

organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(d) For purposes of applying this subpart and calculating the 3-year average referenced in § 1400.500, that average will be for the adjusted gross income for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For a legal entity that is not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered "new" to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the "old" legal entity. When there is such commonality, income of the "old" legal entity will be averaged with that of the "new" legal entity for the base period.

#### **§ 1400.502 Compliance and enforcement.**

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation;

(2) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(3) The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include

State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the person's or legal entity's income; or

(4) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.

(b)(1) All persons and legal entities are subject to an audit by FSA of any information submitted in accordance with this subpart. As a part of this audit, income tax returns may be requested, and if requested, must be supplied by all related persons and legal entities.

(2) In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested.

(c) Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

#### **§ 1400.503 Commensurate reduction.**

(a) Any program payment or benefit subject to this subpart provided to a legal entity, general partnership, or joint venture will be reduced by an amount commensurate with the direct and indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity determined to have an average adjusted gross income in excess of the applicable limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in a legal entity will be reviewed to the fourth level of ownership, as specified in § 1400.105, to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by a person in the fourth level of ownership in a legal entity, no payment or benefit will be made with respect to such interest.

Signed in Washington, DC, on December 19, 2008.

**Glen L. Keppy,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E8-30764 Filed 12-23-08; 11:15 am]

**BILLING CODE 3410-05-P**

## **DEPARTMENT OF AGRICULTURE**

### **Commodity Credit Corporation**

#### **7 CFR Part 1412**

**RIN 0560-AH84**

#### **Direct and Counter-Cyclical Program and Average Crop Revenue Election Program**

**AGENCY:** Commodity Credit Corporation, Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) regarding the direct and counter-cyclical payment program (DCP) for the 2008 through 2012 crop years as well as Average Crop Revenue Election (ACRE) program payments for the 2009 through 2012 crop years. The 2008 Farm Bill further authorizes payments, with some changes, that were previously authorized under the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) regarding direct and counter-cyclical payments for the crop years 2002 through 2007. The payments provide income support to producers of eligible commodities and are based on historically-based acreage and yields and do not depend on the current production choices of the farmer. In general, the 2008 Farm Bill provides payments to eligible producers of covered commodities and peanuts and beginning in 2009, pulse crops as well. Additionally, the 2008 Farm Bill provides for the establishment of a yield for each farm for any designated oilseed or eligible pulse crop for which a payment yield was not established under the 2002 Farm Bill.

**DATES:** *Effective Date:* December 23, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Salomon Ramirez, Director, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW., Washington, DC 20250-0517; phone: (202) 720-7641; e-mail: [Salomon.Ramirez@wdc.usda.gov](mailto:Salomon.Ramirez@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:**

#### **Direct and Counter-Cyclical Program and Average Crop Revenue Election Program**

For crop years 2002 through 2007, pursuant to the 2002 Farm Bill (Pub. L.

107–171), wheat, corn, barley, grain sorghum, oats, upland cotton and rice, (the same crops that were previously eligible for fixed annual Production Flexibility Contract (PFC) payments for producers under prior law) oilseed crops, including soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and peanuts were crops eligible for a fixed direct payment. (PFC payments were based on historical yields and acreage. Direct payments were received whether or not a crop was planted, and did not depend on what crop was planted, (except for fruit and vegetable restrictions)). The 2008 Farm Bill further authorizes these types of direct payments for the 2008 through 2012 crop years, with some changes, and adds pulse crops beginning with the 2009 crop year. Counter-cyclical payments (counter-cyclical payments are similar to the deficiency payments authorized under the earlier Acreage Reduction Program (ARP), which mandated strict acreage limitations and mandatory acreage idling or set-aside requirements) were authorized for the 2002 through 2007 crop years pursuant to the 2002 Farm Bill for these same crops. Under the 2008 Farm Bill, peanuts continue to be eligible for direct and counter-cyclical payments, and continue to have slightly different statutory requirements than for other crops.

#### Base Acres and Payment Yields

Section 1001 of the 2008 Farm Bill provides that the base acres and yields established by the 2002 Farm Bill that were effective September 30, 2007, will constitute the base acres and yields for the 2008 through 2012 crop years. The 2008 Farm Bill, however, requires adjustments to base acres for various reasons including, but not limited to, land no longer being devoted to agricultural uses. In addition to changes required by the 2008 Farm Bill, this rule provides that for the 2009 and subsequent crop years, crop acreage bases will be terminated with respect to land owned by Federal agencies. A transition provision is provided with respect to Federal land that was subject to a lease agreement entered into prior to the effective date of this rule. In such cases, the termination of the crop acreage bases will become effective when the lease expires.

As to payment yields, the 2008 Farm Bill requires that the payment yield for direct and counter cyclical payments under the 2002 Farm Bill, as in effect on September 30, 2007, be used. Section 1102 of the 2008 Farm Bill further requires the Secretary to establish a

payment yield for direct and counter-cyclical payments for each farm for any designated oilseed or eligible pulse crop for which a payment yield was not established under the 2002 Farm Bill. This will involve a determination of an average yield per planted acre (designated oilseeds or pulse crop) on a farm for the 1998 through 2001 crop years, excluding any crop year in which the acreage planted was zero. An adjustment to the payment yield will equal the product of the average yield and the ratio resulting from dividing the national average yield for the 1981 through 1985 crops by the national average yield for the 1998 through 2001 crops. If the yield for a farm for any of the 1998 through 2001 crop years was less than 75 percent of the county yield for that designated oilseed or pulse crop, then the Secretary will assign a yield equal to 75 percent of the county yield to determine the average.

As with the 2002 Farm Bill, the 2008 Farm Bill specifies certain requirements to which the participant must agree to be eligible for direct and counter-cyclical payments. One such requirement is to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices.

Sections 1101 and 1302 of the 2008 Farm Bill directed that base acres for covered commodities and peanuts would be reduced for land that has been subdivided and developed for multiple residential units or other non-farming uses if the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use. Accordingly, these regulations detail the procedures under which land will be considered subdivided and developed for multiple residential units or other non-farming uses, whether such land remains devoted to commercial agricultural production, and whether such land is likely to be returned to the previous agricultural use.

Additionally, beginning with the 2009 crop year, except for farm owners who are socially disadvantaged or limited resource farmers, section 1101 of the 2008 Farm Bill, as amended by Public Law 110–398, specifically precludes issuance of payments to producers on farms that have 10 or less total base acres of covered commodities or peanuts.

Section 1107 of the 2008 Farm Bill authorizes the Secretary to carry out a pilot project to permit the planting of

cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes grown for processing on base acres in certain States during each of the 2009 through 2012 crop years. The number of base acres eligible during each crop year for the pilot project will be: 9,000 acres in Illinois, 9,000 acres in Indiana, 1,000 acres in Iowa, 9,000 acres in Michigan, 34,000 acres in Minnesota, 4,000 acres in Ohio, and 9,000 acres in Wisconsin. Contract and managerial requirements for this pilot project will be outlined in the regulations. Generally, to be eligible for selection to participate in the pilot project, the producers on a farm must demonstrate to the Secretary that they have entered into a contract to produce a crop of one of the specified commodities for processing and that they agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits. The base acres on a farm for a crop year will be reduced by an acre for each acre planted under the pilot program. Implementation of this program will commence with the 2009 crop year.

Additionally, subject to subsections (b) and (c) of section 1108 of the 2008 Farm Bill, for the purposes of determining the amount of the counter-cyclical payments to be paid to the producers on a farm for long grain rice and medium grain rice under section 1104 of the 2008 Farm Bill, base acres on the farm will be apportioned based on the percentage of acreage planted in the applicable State to long grain rice and medium grain rice during the 2003 through 2006 crop years. Section 1108 requires that the Secretary use the same total base acres, payment acres, and payment yields established with respect to rice under sections 1101 and 1102. Although the provisions of the 2008 Farm Bill are effective with the 2008 crop year, the election and apportionment cannot be performed before the 2009 crop year. We do not anticipate this being a problem, however, as counter-cyclical payments are not anticipated for rice in 2008. In the event that changes due to some circumstance, measures will be taken to implement the effectiveness of the change earlier.

In response to concerns regarding the sharing of contract payments and various forms of cash and share leases (such as traditional cash leases, traditional share leases, and combination or flex leases that have features of both traditional cash and traditional share leases), these regulations will clarify for the purpose of determining payments under these

regulations only, that for the 2009 through 2012 crop years, combination or "flex" leases will be viewed as cash leases. A combination or "flex" lease is one that provides for the greater of a determinable amount or determinable share of a crop or crop proceeds. For 2008, these leases are deemed to be share leases. For 2009, these leases are deemed cash leases.

#### ACRE

As an alternative to receiving counter-cyclical payments, section 1105 of the 2008 Farm Bill provides that ACRE is a farm program option for all covered commodities and peanuts that is available during each of the 2009, 2010, 2011, and 2012 crop years. A key feature of ACRE is to provide revenue protection based on several factors such as recent market prices as well as actual production and revenue of the covered commodity or peanuts at the farm and State levels. Unlike counter-cyclical payments, ACRE payments are not solely determined based on comparing national average prices to loan rates or other predetermined rates. When certain program standards are met, payments are based on the crop's actual planted acres and actual yield instead of historical yields and crop base acres, except when the crop's actual planted acres exceed the total base acreage on the farm.

Producers will give up a fixed amount of revenue, 20 percent of their direct payment, in exchange for a possible ACRE payment in a year when gross revenue is low, at which time payments could be greater than counter-cyclical payments. ACRE provides participating producers a revenue guarantee each year based on market prices and average yields for the respective commodities. The guarantee is based on State-level yields and national market prices, but payments are dependent upon State- and farm-level yields and national market prices. ACRE's policy objective is to assist farmers with managing the systemic risk of a decline in revenue of a crop over a short period of years.

However, once made on a farm, the election of ACRE is irrevocable, and the farm will remain in ACRE from the crop year in which participation was initially elected through the duration of the 2012 crop year. The election applies to all covered commodities and peanuts grown on the farm. If ACRE is not elected by all producers on the farm or if an ACRE election is not made, program participation defaults to the traditional DCP (provided DCP signup requirements are met).

Enrollment in an ACRE contract is a two-step process and first requires

producers on a farm to elect the ACRE option. Election does not automatically enroll the producers or the farm, however. Following the irrevocable election, the producers will have the option to choose whether or not to participate in the annual ACRE contract.

For producers on farms that have elected and enrolled in ACRE, direct payments will be reduced by 20 percent such that they equal 80 percent of direct payments under the traditional direct payment program and marketing assistance loan rates will be reduced by 30 percent such that the loan rates will be equal to 70 percent of marketing loan rates.

ACRE payments equal the lesser of either:

ACRE state revenue guarantee minus state actual revenue  
or  
25% of ACRE state revenue guarantee times  
83.3 percent of the farm's acres planted to the covered commodity or peanuts (85 percent for the 2012 crop) times

the farm's Olympic average yield (removes high and low yield) for the most recent 5 years divided by the State's ACRE benchmark yield.

The ACRE state revenue guarantee for a crop for a crop year equals the ACRE benchmark state yield per planted acre times ACRE price guarantee times 90 percent. The benchmark yield is Olympic average of state's yields for 5 most recent crop years. The price guarantee is the simple average of U.S. market year price for 2 most recent crop years. For example, for the purpose of establishing the guarantee for the 2009 crop year, the 2 most recent crop years are 2007 and 2008. For 2010 through 2012, the revenue guarantee cannot increase or decrease more than 10 percent from the guarantee for the previous crop year. The increase or decrease in the state revenue guarantee for a covered commodity or peanuts will be applicable to all ACRE program participants in a State, regardless of the year the participant first elected ACRE or enrolled. Separate state revenue guarantees are established for irrigated and non-irrigated land if a state's planted acres of a covered commodity or peanuts are at least 25 percent irrigated and at least 25 percent non-irrigated.

ACRE actual state revenue for a crop for a crop year equals state yield per planted acre times the national average market price (which equals higher of U.S. average cash price for the crop year or 70 percent of the crop's marketing assistance loan rate). While the statutory provisions regarding state revenue are not crystal clear, interpretation of the

statute would not provide a reasonable result consistent with the nature of the statute unless it were read to lead to, in effect, a per acre amount.

The total number of planted acres that receive an ACRE payment cannot exceed a farm's total base acres for all covered commodities and peanuts on the farm. If a farm's total planted acres exceed the farm's total base acres, the farmer may choose which planted acres to enroll in ACRE.

ACRE payments are only available if a farm's actual revenue for the crop is less than the farm's ACRE benchmark revenue for that crop year. A farm's actual revenue for a crop equals the farm's actual yield times the U.S. market year price for the crop for the crop year. A farm's ACRE benchmark revenue equals:

(Olympic average of farm's yields for the 5 most recent crop years times  
ACRE guarantee price)  
plus  
per acre crop insurance premium paid by the farmer for the crop for the crop year.

Producers electing the ACRE option and enrollment, as a condition of payment eligibility, must report production of reported acreage of covered commodities and peanuts on the farm no later than the crop reporting date for the crop in the year following the year the crop was reported as planted for harvest. The regulations specify the information and documentation requirements for these production reports.

The 2008 Farm Bill provides a \$65,000 per person or legal entity payment limit for counter-cyclical payments, a reduced direct payment limit for participants in the ACRE program to reflect the amount the direct payment is reduced as a condition to participate in ACRE, and a limit in the amount of counter-cyclical and ACRE payments that reflect the \$65,000 limit plus the amount that the direct payment limit is reduced. The counter-cyclical limits and ACRE limits are combined for those producers who participate in ACRE because producers are eligible to receive the counter-cyclical payments on one farm and the ACRE payments on a separate farm.

#### FSA Notifications of Farm Bill Provisions

The following provides information regarding the notification processes FSA has undergone to ensure that farm owners are aware of the provisions of the 2008 Farm Bill and that participants have all applicable information available on record at FSA to assist them in making participation elections.

Date	FSA action
June 4, 2008 .....	<p>Issued a DCP Notice to State and County Offices to prepare for implementation of the 2008 Farm Bill. The notice:</p> <ul style="list-style-type: none"> <li>• Provided an overview of the 2008 Farm Bill as it relates to 2008 through 2012.</li> <li>• Compared 2008 through 2012 DCP provisions and covered commodities with provisions effective for 2007 under the 2002 Farm Bill.</li> <li>• Clarified statutory definitions of long grain and medium rice.</li> <li>• Announced the inclusion of pulse crops as a covered commodity in 2009.</li> <li>• Discussed provisions for base acre adjustments permitted under the 2008 Farm Bill and explained how payment yields would be determined.</li> <li>• Discussed the percent of base acres used to calculate direct payments for each year under the 2008 Farm Bill.</li> <li>• Announced the direct payment rates and target prices for the 2008 through 2012 years.</li> <li>• Stated the payment limitations applicable to direct and counter cyclical payments.</li> <li>• Discussed the availability of the option to elect participation in the ACRE program starting with the 2009 crop year.</li> <li>• Announced planting flexibility as it existed under the 2002 Farm Bill, the 2008 Farm Bill, and the availability of a Planting Transferability Pilot Project for certain crops and States beginning in 2009.</li> <li>• Discussed compliance provisions of DCP.</li> <li>• Announced the prohibition of DCP and ACRE payments to producers on farms having 10 or less base acres.</li> <li>• Discussed how policy is being developed to address how base acres will need to be reduced when land has been subdivided and developed for multiple residential units or other nonfarming uses.</li> <li>• Announced the direct payment rates and target prices for the 2008 through 2012 years.</li> <li>• Stated the payment limitations applicable to direct and counter cyclical payments.</li> <li>• Discussed the availability of the option to elect participation in the ACRE program starting with the 2009 crop year.</li> <li>• Announced planting flexibility as it existed under the 2002 Farm Bill, the 2008 Farm Bill, and the availability of a Planting Transferability Pilot Project for certain crops and States beginning in 2009.</li> <li>• Discussed compliance provisions of DCP.</li> </ul>
June 24, 2008 .....	<p>Issued a DCP Notice Concerning the 2008 DCP and Availability of Software. The notice:</p> <ul style="list-style-type: none"> <li>• Announced the 2008 DCP enrollment period.</li> <li>• Outlined the provisions that differentiate 2007 DCP from 2008 DCP.</li> <li>• Provided information regarding a revised CCC-509 and CCC-509 Appendix, and the need for their use in 2008 signup.</li> <li>• Discussed the availability of 2008 DCP Contract software.</li> <li>• Instructed FSA offices to publicize DCP provisions using all available means.</li> <li>• Announced the availability of 2008 advance direct payments.</li> <li>• Issued clarification for handling DCP contracts for farms having 10 or less base acres (prior to the amendment in Public Law 110-398).</li> <li>• Issued a notice regarding establishing fruit and vegetable (FAV) and Wild Rice Double-Cropping Regions.</li> </ul>
June 27, 2008 .....	<p>Issued a notice in the <b>Federal Register</b> announcing implementation of DCP provisions for the 2008 crop year based on the current regulation in 7 CFR part 1412, Direct and Counter-cyclical Program, except as otherwise noted in the Notice and as otherwise required by the 2008 Farm Bill.</p>

### Signup Fees and Enrollment Deadlines

As provided in this rule, a signup deadline of June 1 has been established. Under the 2002 Farm Bill DCP provisions, a \$100 fee was assessed if a participant did not sign a DCP contract by June 1 of the crop year. For the 2008 crop year, this fee did not apply. Instead, a final signup deadline of September 30, 2008, applied. For the 2009 and subsequent crop years, a final enrollment deadline of June 1 will apply and there will be no late enrollment period or fee. Producers interested in participating must complete enrollment of the farm by June 1 of the applicable crop year.

Prior to DCP and PFC, producers were required to decide whether to annually enroll in Acreage Reduction Program contracts and under those contracts there were defined signup periods that often closed much earlier than June 1. In other words, producers generally did not have an entire contract period to enroll or enroll late and pay a late filed

fee. In some respects, a “late-file” enrollment period ending later in a contract year actually caused FSA and producers more problems because many producers who thought they had enrolled often had not. Further, a later enrollment deadline or “late-file” enrollment period raised questions of program integrity because compliance activities could not be performed during the contract period on farms that were not yet enrolled. Additionally, it has been determined that an enrollment deadline of June 1 is necessary because of the complexities involved in administering new payment limitation provisions which provide for attribution of payments to individuals within entities. Therefore, for the 2009 and each of the subsequent crop years, an enrollment deadline of June 1 of each such year will apply and all producers interested in annually participating must enroll by June 1 of such year.

