(c) Notwithstanding paragraph (b) of this section, a minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

(1) Has a separate and distinct interest in the land or crop involved;

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

§ 718.203 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

§ 718.204 Reconstitution of allotments, quotas, and acreages.

(a) Farms shall be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions of farms subject to a production flexibility contract in accordance with part 1412 of this title will be effective for the current year if initiated on or before July 1 of the fiscal year.

(c) For tobacco and peanut farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (b) and (c) of this section, a reconstitution may be effective for the current year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is to avoid the statutes and regulations governing commodity programs found in this title.

§ 718.205 Rules for determining farms, allotments, quotas, and acreages when reconstitution is made by division.

(a) The methods for dividing farms, allotments, quotas, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution, agricultural use, cropland, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the proration of allotments, quotas, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(2) Allotments, quotas, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and acreages, such allotments, quotas, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and acreages are not apportioned in accordance with the provisions of paragraph (b)(2) or (3) of this section, the allotments, quotas, and acreages shall be divided

pursuant to paragraphs (d) through (g) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and acreages, including historical acreage that has been doublecropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section. In the case of land subject to a Wetlands Reserve Program easement or Emergency Wetlands Reserve Program easement, the parent farm shall retain the allotments, quotas, and acreages.

(2) If the county committee determines that allotments, quotas, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landowner may designate, as provided in this paragraph, the manner in which allotments, quotas, and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and acreage that shall be permanently reduced when the sum of the allotments, quotas, and acreages exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments or quotas. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments or quotas, shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments and quotas, with respect to the part which has been owned for 3 years or more.

(5) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(6) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or acreage has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and acreages between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4).

(d)(1) The contribution method is the proration of a parent farm's allotments, quotas, and acreages to each tract as the tract contributed to the allotments, quotas, or acreages at the time of combination and may be used

when the provisions of paragraphs (b) and (c) of this section do not apply. The contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if FSA records are available to show the amount of contribution.

(2) The county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(e) The agricultural use method is the proration of contract acreage to the tracts being separated from the parent farm in the same proportion that the agricultural and related activity land for each tract bears to the agricultural and related activity land for the parent farm. This method of division shall be used if the provisions of paragraphs (b) through (d) of this section do not apply.

(f)(1) The cropland method is the proration of allotments and quotas to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments and quotas which are more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(2) The cropland method shall not be used to divide contract acreage.

(g)(1) The history method is the proration of allotments and quotas to the tracts being separated from the farm on the basis of the allotments and quotas determined to be representative of the operations normally carried out on each tract. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in the proration of allotments and quotas, more representative than the cropland method of division of the operation normally carried out on each tract; and

(ii) Obtains written consent of all owners to use the history method.

(2) Notwithstanding any other provision of this section, the county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(3) The history method shall not be used to divide contract acreage.

(h)(1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d), (e), (f) and (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or acreage determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or acreage with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or acreages established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division performed according to paragraphs (d) through (g) may be increased or decreased if the county committee determines the method used did not

provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(i) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs.

[61 FR 37552, July 18, 1996, as amended at 65 FR 65722, Nov. 2, 2000]

§ 718.206 Rules for determining allotments, quotas, and acreages when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and acreages, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and acreages for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

[61 FR 37552, July 18, 1996; 61 FR 49049, Sept. 18, 1996]

§ 718.207 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating allotments and quotas, with respect to land involved in eminent domain acquisitions. Such allotments and quotas, in accordance with this section, may be pooled for the benefit of the owner who is displaced from the acquired farm by eminent domain acquisition. Such pooling shall be for a 3-year period from the date of displacement or during such other period as the displaced owner may request for the transfer of allotments and quotas, from the pool to other farms owned by such person.

(b) An eminent domain acquisition is a taking of title to land, or the taking of an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain.

(c) For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.