSA committee may

accept applications filed after the closing date upon a determination by the county FSA committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State FSA committee approves such determination.

§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.

(a) *General.* The allotment or quota established for a farm may be transferred to another farm to the extent provided for in this section. For transfers by sale, common ownership units on a farm may be considered to be separate farms. Transfers are not permitted for cigar binder (types 54 and 55) tobacco allotments.

(1) *Types of transfers.* With respect to:

(i) Cigar-filler (type 46) and cigar-filler (types 42, 43, and 44), tobacco transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(A) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease

(B) Owner, or

(C) Sale.

(iv) Fire-cured, dark air-cured, and Virginia sun-cured tobacco, transfers may be by:

(A) Lease,

(B) Owner, or

(C) Sale.

(2) *Transfer agreement.* In order to transfer a marketing quota or allotment between two eligible farms, including a marketing quota or allotment that is pooled in accordance with part 718 of this chapter, the transfer must be recorded on Form FSA-375 and:

(i) *Where to file.* Filed in the county FSA office which serves the county in which the transferring farm is located for administrative purposes.

(ii) *Signature-burley tobacco.* Signed by, for burley tobacco only:

(A) *Leases.* The owner and operator of the transferring farm and the owner or operator of the receiving farm. For

leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

(B) *Sales.* The owner of the selling farm and an active burley tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which the quota will be assigned, the owner or operator of the farm must give written consent for the quota to be assigned to the farm.

(C) *Owner transfers.* The owner of the transferring farm, who also must be the owner or operator of the receiving farm.

(iii) *Signature-flue-cured tobacco.* Signed by, for flue-cured tobacco only:

(A) *Leases.* The owner of the transferring farm and the owner or operator of the receiving farm. For leases made under the disaster provisions of this section, the signature of the owner of the transferring farm will not be required if the FSA determines that the farm is cash leased for the current crop year and that the owner does not share in the crop.

(B) *Sales.* The owner of the selling farm and an active flue-cured tobacco producer who is the buyer. If the buyer is neither owner nor operator of the farm to which allotment and quota will be assigned, the owner or operator of the farm must be given written consent for the allotment and quota to be assigned to the farm.

(iv) *Signatures—except burley and flue-cured tobacco.* Signed by, for all kinds of tobacco other than burley and flue-cured tobacco, the owner and operator of the transferring farm and the owner or operator of the receiving farm.

(v) *Witness.* Each person whose signature is required by paragraphs (a)(2)(ii), (iii), or (iv) of this section must sign Form FSA-375 in the presence of a State or county FSA committee member or employee who shall sign Form FSA-375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be witnessed in the county FSA office where