### Payments

Payments in the programs covered in this part are subject to statutory changes in conditions, rates, limitations, and eligibilities. Under a separate rulemaking, CCC will publish changes relevant to payment limitations.

### Summary

In summary, FSA has, in administering the provisions of the 2008 Farm Bill, utilized available means to ensure that farm owners and operators have all necessary information from FSA that FSA is capable of providing to them, and in such a manner that owners can make educated decisions when determining appropriate DCP base and yield elections for a farm. As was the case with the 2002 Farm Bill, the 2008 Farm Bill explicitly sets forth many of the terms and provisions of the DCP. Accordingly, administration of the program is subject to little variation or flexibility from the statutory authority.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code 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.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost benefit assessment of this rule is summarized below and is available from the contact listed above.

Cost Benefit Analysis Summary

The underlying policy structure for the 2008 Farm Bill is largely unchanged from the policy structure for the 2002 Farm Bill. The 2008 Farm Bill continues planting flexibility, continues marketing assistance loan provisions at higher levels (for some crops in some years. The net fiscal impacts of the changes made by the 2008 Farm Bill and implemented by this rule are estimated to be as shown in the following table:

AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2008–2012

Program	Average annual outlay change (billion dollars)
Direct Payments .....	\$ –0.484
Counter-cyclical Payments ...	–0.043
ACRE Payments .....	1.014
Total .....	0.487

Direct and counter-cyclical payments will increase farm income, but will have little impact on planting decisions because these payments are decoupled from the production decisions of individual farmers. These benefits are paid on historically-based acreage and yields and do not depend on the current production choices of the farmer. Direct payments and counter-cyclical payments were assumed in this analysis to have no impact on production. Direct payments are projected to average \$4.749 billion in fiscal years (FY) 2008 through 2014 for crop years 2008 through 2012. These payments represent

an decrease of about \$0.484 billion each crop year compared with direct payments issued under the 2002 Farm Bill. Counter-cyclical payments are projected to average \$0.089 billion in FY 2008 through 2014 for crop years 2008 through 2012. These payments represent a decrease of \$0.043 billion compared with counter-cyclical payments under the 2002 Farm Bill. ACRE payments are projected to average \$1.014 billion each crop year.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this 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. After a thorough environmental review, FSA has determined that the changes to the program authorized by the 2008 Act and promulgated by this final rule, are considered categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation (7 CFR 799.10(b)(2)(xvi)). Therefore, no environmental assessment or environmental impact statement shall be prepared on this rule. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on

states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA’s usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the incomes of an extraordinarily large number of agricultural producers. In any event, section 1601(c)(3) provides cause. Accordingly, this rule is effective upon the date of filing for public inspection at the Office of the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Direct and Counter-Cyclical Program, 10.055.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 1412**

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

■ For the reasons discussed above, revise 7 CFR part 1412 to read as follows:

**PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND AVERAGE CROP REVENUE ELECTION PROGRAM FOR THE 2008 AND SUBSEQUENT CROP YEARS**

**Subpart A—General Provisions**

Sec.

- 1412.1 Applicability, statutory changes, interest, and contract provisions.
- 1412.2 Administration.
- 1412.3 Definitions.
- 1412.4 Appeals.

**Subpart B—Establishment of Base Acres for a Farm for Covered Commodities**

- 1412.21 Base acres.
- 1412.22 Failure to make pulse crop election.
- 1412.23 Base acres and Conservation Reserve Program.
- 1412.24 Limitation of total base acreage on a farm.

**Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments**

- 1412.31 Direct payment yields for covered commodities, except pulse crops.
- 1412.32 Direct payment yield for designated oilseed and pulse crops.
- 1412.33 Payment yield for counter-cyclical payments for covered commodities.
- 1412.34 Submitting production evidence for establishing direct payment yields for oilseeds and pulse crops.
- 1412.35 Incorrect or false production evidence of oilseeds and pulse crops.

**Subpart D—Direct and Counter-Cyclical Program Contract and ACRE Program Contract Terms and Enrollment Provisions for Covered Commodities and Peanuts for 2008 Through 2012**

- 1412.41 Direct and counter-cyclical program contract or ACRE program contract.
- 1412.42 Eligible producers.
- 1412.43 Reconstitutions.
- 1412.44 Notification of base acres.
- 1412.45 Reducing or terminating base acreage.
- 1412.46 Succession-in-interest.
- 1412.47 Planting flexibility.
- 1412.48 Planting Transferability Pilot Project.
- 1412.49 Apportionment of long and medium grain rice.
- 1412.50 Matters of general applicability.

