

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.

[55 FR 39914, Oct. 1, 1990, as amended at 56 FR 21442, May 9, 1991; 65 FR 7953, Feb. 16, 2000]

§ 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:

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(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flow-age easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency that provided uninterrupted possession to the owner from the date of acquisition to the end of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that tobacco may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period provided in paragraph (c) of this section.

(f) If the county committee is notified or otherwise determines that an owner has been displaced from the farm, the county committee shall establish a pool for the tobacco eligible under this section for a 3-year period beginning on the date of displacement. Pooled tobacco shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable regulations.

(g) There shall be no pooling of an tobacco if:

(1) The county committee determines that an agency has eminent domain power to acquire a farm for the continued production of an tobacco, and

(i) The agency acquires a farm only for such purpose; and

(ii) The agency files a written notice with the county committee designating the tobacco to be produced on the farm.

(2) An agency acquires and retains the land in an agricultural or related activity. The tobacco for such land will be in accordance with applicable regulations.

(3) A displaced owner voluntarily waives the right to have all the tobacco or any part pooled and requests that the tobacco be retained on the agency acquired land;

(4) Agency acquired cropland will not be farmed and represents less than 15

percent of the total cropland on the farm. The tobacco shall be retained on the portion of the farm not acquired by the agency.

(5) An agency acquires land that will not be farmed and the cropland it contains is less than 15 percent of the total on the farm, the entire tobacco for the acquired land shall be retained on the land not acquired by the agency. The owner must file a written request with the county committee for such retention. The tobacco to be retained on the farm cannot exceed the land devoted to an agriculture related activity. Tobacco that is not retained shall be pooled; or

(6) If, prior to pooling, an owner requests transfer of the tobacco to other farms they own in the same county, the county committee may approve a transfer without establishment of a pool, subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and re-apportionment of pooled tobacco notwithstanding other provisions of applicable commodity regulations.

(h) Pooled tobacco may be released on an annual basis by the owner to a county committee during any year in which tobacco is pooled and not otherwise transferred from the pool. The county committee may reapportion the released tobacco to other farms in the same county that have tobacco for the same commodity. Pooled tobacco shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled tobacco that is released shall be considered to have been fully planted in the pool and not on the farm to which such tobacco is reapportioned.

(i) Pooled tobacco that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled tobacco, subject to the terms and conditions for such transfers in the

applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j)(1) Displaced owners may request a transfer of all or part of the pooled tobacco to any other farm in the United States that is owned by the displaced owner, but only if there are farms in the receiving county with tobacco, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of tobacco from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining tobacco from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving

county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the tobacco is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage that is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but

must be a producer on the receiving farm during the first year that tobacco is transferred;

(v) The agreement between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the tobacco is transferred; and

(vi) The agreement under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the receiving State. The receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraphs (j)(4)(ii) through (j)(4)(iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the tobacco is transferred.

(6) Upon approval under this paragraph, the receiving county committee shall issue a notice of tobacco under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors. In determining the tobacco available for transfer, the receiving county committee shall consider the receiving tract as a separate own-

ership. The acreage transferred from the pool shall not exceed the tobacco most recently established for the acquired farm placed in the pool. When all or a part of the tobacco placed in the pool is transferred and used to establish or increase the tobacco for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future tobacco to have been planted on the receiving farm for which tobacco, are established or increased under this section. If only a part of the available tobacco is transferred from the pool, the remaining part of the tobacco, shall remain in the pool for transfer to other farms of the owner until all such tobacco has been transferred or until the period of eligibility for establishing or increasing tobacco under this section has expired.

(7) If any tobacco is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation, or that the conditions of paragraph (j)(4) of this section are not met, the tobacco for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the tobacco transferred from the pool. If the time for the transfer of the tobacco from the pool has not expired, the tobacco initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could request administrative review. Cancellation of the transfer of tobacco by the receiving county committee requires approval by the receiving State committee. The receiving county committee shall issue a notice of marketing quota and penalty in accordance with applicable commodity regulations.

(8) If the displaced owner requests transfer of pooled tobacco, within the prescribed period, but the request for transfer is filed during a year or a part of the pooled tobacco was released to the transferring county committee pursuant to paragraph (h), the request will be processed in the usual manner

but the amount released shall not be effective until the succeeding year. When a request for transfer of pooled tobacco involves a transfer from one State to another, the receiving State committee shall ask the transferring State committee whether any of the tobacco for which transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g)(3) and (g)(4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the tobacco is retained on the portion not acquired as provided in paragraphs (g)(3) and (g)(4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may request from the county committee a written designation of beneficiary of the rights in the tobacco attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may continue a lease or negotiate a lease with the agency, transfer rights with respect to farms owned by the beneficiary, and release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) of this section and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with applicable rights:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraphs (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable regulations.

(2) If tobacco for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the tobacco shall be reduced in the pool accordance to applicable regulations.

[68 FR 16181, Apr. 3, 2003]

§ 723.222 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity that is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop that is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

[68 FR 16181, Apr. 3, 2003]

§ 723.223 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely