

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 718

RIN 0560-AF36

#### Amendment to the Farm Reconstitution Regulations for Acreages, Allotments, and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule with requests for comments.

**SUMMARY:** This proposed rule would amend regulations that are used to determine whether separate tracts of land will be considered separate farms for certain commodity programs. The regulations also set generic terms and definitions for those programs. This rule, if adopted, would modify several definitions, change the effective date for certain farm reconstitutions, and add new provisions governing farm divisions. These changes are expected to improve the administration of farm programs.

**DATES:** Comments must be received on or before March 6, 2000 to be assured of consideration.

**ADDRESSES:** Submit comments to: Loretta Baxa, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250-0517, telephone (202) 720-7602, e-mail [loretta\\_baxa@wdc.fsa.usda.gov](mailto:loretta_baxa@wdc.fsa.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Loretta Baxa at (202) 720-7602.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not

applicable to this proposed rule because FSA is not required by 5 U.S.C. 533 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

##### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

##### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

##### Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560-0025. This rule does not contain any new collection information requirements.

##### Executive Order 12612

It has been determined that this rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The

provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

##### Discussion of the Proposed Rule

A number of commodity programs are administered on a farm-by-farm basis. Rules in 7 CFR part 718 govern what is considered to be a "farm" for certain commodity programs and sets out other generic definitions and rules for those programs. This proposed rule would amend part 718 in several respects. First, a number of definitions found at § 718.2 would be amended. Among these, the "agricultural use" definition in that section would be revised in its entirety. Under the rules in part 718 in certain instances the division of a farm's "contract acreage" (acreage enrolled in the Production Flexibility Contract program administered under 7 CFR part 1412) will be made on the basis of each separate tract's agricultural use acreage. Currently, the § 718.2 "agricultural use" definition refers to certain specific crop, forage and conserving uses. To avoid being unduly restrictive, the definition would, by this rule, be modified to more generally provide that it includes any agricultural activity. Also, § 718.2 would be amended to add a definition for "common ownership unit". That term and concept is used in connection with tobacco farm divisions under 7 CFR part 723 in which production histories may be assigned to those units. The added definition follows that which already appears in part 723. Further, the "cropland" definition in § 718.2 is important for a number of program matters including the establishment of how much land on the farm can be enrolled in the Production Flexibility Contract program and the Conservation Reserve Program. This rule would clarify the definition to specify that: (1) newly broken out land will be considered "cropland" for part 718 purposes so long as the land is capable of, and is intended to be harvested using normal harvesting and production techniques and (2) land devoted to ponds, tanks, or trees will not generally be considered "cropland" for part 718 purposes. In addition, the "farm" definition contained in § 718.2 will be modified. Currently, that term is defined to mean a unit operated by one producer

with equipment, labor, accounting system and management separate from other production units. To comport more plainly with current practice and more clearly incorporate the other conditions that apply to the constitution of a farm under part 718, the "farm" definition would be clarified to specify that a farm must (in addition to meeting other requirements) consist of tracts that: (1) Have both the same owner and operator or (2) have the same operator but have multiple owners who have agreed in writing to have the tracts treated as one farm. Also, as indicated, in the current definition it is provided that the farm's equipment, labor, accounting system and management must be separate from that of other units. That provision would, in the proposed rule be moved to § 718.201. Further, the current "farmland" definition specifies that "farmland" includes cropland, forest, and other land on the farm. That which is "farmland" and which is not "farmland", can be important for some program determinations. In this rule, the part 718 "farmland" definition will be clarified to match other definition changes proposed in this rule. Finally, with respect to the definitions, the term "operator" is currently defined in § 718.2 to mean the person who is determined by the local Farm Service Agency (FSA) county committee to be the person in charge of the farm for the current year. Since those determinations (of who is the "operator" on the farm) are sometimes on-going determinations rather than determinations that are made every year, the new definition would remove the reference to the "current year."

Also, this rule would amend provisions of § 710.201 relating to those instances in which the combination of farms is prohibited. Under the current regulations, a PFC farm and non-PFC farm cannot be combined because to do so could unduly expand the eligibility of the producer for certain commodity loans which are, by statute, intended to be limited to PFC farms only. However, that concern may not come into play when the non-PFC farm has potential PFC eligibility because of an existing CRP contract and the entirety of that farm is enrolled in the CRP. Accordingly, the rule would allow such combinations to occur in those limited circumstances despite the fact that one farm is a PFC farm and the other is not. The rule contemplates, however, that if on the termination of the CRP contract the new PFC eligibility is not exercised, the two farms would have to be divided back into separate farms. Further, the

rule would also amend § 718.204. Specifically, that section would be revised to add a provision that specifies for farms in the PFC program that a requested farm reconstitution will become effective for the current year only if initiated before the earlier of June 1 of the fiscal year or the date on which PFC payments for the farm for that year are issued. This will help avoid having a change in farm organization that may raise a dispute over the proper distribution of current PFC monies. Also, under the current provisions of § 718.204, the county FSA committee, with the concurrence of the State FSA committee, can allow extension of the deadlines otherwise provided for in § 718.204 so long as the extension would not serve to foster a scheme to avoid substantive program requirements. In this rule that allowance would no longer apply to the special deadline that applies to PFC contracts. This change would be made to further assure that there is no interference and confusion over the making of current PFC payments and to assure uniformity. That section also contains a provision with a special rule for farms with tobacco or peanuts which provides that the farm reconstitutions for those farms will be effective for the current year only if the reconstitution is initiated before the crop is planted or would have been planted. To assure clarity in the application of the rules, § 718.204 would be amended to add an additional provision which addresses the situation where the reconstitution involves both: (1) a PFC and (2) tobacco or peanut farms. In such case, the earlier of the two deadlines (the one for PFC farms and the one for tobacco and peanut farms) would establish the last date by which a farm reconstitution could be effective for the current year. Finally, there would be one additional provision added to § 718.204(e) to specify that the division of or combination of farm acreage would also include the division or combination of any potential PFC eligibility that may be associated with a current CRP contract. That is, when the PFC was initiated, farms with certain preexisting "crop acreage bases" were given a one-time opportunity to enroll in the PFC. Eligible farms had to have a "crop acreage base" under a preexisting program. Producers had to enroll their acreage in the program by a set date in 1996, the only exception being that a later sign-up was allowed for farms that had a crop acreage base in suspension under a CRP contract. Those farms, on a one-time only basis, can enroll acreage into the PFC upon

termination of the CRP contract, subject to certain conditions.

Amendments are also proposed for § 718.205. That section sets out, in an order of priority, the various calculation methods that are used to divide up or reconstitute a farm. To improve program performance, amendments are proposed here to § 718.205. The current priority list calls for using the following division and reconstitution methods in the following order or priority as applicable: (1) Estate method; (2) designation by owner method; (3) contribution method; (4) agricultural use method; (5) cropland method and (6) history method. This rule would add a new method which is to be called the "default method" and which will, as a matter of priority, be added between the "agricultural use" and "cropland" methods. Under the "default" method the tracts would be divided away from the parent farm based on the attributes of the individual tracts at the time of the division. Also, because of the addition of this new method, other technical revisions have been needed so as to reorganize § 718.205. In addition, § 718.205 has been further revised to specify that the agency can adjust the results of any reconstitution when it believes that to do so would be more equitable or would further the purposes of the program which are impacted by decisions made under part 718. Still further, a provision is added to § 718.205 to specify that where the division of the farm is going to be made using the landowner designation method, those persons with a security interest in the land itself must agree to the disposition. This is designed to insure fairness and thus, in addition, avoid having the reconstitution regulations serve as an impediment to the ability of farmers to obtain financing. Also, the provision in § 718.205 regarding the contribution method have been changed as they regard the current provisions which provide that this method will be used to separate farms only if the contribution took place within the last 6 years or if there are adequate records to allow the determination to be made. In the end, that provision merely establishes that which would be implied anyway; namely, that the contribution method will only be used to the extent that the contribution can actually be determined. Even with the 6 year period mentioned in the current rule, the contribution method could not be used effectively unless there were sufficient records available to allow the determination to be made. Hence, that provision, in this rule, would be eliminated.