**Subpart E—Financial Considerations Including Sharing Payments**

- 1412.51 Limitation of payments.
- 1412.52 Direct payment provisions.
- 1412.53 Counter-cyclical payment provisions.

- 1412.54 Sharing of contract payments.
- 1412.55 Provisions relating to tenants and sharecroppers.

**Subpart F—Contract Violations and Reduction in Payments**

- 1412.61 Contract violations.
- 1412.62 Fruit, vegetable and wild rice acreage reporting violations.
- 1412.63 Contract liability.
- 1412.64 Inaccurate representation, misrepresentation, and scheme or device.
- 1412.65 Offsets and assignments.
- 1412.66 Acreage and production reports.
- 1412.67 Notices of loss.
- 1412.68 Compliance with highly erodible land and wetland conservation provisions.
- 1412.69 Controlled substance violations.

**Subpart G—Average Crop Revenue Election (ACRE) Program**

- 1412.71 Administration.
- 1412.72 Availability and election of alternative approach.
- 1412.73 Sharing of ACRE payments.
- 1412.74 Prior Enrollment in DCP.
- 1412.75 Notice of election.
- 1412.76 Payments.
- 1412.77 Transfer of land and succession-in-interest.
- 1412.78 Violations.
- 1412.79 Executed ACRE contract not in conformity with regulations.
- 1412.80 Division of program payments and provisions relating to tenants and sharecroppers.

**Authority:** 7 U.S.C. 7911–7918, 7951–7956, 8711–8719, 8751–8756, and 8781; and 15 U.S.C. 714b and 714c.

**Subpart A—General Provisions**

**§ 1412.1 Applicability, statutory changes, interest, and contract provisions.**

This part governs: How base acres and farm program payment yields are established or adjusted for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, peanuts, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other designated oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2008 through 2012; the month when producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program contracts with CCC for each of the years 2008 through 2012, as applicable; and the peanut crop acreage bases and yields in order to receive 2008 through 2012 direct and counter-cyclical payments. Payments otherwise provided for in this part are subject to changes made by statute in rates, conditions, and eligibility notwithstanding any contract made

under this part. However, any such modification may, as determined by the Deputy Administrator, allow producers the opportunity to withdraw from the contract. Also, if any refund comes due to CCC under this part, interest will be due from the date of the CCC disbursement except as determined by the Deputy Administrator. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant must comply with the regulations in this part and any additional requirements imposed by the program contract.

**§ 1412.2 Administration.**

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the Executive Vice President, or the Deputy Administrator, 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 has the authority in individual cases to authorize State and county committees to waive or modify deadlines (except statutory deadlines) and other non-statutory requirements, in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program. Producers and participants have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decisions not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

(f) A representative of CCC may execute the FSA forms entitled "Direct

and Counter-Cyclical Program Contract” and “Average Crop Revenue Election Program Contract” only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to or after the dates authorized by the Executive Vice President, CCC, is null and void and will not be considered to be a contract between CCC and the operator or any other producer on the farm.

### § 1412.3 Definitions.

The definitions set forth in this section are applicable for all purposes of administering the DCP. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions set forth in this section.

Where there is a conflict or a difference in definitions specified in this part and those that apply to the Average Crop Revenue Election (ACRE) program specified in subpart G of this part, the regulations of subpart G of this part will apply to the ACRE program.

*Average Crop Revenue Election (ACRE)* means the program authorized by section 1105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8715) according to subpart G of this part. Participation in the ACRE program requires a two-step process by the producer, specifically step 1 an election according to subpart G of this part followed by step 2 enrollment according to this part.

*Base acres* means the number of acres established with respect to a covered commodity and peanuts on a farm pursuant to sections 1101 and 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007, subject to any adjustment in accordance with subpart B of this part.

*Commercial agricultural production* means the propagation and raising of agricultural products for commercial sale or barter having gross receipts or sales annually in excess of \$1,000. The term includes pastures and land devoted to approved conserving uses.

*Considered planted* means acreage approved as prevented planted in accordance with § 718.103 of this title or the acreage considered planted to a covered commodity pursuant to § 1412.48.

*Contract* means the CCC-approved standard, uniform forms and appendixes specified by CCC that constitute the agreement for participation in the Direct and Counter-

Cyclical Program or ACRE program, as applicable.

*Contract year* means the particular year of the particular contract based on the compliance period for the contract. The compliance year will run from October 1 to the following September 30 and will have the same name as the corresponding fiscal year. For example, the 2009 contract year will be October 1, 2008, through September 30, 2009, and that year will be considered, too, the 2009 crop year. The contract for the 2009 crop year will be considered the contract for the 2009 crop. The same references will apply to all other years.

