

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

the farm is administratively located, they may be witnessed in any State or county FSA office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county FSA office mails Form FSA-375 for the required signatures;

(b) *Effective date.* In order for the transfer to be effective for the current year, the Form FSA-375 shall be filed:

(1) *When to file—burley tobacco.* For burley tobacco:

(i) On or before July 1 of the current year, except as provided in paragraph (b)(1)(ii) of this section. An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county FSA committee, with the concurrence of the State FSA committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) After July 1 of the current crop year and before February 16 of the following calendar year when the transfer is by lease and the transferring farm has suffered a loss of production of burley tobacco due to hail, drought, excessive rain, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(2) *When to file—flue-cured tobacco.* For flue-cured tobacco:

(i) On or before June 15 if the transfer is by sale.

(ii) After June 30 and on or before November 15 for a transfer by lease when the transferring farm has suffered a loss of production of flue-cured tobacco due to drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator.

(3) *When to file—except burley and flue-cured tobacco.* For all other kinds of tobacco, by the date established by the State FSA committee, except that

a lease shall be effective if the county FSA committee, with the approval of a State FSA committee representative, finds that the producer was prevented from timely filing the transfer agreement due to reasons beyond the control of the producer.

(c) *Approval or disapproval.* A transfer agreement shall not be approved before the period for filing an application for review of the initial notice of allotment or quota has expired. The county FSA committee or its designee shall approve each transfer agreement that meets the eligibility requirements of this section. The county FSA committee shall disapprove any transfer agreement that does not meet the eligibility requirement of this section. Any approval or disapproval of a transfer agreement shall to the extent possible be made within 30 days after the transfer agreement is filed with the county FSA committee unless additional time is required as the result of conditions beyond the control of the county FSA committee. However:

(1) *Burley tobacco.* If an agreement is filed after July 1 which provides for the sale of quota, a transfer agreement shall not be approved until the next year's quota is computed for the selling farm. In addition, if marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(2) *Flue-cured tobacco.* If an agreement is filed after June 15 which provides for the sale of an allotment and quota, a transfer agreement shall not be approved until next year's allotment and quota is computed for the selling farm. In addition, if a marketing quota referendum will be conducted to determine whether or not quotas will be in effect for the crop, a transfer agreement shall not be approved until the Secretary announces that quotas have been approved by referendum.

(d) *Time of determination.* An approved transfer agreement shall become effective for the then current crop year, except that if an agreement that is filed after June 15 for the sale of flue-cured tobacco quota or after July 1 for the

sale of burley tobacco quota, such approved agreement shall become effective for the next crop year.

(e) *Burley tobacco.* For burley tobacco only:

(1) *Basis for transfer by sale.* If the transfer of a quota is by sale, the transfer shall be based on part or all of the farm poundage quota.

(2) *Basis for transfer by lease or owner.* If the transfer of a quota is by lease or by the owner, transfer shall be based on a part of or all of the effective farm poundage quota.

(3) *Accumulation of quota.* A transfer by lease or by owner shall not be approved if the county FSA committee determines that the primary purpose of the transfer is to accumulate the quota on the farm (i.e., alternately transferring to and from the farm for 2 or more years to maintain the quota without satisfactory evidence of plans for producing the quota on the receiving farm).

(4) *Subleasing.* In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county FSA committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period. However, a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(5) *Transferring farm restrictions.* An agreement to transfer quota from a farm by lease or by the owner shall not be approved:

(i) *Limitation.* If the pounds of quota being transferred exceed the difference obtained by subtracting from the effective farm marketing quota the total pounds of quota purchased and/or reallocated from forfeited quota in the current and two preceding years, as adjusted to reflect changes in national quota factors which have occurred since each respective purchase and/or reallocation of quota. However, this provision shall not be applicable to

transfer agreements that are filed after July 1.

(ii) *New farm.* If the farm is a new farm.

(iii) *Reduction pending.* If consideration of a marketing quota violation is pending which may result in a quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a 1-year transfer will be approved if otherwise eligible.

(iv) *Filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm. However, burley tobacco producers in the States of Tennessee, Ohio and Indiana shall, irrespective of the preceding sentence, be permitted to lease and transfer burley tobacco quota from one farm in a State to any other farm in the State if other conditions for the transfer are met.