Further, the provisions dealing with the "agricultural use" method would be amended. Currently the regulations call for, when using that method, dividing the tract based on land involved in "agricultural and related activity." Because of the expansive new definition of "agricultural use" which would be adopted in this rule, those references in this rule would be changed to references to land in "agricultural use." That change would not be expected to change in a material way the application of the agricultural use method of proration. In addition, this part of the regulations is modified to make another clarifying change in its text.

Finally, it is proposed that the authority citation for part 718 be amended to add references to 7 U.S.C. 1375, 1378, and 1379. These are generic provisions of the Agricultural Adjustment Act of 1938 which generally provide for the Secretary to issue regulations governing the making available of quotas and allotments under that Act and other matters relating to that Act. Also those provisions deal with the disposition of allotments when there is an exercise of eminent domain over a farm and, 7 U.S.C. 1379 specifically provides the Secretary with the authority to undertake farm reconstitutions. Further, this rule would add a section that would set out in part 718 the control numbers assigned by the Office of Management and Budget for Paperwork Reduction Act purposes.

Comments are requested on all of these matters.

#### List of Subjects in 7 CFR Part 718

Acreage allotments, marketing quotas.

Accordingly, 7 CFR part 718 is proposed to be amended as follows:

#### PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. Revise the authority citation for part 718 to read as follows:

**Authority:** 7 U.S.C. 1373, 1374, 1375, 1378, 1379, and 7201 *et seq.*; 15 U.S.C. 714a *et seq.* and 21 U.S.C. 889.

2. Amend § 718.2 by:

- a. Removing the definition of "Agricultural use";
- b. Adding new definitions of "Agricultural use land" and "Common ownership unit" in alphabetical order;
- c. Revising paragraphs (1)(v), (1)(vi) and (2)(v) and adding paragraph (1)(vii) in the definition of "Cropland"; and
- d. Revising the definitions of "Farm", "Farmland" and "Operator".

The additions and revisions read as follows:

#### § 718.2 Definitions.

\* \* \* \* \*

*Agricultural use land* means land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1412 of this title and continues to be used for agricultural purposes or land that met the definition of cropland on or after April 4, 1996, and continues to be used for agricultural purposes but not for nonagricultural commercial or industrial use.

\* \* \* \* \*

*Common ownership unit* means a distinguishable parcel of land, consisting of one or more tracts of land with the same owners, as determined by FSA.

\* \* \* \* \*

*Cropland.* (1) \* \* \*

- (v) Is in sod waterways or filter strips planted to a perennial cover;
- (vi) Is preserved as cropland in accordance with 1410 of this title; or
- (vii) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(2) \* \* \*

- (v) Converted to ponds, tanks or trees (other than those trees planted in compliance with a Conservation Reserve Program contract executed pursuant to parts 704 or 1410 of this title, or trees which are used in one- or two-row shelterbelt plantings, or are part of an orchard or vineyard).

\* \* \* \* \*

*Farm* shall generally mean a tract, or tracts, of land which are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner, or, if not the same owner, all owners must agree to the treatment of the multiple tracts as one farm for these purposes.

\* \* \* \* \*

*Farmland* means the sum of the agricultural use land, forest, acreage planted to an eligible crop acreage as specified in 7 CFR 1437.3 (noninsured crop disaster assistance program) and other land on the farm.

\* \* \* \* \*

*Operator* means an individual, entity, or joint operation who is determined by the county committee, or considered by the county committee, to be in general

control of the farming operations on the farm.