*Counter-cyclical payment* means a payment made to eligible producers on a farm in accordance with subpart E of this part for covered commodities and peanuts.

*Covered commodity* means wheat, corn, grain sorghum, barley, oats, upland cotton, long grain rice, medium grain rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other oilseeds as determined by the Secretary.

*Crop year* means the relevant contract year. For example, the 2009 crop year is the year that runs from October 1, 2008, through September 30, 2009, and references to payments for that year refer to payments made under contracts with the compliance year that runs during those dates.

*DCP cropland* means DCP cropland as defined in part 718 of this title.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or a designee.

*Developed* means:

- (1) Land has been approved by the local government for uses other than commercial agricultural uses; and
- (2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

*Direct payment* means a payment made to eligible producers on a farm for peanuts and covered commodities in accordance with subpart E of this part.

*Dry peas* means Austrian, wrinkled seed, yellow, Umatilla, and green, excluding peas grown for the fresh, canning, or frozen market.

*Effective price* means the price calculated by the Secretary in accordance with § 1412.53 for covered commodities and peanuts to determine whether counter-cyclical payments are required to be made under that section for a crop year.

*Excess base acres* means the number of base acres of covered commodities and peanuts on the farm that exceed the farm's total DCP cropland.

*Fiscal year* means the year running from October 1 to the following September 30 and will be designated by the same calendar year in which it ends. For example, the 2009 fiscal year ends September 30, 2009.

*Harvested* means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in or on a truck or other conveyance or is consumed by livestock through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay, are considered harvested when in the bale, whether removed from the field or not.

*Marketing year* means the 12-month period beginning in the calendar year the crop is normally harvested as follows:

- (1) Barley, oats, and wheat: June 1–May 31;
- (2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1–June 30;
- (3) Upland cotton, peanuts, and rice: August 1–July 31; and
- (4) Corn, grain sorghum, soybeans, sunflowers, safflower, mustard, crambe, sesame, and chickpeas: September 1–August 31.

*Oilseeds* means a crop of soybeans, sunflower seed, rapeseed, canola, crambe, safflower, flaxseed, mustard seed, sesame seed, or, if determined and announced by CCC, another oilseed.

*Payment acres* means:

- (1) Except as provided for in paragraph (2) of this definition, 85 percent of the base acres of a covered commodity or peanuts on a farm in accordance with § 1412.71 or subpart B of this part, as applicable, for which direct or counter-cyclical or ACRE payments are made.

- (2) For each of the 2009 through 2011 crop years, 83.3 percent of the base acres for a covered commodity or peanuts on a farm in accordance with § 1412.71 or subpart B of this part, as applicable, for which direct or ACRE payments are made.

*Payment yield* means:

- (1) For peanuts, the yield established pursuant to section 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007.

- (2) For covered commodities, the yield established in accordance with subpart C of this part for a farm for a covered commodity.

- (3) For designated oilseeds or pulse crops, the yield established in accordance with subpart C of this part for a farm for a crop of a designated oilseed and pulse crop.



*Processing* means with respect to uses of a crop, non-fresh intended uses of crops enrolled in the project referred to in § 1412.48 for crops being grown pursuant to a contract for canning, pickling, frozen, juice, dry edible bean or pea, or such other uses deemed by CCC not to be fresh intended uses of crops mentioned in § 1412.48.

*Pulse crop* means dry peas, lentils, small chickpeas, and large chickpeas. Pulse crop bases will not generate direct payments and may only create counter-cyclical payments for the 2009 and subsequent crop years.

*Subdivided* means land has been approved or designated by the local government, or a unit thereof, for development or use as something other than commercial agricultural production or other non-agricultural use.

*Supportive and necessary contractual documents* means those documents including, but not limited to, those items substantiating the DCP contract such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by the Secretary.

*Target price* means, for peanuts, the price per ton; and for covered commodities, the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) used to determine the payment rate for counter-cyclical payments.

#### **§ 1412.4 Appeals.**

A participant may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

### **Subpart B—Establishment of Base Acres for a Farm for Covered Commodities**

#### **§ 1412.21 Election of base acres.**

(a) Subject to adjustments in paragraph (b) of this section, base acres for covered commodities and peanuts are as defined in § 1412.3.

(b) No later than April 1, 2009, owners on a farm may establish base acres for pulse crops.

(1) Subject to the limitations in accordance with paragraph (d) of this section and § 1412.24, the base acres for pulse crops are equal to the sum of the following:

(i) The 4-year average of the acreage planted or prevented planted to the pulse crops during each of the 1998 through 2001 crop years for harvest, grazing, haying, silage, or other similar purposes, as determined by the Secretary, plus

(ii) The 4-year average of the acreage prevented from being planted to covered commodities during each of the 1998 through 2001 crop years, for reasons beyond the control of the producer, as determined by the Deputy Administrator.

