

## § 714.45

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. 1501–1531, 1921–2008v, 7201–7334, and 15 U.S.C. 714b.

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 is applicable to all programs specified in chapters VII and XIV of this title that are administered by the Farm Service Agency (FSA) and to any other programs that adopt this part by reference. This part governs how FSA administers marketing quotas, allotments, base acres, and acreage reports for those programs to which this part applies. The regulations to which this part applies are those that establish procedures for measuring allotments and program eligible acreage, for determining program compliance, farm reconstitutions, application of finality, and equitable relief from compliance or ineligibility.

(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, as amended at 80 FR 41994, July 16, 2015]

**§ 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, with respect to a covered commodity on a farm, the number of acres in effect on September 30, 2013, as defined in the regulations in part 1412, subpart B, of this title that were in effect on that date, subject to any reallocation, adjustment, or reduction. The term “base acres” includes any generic base acres as specified in part 1412 planted to a covered commodity as specified in part 1412.

*Beginning farmer or rancher* means a person or legal entity (for legal entities to be considered a beginning farmer or rancher, all members must be related by blood or marriage and all members must be beginning farmers or ranchers) for which both of the following are true for the farmer or rancher:

(1) Has not operated a farm or ranch for more than 10 years; and

(2) Materially and substantially participates in the operation.

*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 land unit* means the smallest unit of land that has an identifiable border located in one physical location (county), as defined in this part, and all of the following in common:

(1) Owner;

(2) Management;

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(3) Cover; and

(4) Where applicable, producer association.

*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.

*Contiguous* means sharing any part of a boundary but not overlapping.

*Contiguous county* means a county contiguous to the reference county or counties.

*Contiguous county office* means the FSA county office that is in a contiguous county.

*Controlled environment* means, with respect to those crops for which a controlled environment is required or expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, as applicable under the particular program, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water, soil, or nutrients) by the producer, is in fact controlled by the producer.

*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 upon which the Administrator, FSA will allow the farm operator, owner, or their 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 compliance 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.

*Double cropping* means, as determined by the Deputy Administrator on a regional basis, consecutive planting of two specific crops that have the capability to be planted and carried to maturity for the intended uses, as reported by the producer, on the same acreage within a 12-month period. To be considered double cropping, the planting of two specific crops must be in an area where such double cropping is considered normal, or could be considered normal, for all growers under normal growing conditions and growers are typically able to repeat the same cycle successfully in a subsequent 12-month period.

*Entity* means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, 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, or 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 Barbardense 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.

*Intended use* means for a crop or a commodity, the end use for which it is grown and produced.

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

*Landlord* means one who rents or leases farmland to another.

*Limited resource farmer or rancher* means a farmer or rancher who is both of the following:

(1) A person whose direct or indirect gross farm sales do not exceed \$176,800 (2014 program year) in each of the 2 calendar years that precede the most immediately preceding complete taxable year before the relevant program year that corresponds to the relevant program year (for example, for the 2014 program year, the two years would be 2011 and 2012), adjusted upwards in later years for any general inflation; and

(2) A person whose total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1) of this definition. (Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through National Resource and Conservation Service at <http://www.lrfstool.sc.egov.usda.gov>.)

(3) For legal entities, the sum of gross sales and household income must be considered for all members.

*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. For the purpose of programs under chapters VII and XIV of this title, 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 is not eligible to receive any program payment;

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

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

*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.

*Physical location* means the political county and State determined by FSA for identifying a tract or common land unit, as applicable, under this part. FSA will consider all the DCP cropland within an original tract to be in one single physical location county and State based upon 95 percent or more of the tract's DCP cropland. For DCP cropland that FSA determines lies outside the physical location (county) of the original tract that is 10 acres or more and more than 5 percent of the original tract, FSA will divide that land from the original tract and establish a new tract for that area.

*Planted and considered planted (P&CP)* means with respect to an acreage amount, the sum of the planted and prevented planted acres on the farm approved by the FSA county committee for a crop. P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an FSA approved double-cropping sequence. Subsequently planted crop acreage and replacement crop acreage are not included as P&CP.

*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.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives,
- (2) Asians or Asian-Americans,
- (3) Blacks or African-Americans,
- (4) Hispanics or Hispanic-Americans,
- (5) Native Hawaiians or other Pacific Islanders, and
- (6) Women.

*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 committee* means the FSA State committee.

*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.

*Subsequent crop* means a crop following an initial crop that is not in an approved double cropping combination.