\* \* \* \* \*

3. Amend § 718.201 by revising paragraphs (a)(1) and (a)(2) to read as follows:

#### § 718.201 Farm constitution.

(a) \* \* \*

(1) After August 1, 1996, land subject, under 7 CFR part 1412, to a production flexibility contract with land not subject to a production flexibility contract unless the farm not subject to a production flexibility contract is a farm on which the entirety of the cropland is enrolled in the CRP and on which the cropland can, and will, become contract acreage for purposes of the production flexibility contract program upon the termination of the CRP contract;

(2) Land under separate ownership unless the owners agree in writing and the labor, equipment, accounting system, and management are operated in common by the operator but separate from that of any other tracts;

\* \* \* \* \*

4. Amend § 718.204 by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

#### § 718.204 Reconstitution of allotments, quotas, and acreage.

\* \* \* \* \*

(b) Reconstitutions of farms subject to a production flexibility contract under part 1412 of this title will be effective for the current year only if initiated before the earlier of June 1 of the fiscal year or prior to the issuance of production flexibility contract payments for the farm or farms being reconstituted.

\* \* \* \* \*

(d) Notwithstanding the provisions of paragraph (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 impacted by this part. Further, however, in the event that a farm is subject to both paragraphs (b) and (c) then the farm reconstitution will be effective for the current year only if the conditions of both paragraphs are met.

(e) Throughout this subpart, when referring to combining or dividing acreage, such acreages will include production flexibility contract acres and any conditional production flexibility contract eligibility that may be held under an existing CRP contract.

5. Amend § 718.205 by:
- a. Revising paragraph (a);
  - b. Revising paragraph (b)(1); to
  - c. Revising paragraphs (b)(4), (c)(2), and (c)(3);
  - d. Redesignating paragraph (c)(4)(ii) as paragraph (c)(4)(iii);
  - e. Adding a new paragraph (c)(4)(ii);
  - f. Revising newly redesignated paragraph (c)(4)(iii);
  - g. Revising paragraph (d)(1);
  - h. Revising paragraph (e);
  - i. Redesignating paragraphs (f) through (i) as paragraphs (g) through (j);
  - j. Adding a new paragraph (f);
  - k. Revising newly redesignated paragraph (i)(1) introductory text; and
  - l. Revising newly redesignated paragraph (i)(2).

The revisions and additions read as follows:

**§ 718.205 Rules for determining farms, allotments, quotas, and acreage 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, default, 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 (h) of this section.

\* \* \* \* \*

(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 (h) of this section, as applicable.

(c)(1) \* \* \*

(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 (h) 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 (h) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) \* \* \*

(ii) Where the land of the parent farm is subject to deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the division of allotments, quotas, or acreage.

(iii) 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 sell allotments, quotas, or acreages. 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, quotas or acreages shall be assigned to that part of the farm in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas or acreages with respect to the part of the farm which has been owned for 3 years or more.

\* \* \* \* \*

(d) (1) The contribution method is the proration of a parent farm's allotments or quotas to each tract as the tract contributed to the allotments or quotas at the time of combination. The contribution method may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

\* \* \* \* \*

(e) The agricultural use method is the proration of the acreage to the resulting tracts in the same proportion that the agricultural use land for each resulting tract relates to the agricultural use land for the parent tract. This method of division shall be used if the provisions of paragraphs (b) and (c) of this section do not apply.

(f) The default method is the separation of tracts from a farm with each tract maintaining the acreage

attributed to the tract when the reconstitution is initiated.

\* \* \* \* \*

(i) (1) Allotments, quotas, and acreages apportioned among the divided tracts pursuant to paragraphs (d) through (h) 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:

\* \* \* \* \*

(2) 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 a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

\* \* \* \* \*

6. Add a new § 718.210, to read as follows:

**§ 718.210 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0025.

Signed at Washington, DC, on January 19, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 00-1967 Filed 2-3-00; 8:45 am]

BILLING CODE 3410-05-P

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Parts 951 and 997**

[No. 2000-03]

RIN 3069-AA92

**Determination of Appropriate Present-Value Factors Associated with Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations by adding a new part to implement provisions of the