

(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.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21442, May 9, 1991]

§ 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.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

(4) The farm acreage allotment and farm marketing quota determined under this section for each farm or tract, as applicable, will be the amount of allotment and quota subject to forfeiture under this section.

(b) *Persons not significantly involved in management or use of land for agricultural 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, or religious institution, but not including any: Individual, partnership, joint venture, family farm corporation, trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructional or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county FSA committee determines that any person which owns farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before December 1 of the year for which the county FSA committee makes such a determination.

(2) *Owner ceases to be significantly involved.* A person shall be considered to be significantly involved in the management or use of land for agricultural purposes if the county FSA committee determines that:

(i) For the 3 preceding years, more than 20 percent of the gross income of the person has been derived from the management or use of land for the production of crops which are planted and harvested annually, and/or livestock, including pasture and forage for livestock; and

(ii) Any other person or all other persons which in combination own more than 50 percent of the assets of the owner of the flue-cured tobacco allotment and marketing quota also meet the criteria specified in paragraph (b)(2)(i) of this section.

(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)(2) of this section have been met with respect to such person. Upon failure of such person to timely respond to such request, the county FSA committee shall determine that the person is not significantly involved in the management or use of land for agricultural purposes.

(c)-(d) [Reserved]

(e) *Buyers of allotment fail to share in the risk of production.*

(1) *Forfeiture required.* If any person buys flue-cured acreage allotment and 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 three 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.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not result in the forfeiture of such quota, but the 3 year period which is specified in paragraph (e)(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 risk of production.* The effective allotment and quota shall be reduced, but not below zero acres or pounds, for planting, leasing, and marketing quota purposes only, to the extent of purchased allotment and quota for each crop year after the crop year in which the buyer of such allotment and quota fails to share in the risk of producing a crop of tobacco planted under such allotment and quota.

(4) *Determining forfeited amount.* If only part of the allotment and quota on a farm resulted from purchased allotment or quota, the amount of farm marketing quota which must be forfeited under paragraph (e) of this section shall be determined by:

(i) Increasing or decreasing each respective purchase of farm marketing quota for the farm to reflect any annual changes in national acreage and national yield factors subsequent to the year of purchase.

(ii) Adding the amounts determined in paragraph (e)(4)(i) of this section, multiplying the result by the farm yield for the farm, and subtracting the pounds of quota which have been sold to prevent forfeiture.

(f) *Tobacco not planted nor considered planted.* Notwithstanding any other provision of this part, any person who owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established, shall forfeit such allotment and quota after February 15 of any year immediately following the 1st year of the 3-year period immediately preceding the year for which the county FSA committee determines that flue-cured tobacco was not planted nor considered planted on such farm during at least 2 years of such 3-year period.

(g) *Hearing.* Before any forfeiture of allotment and 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 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:

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

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

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

(5) Wait until the period has passed for the affected person to appeal the county FSA committee or review committee determination that allotment and quota must be forfeited under the provisions of this section.

(h) *Apportionment of data and determination of allotment and 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 forfeiting farm before the forfeiture to determine a factor for apportioning farm data for the current year and for the base period. The data to be retained on the forfeiting farm shall be determined by multiplying the factor by the following data of the forfeiting farm, the:

- (i) Planted and considered planted acres for the base period.
 - (ii) History acres for the base period.
 - (iii) Farm acreage allotment for the base period.
 - (iv) Overmarketings which have not been subtracted when determining the effective farm marketing quota of the forfeiting farm.
 - (v) Acres of allotment reduced in the current year for a marketing quota violation in a prior year.
 - (vi) Previous year's effective farm marketing quota.
 - (vii) Previous year's marketings.
 - (viii) Previous year's farm marketing quota.
 - (ix) Pounds of quota transferred from the forfeiting farm by lease in the current year.
 - (x) Pounds of quota transferred to the farm by lease 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 acres or pounds which are retained on the forfeiting farm from the acres or pounds 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) *Allotment and quota after forfeiture.* After adjustment of data, the effective farm acreage allotment and the effective farm marketing quota shall be determined in accordance with § 723.205 and 723.206 of this part, respectively, for the forfeiting farm.

(i) *Forfeiture pool.* (1) *Establishing forfeiture pool.* A forfeiture pool shall be established in each county in which a forfeiture of allotment and 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 the:

- (i) Farm acreage allotment for the current year and for the base period.
- (ii) Farm marketing quota for the current year and for the base period.
- (iii) Acres reduced for violation.
- (iv) Planted and considered planted acres for the base period.
- (v) History acres for the base period.
- (vi) Previous year's effective farm marketing quota.
- (vii) Previous year's marketing.
- (viii) Quota transferred from the forfeiting farm by lease.