*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 located in one physical location (county), as defined in this part, 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).

*United States* means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States.

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

*Veteran farmer or rancher* means a farmer or rancher who has served in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components and who:

- (1) Has not operated a farm or ranch;
- (2) Has operated a farm or ranch for not more than 10 years; or
- (3) Is a veteran (as defined as a person who served in the active duty or either active duty for training or inactive duty during which the individual was disabled, and who was discharged or released therefrom under conditions other than dishonorable) who has first obtained status as a veteran during the most recent 10-year period.

*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, as amended at 79 FR 74571, Dec. 15, 2014; 80 FR 41994, July 16, 2015; 84 FR 45886, Sept. 3, 2019]

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

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in § 718.109, or the error amount or percentage for refunds of redetermination costs as prescribed in § 718.112.

[61 FR 37552, July 18, 1996, as amended at 80 FR 41994, July 16, 2015]

### § 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 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.

(d) Program participants requesting program benefits as a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher must provide a certification of their status as a member of one of those groups as required by the applicable program provisions.

[68 FR 16172, Apr. 3, 2003, as amended at 84 FR 45886, Sept. 3, 2019]

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**§ 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   |
| 0 thousandths ..... | 10.993149 (or less) ..... | 10.9931 |
|                     | 10.993150 (or more) ..... | 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 part 1412 of this title;
- (ii) Any payments or benefits for losses to 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 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, as amended at 84 FR 45886, Sept. 3, 2019]

**§ 718.7 Furnishing maps.**

(a) A reasonable number, as determined by FSA, of reproductions of photographs, mosaic maps, and other maps will be made available to the owner of a farm, an insurance company reinsured by the Federal Crop Insurance Corporation (FCIC), or a private party contractor performing official duties on behalf of FSA, CCC, and other USDA agencies.

(b) For all others, reproductions will be made available at the rate FSA determines will cover the cost of making such items available.

[80 FR 41994, July 16, 2015]

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### § 718.8 Administrative county and servicing FSA county office.

(a) FSA farm records are maintained in an administrative county determined by FSA. Generally, a farm's administrative county is based on the physical location county of the farm. If all land on the farm is physically located in one physical location county, the farm's records will be administratively located in that physical location county.

(b) In cases where there is no FSA office in the county in which the farm is physically located or where a servicing FSA county office is responsible for more than one administrative county, the farm records will be administratively located as specified in paragraph (a) of this section and with a servicing FSA county office that FSA as designated as responsible for that administrative county.

(c) Farm operators and owners can conduct their farm's business in any FSA county office. FSA's designation of a farm's administrative county is based on where land of the farm is located as specified in paragraph (a) of this section or as might be required under paragraph (b) of this section.

(d) Farm operators and owners can request a change to their servicing FSA county office and that request may necessitate a change to the farm's administrative county as specified in paragraph (a) or (b) of this section. If the requested servicing FSA county office is not responsible for and does not have an administrative county for the physical location of the farm according to paragraphs (a) or (b) of this section and FSA approves the request for change of servicing FSA county office, FSA will designate the administrative county for the farm from those available in the requested servicing FSA county office.

(e) If a county contiguous to the county in which the farm is physically located in the same State does not have a servicing FSA county office, the farm will be administratively located by FSA in a contiguous county in another contiguous State that is convenient to the farm operator and owner. Requests for changes to a farm's servicing FSA county office, which may or may not result in a change to a farm's

administrative county under this section, must be submitted to FSA by August 1 of each year for the change to take effect that calendar year.

(f) When land on the farm is physically located in more than one county, the farm will be administered by a servicing FSA county office determined by FSA to be the administrative county responsibility for administration of programs for one or more of the physical counties involved in the farm's constitution. Paragraph (b), (c), or (d) of this section applies if changes occur to the servicing FSA county office and administrative county.

(g) Farm operators and owners cannot request a change to a farm's administrative county. The operator and owner of a farm serviced by an FSA county office responsible for a farm's administrative county can request a change of servicing FSA county office to another FSA servicing county office in the same State by August 1 for the change to take effect that calendar year. Review and approval of any change to the servicing FSA county office is solely at the discretion of FSA. Requests for change in servicing FSA county office, which may or may not result in a change to a farm's administrative county, will be reviewed and approved by county committee if all the following can be determined to apply:

(1) The requested change does not impact the constitution of a farm;

(2) The requested change will not result in increased program eligibility or additional benefits for the farm's producers that would not be earned absent the change in servicing FSA county office and, if applicable, administrative county being made; and

(3) The change is not to circumvent any of the provisions of other program regulations to which this part applies.

(h) The State committee will submit all requests for exceptions from regulations specified in this section to the Deputy Administrator.

[84 FR 45886, Sept. 3, 2019]

### § 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,

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then a spouse may sign all such FSA or CCC documents on behalf of the other spouse, except as otherwise specified in this section, 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 for each farm.

(b) A spouse may not sign a document on behalf of the other 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.

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(f) Documents that were previously acted on and approved by the FSA county office or county committee will not subsequently be determined inadequate or invalid because of the lack of signature authority of any person signing the document on behalf of the applicant or any other individual, entity, general partnership, or joint venture, unless the person signing the program document knowingly and willfully falsified the evidence of signature authority or a signature. However, FSA may require affirmation of the document by those parties deemed appropriate for an affirmation, as determined by the Deputy Administrator. Nothing in this paragraph relieves participants of any other program requirements.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004, as amended at 80 FR 41995, July 16, 2015]

### §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, measuring quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee will provide measurement service if the producer requests such service and pays the cost, except that measurement service is not available and will not be provided to determine total acreage or production of a crop when the request is made:

(1) For acreage, after the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in § 718.104; or

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

(b) Except for measurements and determinations performed by FSA in accordance with late-filed acreage reports filed in accordance with § 718.104, when a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage is guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement.

[84 FR 45887, Sept. 3, 2019]

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

(b)(1) Participants in programs for which eligibility for benefits is tied to base acres must report the acreage of fruits and vegetables planted for harvest on a farm enrolled in such program;

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(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 intended use of land enrolled in such programs;

(4) All participants in the programs governed by part 1437 of this title must report all acreage and intended use of the eligible crop in the country 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 reporting acreage as prevented planted acreage or failed acreage must provide documentation that meets the provisions of §718.103 to the FSA county office where the farm is administered.

(c) The annual acreage reports required in paragraph (a) of this section must be filed with the county committee by the farm operator, farm owner, producer of the crop on the farm, or duly authorized representative by the final reporting date applicable to the crop as established by the Deputy Administrator.

(d) Participants in programs to which this part is applicable must report all crops, in all counties, in which they have an interest. This includes crops on cropland and noncropland, including native or improved grass that will be hayed or grazed.

[68 FR 16176, Apr. 3, 2003, as amended at 71 FR 13741, Mar. 17, 2006; 79 FR 74571, Dec. 15, 2014; 80 FR 41995, July 16, 2015]

### **§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 eligi-

ble 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) FSA may approve acreage as “prevented planted acreage” if all other conditions for such approval are met and provided the conditions in paragraphs (b)(1) through (6) of this section are met.

(1) Except as specified in paragraph (b)(2) of this section, producers must report the acreage, on forms specified by FSA, within 15 calendar days after the final planting date determined for the crop by FSA.

(2) If the acreage is reported after the period identified in paragraph (b)(1) of this section, the application must be filed in time to permit:

(i) The county committee or its authorized representative to make a farm visit to verify eligible disaster conditions that prevented the specified acreage or crop from being planted; or

(ii) The county committee or its authorized representative the opportunity to determine, based on visual inspection, that the acreage or crop in question was affected by eligible disaster conditions such as damaging weather or other adverse natural occurrences that prevented the acreage or crop from being planted.

(3) A farm visit to inspect the acreage or crop is required for all late-filed acreage reports where prevented planting credit is sought. Under no circumstance may acreage reported after the 15-day period referenced in paragraph (b)(1) of this section be deemed acceptable unless the criteria in paragraph (b)(2) of this section are met. State and county committees do not have the authority to waive the field inspection and verification provisions for late-filed reports.

(4) All determinations made during field inspections must be documented on each late-filed acreage report, with

results also recorded in county committee minutes to support the documentation.

(5) The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision.

(6) The prevented planted acreage report was approved by the county committee. The county committee may disapprove prevented planted acreage credit if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage, the producer must show to the satisfaction of FSA that the producer intended to plant the acreage. Documentation supporting such intent includes documents related to field preparation, seed purchase, and any other information that shows the acreage could and would have been planted and harvested absent the natural disaster or eligible cause of loss that prevented the planting.

(d) 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.

(e) Prevented planted acreage credit under this part applies 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.

(f) Acreage ineligible for prevented planting coverage includes, but is not limited to, acreage:

(1) With respect to which the planting history or conservation plans indicate it 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;

(3) Not planted because of a management decision;

(4) Affected by the containment or release of water by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of water;

(5) Where any other person receives a prevented planted payment for any crop for the same crop year, unless the acreage meets all the requirements for double cropping under this part;

(6) Where pasture or other forage crop is in place on the acreage during the time that planting of the crop generally occurs in the area;

(7) Where another crop is planted (previous or subsequent) that does not meet the double cropping definition;

(8) Where any volunteer or cover crop is hayed, grazed, or otherwise harvested on the acreage for the same crop year;

(9) Where there is an inadequate supply of irrigation water beginning on the Federal crop insurance sale closing date for the previous crop year or the Noninsured Crop Disaster Assistance Program (NAP) application closing date for the crop as specified in part 1437 of this title through the final planting date of the current year;

(10) On which a failure or breakdown of irrigation equipment or facilities, unless the failure or breakdown is due to a natural disaster;

(11) That is under quarantine imposed by a county, State, or Federal government agency;

(12) That is affected by chemical or herbicide residue, unless the residue is due to a natural disaster;

(13) That is affected by drifting herbicide;

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(14) On which a crop was produced, but the producer was unable to obtain a market for the crop;

(15) Involving a planned planting of a “value loss crop” as that term is defined for NAP as specified in part 1437 of this title, including, but not limited to, Christmas trees, aquaculture, or ornamental nursery, for which NAP assistance is provided under value loss procedure;

(16) For which the claim for prevented planted credit relates to trees or other perennials unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(17) That is affected by wildlife damage;

(18) Upon which, the reduction in the water supply for irrigation is due to participation in an electricity buy-back program, or the sale of water under a water buy-back or legislative changes regarding water usage, or any other cause which is not a natural disaster; or

(19) That is devoted to non-cropland.

(g) CCC may allow exceptions to acreage ineligible for prevented planting coverage when surface water or ground water is reduced because of a natural disaster (as determined by CCC).

(h) 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.

(i) 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 county committee. The county committee will deny the acreage report if it is not satisfied with the documentation provided.

(j) 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.

(k) 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.

(l) 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.

(m) 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; or

(3) That failed because of a management decision.

[71 FR 13741, Mar. 17, 2006, as amended at 80 FR 41995, July 16, 2015; 84 FR 45887, Sept. 3, 2019]

### §718.104 Late-filed and revised acreage reports.

(a) Late-filed acreage reports may be accepted after the final reporting date through the crop’s immediately subsequent crop year’s final reporting date and processed by FSA if both of the following apply:

(1) The crop or identifiable crop residue remains in the field, permitting FSA to verify and determine the acreage and

(2) The crop acreage and common land unit for which the reported crop acreage report is being filed has not already been determined by FSA.

(b) Acreage reports submitted later than the date specified in paragraph (a)

of this section will not be processed by FSA and will not be used for program purposes.

(c) The person or legal entity filing a report late must pay the cost of a farm inspection and measurement unless FSA determines that failure to report in a timely manner was beyond the producer's control. The cost of the inspection and measurement is equal to the amount FSA would charge for measurement service; however, FSA's determination of acreage as a result of the inspection and measurement is not considered a paid for measurement service under § 718.101. The acreage measured will be entered as determined acres.

(d) When an acceptable late-filed acreage report is filed in accordance with this section, the reported crop acreage will be entered for the amount that was actually reported to FSA before FSA determined acres, and the determined crop acreage will be entered as it was determined and established by FSA.

(e) Revised acreage reports may be filed 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.

(f) Revised reports will 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, as amended at 80 FR 41996, July 16, 2015; 84 FR 45887, Sept. 3, 2019]

#### § 718.105 Tolerances 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 acre-

age 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 upon which 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) 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;

(2) Participants may be ineligible for all or a portion of payments or benefits subject to the requirements of §§ 718.102 (b)(1), (b)(3) and (b)(5); and

(3) Participants may be ineligible for all or a portion of payments or benefits under a program that requires accurate crop acreage reports under rules governing the program.

[68 FR 16176, Apr. 3, 2003, as amended at 80 FR 41996, July 16, 2015; 84 FR 45887, Sept. 3, 2019]

#### § 718.106 Non-compliance and false acreage reports.

(a) Participants who 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) and (3).

(b) [Reserved]

[80 FR 41996, July 16, 2015]

#### § 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

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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 considered 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

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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 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 disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

**§ 718.111 Notice of measured acreage.**

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

(b) [Reserved]

[80 FR 41996, July 16, 2015]

**§ 718.112 Redetermination.**

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

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

(b) FSA will refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or 5 pounds for cotton;

(ii) Five percent or 1 bushel for wheat, barley, oats, and rye; or

(iii) Five percent or 2 bushels for corn and grain sorghum; or

(2) The farm stored production is changed by at least the smaller of 3 percent or 600 bushels; or

(3) The acreage of the crop is:

(i) Changed by at least the larger of 3 percent or 0.5 acre; or

(ii) Considered to be within program requirements.

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

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

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

**§ 718.201 Farm constitution.**

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

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

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

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

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

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

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

(i) Counties are divided by a river;

(ii) Counties do not share a common border because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit;

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

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

(b)(1) If all land on the farm is physically located in one county, the farm shall be administratively located in such county. If there is no FSA office in the county or the county offices have been consolidated, the farm shall be administratively located in the contiguous county most convenient for the farm operator.

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached,

the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(c) A reconstitution of a farm either by division or by combination is required whenever:

(1) A change has occurred in the operation of the land since the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as specified in paragraph (a) of this section, except that no reconstitution will be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase the amount of program benefits received;

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

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

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

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

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

(e) Reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(1) Circumvent the provisions of part 12 of this title; or

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(2) Circumvent any other chapter of this title.

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

**§ 718.202 Determining the land constituting a farm.**

(a) In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. For purposes of this part, the following rules shall be applicable to determining what land is to be included in a farm.

(b) A minor shall be considered to be the same owner or operator as the parent, court-appointed guardian, or other person responsible for the minor child, unless the parent or guardian has no interest in the minor's farm or production from the farm, and the minor:

- (1) Is a producer on a farm;
- (2) Maintains a separate household from the parent or guardian;
- (3) Personally carries out the farming activities; and
- (4) Maintains a separate accounting for the farming operation.

(c) A minor shall not be considered to be the same owner or operator as the parent or court-appointed guardian if the minor's interest in the farming operation results from being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(d) A life estate tenant shall be considered to be the owner of the property for their life.

(e) A trust shall be considered to be an owner with the beneficiary of the trust; except a trust can be considered a separate owner or operator from the beneficiary, if the trust:

- (1) Has a separate and distinct interest in the land or crop involved;
- (2) Exercises separate responsibility for the separate and distinct interest; and
- (3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

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

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

being under the same ownership in determining a farm.

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

**§ 718.203 County committee action to reconstitute a farm.**

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator with the concurrence of the owner of the farm. Any request for a farm reconstitution shall be filed with the county committee.

**§ 718.204 Reconstitution of base acres.**

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

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

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

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

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

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

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

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

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

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

(iii) Correct an erroneous acreage report; or

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

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

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

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

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

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

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

### **§ 718.206 Determining farms, tracts, and base acres when reconstitution is made by division.**

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

(b) The estate method for reconstitution is the pro-rata distribution of base acres for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the base acres for that tract will be determined according to paragraphs (c) through (e) of this section.

(1) Base acres must be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

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

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

(c) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the base acres, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers.

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

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

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

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

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

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

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

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

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

(f) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in the farm program payment yield on a resulting farm will be offset by a corresponding decrease on another resulting farm of the division.

[80 FR 41997, July 16, 2015]

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

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

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

(b) [Reserved]

[80 FR 41998, July 16, 2015]

### Subpart D—Equitable Relief From Ineligibility

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

#### § 718.301 Applicability.

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

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

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

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

#### § 718.302 Definitions and abbreviations.

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

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

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

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

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

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

#### § 718.303 Reliance on incorrect actions or information.

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

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

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

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

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

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

[80 FR 41998, July 16, 2015]

#### § 718.304 Failure to fully comply.

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

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 FSA to have made a good faith effort to comply fully with the terms and conditions of the covered program and have performed substantial actions required for program eligibility.

[80 FR 41998, July 16, 2015]

**§ 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 an FSA State or county committee (or employee of such committee) becomes final on an application for benefits 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 any of the following exceptions exist:

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

(2) The determination was in any way based on erroneous, innocent, or purposeful 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 knew or had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.

(1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;

(2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.

(c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.

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

**§ 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, after consultation with and approval from OGC but without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 through 718.305 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

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which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the participant (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, 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 an SED 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 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 requirements for granting relief under § 718.303 or § 718.304 have been met, that the form of relief is authorized under § 718.305, 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.

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

**SUBCHAPTER C [RESERVED]**