Development Commission, Inc. (Aroostook County) in Maine and Middle Rio Grande FUTURO Communities in Texas were designated as rural empowerment zones pursuant to the Round III authorizing legislation.

It is important to establish with certainty the beginning date of the period that runs with empowerment zone designation for these communities. It is particularly relevant to bond counsels which provide opinions on the validity of tax preferential bonds issued under the empowerment zone provisions in the Internal Revenue Code. Accordingly, this final rule amends the definition of designation date to include the designation date for Round III empowerment zones in addition to the other relevant designation dates.

This regulation is being published as a final rule without a Notice of Prior Rulemaking because the change being made is a matter of historical fact and is not subject to change in response to comments. Therefore, public comment is unnecessary and impracticable and contrary to the public interest. For this same reason, this final rule will be effective immediately upon publication.

Delegation of Authority

In the Final Rule published on March 25, 2002 (67 FR 13553), the Secretary of Agriculture delegated to the Under Secretary, Rural Development, authority to promulgate regulations for 7 CFR part 25.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

■ In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

■ 1. The authority citation for part 25 is revised to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Pub. L. 103–66, 107 Stat. 543; Pub L. 105–34, 111 Stat. 885; Sec. 766, Pub. L. 105–277, 112 Stat. 2681–37; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

Subpart A—General Provision

■ 2. Amend § 25.3 by revising the definition of ''designation date'' to read as follows:

§ 25.3 Definitions.

* * * * *

Designation date means December 21, 1994, in the case of Round I designations, December 24, 1998, in the case of Round II and Round IIS designations and January 11, 2002, in the case of Round III designations.

* * * * *

Dated: March 25, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–8039 Filed 4–2–03; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR 718 and 723

Commodity Credit Corporation

7 CFR 1412 and 1413

RIN 0560–AG79

Acreage Reporting and Common Provisions

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) by making changes to Agency regulations that govern provisions common to multiple programs, including acreage report requirements, farm constitution, and monitoring compliance with those provisions. Other provisions of the 2002 Act will be implemented under separate rules. The intent of this rule is to implement statutory requirements for reports of acreage and conform the regulations with changes in other Agency programs.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Dan_McGlynn@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

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

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency program index under the Department of Agriculture, Farm Service Agency.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because FSA and CCC are not required by 5 U.S.C. 553 or any law to publish a notice of proposed rulemaking for this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded the rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The provisions of this rule are not subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC and FSA are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule. Further, this rule imposes no mandates, as defined in sections 202 and 205 of UMRA, on State, local or tribal governments, or the private sector.

Paperwork Reduction Act

Sections 1601(c) and 2702(b) of the 2002 Act provide that the promulgation of regulations and the administration of Title I and II of the 2002 Act shall be done without regard to chapter 35 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Background

This rule amends CCC and FSA regulations that govern how marketing quotas, allotments, and base acres are maintained, monitored, divided, and reallocated. These regulations determine an agricultural producer's ability to market certain crops and their eligibility to receive marketing loans, support prices, and other CCC and FSA program benefits.

The 2002 Act authorizes the establishment of base acres on a farm and the issuance of direct payments and counter-cyclical payments for covered commodities and peanuts. Requirements are provided that must be met as a condition of receipt of these payments. Among other changes, the 2002 Act also terminates marketing quota programs for peanuts.

Sections 1105(c) and 1305(c) of the 2002 Act require producers on a farm to submit annual acreage reports with respect to all cropland on the farm as a condition of the receipt of any direct payments, counter-cyclical payments, marketing assistance loans and loan deficiency payments. In the recent past, the reporting of only certain planted acres by a farmer has been required for some FSA and CCC programs. In addition, sections 1105(a)(2) and 1305(a)(2) authorize the Secretary to issue such rules as the Secretary considers necessary to ensure producer compliance with the following requirements: subtitles B and C of title XII the Food Security Act of 1985; planting flexibility requirements of sections 1106 and 1306; the requirement to use farmland in a quantity equal to the attributable base acres for the farm for an agricultural or conserving use; the requirement to control noxious weeds and maintain the land using sound agricultural practices, if the agricultural or conserving use involves the non-cultivation of any base acres.

Under section 1101 of the 2002 Act, owners of a farm will be provided a one-time opportunity to elect the method by which base acres are to be calculated. This election applies to the farm, as it is constituted for CCC program purposes. Many FSA farms are comprised of land with divided ownership held by multiple owners. All owners of a farm must agree to the method by which base acres on the farm are calculated. Therefore, what constitutes a distinct farm operation for these purposes (the constitution of a ''farm'') is vital to the ability of CCC to implement the 2002 Act.

The regulations at 7 CFR part 718 are being amended in their entirety to make the changes required by the 2002 Act, and to incorporate the use of Geographic Information Systems. The changes made in this rule are expected to improve overall program administration, provide requirements and procedures for program participants, and allow for increased program support from new technologies.

The amendments to part 718 do not impact farm program participation or payment levels. Also, there are no expected impacts on acres planted, prices, or program payments. Therefore, net farm income and consumer costs will be unchanged and Federal outlays will remain within parameters established in the 2002 Act.

Additions to the regulations have also been made to cover ownership questions where current public records may be inadequate or where there is some other dispute about ownership. The rule will allow certifications to be used and allow claims to be barred where there is such a certification and there has been a failure of other claimants to act promptly or where the current public records are inadequate to readily resolve ownership issues. Not allowing such certifications would make it difficult for a number of small farms to receive prompt payments due to changes in ownership over the years which may not be reflected in the current public records and which may not be easily be corrected. While the rule could result in a bar to some claims that might otherwise be established, the rule in effect imposes a burden on all owners to ensure that their interests in the property are made known to FSA so that programs can be run in a timely manner and without excessive research and effort with the many farms that have to be serviced.

In addition, the rule provides for the Bureau of Indian Affairs of the Department of Interior to make certain decisions on behalf of farms entrusted to them or under their management. This follows current practice. The rule also provides that in the event of the need to collect a refund or claim in connection with these BIA-related farms, the sum, among other remedies, may be collected by an offset against the particular beneficiaries or by an offset against the farm itself. This collection provision reflects that the FSA may not, on many occasions, know who the beneficiaries of such farms are and that such adjustment as may be needed among individual interested parties can best be made by the BIA. This rule also makes a corrections to the hard white wheat regulations of 7 CFR Part 1413 published on February 3, 2003, 68 FR 5205. Specifically the applicability section of that rule is changed in this rule in keeping with the intent of that rulemaking so as not to limit 1413 to only ''winter'' varieties of hard white wheat. Further, a numbering correction is made to another section. These changes are exempt from comment for the same reasons as exempted the original rules from comment and because they are corrective in nature.

List of Subjects

7 CFR Part 718

Acreage allotments, Agricultural commodities, Marketing quotas.

7 CFR Part 723

Acreage allotments, Agricultural commodities, Marketing quotas, Price support programs, Tobacco.

7 CFR Part 1412

Agriculture, Feed Grains, Grains, Oilseeds, Price support programs.

7 CFR Part 1413

Agricultural commodities, Feed grains, Grains.

■ Accordingly, 7 CFR parts 718, 723, 1412 and 1413 are amended as set forth below.

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. The authority for part 718 is revised to read as follows:

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

■ 2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

§ 718.1 Applicability.

(a) This part is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA). This rule governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

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

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

(d) No provisions or delegation herein to a State or county committee shall 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.

(e) The Deputy Administrator 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.

§ 718.2 Definitions.

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

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

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

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

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

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

CCC means the Commodity Credit Corporation.

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

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

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

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

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

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

County committee means the FSA county committee.

Crop reporting date means the latest date the Administrator, FSA will allow the farm operator, owner, or their 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 planimetering 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 nonagricultural commercial or industrial use.

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

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

Extra Long Staple (ELS) Cotton means cotton that meets all of the following conditions:

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

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

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

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

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild

(6) Great grandchildren;

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

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

Farm means a tract, or tracts, of land that are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

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

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

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

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

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

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

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

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

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

Landlord means one who rents or leases farmland to another.

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

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

Measurement service guarantee means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

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

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

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

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

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

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

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

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

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

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

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

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

(A) The redemption period has not passed; and

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

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

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

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

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

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

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

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

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

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

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

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

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

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

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

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

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

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

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

Staking and referencing means determining an acreage before planting by:

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

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

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

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

Tenant means:

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

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

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

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

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

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

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

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbadense 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.

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.

§ 718.3 State committee responsibilities.

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

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

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

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

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

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

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual

cost involved when performing measurement service from aerial slides or digital images.

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

§ 718.4 Authority for farm entry and providing information.

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

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

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

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

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

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

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

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

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

§ 718.5 Rule of fractions.

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

Required decimal	Computation	Result
Whole numbers.	6.49 (or less)	6
	6.50 (or more)	7
Tenths	7.649 (or less)	7.6
	7.650 (or more).	7.7
Hundredths	8.8449 (or less).	8.84
	8.8450 (or more).	8.85
Thousandths ..	9.63449 (or less).	9.634
	9.63450 (or more).	9.635
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 shall be ineligible for any payment made under any Act, with respect to any commodity produced during the crop year of conviction and the four succeeding crop years, by such person.

(2) Trafficking a controlled substance shall be, at the discretion of the court, ineligible for any or all USDA benefits as follows:

(i) For up to 5 years after the first conviction;

(ii) For up to 10 years after a second conviction; and

(iii) Permanently for a third conviction.

(3) Possession of a controlled substance shall be ineligible for any or all UDSA benefits for:

(i) Up to one year upon the first conviction;

(ii) For up to 5 years after a second or subsequent conviction for such an offense as determined by the court.

(c) USDA benefits subject to paragraph (b) of this section include:

(1) Any payments or benefits under the Direct and Counter Cyclical Program (DCP) in accordance with part 1413 of this title;

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

(3) Any price support loan available in accordance with part 1464 of this title;

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

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

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

(7) A loan made or guaranteed under the Consolidated Farm and Rural Development Act or any other law formerly administered by the Farmers Home Administration; or

(d) 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 shall be reduced, for the appropriate period, by a percentage equal to the total interest of the shareholder, beneficiary, or member.

§ 718.7 Furnishing maps.

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

§ 718.8 Administrative county.

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

(b) If the land on the farm is located in more than one county, the farm shall

be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

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

§ 718.9 Signature requirements.

(a) When a program authorized by this chapter and parts 1410 and 1413 of this title requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such FSA or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA with respect to each farm.

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

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

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

(3) Power of attorney;

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

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

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

(e) Notwithstanding any other provision in this title, an authorized agent of the Bureau of Indian Affairs (BIA) of the United States Department of Interior may sign as agent for landowners with properties affiliated with or under the management or trust of the BIA. For collection purposes, such payments will be considered as being made to the persons who are the beneficiaries of the payment or may, alternatively, be considered as an obligation of all persons on the farm in general. In the event of a need for a refund or other claim may be collected, among other means, by other monies due such persons or the farm.

§ 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.

■ 3. Subpart B is revised to read as follows:

Subpart B—Determination of Acreage and Compliance

Sec.

§ 718.101 Measurements.

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

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

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

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

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

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

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

§ 718.102 Acreage reports.

(a) In order to be eligible for benefits, participants in the programs specified in paragraphs (b)(1) through (b)(6) of this section must annually submit accurate information as required by these provisions.

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

(2) Participants in the programs governed by parts 1421 and 1427 of this title must report the acreage planted to a commodity for harvest for which a

marketing assistance loan or loan deficiency payment is requested;

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

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

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

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

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

§ 718.103 Late-filed reports.

(a) A report may be accepted after the required date if the crop or identifiable crop residue is in the field.

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

§ 718.104 Revised reports.

(a) The farm operator may revise a report of acreage with respect to 2002 and subsequent years to change the acreage reported if:

(1) The county committee determines that the revision does not have an adverse impact on the program;

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

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

(b) Revised reports shall be filed and accepted:

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

(2) If the requirements of paragraph (a) of this section have been met and the producer was in compliance with all other program requirements at the reporting date.

§ 718.105 Tolerances, variances, and adjustments.

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

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

(c) Tolerance rules do not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

§ 718.106 Non-compliance and fraudulent acreage reports.

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

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

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

§ 718.107 Acreages.

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

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

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

§ 718.108 Measuring acreage including skip row acreage.

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

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire

acreage of the field or subdivision may be 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 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.

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

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if they pay the cost of the redetermination. The request must be submitted to FSA within 15 calendar days after the date of the notice described in §§ 718.110 or 718.111, or within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. A redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

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

(i) Five percent or 5 pounds for cotton;

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

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

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

(3) The acreage of the crop is:

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

(ii) Considered to be within program requirements.

■ 4. Subpart C is revised to read as follows:

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

Sec.

§ 718.201 Farm constitution.

(a) In order to implement agency programs and monitor farmer compliance with regulations, the agency must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or groups of land 'constitute' an individual unit or farm. Land, which

has been properly constituted under prior regulations, shall remain so constituted until a reconstitution is required under paragraph (c) of this section. The constitution and identification of land as a farm for the first time and the subsequent reconstitution of a farm made hereafter, shall include all land operated by an individual entity or joint operation as a single farming unit except that it shall not include:

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

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

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

(i) All of the land is contiguous;

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

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

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

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

(4) Federally-owned land;

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

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

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

(i) Counties are divided by a river;

(ii) Counties do not touch because of a correction line adjustment; or

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

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

(2) If the land on the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

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

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

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

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

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

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

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

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

(2) Circumvent any other chapter of this title.

§ 718.202 Determining the land constituting a farm.

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

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

(1) Is a producer on a farm;

(2) Maintains a separate household from the parent or guardian;

(3) Personally carries out the farming activities; and

(4) Maintains a separate accounting for the farming operation.

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

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

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

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

(2) Exercises separate responsibility for the separate and distinct interest; and

(3) Maintains funds and accounts separate from that of any other individual or entity for the interest.

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

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

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

§ 718.203 County committee action to reconstitute a farm.

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

§ 718.204 Reconstitution of allotments, quotas, and bases.

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

(b) Reconstitutions of farms subject to a direct and counter-cyclical program contract in accordance with part 1413 of this title will be effective for the current year if initiated on or before August 1 or prior to the issuance of DCP payments for the farm or farms being reconstituted.

(c) For tobacco farms, a reconstitution will be effective for the current year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

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

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

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

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

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

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

(iii) Correct an erroneous acreage report; or

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

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

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

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

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

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

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

§ 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

(a) The methods for dividing farms, tracts, allotments, quotas, and bases in order of precedence, when applicable, are estate, designation by landowner, contribution, cropland, DCP cropland, default, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the pro-rata distribution of allotments, quotas, and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

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

(4) If allotments, quotas, and bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and bases, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

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

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

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm

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

(4) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

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

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

(2) The county committee determines and the State committee or a representative thereof concurs, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming.

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

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

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

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

(2) The county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

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

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated. (i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

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

(j) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs; or

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

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

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and bases, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and bases for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

PART 723—TOBACCO

■ 5. The authority citation for part 723 continues to read as follows:

Authority: 7 U.S.C. 1301 *et seq.*; 7 U.S.C. 1421; 7 U.S.C. 1445–1 and 1445–2.

