§ 718.103 Prevented planted and failed acreage.

(a) Prevented planting is the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC. The eligible cause of loss that prevented the planting must have:

1. Occurred after a previous planting period for the crop;
2. Occurred before the final planting date for the crop in the applicable crop year or, in the case of multiple plantings, the harvest date of the first planting in the applicable planting period; and
3. Similarly affected other producers in the area, as determined by CCC.

(b) To be approved by FSA as prevented planted acreage:

1. The acreage must have been reported within 15 calendar days after the latter of:
   i. The occurrence of prevented planting, or
   ii. The end of the planting period;
2. The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision; and
3. The prevented planted acreage report must be acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage:

1. The producer must show there was the intent to plant the acreage by providing documentation to FSA where the farm is administered that meets the provisions of § 718.103.
2. The producer must show that the amount of the prevented planted acreage credit is consistent with prior years’ planting history for the farm.

(d) Eligible prevented planting acreage will be determined on the basis of the producer’s intent to plant the crop acreage and possession of, or access to, resources to plant, grow, and harvest the crop, as applicable.

(e) Prevented planting acreage credit is not provided on acreage that had either a previous or subsequent crop planted on the acreage, unless the COC determines that all of the following conditions are met:

1. There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;
2. Both crops could have reached maturity if each planting was harvested or would have been harvested;
(3) Both the initial and subsequent planted crops were planted or prevented-planted within the normal planting period for that crop; and
(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(f) Prevented planted acreage credit will not be given to crops where the prevented-planted acreage was affected by drought, unless:
(1) On the final planting date for non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather, as determined by CCC; and
(2) Prolonged precipitation deficiencies exceeded the D2 level as determined using the U.S. Drought Monitor; and
(3) Verifiable information is collected from sources whose business or purpose it is to record weather conditions, as determined by CCC, and including but not limited to the local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planted acreage credit under this part shall apply to irrigated crops where the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions if there was not a reasonable probability of having adequate water to carry out an irrigation practice.

(h) Acreage ineligible for prevented planting coverage includes, but is not limited to acreage:
(1) Which planting history or conservation plans indicate would remain fallow for crop rotation purposes;
(2) Used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs; and
(3) Not planted because of a management decision.

(i) Failed acreage is acreage that was planted with the proper equipment during the planting period but failed as a result of an eligible cause of loss, as determined by CCC.

(j) To be approved by CCC as failed acreage the acreage must have been reported as failed acreage before disposition of the crop, and the acreage must have been planted under normal conditions but failed as the result of a natural disaster and not a management decision. Producers who file a failed acreage report must have the request acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(k) To receive failed acreage credit the producer must show all of the following:
(1) That the acreage was planted under normal conditions using the proper equipment with the intent to harvest the acreage.
(2) Provide documentation that the crop was planted using farming practices consistent for the crop and area, but could not be brought to harvest because of disaster-related conditions.
(l) The eligible cause for failed acreage must have:
(1) Occurred after the crop was planted, and
(2) Before the normal harvest date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and
(2) Other producers in the area were similarly affected as determined by CCC.

(m) Eligible failed acreage will be determined on the basis of the producer planting the crop under normal conditions with the expectation to take the crop to harvest.

(n) Acreage ineligible for failed acreage credit includes, but is not limited to acreage:
(1) Which was planted using methods that could not be considered normal for the area and without the expectation of harvest;
(2) Used for conservation purposes or intended to be or considered to have been un-harvested under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs; and
§ 718.104  

(3) That failed because of a management decision.  

[71 FR 13741, Mar. 17, 2006]  

§ 718.104 Late-filed and revised acreage reports.  

(a) Late-filed acreage reports may be accepted after the final reporting date, and be considered timely filed, if both of the following apply:  

(1) The crop or identifiable crop residue is in the field, and  

(2) The acreage has not already been determined by FSA.  

(b) The farm operator filing a report late shall pay the cost of a farm inspection unless FSA determines that failure to report in a timely manner was beyond the producer's control.  

(c) Revised acreage reports may be filed with respect to 2005 and subsequent years to change the acreage reported if:  

(1) The acreage has not already been determined by FSA; and  

(2) Actual crop or residue is present in the field.  

(d) Revised reports shall be filed and accepted:  

(1) At any time for all crops if the crop or residue still exists in the field for inspection to verify the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and  

(2) If the producer was in compliance with all other program requirements at the reporting date.  

[71 FR 13742, Mar. 17, 2006]  

§ 718.105 Tolerances, variances, and adjustments.  

(a) Tolerance is the amount by which the determined acreage for a crop may differ from the reported acreage or allotment for the crop and still be considered in compliance with program requirements under §§ 718.102(b)(1), (b)(3) and (b)(5).  

(b) Tolerance rules apply to those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements or when a measurement service is not requested for acreage destroyed to meet program requirements.  

(c) Tolerance rules do not apply to:  

(1) Program requirements of §§ 718.102(b)(2), (b)(4) and (b)(6);  

(2) Official fields when the entire field is devoted to one crop;  

(3) Those fields for which staking and referencing was performed and such acreage was planted according to those measurements; or  

(4) The adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment.  

(d) An administrative variance is applicable to all allotment crop acreages. Allotment crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when the determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:  

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment; and  

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:  

<table>
<thead>
<tr>
<th>Effective acreage allotment is within this range</th>
<th>Administrative variance</th>
</tr>
</thead>
<tbody>
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<tr>
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</tr>
<tr>
<td>4.50 and up</td>
<td>0.09</td>
</tr>
</tbody>
</table>

(e) A tolerance applies to tobacco, other than flue-cured or burley, if the measured acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance. Such excess acreage of tobacco may be adjusted to the effective farm acreage allotment to avoid marketing quota penalties or receive price support.  

(f) If the acreage report for a crop is outside the tolerance for that crop:  

(1) FSA may consider the requirements of §§ 718.102(b)(1), (b)(3) and (b)(5) not to have been met, and;  

(2) Participants may be ineligible for all or a portion of payments or benefits