(2) *Yield for forfeiture pool.* The farm yield for the forfeiture pool shall be determined by dividing the farm marketing quota in the forfeiture pool by the farm acreage allotment in the forfeiture pool. The preliminary farm yield for the forfeiture pool shall be determined by dividing the farm yield by the national yield factor.

(3) *Adjustment of data in forfeiture pool.* At the beginning of the current year, the data in the forfeiture pool shall be adjusted by the factors used in determining yields, allotments, and quotas for old farms. Acreage and quota data in the forfeiture pool shall be decreased each time quota is reallocated from the forfeiture pool, such decrease to 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.

(j) *Reallocation of allotment and quota from forfeiture pool.* (1) *Application.* In order to establish eligibility to receive allotment and 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 March 31. 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 allotment and quota from the forfeiture pool, the county FSA committee must determine that:

- (i) The application was filed timely.
- (ii) The applicant is an active producer.
- (iii) During the current year or during the 4 years preceding the current year, the applicant has not:

(A) Sold or forfeited allotment and quota from any farm.

(B) Used the designation method of division to retain less allotment than the farm would have retained by another method of division.

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

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

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

(4) *Reallocation by county FSA committee.* Reallocation of any allotment and quota shall be made by the county FSA committee. In making its determination of the amounts to reallocate, the county FSA committee may consider the size of the current allotments 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), and other factors which in the judgment of the county FSA committee should be considered. Allotment and quota may be reallocated to a farm which currently does not have a flue-cured tobacco allotment. A factor shall not be used to reallocate allotment and 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 reallocate.* The county FSA committee may reallocate all or part of the quota in the forfeiture pool.

(i) *Minimum.* The minimum amount of quota which may be reallocated to an eligible applicant is the total amount of quota in the pool or 200 pounds, whichever is less.

(ii) *Maximum.* The maximum amount of quota which may be reallocated to an eligible applicant is 1,000 pounds. However, with State FSA committee approval, up to 2,500 pounds may be allocated.

(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 pounds of farm marketing quota reallocated to a farm shall be divided by the farm yield for the farm to determine the amount of reallocated farm acreage allotment. 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) *Allotment and quota for receiving farm.* After any adjustments which are made 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 the receiving farm according to §§ 723.205 and 723.206, respectively, of this part.

(k) *Forfeiture of reallocated allotment and quota.* Allotment and 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 (e)(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.

(l) *Successor-in-interest.* The 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 was assumed.

(1) *New owner.* The new owner of a farm on which a portion or all of the farm acreage allotment and farm marketing quota for such farm was either purchased and/or was reallocated from forfeited allotment and 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 15 of the current crop year and such owner would otherwise be required to sell or forfeit the farm acreage allotment and farm marketing quota because in the preceding crop year the owner of such allotment and quota did not share in the risk of producing a crop of tobacco which was subject to such purchased or reallocated allotment and quota, the new owner may be considered the buyer of the allotment and 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 15 of the current year a certification that such owner intends to become an active flue-cured tobacco producer. Any purchased or reallocated allotment and quota, which is acquired by a new owner who is considered to be the buyer of the allotment and 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 allotment and 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 allotment and 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 the production of tobacco produced on the farm.

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§ 723.221 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating tobacco with respect to land involved in eminent domain acquisitions. An eminent domain acquisition is a taking of title to land, an easement to impound water on the land (impoundment), or an easement to flood the land (flowage), under the power of a Federal, State, or other agency. Acquisition may be by court condemnation of the land or by negotiation between the agency and the owner. This section does not apply to acquisition of land by an agency by a method other than eminent domain acquisition. All land acquired, including surrounding land acquired as a package acquisition, shall be considered an eminent domain acquisition if the agency expended funds using its power of eminent domain.

(b) In this section, owner means a person having title to the land for a period of at least 12 months immediately before the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If a person has owned the land for less than such 12-month period, they may still be considered the owner if the State committee determines they acquired the land for farming and not for obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to a pending eminent domain acquisition contract to an agency or an option by an agency or subject to pending condemnation proceedings. When the current titleholders are not the owner according to this section, the State committee shall determine who previously had title to the land and who is the owner according to this paragraph.

(c) Tobacco may be pooled for the benefit of an owner whose farm is acquired by eminent domain. Pooling shall be for a 3-year period from the date of displacement or during a period. The displaced owner may request transfer of allotments and quotas from the pool to other farms owned by such person.

(d) The owner shall be considered displaced from a farm by eminent domain acquisition on the date: