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sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or disapproval, the claim shall be promptly sent to the Deputy Administrator.

§ 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

§ 714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

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AUTHORITY: 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

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SOURCE: 61 FR 37552, July 18, 1996, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 68 FR 16172, Apr. 3, 2003, unless otherwise noted.

§ 718.1 Applicability.

(a) This part:

(1) Is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA), except that only §§ 718.6 and 718.11 are applicable to parts 761 through 774 of this chapter;

(2) Governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) For all programs, except for those administered under parts 761 through 774 of this chapter:

(1) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and carried out in the field by State and county FSA committees (State and county committees);

(2) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part;

(3) No provisions or delegation herein to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee;

(4) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) The programs under parts 761 through 774 will be administered according to the part, or parts, applicable to the specific program.

[72 FR 63284, Nov. 8, 2007]

§ 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

Administrative variance (AV) means the amount by which the determined acreage of tobacco may exceed the effective allotment and be considered in compliance with program regulations.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Allotment crop means any tobacco crop for which acreage allotments are established pursuant to part 723 of this chapter.

Barley means barley that follows the standard planting and harvesting practice of barley for the area in which the barley is grown.

Base acres means the quantity of acres established according to part 1413 of this title.

CCC means the Commodity Credit Corporation.

Combination means consolidation of two or more farms or parts of farms, having the same operator, into one farm.

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.

Constitution means the make-up of the farm before any change is made because of change in ownership or operation.

Controlled substances means the term set forth in 21 CFR part 1308.

Corn means field corn or sterile high-sugar corn that follows the standard planting and harvesting practices for corn for the area in which the corn is grown. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

County means the county or parish of a state. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Crop reporting date means the latest date the Administrator, FSA will allow the farm operator, owner, or their

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agent to submit a crop acreage report in order for the report to be considered timely.

Cropland. (a) Means land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;

(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;

(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;

(5) Is in sod waterways or filter strips planted to a perennial cover;

(6) Is preserved as cropland in accordance with part 1410 of this title; or

(7) 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.

(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(1) No longer used for agricultural production;

(2) No longer suitable for production of crops;

(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or

(5) Converted to ponds, tanks or trees other than those trees planted in com-

pliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

Current year means the year for which allotments, quotas, acreages, and bases, or other program determinations are established for that program. For controlled substance violations, the current year is the year of the actual conviction.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or their designee.

Determination means a decision issued by a State, county or area FSA committee or its employees that affects a participant's status in a program administered by FSA.

Determined acreage means that acreage established by a representative of the Farm Service Agency by use of official acreage, digitizing or planimetry areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

Direct and counter-cyclical program (DCP) cropland means land that currently meets the definition of cropland, land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1413 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 and not for non-agricultural commercial or industrial use.

Division means the division of a farm into two or more farms or parts of farms.

Entity means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Extra Long Staple (ELS) Cotton means cotton that follows the standard planting and harvesting practices of the area in which the cotton is grown, and meets all of the following conditions:

(1) American-Pima, Sea Island, Sealand, all other varieties of the Barbandense species of cotton and any hybrid thereof, and any other variety of cotton in which 1 or more of these varieties is predominant; and,

(2) The acreage is grown in a county designated as an ELS county by the Secretary; and,

(3) The production from the acreage is ginned on a roller-type gin.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Farm means a tract, or tracts, of land that 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 except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

Farm inspection means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Farm number means a number assigned to a farm by the county committee for the purpose of identification.

Farmland means the sum of the DCP cropland, forest, acreage planted to an eligible crop acreage as specified in 1437.3 of this title and other land on the farm.

Field means a part of a farm which is separated from the balance of the farm

by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

GIS means Geographic Information System or a system that stores, analyzes, and manipulates spatial or geographically referenced data. GIS computes distances and acres using stored data and calculations.

