

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

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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 shall be adjusted to reflect the acreage permanently released.

(2) An acreage allotment shall not be released either annually or permanently:

(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

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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 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.