

§ 718.202

(2) The farm was not properly constituted the previous time;

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

(4) The county committee determines that the farm was reconstituted on the basis of false information;

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

(d) 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.

§ 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, court-appointed guardian, or other person responsible for the minor child, unless the parent or guardian has no interest in the minor's farm or production from the farm, and the minor:

(1) Is a producer on a farm;

(2) Maintains a separate household from the parent or guardian;

(3) Personally carries out the farming activities; and

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

(c) 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

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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.

(f) The county committee shall require specific proof of ownership.

(g) Land owned by different persons of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(h) All land operated as a single unit and owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock, or where the parent is owned and operated by subsidiary corporations, shall be constituted as one farm.

§ 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 bases.

(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 direct and counter-cyclical program contract in accordance with part 1413 of this title will be effective for the current year if initiated on or before August 1 or prior to the issuance of DCP payments for the farm or farms being reconstituted.

(c) For tobacco 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 (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

§ 718.205 Substantive change in farming operation, and changes in related legal entities.

(a) Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Avoid damages or penalties under a contract or statute;

(iii) Correct an erroneous acreage report; or

(iv) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs of this title, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

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

(b)(1) The estate method is the pro-rata distribution of allotments, quotas, and bases 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 bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases 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 bases, such allotments, quotas, and bases shall be apportioned in the manner agreed to in