GPS means Global Positioning System or a positioning system using satellites that continuously transmit coded information. The information transmitted from the satellites is interpreted by GPS receivers to precisely identify locations on earth by measuring distance from the satellites.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, having characteristics of a feed grain or dual purpose variety) that follows the standard planting and harvesting practice for grain sorghum for the area in which the grain sorghum was planted. Sweet sorghum is not considered a grain sorghum.

Ground measurement means the distance between 2 points on the ground, obtained by actual use of a chain tape, GPS with a minimum accuracy level as determined by the Deputy Administrator, or other measuring device.

Joint operation means a general partnership, joint venture, or other similar business organization.

Landlord means one who rents or leases farmland to another.

Measurement service means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

Measurement service after planting means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and

the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

Minor child means an individual who is under 18 years of age. State court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

Nonagricultural commercial or industrial use means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

Normal planting period means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

Oats means oats that follows the standard planting and harvesting practice of oats for the area in which the oats are grown.

Operator means an individual, entity, or joint operation who is determined by the FSA county committee to be in control of the farming operations on the farm.

Owner means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government, however, such agency shall not be eligible to receive any payment pursuant to such contract;

(2) One who is buying farmland under a contract for deed;

(3) One who has a life-estate in the property; or

(4) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title:

(i) One who has purchased a farm in a foreclosure proceeding; and

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (d)(1)(i) of this definition shall be entitled to receive benefits in accordance with an agency program only to the extent the owner complies with all program requirements.

(5) One who is an heir to property but cannot provide legal documentation to confirm ownership of the property, if such heir certifies to the ownership of the property and the certification is considered acceptable, as determined by the Deputy Administrator. Upon a false or inaccurate certification the Deputy Administrator may impose liability on the certifying party for additional cost that results—however such a certification may be taken by the Deputy Administrator as a bar to other claims where there has been a failure of other persons claiming an interest in the property to act promptly to protect or declare their interest or where the current public records do not accurately set out the current ownership of the farm.

Partial reconstitution means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops. This results in the same farm having two or more farm numbers in one crop year.

Participant means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

Pasture means land that is used to, or has the potential to, produce food for grazing animals.

Person means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

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

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a

fund or account separate from that of any other individual or entity.

Producer means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

Quota means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

Random inspection means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

Reconstitution means a change in the land constituting a farm as a result of combination or division.

Reported acreage means the acreage reported by the farm operator, farm owner, farm producer, or their agent on a Form prescribed by the FSA.

Required inspection means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine adherence to program requirements or to verify the farm operator's, farm owner's, farm producer, or agent's report.

Rice means rice that follows the standard planting and harvesting practices of the area excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Secretary means the Secretary of Agriculture of the United States, or a designee.

Sharecropper means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

Skip-row or strip-crop planting means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing means determining an acreage before planting by:

(1) Measuring or computing a delineated area from ground measurements and documenting the area measured; and, (2) Staking and referencing the area on the ground.

Standard deduction means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Subdivision means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

Tenant means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

Tolerance means a prescribed amount within which the reported acreage and/or production may differ from the determined acreage and/or production and still be considered as correctly reported.

Tract means a unit of contiguous land under one ownership, which is operated as a farm, or part of a farm.

Tract combination means the combining of two or more tracts if the tracts have common ownership and are contiguous.

Tract division means the dividing of a tract into two or more tracts because of a change in ownership or operation.

Turn-area means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turn row, headland, or end row).

Upland cotton means planted and stub cotton that is not considered extra long staple cotton, and that follows the standard planting and harvesting practices of the area and is produced from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton in which

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one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

Wheat means wheat for feed or dual purpose variety that follows the standard planting and harvesting practice of wheat for the area in which the wheat is grown.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004]

§718.3 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee, which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee, which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides or digital images.

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in §718.108, or the error amount or percentage for refunds of redetermination costs as prescribed in §718.111.

§718.4 Authority for farm entry and providing information.

(a) This section applies to all farms that have a tobacco allotment or quota under part 723 of this chapter and all farms that are currently participating in programs administered by FSA.