(v) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the county FSA committee in the county in which the farm is located for administrative purposes determines that the:

(A) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, drought, excessive rain, tornado, or other natural disaster.

(B) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota.

(C) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(D) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(E) Receiving farm is administratively located in the same State as the transferring farm.

(vi) *Consent of lien holder.* For a multiple year transfer, if the farm is subject to lien, unless the lien holder agrees in writing to the transfer; and

(vii) *Claim for marketing quota penalty.* If a claim has been filed against the

lessor for a tobacco marketing quota penalty and the claim remains unpaid; However, this provision shall not apply if the claim is paid or the entire proceeds of the lease of the quota are applied against the claim and the county FSA committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(viii) *Forfeiture pending.* To the extent that forfeiture of such quota is expected to become final before July 1.

(ix) *Divided farms with less than 1,000 pounds of quota.* If the farm has been divided by reconstitution and the divided farm has a farm marketing quota of less than 1,000 pounds subject to being reduced to zero pursuant to section 723.208(b).

(6) *Receiving farm restrictions.* An agreement to transfer quota to a farm by lease or by owner shall not be approved:

(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:

(A) Unless the receiving farm is administratively located in the same county as the transferring farm and the provisions of paragraph (e)(5)(iv) of this section are not applicable.

(B) If the pounds of quota being transferred to the farm exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the:

(A) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(B) Pounds of quota to be transferred to the lessee farm do not exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year. However, the total quantity of tobacco that can be leased or transferred to a farm during a crop year may not ex-

ceed that quantity which equals 15 percent of the effective quota on the farm prior to any leases or transfers filed after July 1 of the crop year.

(C) Transferring farm is administratively located in the same State as the receiving farm.

(7) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota was bought and/or reallocated from quota previously forfeited as provided in §723.219(i)(1), and the purchase and/or reallocation became effective within the current or any of the three preceding years; if the purchased and/or reallocated quota was obtained from quota purchased and/or reallocated as provided in paragraph (b) of this section within the four preceding years. However, this provision shall not be applicable if:

(A) The quota was purchased and/or reallocated to the farm during four preceding years; and

(B) The county FSA committee, with the concurrence of a representative of the State FSA committee, determines that the failure to permit the sale of quota, to the extent otherwise permitted by this section, would cause an undue hardship on the seller and the:

(1) Sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(2) Owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(3) Owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(4) Owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or sharecropper and a replacement cannot be obtained.

(ii) *Location of farms.* Unless both the selling farm and the buying farm are administratively located in the same county.

(iii) *Pounds for sale.* The pounds transferred by sale shall be based on part of all of the farm poundage quota.

(iv) *Reduction pending.* If consideration of an indicated marketing quota violation is pending which may result in quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before the date specified in § 723.212 of this part, a transfer will be approved if otherwise eligible.

(v) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the quota in order to prevent forfeiture.

(vi) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the quota are applied against the claim and the county FSA committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vii) *Consent of lien holder.* Requires consent of the lien holder, if the farm is subject to a lien, unless the lien holder agrees in writing to the transfer. However, consent of a lien holder is not required for a transfer of the pounds of quota from a farm for which forfeiture is required in accordance with the provisions of § 723.219.

(viii) *Quota is subject to an approved Conservation Reserve Program Contract.* If the quota has been reduced because of an approved Conservation Reserve Program contract according to part 704 of this chapter unless forfeiture is otherwise required.

(8) *Restrictions on buying farm.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producers.* Unless the buyer is an active burley tobacco producer.

(ii) *Cropland limitation.* If the sum of the pounds of quota being transferred exceeds the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.

(iii) *Quota previously sold.* If quota was sold from the farm in the current or either of the two preceding years.

(iv) Unless both the buying farm and the selling farm are administratively located in the same county.

(v) *Quota limitation.* If the sum of the pounds of quota being transferred in the current year exceeds the larger of: (A) 30 percent of the receiving farm's existing quota, or (B) 20,000 pounds.

(9) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: However, an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

(10) *Redetermination of quota after transfer by lease or by the owner.* After a transfer by lease or by the owner, the effective farm marketing quota shall be redetermined for both the transferring farm and the receiving farm.

(11) *Apportionment of data-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(ii) The pounds of quota which have been transferred from the selling farm by lease or by the owner in the current year;

(iii) The pounds of quota which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(iv) The pounds of quota transferred to the farm by lease or by owner in the previous year;

(v) The previous year's farm marketing quota; and

(vi) The previous year's effective farm marketing quota.

(12) *Apportionment of data-buying farm.* The buying farm's share of each respective item of farm data shall be

determined by subtracting the pounds which are retained on the selling farm for the respective item from the pounds which were established for the selling farm for the respective item before the current sale of quota. However, the pounds of quota transferred from the selling farm by lease or by the owner and/or the pounds of quota reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which were transferred by lease or by the owner, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(13) *Redetermination quota after sale or purchase of quota.* After adjusting the data in accordance with the provisions of this section, the effective farm marketing quota shall be determined for both the buying and selling farm.

(14) *Farm division after transfer by lease.* If a farm is divided after there has been a transfer of a marketing quota to the farm by lease, the transferred quota shall be divided in the manner which is designated in writing by the lessee. In the absence of a written designation, the leased quota shall be apportioned in the same manner as the farm marketing quota of the parent farm.

(15) *Multiple year transfer by lease or by owner.* The effective farm marketing quota on a receiving farm having a multiple-year transfer agreement in effect shall be adjusted for each year for which such transfer agreement is in effect to reflect any decrease in the national quota factor which causes the farm marketing quota established for the transferring farm to be less than the pounds of quota which have been transferred to the receiving farm.

(16) *Considered planted credit.* Considered planted credit shall be given to the transferring farm when tobacco quota is transferred from the farm by lease or by owner.

(f) *Flue-cured tobacco.* For flue-cured tobacco only:

(1) *Location of buying and selling farms.* Marketing quota for flue cured tobacco transferred by sale must be to a farm administratively located within the same county, except that if 25 percent of the active flue-cured tobacco producers within a State petition the Secretary and the Secretary determines that a majority of the active flue-cured tobacco producers voting in the referendum approve, the sale of a flue-cured tobacco allotment or quota from a farm in the State to any other farm in the State shall be permitted if all other conditions for such transfers are met. Further, the Secretary may permit flue-cured farms with the same owner that are located in contiguous counties to be combined for administrative purposes as one farm, notwithstanding provisions in part 718 of this chapter that might not otherwise permit that kind of combination.

(2) *Maximum quota to be transferred by sale.* If the transfer is by sale, the transfer shall be based on part or all of the farm poundage quota. The maximum quota that may be transferred by sale is the farm poundage quota.

(3) *Transfer by lease-involvement of outside parties.* If the transfer is by lease, only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for such transfer. The transfer shall be based on a portion or all of the effective farm poundage quota. The maximum quota that may be transferred by lease is the effective farm poundage quota.

(4) *Lessor farm restrictions.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county FSA committee in the county in which the farm is located for administrative purposes determines that the:

(A)(1) The farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or

(2) In accordance with guidelines issued by the Deputy Administrator, the planted acreage of flue-cured tobacco on the farm is sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county FSA committee determines that the amount of the lease represents a reasonable price for the pounds of quota being leased.

(iv) *Located in the same State.* Unless the lessor farm is administratively located in the same State as the lessee farm.

(5) *Lessee farm restrictions.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

(iii) *Located in same State.* Unless the lessee farm is administratively located in the same State as the lessor farm.

(6) *Selling farm restrictions.* A transfer of quota from a farm by sale shall not be approved:

(i) *Previously purchased and/or reallocated quota.* If a farm marketing quota includes quota that was purchased and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the current or any of the three preceding years. However, this provision shall not be applicable if:

(A)(1) The quota being sold was purchased in such period, if forfeiture of such quota is required by § 723.220 of this part, and the amount of quota being transferred does not exceed the amount of quota for which forfeiture otherwise is required in accordance with the provisions of § 723.220 of this part; or

(2) The county FSA committee, with the concurrence of a representative of the State FSA committee, determines that the failure to approve the sale would cause an undue hardship on the seller and:

(B) The sale is in connection with the settlement of an estate which includes the farm for which the quota was established;

(C) The owner of the quota is experiencing financial distress to the extent that current year financing is unlikely;

(D) The owner of the quota is disabled due to health reasons to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota; or

(E) The owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to reasons beyond such owner's control such as the loss of a tenant or share cropper and a replacement cannot be obtained.

