

§ 718.110 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 calendar days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm inspection to determine the adjusted acreage prior to the date the farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of FSA and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

§ 718.111 Notice of measured acreage.

(a) FSA will provide notice of measured acreage and mail it to the farm operator. This notice constitutes notice to all parties who have ownership, leasehold interest, or other interest in such farm.

(b) [Reserved]

[80 FR 41996, July 16, 2015]

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if the producer pays the cost of the redetermination. The request must be submitted to FSA within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination will

be undertaken in the manner prescribed by the Deputy Administrator. A redetermination will be used in lieu of any prior determination unless it is determined by the representative of the Deputy Administrator that there is good cause not to do so.

(b) FSA will refund the payment of the cost for a redetermination 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.

[68 FR 16176, Apr. 3, 2003, as amended at 80 FR 41996, July 16, 2015]

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Base Acres

SOURCE: 68 FR 16178, Apr. 3, 2003, unless otherwise noted.

§ 718.201 Farm constitution.

(a) In order to implement FSA programs and monitor compliance with regulations, FSA must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or group of lands “constitute” an individual unit or farm. Land that was properly constituted under prior regulations will remain so constituted until a reconstitution is required by 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 thereafter will include all land operated by an individual entity or joint operation as a single farming unit except that it may not include:

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(1) Land under separate ownership unless the owners agree in writing or have previously agreed in writing and the labor, equipment, accounting system, and management are operated in common by the operator, but separate from other tracts;

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

(3) Federally owned land unless it is rangeland on which no crops are planted and on which there are no crop base acres established;

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

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

(6) For base acre crops, land located in counties that are not contiguous except where:

(i) Counties are divided by a river;

(ii) Counties do not share a common border 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;

(7) Land subject to either a default election or a valid election made under part 1412 of this title for each and all covered commodities constituted with land that has a different default election or valid election for each and all covered commodities, irrespective of whether or not any of the land has base acres; or

(8) Land subject to an election of individual coverage under the Agriculture Risk Coverage Program (ARC-IC) in any State constituted with any land in another State.

(b)(1) If all land on the farm is physically located in one county, the farm 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 is required whenever:

(1) A change has occurred in the operation of the land since 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 specified in paragraph (a) of this section, except that no reconstitution will 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, or increase the amount of program benefits received;

(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) An owner can file a written request to have FSA reconstitute from original tracts areas that are less than 10 DCP cropland acres and less than 5 percent of the original tract, if such request is accompanied by sufficient data from which FSA can determine the political county and State of land in both the original tract and the proposed tract. Any owner-initiated requests for tract divisions for physical location will be performed and effective prospectively from date of request and approval by FSA.

(e) 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

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(2) Circumvent any other chapter of this title.

[68 FR 16178, Apr. 3, 2003, as amended at 80 FR 41996, July 16, 2015; 84 FR 45887, Sept. 3, 2019]

§ 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 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 base acres.

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

(b) Reconstitutions will be effective for the calendar year if initiated by August 1 of that year. Any reconstitution initiated after August 1 will not be effective for that year; it will be effective for the subsequent year.

(c) The Deputy Administrator may approve an exception to permit a reconstitution initiated after August 1 to be effective for the same year, if FSA determines that the failure is due to administrative problems as determined by FSA at the local or national level. Producers have no right to seek an exception under this paragraph. When such situations exist, FSA will establish procedures under which reconstitutions will be accepted and when those reconstitutions will become effective.

[79 FR 57714, Sept. 26, 2014, as amended at 84 FR 45887, Sept. 3, 2019]

§ 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:

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(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

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(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, and base acres when reconstitution is made by division.

(a) The methods for dividing farms, tracts, and base acres are, in order of precedence: Estate, designation by landowner, cropland, and default. The proper method will be determined on a crop-by-crop basis.

(b) The estate method for reconstitution is the pro-rata distribution of base acres 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 base acres for that tract will be determined according to paragraphs (c) through (e) of this section.

(1) Base acres must 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.

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

(3) If base acres are not apportioned as specified in paragraph (b)(1) or (2) of this section, the base acres must be divided as specified in paragraph (d) or (e) of this section, as applicable.

(c) 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 base acres, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers.

(1) If the county committee determines that base acres cannot be divided in the manner designated by the owner because the owner's designation does not meet the requirements of paragraph (c)(2) of this section, FSA will notify the owner and permit the owner to revise the designation to meet the requirements. If the owner does not furnish a revised designation of base acres within a reasonable time after such notification, or if the revised designation does not meet the requirements, the county committee will divide the base acres in a pro-rata manner in accordance with paragraph (d) or (e) of this section.