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative

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present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

(1) All FSA and CCC program benefits for that farm shall be denied;

(2) The person preventing the farm inspection shall pay all costs associated with the farm inspection;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) For tobacco, the farm operator must furnish proof of disposition of:

(i) All tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) No credit will be given for disposing of excess tobacco other than that identified by a marketing card unless disposed of in the presence of FSA in accordance with §718.109 of this part.

(c) If a program participant refuses to furnish reports or data necessary to determine benefits in accordance with paragraph (a) of this section, or FSA determines that the report or data was erroneously provided through the lack of good faith, all program benefits relating to the report or data requested will be denied.

§718.5 Rule of fractions.

(a) Fractions shall be rounded after completion of the entire associated computation. All mathematical calculations shall be carried to two decimal places beyond the number of decimal places required by the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by “1” as follows:

Required decimal	Computation	Result
Whole numbers	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more)	7.7
Hundredths	8.8449 (or less)	8.84
	8.8450 (or more)	8.85
Thousandths	9.63449 (or less)	9.634
	9.63450 (or more)	9.635

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Required decimal	Computation	Result
0 thousandths	10.993149 (or less) ... 10.993150 (or more)	10.9931 10.9932

(b) The acreage of each field or subdivision computed for tobacco and CCC disaster assistance programs shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre. The acreage of each field or subdivision computed for crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.6 Controlled substance.

(a) The following terms apply to this section:

(1) *USDA benefit* means the issuance of any grant, contract, loan, or payment by appropriated funds of the United States.

(2) *Person* means an individual.

(b) Notwithstanding any other provision of law, any person convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year is ineligible during the crop year of conviction and the four succeeding crop years, for any of the following USDA benefits:

(i) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1412 of this title;

(ii) Any payments or benefits for losses to trees, crops, or livestock covered under disaster programs administered by FSA;

(iii) Any price support loan available in accordance with part 1421 of this title;

(iv) Any price support or payment made under the Commodity Credit Corporation Charter Act;

(v) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act or any other Act;

(vi) Crop Insurance under the Federal Crop Insurance Act;

(vii) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law administered by FSA's Farm Loan Programs.

(2) Possession or trafficking of a controlled substance, is ineligible for any or all USDA benefits:

(i) At the discretion of the court,

(ii) To the extent and for a period of time the court determines.

(c) If a person denied benefits under this section is a shareholder, beneficiary, or member of an entity or joint operation, benefits for which the entity or joint operation is eligible will be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

[72 FR 63284, Nov. 8, 2007]

§ 718.7 Furnishing maps.

A reasonable number, as determined by FSA, of reproductions of photographs, mosaics and maps shall be available to the owner of a farm insurance companies reinsured by the Federal Crop Insurance Corporation (FCIC), private party contractors performing their official duties on behalf of FSA, CCC, and other USDA agencies. To all others, reproductions shall be made available at the rate FSA determines will cover the cost of making such items available.

§ 718.8 Administrative county.

(a) 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.

(b) 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) The State committee shall submit all requests to deviate from regulations specified in this section to the Deputy Administrator.

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§ 718.9 Signature requirements.

(a) When a program authorized by this chapter or Chapter XIV of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA with respect to each farm.

(b) Except a husband or wife may not sign a document on behalf of a spouse with respect to:

(1) Program document required to be executed in accordance with part 3 of this title;

(2) Easements entered into under part 1410 of this title;

(3) Power of attorney;

(4) Such other program documents as determined by FSA or CCC.

(c) An individual; duly authorized officer of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; or conservator may delegate to another the authority to act on their behalf with respect to FSA and CCC programs administered by USDA service center agencies by execution of a Power of Attorney, or such other form as approved by the Deputy Administrator. FSA and CCC may, at their discretion, allow the delegations of authority by other individuals through use of the Power of Attorney or such other form as approved by the Deputy Administrator.

(d) Notwithstanding another provision of this regulation or any other FSA or CCC regulation in this title, a parent may execute documents on behalf of a minor child unless prohibited by a statute or court order.

(e) Notwithstanding any other provision in this title, an authorized agent of the Bureau of Indian Affairs (BIA) of the United States Department of Interior may sign as agent for landowners with properties affiliated with or under the management or trust of the BIA. For collection purposes, such payments will be considered as being made to the persons who are the beneficiaries of the payment or may, alternatively, be considered as an obligation of all persons

on the farm in general. In the event of a need for a refund or other claim may be collected, among other means, by other monies due such persons or the farm.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004]

§ 718.10 Time limitations.

Whenever the final date prescribed in any of the regulations in this title for the performance of any act falls on a Saturday, Sunday, national holiday, State holiday on which the office of the county or State Farm Service Agency committee having primary cognizance of the action required to be taken is closed, or any other day on which the cognizant office is not open for the transaction of business during normal working hours, the time for taking required action shall be extended to the close of business on the next working day. Or in case the action required to be taken may be performed by mailing, the action shall be considered to be taken within the prescribed period if the mailing is postmarked by midnight of such next working day. Where the action required to be taken is with a prescribed number of days after the mailing of notice, the day of mailing shall be excluded in computing such period of time.

§ 718.11 Disqualification due to Federal crop insurance violation.

(a) Section 515(h) of the Federal Crop Insurance Act (FCIA) provides that a person who willfully and intentionally provides false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or to an approved insurance provider with respect to a policy or plan of FCIC insurance, after notice and an opportunity for a hearing on the record, will be subject to one or more of the sanctions described in section 515(h)(3). In section 515(h)(3), the FCIA specifies that in the case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefit under a number of programs. The list includes, but is not limited to, benefits under:

(1) The FCIA.

(2) The Agricultural Market Transition Act (7 U.S.C. 7201 *et seq.*), including the Noninsured Crop Disaster Assistance Program under section 196 of that Act (7 U.S.C. 7333).

(3) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

(4) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

(5) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*).

(6) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

(7) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(8) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in prices of agricultural commodities.

(b) Violation determinations are made by FCIC. However, upon notice from FCIC to FSA that a producer has been found to have committed a violation to which paragraph (a) of this section applies, that person will be ineligible for payments under the programs specified in paragraph (a) of this section that are funded by FSA for the same period of time for which, as determined by FCIC, the producer will be ineligible for crop insurance benefits of the kind referred to in paragraph (a)(1) of this section. Appeals of the determination of ineligibility will be administered under the rules set by FCIC.

(c) Other sanctions may also apply.

[72 FR 63284, Nov. 8, 2007]

Subpart B—Determination of Acreage and Compliance

SOURCE: 68 FR 16176, Apr. 3, 2003, unless otherwise noted.

§ 718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee shall provide measurement service if the producer requests such service and pays the cost, except that service shall not be provided to determine total acreage

or production of a crop when the request is made:

(1) After the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in § 718.103;

(2) After the farm operator has furnished production evidence when required for program administration purposes except as provided in this subpart; or

(3) In connection with a late-filed report of acreage, unless there is evidence of the crop's existence in the field and use made of the crop, or the lack of the crop due to a disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or acreage of a crop that is limited to a specific number of acres to meet any program requirement.

(c) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement thereof, if the producer has taken action with an economic significance based on the measurement service, and the entire crop required for the farm was measured. If the producer has not taken action with an economic significance based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

(d) When a measurement service reveals acreage in excess of the permitted acreage and the allowable tolerance as defined in this part, the producer must destroy the excess acreage and pay for FSA to verify destruction, in order to keep the measurement service guarantee.

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraphs (b)(1) through (b)(6) of

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this section must annually submit accurate information as required by these provisions.

