

§718.201

7 CFR Ch. VII (1-1-02 Edition)

shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a re-determination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

- (i) Five percent or 5 pounds for cotton;
- (ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or
- (iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

- (i) Changed by at least the larger of 3 percent or 0.5 acre; or
- (ii) Considered to be within program requirements.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Acreages

§718.201 Farm constitution.

(a) Land which has been properly constituted under prior regulations shall remain so constituted until a re-constitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by one person as a single farming unit except that it shall not include:

(1) After August 1, 1996, land subject to a production flexibility contract with land not subject to a production flexibility contract;

(2) Land under separate ownership unless the owners agree in writing;

(3) Land under a lease agreement of less than 1 year duration;

(4) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

- (i) All of the land is owned by one person and operated by one person and all such land is contiguous;
- (ii) Two or more tracts are located in counties that are contiguous in the

same State and are owned by the same person if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in §718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(5) Federally owned land;

(6) State-owned wildlife land unless the former owner has possession of the land under a leasing agreement;

(7) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program;

(8) For land subject to production flexibility contracts, land located in counties that are not contiguous. However, this subparagraph shall not apply if:

- (i) Counties are divided by a river;
- (ii) Counties do not touch because of a correction line adjustment; or
- (iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit; and

(9) With respect to peanut poundage quotas, land across:

- (i) County lines when the quotas established for the land involved cannot be transferred; or
- (ii) State lines.

(b)(1) If all land on the farm is physically located in one county, the farm records shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached,

the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator;

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit;

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located; or

(7) Land is sold for or devoted to non-agricultural commercial or industrial uses; however, a reconstitution is not required and allotments, quotas and acreages may remain with the farm if either of the following apply:

(i) The land is already devoted to residential, recreational, industrial or commercial buildings; or

(ii) The owner would qualify to use the landowner designation method of division in accordance with § 718.205 or the allotments and quotas can be transferred by sale or owner in accordance with this part and parts 723 or 729 of this chapter and the owner of the parent farm and the purchaser file a signed written memorandum of understanding before Form FSA-476 or Form MQ-24 is issued, stating that the land will be devoted immediately or within 3 years to:

(1) Nonagricultural commercial uses; or

(2) Recreational, residential, industrial or non-farm commercial uses.

(d) Notwithstanding the provisions of paragraphs (c)(1) through (c)(7), a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

(2) Circumvent any other chapter of this title.

[61 FR 37552, July 18, 1996, as amended at 65 FR 7953, Feb. 16, 2000]

§ 718.202 Determining the land constituting a farm.

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent or court-appointed guardian (or other person responsible for the minor child) unless:

(1) The minor child is a producer on a farm;

(2) Neither the minor's parents nor guardian has any interest in the minor's farm or production from the farm;

(3) The minor establishes and maintains a separate household from the parent or guardian;

(4) Personally carries out the farming activities in the operation; and

(5) Maintains a separate accounting for the farming operation.