(2) The landowner may designate a manner in which base acres are divided by filing a signed written memorandum of understanding of the designation of base acres with the county committee before the transfer of ownership of the land. Both the transferring owner and transferee must sign the written designation of base acres.

(i) Within 30 days after a prescribed form, letter, or notice of base acres is issued by FSA following the reconstitution of a farm but before any subsequent transfer of ownership of the land, all owners in existence at time of the reconstitution request may seek a different manner of base acre designation by agreeing in writing by executing a form CCC-517 or other designated form.

(ii) The landowner must designate the base acres that will be permanently reduced when the sum of the base acres exceeds the effective cropland plus double-cropped acres for the farm.

(iii) When the part of the farm from which the ownership is being transferred was owned for less than 3 years, the designation by landowner method of designating base acres cannot be used unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell base acres. In the absence of such a determination, and if the farm contains land that has been owned for less than 3 years, the part of the farm that has been owned for less than 3 years will be considered as a separate farm and the base acres must be assigned to that farm in accordance with paragraph (d) or (e) of this sec-

tion. Such apportionment will be made prior to any designation of base acres with respect to the part that has been owned for 3 years or more.

(3) The designation by landowner method may be applied, at the owner's request, to land owned by an Indian Tribal Council that is leased to two or more producers for the production of any crop of a commodity for which base acres have been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the base acres between the applicable tracts in the manner designated by the Council. The use of this method is not subject to the requirements specified in paragraph (c)(2) of this section.

(d) The cropland method for reconstitution is the pro-rata distribution of base acres to the resulting tracts in the same proportion that each resulting tract bears to the cropland for the parent tract. This method of division will be used if paragraphs (b) and (c) of this section do not apply.

(e) The default method for reconstitution is the separation of tracts from a farm with each tract maintaining the base acres attributed to the tract when the reconstitution is initiated.

(f) Farm program payment yields calculated for the resulting farms of a division 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 the farm program payment yield on a resulting farm will be offset by a corresponding decrease on another resulting farm of the division.

[80 FR 41997, July 16, 2015]

§ 718.207 Determining base acres when reconstitution is made by combination.

(a) When two or more farms or tracts are combined for a year, that year's base acres, with respect to the combined farm or tract, as required by applicable program regulations, will not be greater than the sum of the base acres for each of the farms or tracts

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comprising the combination, subject to the provisions of § 718.204.

(b) [Reserved]

[80 FR 41998, July 16, 2015]

Subpart D—Equitable Relief From Ineligibility

SOURCE: 67 FR 66307, Oct. 31, 2002, unless otherwise noted.

§ 718.301 Applicability.

(a) This subpart is applicable to programs administered by the Farm Service Agency under chapters VII and XIV of this title, except for an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended. Administration of this subpart shall be under the supervision of the Deputy Administrator, except that such authority shall not limit the exercise of authority allowed State Executive Directors of the Farm Service Agency as provided for in § 718.307.

(b) Section 718.306 does not apply to a function performed under either section 376 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), or a conservation program administered by the Natural Resources Conservation Service of the United States Department of Agriculture.

(c) The relief provisions of this part cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of law or regulations governing the program benefit or assistance.

[67 FR 66307, Oct. 31, 2002, as amended at 80 FR 41998, July 16, 2015]

§ 718.302 Definitions and abbreviations.

In addition to the definitions provided in § 718.2 of this part, the following terms apply to this subpart:

Covered program means a program specified in § 718.301 of this subpart.

FSA means the Farm Service Agency of the United States Department of Agriculture.

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OGC means the Office of the General Counsel of the United States Department of Agriculture.

SED means, for activities within a particular state, the State Executive Director of the United States Department of Agriculture, FSA, for that state.

[67 FR 66307, Oct. 31, 2002, as amended at 80 FR 41998, July 16, 2015]

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, if an action or inaction by a participant is based upon good faith reliance on the action or advice of an authorized representative of an FSA county or State committee, and that action or inaction results in the participant's noncompliance with the requirements of a covered program that is to the detriment of the participant, then that action or inaction still may be approved by the Deputy Administrator as meeting the requirements of the covered program, and benefits may be extended or payments made in as specified in § 718.305.

(b) This section applies only to a participant who:

(1) Relied in good faith upon the action of, or information provided by, an FSA county or State committee or an authorized representative of such committee regarding a covered program;

(2) Acted, or failed to act, as a result of the FSA action or information; and

(3) Was determined to be not in compliance with the requirements of that covered program.

(c) This section does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

[80 FR 41998, July 16, 2015]

§ 718.304 Failure to fully comply.

(a) When the failure of a participant to fully comply with the terms and conditions of a covered program precludes the providing of payments or benefits, relief may be authorized as specified in § 718.305 if the participant