(ii) *Reduction pending.* If consideration of an indicated violation is pending which may result in an allotment and quota reduction for the farm for the current year. However, if the county FSA committee determines that a decision will not be made on the pending case on or before April 1, a transfer may be approved.

(iii) *Forfeiture pending.* If the agreement for transfer by sale is filed subsequent to the final date which is permitted for the sale of the allotment and quota in order to prevent forfeiture.

(iv) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer: However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of §723.220 of this part.

(v) *Claim for marketing quota penalty.* If a claim has been filed against the seller for a tobacco marketing quota penalty and the claim remains unpaid: However, this provision shall not be applicable if the claim for such penalty is paid or the entire proceeds of the sale of the allotment and quota are applied against the claim and the county FSA committee determines that the amount paid represents a reasonable selling price for the pounds of quota being sold.

(vi) *Allotment and quota subject to an approved Conservation Reserve Program contract.* If the allotment and quota is subject to an approved Conservation Reserve Program contract, unless forfeiture otherwise would be required in accordance with the provisions of §723.220 of this part.

(7) *Buying farm restrictions.* A transfer of quota to a farm by purchase shall not be approved:

(i) *Active producer.* Unless the buyer is an active flue-cured tobacco producer.

(ii) [Reserved]

(iii) *Quota previously sold.* If the farm owner sold quota from a farm during the current or any of two preceding years.

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(8) *Allotment and quota after transfer by lease.* The effective farm acreage allotment and the effective farm marketing quota shall be determined for both the lessee farm and the lessor farm in accordance with the provisions of §§723.205 and 723.206 of this part, respectively.

(9) *Apportionment of data after transfer of quota by sale-selling farm.* The pounds of farm marketing quota retained on the selling farm after the sale of quota shall be divided by the farm marketing quota established for the selling farm before the sale to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the selling farm shall be determined by multiplying the factor by the following data:

(i) The planted and considered planted acres for the base period;

(ii) The history acres for the base period;

(iii) The farm acreage allotment for the current year and for the base period;

(iv) The amount of any overmarketings which have not been subtracted when a determination is made of the effective farm marketing quota of the selling farm;

(v) The pounds of quota which have been transferred from the selling farm by lease in the current year;

(vi) The acres of allotment which have been reduced in the current year as the result of a marketing quota violation in a prior year;

(vii) The pounds of quota transferred to the farm by lease in the previous year;

(viii) The previous year's farm marketing quota;

(ix) The previous year's effective farm marketing quota; and

(x) The previous year's marketings.

(10) *Apportionment of data-buying farm.* The pounds of farm marketing quota which have been purchased shall be divided by the farm yield for the buying farm in order to determine the farm acreage allotment for the buying farm. The buying farm's share of other farm data shall be determined by subtracting the acres or pounds, as applicable, which are retained on the selling farm from the acres or pounds which were established for the selling farm

before the current sale of quota: However, the acres computed for the acres of reduction resulting from a marketing quota violation for the buying farm shall be multiplied by a factor determined by dividing the farm yield of the selling farm by the farm yield of the buying farm in order to determine the acres of reduction from the buying farm for the current year. The pounds of quota transferred from the selling farm by lease and/or the acres of allotment reduction resulting from a marketing quota violation on the selling farm may be apportioned between the farms in accordance with a written agreement between the buyer and the seller if the farm marketing quota retained on the selling farm is sufficient to satisfy the pounds of quota which are leased, the pounds of quota which have been reduced as the result of a marketing quota violation, and the overmarketings for the farm, if any. The data determined in accordance with this paragraph shall be added to any previous data for the buying farm.

(11) *Allotment and quota.* After adjusting the data in accordance with the provisions of this section, the farm acreage allotment, the effective farm acreage allotment, and the effective farm marketing quota shall be determined for both the buying and the selling farm.

(12) *Effect of price support eligibility.* If a lease agreement is filed after the farm operator reports the acreage of tobacco on the farm in the current year, the effective farm acreage allotment which has been determined prior to the approval of the transfer will be used in determining price support eligibility for the farm.