(b)(1) Participants in the programs governed by part 1412 of this title must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

(2) Participants in the programs governed by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a marketing assistance loan or loan deficiency payment is requested;

(3) Participants in the programs governed by part 1410 of this title must report the use of land enrolled in such programs;

(4) All participants in the programs governed by part 1437 of this title must report all acreage in the county of the eligible crop in which the producer has a share;

(5) Participants in the programs governed by part 723 of this chapter and part 1464 of this title must report the acreage planted to tobacco by kind on all farms that have an effective allotment or quota greater than zero;

(6) All participants in the programs governed by parts 1412, 1421, and 1427 of this title must report the use of all cropland on the farm.

(7) All producers requesting to report acreage as prevented planted or failed must provide documentation to FSA where the farm is administered that meets the provisions of § 718.103.

(c) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, producer of the crop on the farm, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee and State committee.

[68 FR 16176, Apr. 3, 2003, as amended at 71 FR 13741, Mar. 17, 2006]

§ 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:

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(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 of field preparation, seed purchase and any other information that shows the acreage could have been planted and harvested under normal weather conditions, and

(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.

(1) 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

(3) 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

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(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:

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(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:

Effective acreage allotment is within this range	Administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(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

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subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5).

§ 718.106 Non-compliance and fraudulent acreage reports.

Participants that knowingly and willfully provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5):

(a) The county committee determines that the acreage report filed according to §§ 718.102 (b)(1), (b)(3) and (b)(5) is inaccurate, and;

(b) A good-faith effort to accurately report the acreage was not made because the report was knowingly and willfully falsified.

§ 718.107 Acreages.

(a) If an acreage has been established by FSA for an area delineated on an aerial photograph or within a GIS, such acreage will be recognized by the county committee as the acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until an authorized representative of FSA verifies the boundaries.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of 15 inches or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop shall be considered as devoted to the crop subject to a deduction or adjustment except as otherwise provided in this part.

§ 718.108 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire acreage of the field or subdivision may be con-

sidered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of; a 40 inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of actual spacing between those rows or the normal spacing in the field. For example, if the crop is planted in single, wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted if it is determined that the acreage is more sparsely planted than normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in case of tobacco, or where other circumstances are present which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

§ 718.109 Deductions.

(a) Any contiguous area which is not devoted to the crop being measured and which is not part of a skip-row pattern under § 718.108 shall be deducted from the acreage of the crop if such area

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meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches;

(2) For tobacco—three-hundredths (.03) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width may be combined to meet the 0.03-acre minimum requirement; or

(3) For all other crops and land uses—one-tenth (.10) acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, non-cropland, and subdivision boundaries each of which is at least 30 inches in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with this subpart.

(b) If the area not devoted to the crop is located within the planted area, the part of any perimeter area that is more than 217.8 feet (33 links) in width will be considered to be an internal deduction if the standard deduction is used.

(c) A standard deduction of 3 percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas.

§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 dis-

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position 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.

Notice of measured acreage shall be provided by FSA and mailed to the farm operator. This notice shall constitute notice to all parties who have ownership, leasehold interest, or other, in such farm.

§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 they pay the cost of the redetermination. The request must be submitted to FSA within 15 calendar days after the date of the notice described in §§718.110 or 718.111, or 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 shall be undertaken in the manner prescribed by the Deputy Administrator. A redetermination shall be used in lieu of any prior determination.

(b) The county committee shall 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.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Bases

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

§ 718.201 Farm constitution.

(a) In order to implement agency programs and monitor farmer compliance with regulations, the agency must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or groups of land 'constitute' an individual unit or farm. Land, which has been properly constituted under prior regulations, shall remain so constituted until a reconstitution is required under 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 hereafter, shall include all land operated by an individual entity or joint operation as a single farming unit except that it shall not include:

(1) 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 other tracts;

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

(3) Land in different counties when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, or owner. However, this paragraph shall not apply if:

(i) All of the land is contiguous;

(ii) The land is located in counties that are contiguous in the same State if:

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 718.202; or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the

farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally-owned land;

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

(6) Land constituting a farm which is declared ineligible to be enrolled in a program under the regulations governing the program; and

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties are divided by a river;

(ii) Counties do not touch 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.

(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 shall be required whenever:

(1) A change has occurred in the operation of the land after 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 set forth in paragraph (a) of this section except that no reconstitution shall 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 amount of program benefits received;

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(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

writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and bases 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 bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to paragraphs (d) through (h) 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 bases, 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, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

(2) If the county committee determines that allotments, quotas, and bases cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(3) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(3) of this section. If the owner does not furnish a revised designation of allotments, quotas, and bases within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(3) of this section, the county committee will divide the allotments, quotas, and bases in a pro-rata manner in accordance with paragraphs (d) through (h) of this section.

(3) A landowner may designate a manner in which allotments, quotas, and bases are divided according to this paragraph.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and

before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases 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, quotas, or bases. 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 bases, shall be assigned to that part in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part that has been owned for 3 years or more.

(4) 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.

(5) 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 base 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 bases 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)(3) of this section.

(d)(1) The contribution method is the pro-rata distribution of a parent farm's allotments and quotas to each tract as the tract contributed to the allotments and quotas at the time of combination

and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(2) The county committee determines and the State committee or a representative thereof concurs, 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.

(e) The cropland method is the pro-rata distribution of allotments and quotas to separate tracts proportionately to the tract's contribution to the cropland for the parent tract. This method shall be used if paragraphs (b) through (d) of this section do not apply unless the county committee determines that division by the history method would result in more representative allotments and quotas than the cropland method, taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(f)(1) The history method is the pro-rata distribution of allotments and quotas to separate tracts on the basis of the operation normally carried out on each tract of the parent farm. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in a more accurate pro-rata distribution of allotments and quotas based on actual contribution of the tract to the totals of the parent farm than the cropland method would; and

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

(2) 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.

(g) The DCP cropland method is the pro-rata distribution of bases to the resulting tracts in the same proportion to the DCP cropland that each resulting tract bears to the DCP cropland for the parent tract. This method of divi-

sion shall be used if paragraphs (b) and (c) of this section do not apply.

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated.

(i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base 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 base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(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.

(j) 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; or

(4) With one resulting farm receiving all of the quota.

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§ 718.207 Determining allotments, quotas, and bases when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and bases, 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 bases for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

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.*). 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) Sections 718.303, 718.304, and 718.307 do not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, may be applied.

(c) 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.

§ 718.302 Definitions and abbreviations.

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

Agricultural commodity means any agricultural commodity, food, feed, fiber,

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or livestock that is subject to a covered program.

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.

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.

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, action or inaction by a participant in a covered program that is to the detriment of the participant, and that is based upon good faith reliance on the action or advice of an authorized representative of a County or State FSA Committee, may be approved by the Administrator, FSA or the Executive Vice President, CCC, as applicable, or their designee, as meeting the requirements of the program, and benefits may be extended or payments made in accordance with § 718.305.

(b) This section applies only to a participant who relied upon the action of, or information provided by, a county or State FSA committee or an authorized representative of such committee and the participant acted, or failed to act, as a result of the Agency action or information. This part 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.

§ 718.304 Failure to fully comply.

(a) Under a covered program, when the failure of a participant to fully comply with the terms and conditions of a program authorized by this chapter precludes the providing of payments or benefits, relief may be authorized in accordance with § 718.305 if

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the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the FSA approval official to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.305 Forms of relief.

(a) The Administrator of FSA, Executive Vice President of CCC, or their designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

§ 718.306 Finality.

(a) A determination by a State or county FSA committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under

Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

§ 718.307 Special relief approval authority for State Executive Directors.

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than \$20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than \$5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than \$1,000,000.

(b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of

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such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that the program participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative in accordance with the provisions of this subpart, or that the producer otherwise failed, in good faith, to fully comply with the requirements of the program and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under \$20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.