■ 6. Subpart B is amended by adding §§ 723.221, 723.222, and 723.223 to read as follows:

Subpart B—Allotments, Quotas, Yields, Transfers, Release and Reapportionment, History Acreages, and Forfeitures

* * * * *

§ 723.221 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating tobacco with respect to land involved in eminent domain acquisitions. An eminent domain acquisition is a taking of title to land, an easement to impound water on the land (impoundment), or an easement to flood the land (flowage), under the power of a Federal, State, or other agency. Acquisition may be by court condemnation of the land or by negotiation between the agency and the owner. This section does not apply to acquisition of land by an agency by a method other than eminent domain acquisition. All land acquired, including surrounding land acquired as a package acquisition, shall be considered an eminent domain

acquisition if the agency expended funds using its power of eminent domain.

(b) In this section, owner means a person having title to the land for a period of at least 12 months immediately before the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If a person has owned the land for less than such 12-month period, they may still be considered the owner if the State committee determines they acquired the land for farming and not for obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to a pending eminent domain acquisition contract to an agency or an option by an agency or subject to pending condemnation proceedings. When the current titleholders are not the owner according to this section, the State committee shall determine who previously had title to the land and who is the owner according to this paragraph.

(c) Tobacco may be pooled for the benefit of an owner whose farm is acquired by eminent domain. Pooling shall be for a 3-year period from the date of displacement or during a period. The displaced owner may request transfer of allotments and quotas from the pool to other farms owned by such person.

(d) The owner shall be considered displaced from a farm by eminent domain acquisition on the date:

(1) The owner loses possession of the land;

(2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency that provided uninterrupted possession to the owner from the date of acquisition to the end of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that tobacco may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period provided in paragraph (c) of this section.

(f) If the county committee is notified or otherwise determines that an owner has been displaced from the farm, the county committee shall establish a pool for the tobacco eligible under this section for a 3-year period beginning on the date of displacement. Pooled tobacco shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable regulations.

(g) There shall be no pooling of an tobacco if:

(1) The county committee determines that an agency has eminent domain power to acquire a farm for the continued production of an tobacco, and

(i) The agency acquires a farm only for such purpose; and

(ii) The agency files a written notice with the county committee designating the tobacco to be produced on the farm.

(2) An agency acquires and retains the land in an agricultural or related activity. The tobacco for such land will be in accordance with applicable regulations.

(3) A displaced owner voluntarily waives the right to have all the tobacco or any part pooled and requests that the tobacco be retained on the agency acquired land;

(4) Agency acquired cropland will not be farmed and represents less than 15 percent of the total cropland on the farm. The tobacco shall be retained on the portion of the farm not acquired by the agency.

(5) An agency acquires land that will not be farmed and the cropland it contains is less than 15 percent of the total on the farm, the entire tobacco for the acquired land shall be retained on the land not acquired by the agency. The owner must file a written request with the county committee for such retention. The tobacco to be retained on the farm cannot exceed the land devoted to an agriculture related activity. Tobacco that is not retained shall be pooled; or

(6) If, prior to pooling, an owner requests transfer of the tobacco to other farms they own in the same county, the county committee may approve a transfer without establishment of a pool, subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled tobacco notwithstanding other provisions of applicable commodity regulations.

(h) Pooled tobacco may be released on an annual basis by the owner to a county committee during any year in which tobacco is pooled and not otherwise transferred from the pool. The county committee may reapportion the released tobacco to other farms in the same county that have tobacco for the same commodity. Pooled tobacco shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled tobacco that is released shall be considered to have been fully planted in the pool and not on the farm to which such tobacco is reapportioned.

(i) Pooled tobacco that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled tobacco, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j)(1) Displaced owners may request a transfer of all or part of the pooled tobacco to any other farm in the United States that is owned by the displaced owner, but only if there are farms in the receiving county with tobacco, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of tobacco from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining tobacco from the pool for a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the

receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the tobacco is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage that is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that tobacco is transferred;

(v) The agreement between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the tobacco is transferred; and

(vi) The agreement under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the receiving State. The receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraphs (j)(4)(ii) through (j)(4)(iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the tobacco is transferred.

(6) Upon approval under this paragraph, the receiving county committee shall issue a notice of tobacco under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors. In determining the tobacco available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the tobacco most recently established for the acquired farm placed in the pool. When all or a part of the tobacco placed in the pool is transferred and used to establish or increase the tobacco for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future tobacco to have been planted on the receiving farm for which tobacco, are established or increased under this section. If only a part of the available tobacco is transferred from the pool, the remaining part of the tobacco, shall remain in the pool for transfer to other farms of the owner until all such tobacco has been transferred or until the period of eligibility for establishing or increasing tobacco under this section has expired.

(7) If any tobacco is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation, or that the conditions of paragraph (j)(4) of this section are not met, the tobacco for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the tobacco transferred from the pool. If the time for the transfer of the tobacco from the pool has not expired, the tobacco initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could request administrative review. Cancellation of the transfer of tobacco by the receiving county committee requires approval by the receiving State committee. The receiving county committee shall issue a notice of marketing quota and penalty in accordance with applicable commodity regulations.

(8) If the displaced owner requests transfer of pooled tobacco, within the prescribed period, but the request for transfer is filed during a year or a part of the pooled tobacco was released to the transferring county committee pursuant to paragraph (h), the request will be processed in the usual manner but the amount released shall not be effective until the succeeding year. When a request for transfer of pooled tobacco involves a transfer from one State to another, the receiving State committee shall ask the transferring State committee whether any of the tobacco for which transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g)(3) and (g)(4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced

therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the tobacco is retained on the portion not acquired as provided in paragraphs (g)(3) and (g)(4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l)(1) The displaced owner may request from the county committee a written designation of beneficiary of the rights in the tobacco attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may continue a lease or negotiate a lease with the agency, transfer rights with respect to farms owned by the beneficiary, and release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (l)(1) of this section and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with applicable rights:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraphs (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable regulations.

(2) If tobacco for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the tobacco shall be reduced in the pool accordance to applicable regulations.

§ 723.222 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity that is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop that is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 723.223 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information about the farm operations, including leases, shall also be included in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section, for each year, which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by the same percentage as the allotment or quota being transferred is adjusted. The allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be require that acreage equal to the allotment and quota transferred shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made before any productivity adjustment. The acreage to be devoted to and maintained in permanent vegetative cover with respect to quota crops shall be determined by dividing the quota transferred by the yield of the farm from which the quota is transferred.

(g) Transfer of an allotment and quota under this section shall only be approved if:

(1) The county committee determines that a timely filed application has been received and that the provisions of this section have been met; and

(2) A representative of the State committee also determines that the provisions of this section have been met. If a transfer is approved, the county committee shall issue revised notices of the allotment or quota for each farm affected. If a county committee determines that requirements for a transfer were not met, a report shall be provided to the State committee. If the State committee agrees that requirements were not met, the transfer will be canceled, and the allotment and quota shall be transferred back to the original farm. Where a cancellation and transfer back is required, the county committee shall issue revised notices of the allotment or quota showing the reasons for the cancellation.

PART 1412—DIRECT AND COUNTER CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAMS

7. Amend § 1412.407 as follows:

■ A. By revising paragraph (d)(2) to read as set forth below.

■ B. Amend paragraph (e) by adding Houston County, Alabama, Tazewell County, Illinois, and Clinton County, Pennsylvania as State Committee-established regions within the respective states.

§ 1412.407 Planting flexibility.

* * * * *

(d) * * *

(2) The farm has a history of planting fruits, vegetables, or wild rice, as

determined by the CCC, in any one of the crop years 1991 through 1995 or 1998 through 2001, in which case the payment acres for the farm shall be reduced on an acre-for-acre basis; or

* * * * *

PART 1413—HARD WHITE WHEAT INCENTIVE PROGRAM

■ 8. Amend § 1413.101 by revising paragraph (b) to read as follows:

§ 1413.101 Applicability.

* * * * *

(b) A production payment incentive shall be available only for hard white wheat that grades U.S. # 2 grade or higher, established by the Federal Grain Inspection Service, that is produced and harvested in the United States.

* * * * *

§ 1413.105 [Amended]

■ 9. Amend § 1413.105 by redesignating the second paragraph (c)(1) and paragraph (c)(2) as paragraphs (c)(2) and (c)(3) respectively.

Signed in Washington, DC, on February 19, 2003.

James R. Little,

Administrator, Farm Service Agency and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–8025 Filed 3–31–03; 3:45 pm]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1136]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: This final rule revises the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary interprets the requirements of Regulation Z. The revisions state the rules for disclosing fees to expedite a payment or delivery of a card. The revisions interpret the rules for replacing an accepted credit card to permit an issuer, under certain conditions, to replace an accepted card with more than one card. The revisions also discuss the treatment of private mortgage insurance payments in disclosing the payment schedule and the selection of Treasury security yields for determining whether a mortgage loan is covered by provisions in Regulation Z that implement the Home Ownership and Equity Protection Act.

DATES: This rule is effective April 1, 2003; the date for mandatory compliance is October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy or Dan S. Sokolov, Attorneys, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for uniform disclosures about its terms and cost. TILA gives consumers the right to rescind certain transactions that involve a lien on their principal dwelling, and it requires additional disclosures and imposes substantive restrictions on certain home-secured loans with rates or fees above a certain amount. The act also addresses the rights and responsibilities of credit card issuers and cardholders.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board has delegated to officials in the Board's Division of Consumer and Community Affairs authority to issue official staff interpretations of Regulation Z. Good faith compliance with the commentary affords creditors protection from liability under section 130(f) of TILA. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In December 2002, the Board published for comment proposed changes to the commentary (67 FR 72,618, December 6, 2002). The revisions discuss the rules for disclosing fees to expedite a payment or delivery of a card; replacing an accepted credit card; including private mortgage insurance premiums in the payment schedule disclosure; and selecting Treasury security yields for determining whether a mortgage loan is covered by the Home Ownership and Equity Protection Act. The Board received approximately 350 comment letters, most on the inquiry about overdraft or ''bounced check'' services. About 280 of the comments were from financial institutions, other creditors, and their representatives. The remaining comment letters were from consumer groups, individuals, and one state agency.

With one exception, the final rule is being adopted substantially as proposed; the proposed comment concerning expedited payment fees has not been adopted. In addition, some changes have been made for clarity in response to commenters' suggestions.

In addition to the proposed commentary revisions, the Board's staff requested information on overdraft or ''bounced check'' protection services. Institutions provide the service in lieu of establishing a traditional overdraft line of credit for the customer. Under these programs, even though the institution generally reserves the right not to pay particular items, a dollar limit is typically established for the account holder and then the institution routinely pays overdrafts on the account up to that amount without a case-by-case assessment. The staff solicited comment and information from the public about how these services are designed and operated, to determine the need for additional guidance to financial institutions under Regulation Z or other laws.

About 300 of the comment letters responded to the request to provide information about the various ways that depository institutions offer bounced check protection services. The comment letters describe programs being offered to depository institutions by a number of vendors. The programs vary from vendor to vendor, and also appear to vary in their implementation from institution to institution. The Board's staff is continuing to gather information on these services, which are not addressed in the final rule.

II. Commentary Revisions

Subpart B—Open-End Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Representatives of the credit card industry requested official guidance on the rules for disclosing two fees charged to consumers in connection with open-end credit plans—a fee imposed when a consumer requests that an individual payment be expedited, and a fee imposed when a consumer requests expedited delivery of a credit card. Because the proper characterization of these fees under TILA previously has been unclear, the staff proposed to revise comment 6(b) to provide guidance.

Under Regulation Z, creditors must disclose fees that are ''finance charges,'' which are defined as ''charges payable