(13) *Violation of lease provisions.* (i) If, after a lease agreement is approved, information is brought to the attention of the county FSA committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county FSA committee shall schedule a hearing, notify such person of the time and place of the hearing, and present evidence at the hearing with respect to the allegation of false certification. If, as a result of the evidence presented, the county FSA committee determines that such

person knowingly made a false certification, the county FSA committee shall notify the person of the determination and afford such person 15 days after the mailing of the notice to request a review of the determination by a review committee as provided for by part 711 of this chapter.

(ii) If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(iii) If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county FSA committee.

(14) *Considered planted credit.* Considered planted credit shall be given to the lessor farm for the tobacco acreage allotment which is deducted as the result of the transfer of quota from the farm by lease.

(15) *Sale of quota with installment payment option.* Notwithstanding any other provision of this section the owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment. Such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(v) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with this subparagraph shall not revert to the seller's farm but shall remain with the farm to which

assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota.

(g) *Burley and flue-cured tobacco.* For burley or flue-cured tobacco:

(1) *Carryover tobacco.* If tobacco is marketed after the entire farm marketing quota of the producing farm has been transferred by sale, the tobacco shall be considered as having been marketed on each farm to which farm marketing quota was transferred by sale in accordance with a transfer agreement filed after June 15 for flue-cured tobacco, or July 1 for burley tobacco, of the last year in which a farm marketing quota was established for the producing farm. Such marketing shall be prorated to each farm in proportion to the pounds of farm poundage quota purchased by each farm. If there was more than one farm to which a farm marketing quota was transferred by sale, the marketing may be assigned to the farms in the manner agreed to in writing by each of the buyers of such farm marketing quota.

(2) *Cancellation of transfer.* A transfer of flue-cured allotment and quota, or burley quota, under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county FSA committee. For the purpose of determining any overmarketings and undermarketings from the farms, and for the purpose of determining eligibility for price support and marketing quota penalties, the cancellation shall be effective as of the date of approval. However, such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes if the:

(i) Transfer approval was made in error or on the basis of incorrect information which had been unknowingly furnished by the parties to the agreement; and

(ii) Parties to the transfer agreement were not notified of the cancellation before the marketing for the receiving farm exceeded the correct effective farm marketing quota.

(3) *Canceled because of fraud.* If a transfer of a flue-cured allotment and quota, or burley quota, is canceled be-

cause of fraud on the part of the owner of the transferring farm but no fraud is attributable to either the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval of the transfer except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case, the overmarketings shall be charged against the farm from which the transfer was made if the farm, after any reconstitution which may be necessary as a result of fraud, is assigned a flue-cured allotment and quota, or burley quota, against which the overmarketings could be charged. Otherwise, the overmarketings shall be charged against any other farm involved in the fraud having a flue-cured allotment and quota, or burley quota, after any reconstitution required by such fraud. Notwithstanding the foregoing, any overmarketings on the receiving farm which are in excess of the amount of quota involved in the canceled transfer shall be charged against the receiving farm.

(4) *Dissolution or revision of a transfer agreement.* A transfer agreement may be dissolved or minor revisions made with respect to such agreement if a written request by all parties to the agreement is made to the county FSA committee by November 15 of the current marketing year for flue-cured tobacco, or by February 15 of the current marketing year for burley tobacco. After any such dissolution or revision of a transfer agreement, an official notice of the flue-cured acreage allotment and marketing quota, or burley quota, shall be issued by the county FSA committee to each of the operators involved in the transfer agreement.

(h) *Cigar tobacco.* For cigar-filler (type 46) and cigar-filler (types 42, 43, and 44) tobacco only, the provisions of paragraph (j) of this section are applicable in addition to the following:

(1) *Farm eligible.* The owner and operator (acting together if different person) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm acreage allotment established for such farm to any other owner or operator of

a farm in the same county with a current year's allotment (old or new farm) for the same kind of tobacco for use on such farm. Transfer of allotments by lease shall not exceed 5 years.

(2) *Transfer approved acre per acre.* The lease and transfer shall be approved acre per acre.

(3) *Considered planted credit.* The amount of allotment acreage which is leased from a farm shall be considered for the purpose of determining future allotments (and tobacco history acreage) to have been planted to tobacco on such farm. The amount of allotment acreage which is leased and transferred to a farm shall not be taken into account in establishing allotments for subsequent years for such farms.

(4) *Limitation on acreage transferred.* The total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm shall not exceed 50 percent of the acreage of cropland in the farm, except that in the case of cigar-filler (types 42, 43, 44, and 46) transfers, such transfers shall be limited to a total of 10 acres.

(5) *Transfer from the pool.* Allotments in a pool pursuant to part 718 of this chapter may be eligible for lease and transfer during the 3-year life of the pooled allotment. An agreement to lease and transfer shall not serve to extend the life of such pooled allotment.

(i) *Fire-cured, Dark air-cured, and Virginia sun-cured tobacco.* For Fire-cured, Dark air-cured, and Virginia sun-cured tobacco, only, the provisions of this section are applicable in addition to the following:

(1) *Persons eligible to file a record of transfer (FSA-375)—sale or lease.* The owner and operator of any old farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may sell or lease all or any part of such allotment to any other owner or operator of a farm in the same county, and in the same State for Virginia fire-cured (type 21) or Virginia sun-cured (type 37) tobaccos. The receiving farm need not be an old farm. In the case of a permanent transfer, a statement signed by all parties to the transaction confirming that the sale has been made shall be filed with the county FSA committee.

(2) *By owner.* The owner of any old tobacco farm for which a Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment is established for the current year may transfer any or all of such allotment permanently, or for a term of years designated by the owner, to another farm in the same county (within the same State for Virginia fire-cured and Virginia sun-cured tobacco) owned or controlled by such owner.

(3) *Maximum period of transfer by lease.* Transfer of allotments by lease shall not exceed 5 years.

(4) *Basis for transfer.* The transfer shall be approved acre for acre.

(5) *Adjustments in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfer of allotment is made shall be adjusted by the county FSA committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for 1 or more years by lease or by owner, the farm history acreage shall not be reduced on the farm from which the transfer is made and farm history acreage shall not be transferred to the receiving farm.

(6) *Limitation on acreage transferred.* The total of the Fire-cured, Dark air-cured, or Virginia sun-cured tobacco allotment which may be transferred for each kind of tobacco, by sale, lease, or by owner, to a farm shall not exceed 50 percent of the acreage of cropland on the farm. The cropland in the farm for the current year for purposes of such transfers shall be the total cropland as defined in Part 718 of this chapter.

(7) *Prohibition on permanent transfer.* A permanent transfer by sale or by owner shall not be approved from any farm to which an allotment was permanently transferred by sale or by owner within the 3 immediately preceding crop years.

(8) *Temporary transfer to non-owned farm.* A transfer requested on a temporary basis to a farm controlled but not owned by the applicant shall be approved only if the applicant will be the operator of the farm to which the transfer is to be made for each year of

the period for which the transfer is requested. When the applicant for whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond such operator's control, the transfer shall remain in effect unless the transfer is terminated under the provisions of paragraph (j) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetence, or bankruptcy of such person.

(9) *Transfer of pooled allotment.* Allotments established for a farm as pooled allotment under part 718 of this chapter may be transferred on a:

(i) Permanent basis during the 3-year life of a pooled allotment, or

(ii) Temporary basis for a term of years not to exceed the remaining number of crop years of such 3-year period. A temporary agreement to transfer shall not serve to extend the life of such pooled allotment.

(10) *New farm eligibility.* Any farm from which the entire farm allotment is sold or permanently transferred by the owner shall not be eligible for a new farm tobacco allotment for the kind transferred during the 5 years following the year in which such transfer is made.

(11) *Transfer of history acreage.* Permanent transfer of allotment shall have the effect of transferring history acreage, farm base, and marketing quota attributable to such allotment. In the case of a transfer by lease, the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment was transferred.

(j) *Tobacco except burley, flue-cured, and cigar (types 54 and 55).* For tobacco that may be transferred in accordance with the provisions of paragraph (h) or (i) of this section, the following provisions shall also apply:

(1) *New farm allotment.* A new farm allotment shall not be transferred.

(2) *Tobacco allotment subject to an approved Conservation Reserve Program contract.* A transfer of allotment designated for reduction under a Conservation Reserve Program contract shall not be approved.

(3) *Subleasing prohibited.* A transfer of allotment from a farm shall not be approved during the period for which a current temporary transfer agreement is in effect that transferred quota to the same farm.

(4) *Limitation on transfer to and from a farm in the same year.* If a transfer agreement is in effect for the current crop year for a farm, a transfer of allotment shall not be approved during the same crop year:

(i) From such farm receiving allotment by transfer for such year, or

(ii) To such farm which had allotment transferred from it for such year.

(5) *Farm in violation.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county FSA committee shall delay approval of any transfer of allotment from or to the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such case cannot be made effective for the current crop year before the final date for reducing allotments for violations, the transfer may be approved by the county FSA committee. In any case, if, after a transfer of a tobacco acreage allotment has been approved by the county FSA committee, it is determined that the allotment for the farm from which or to which such acreage is transferred is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year.

(6) *Claim for tobacco marketing quota penalty.* A transfer of acreage allotment from a farm shall not be approved if a claim has been filed against the lessor, seller, or transferring owner for a tobacco marketing quota penalty and the claim remains unpaid. However, this provision shall not apply if the claim is paid or the entire proceeds of the lease or sale of the allotment are applied against the claim and the county FSA committee determines that the amount paid for the lease or sale represents a reasonable price for the acres of allotment being transferred.

(7) *Approval after review period.* A transfer of allotment shall not be approved by the county FSA committee for any farm before the time of filing an application for review, as shown on

the original allotment notice for the farm, has expired. If an application for review is filed for a farm involved in a transfer agreement, such agreement shall not be approved by the county FSA committee until the allotment for such farm is finally determined pursuant to part 711 of this chapter.

(8) *Acreage allotment after lease and transfer.* The acreage allotment determined after a temporary transfer for a farm under the provisions of this section shall be the allotment of such farm for the current year only for the purpose of determining:

- (i) Excess acreage,
- (ii) The amount of penalty to be collected on marketings of excess tobacco including absorption of carryover penalty tobacco,
- (iii) Eligibility for price support, and
- (iv) The farm marketing quota and the percentage reduction for a violation in the allotment for the farm.

(9) *Cancellation of transfer.* Any transfer of allotment under this section which was approved by the county FSA committee in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county FSA committee. Such cancellation shall be effective as of the date of approval for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalty purposes, if:

- (i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the transfer agreement; and
- (ii) The parties to the transfer agreement were not notified of the cancellation before the tobacco was planted.

(10) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county FSA committee. Such written notification shall be filed prior to planting the tobacco. A late filed request to dissolve or revise the transfer may be effective for the current year if the county FSA committee with approval of a representative of the State FSA committee determines that the producer was prevented from time-

ly filing for reasons beyond such producer's control.

(11) *Reconstituted farm.* The allotment for a farm being divided or combined in the current year shall be the allotment after the transfer has been approved. Notwithstanding the above, in the case of a division, the county FSA committee shall allocate the acreage that was transferred by lease to the tracts involved in the division as the parent farm owners and operators designate in writing. In the absence of such designation, the county FSA committee shall apportion the leased acreage.

(12) *Consent of lien holder.* A transfer of allotment other than by annual lease shall not be approved from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lien holder.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21441, May 9, 1991; 58 FR 11960, Mar. 2, 1993; 63 FR 11582, Mar. 10, 1998; 65 FR 7953, Feb. 16, 2000; 66 FR 53509, Oct. 23, 2001]

**§ 723.217 Release and reapportionment of old farm acreage allotments for Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco.**

(a) *Annual or permanent release of acreage allotments to State committee.* Except as provided in this paragraph, all or any part of a farm acreage allotment on which Cigar-filler and Binder (types 42, 43, 44, 54, and 55) tobacco will not be produced and which the operator of the farm voluntarily releases on an annual basis, or both the owner and operator voluntarily releases on a permanent basis, in writing to the State FSA committee by not later than the final date for filing releases established by the State FSA committee for the current year shall be deducted from the allotment of such farm.

(1) For the farm voluntarily releasing tobacco farm acreage allotment on an annual basis, such acreage will be considered as having been planted on the releasing farm for the purpose of establishing allotments for subsequent years. For the farm receiving such annual released acreage, such acreage shall not be taken into account in establishing future allotments for the farm. The tobacco history acreage for a farm releasing on a permanent basis