(c) Subject to paragraph (d) of this section, the total acreage of a pulse crop on the farm calculated in accordance with paragraph (b) of this section must not exceed:

(1) The total acreage of cropland on the farm minus

(2) The total acreage for all covered commodities, peanut, and other pulse crops determined in accordance with paragraphs (a) and (b) of this section.

(d) If the calculation in paragraph (c) of this section results in a negative number, the pulse crop acreage on the farm for that crop year will be zero for the purposes of determining the 4-year average, in accordance with paragraph (b) of this section. Further, no prevented planning credit or other base credit may be allowed for a pulse crop for any planting activity for which base credit was allowed or will be allowed for another commodity.

(e) If the acreage planted or prevented from being planted was devoted to a different covered commodity in the same crop year (other than a covered commodity or pulse crops produced under an established practice of double-cropping), the owner may select the commodity to be used for base purposes for that crop year in determining the 4-year average, but may not select both the initial commodity and subsequent commodity.

(f)(1) An owner may increase the eligible acres of pulse crops on a farm by reducing the acreage of covered commodities and peanuts determined in accordance with paragraphs (a) and (b) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acres for pulse crops on the farm may not exceed the four-year average of pulse crops determined under paragraph (b) of this section.

(2) For the purpose of determining a 4-year average acreage for a farm under this section, any crop year in which a pulse crop was not planted or prevented planted will be excluded.

#### **§ 1412.22 Failure to make pulse crop election.**

If an owner fails to make an election for establishing pulse crop base acres on a farm by April 1, 2009, in accordance with § 1412.21, that owner will be deemed to have made the election to determine all base acres for all covered

commodities and peanuts on the farm as set forth in § 1412.21.

#### **§ 1412.23 Base acres and Conservation Reserve Program.**

(a) Subject to paragraphs (b) and (c) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Farm Bill, Pub. L. 99–198) that expired, was voluntarily terminated, or was early released on or after September 30, 2007.

(b) The total base acreage on a farm must not exceed the limitation of § 1412.24.

(c) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than June 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm may elect to receive either direct payments and counter-cyclical payments or ACRE payments, as applicable, with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

#### **§ 1412.24 Limitation of total base acreage on a farm.**

(a) The sum of the following must not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this part, plus

(2) Any cropland acreage on the farm enrolled in a Conservation Reserve Program contract in accordance with part 1410 of this chapter, plus

(3) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter, plus

(4) Any other acreage on the farm enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the covered commodity base acres or peanut base acres, against which the reduction required in this section will be made.

(c) In applying paragraph (a) of this section, CCC will take into account the



practice of double cropping on a farm, as determined by CCC.

### Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

#### § 1412.31 Direct payment yields for covered commodities, except pulse crops.

(a) The direct payment yield for each covered commodity, except pulse crops, will be the payment yield established for the commodity for the farm in accordance with the regulations for covered commodities at part 1412 of this chapter in effect on January 1, 2008 (see 7 CFR part 1412, revised as of January 1, 2008).

(b) [Reserved]

#### § 1412.32 Direct payment yield for designated oilseed and pulse crops.

(a) The direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm will be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1985 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b)(1) The yield per planted acre for such designated oilseed for which a yield was not established by September 30, 2007, and for pulse crops on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years will be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year will be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.34; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average

of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section will be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator will assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

#### § 1412.33 Payment yield for counter-cyclical payments for covered commodities.

The counter-cyclical payment yield for covered commodities on the farm will be equal to the counter-cyclical payment yield established for the covered commodity on the farm that was effective September 30, 2007. Counter cyclical payment yields for designated oilseeds or eligible pulse crops for which direct payment yields were not established as of September 30, 2007, will be equal to the direct payment yield established in accordance with §§ 1412.32 or 1412.34, as applicable.

#### § 1412.34 Submitting production evidence for establishing direct payment yields for oilseeds and pulse crops.

(a)(1) Reports of production evidence must be submitted when the owner elects to establish a direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm in accordance with § 1412.32.

(2) Producer or third-party certification will not be accepted as proof of production evidence.

(3) Reports of production evidence for designated oilseeds for which a yield was not established by September 30, 2007, and for pulse crops must be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels,

CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Settlement sheets;

(iv) Warehouse ledger sheets;

(v) Elevator receipts or load

summaries, supported by other evidence showing disposition, such as sales documents;

(vi) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(vii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The date of transaction or delivery, and

(v) The quantity.

(c) When production of a designated oilseed for which a yield was not established by September 30, 2007, and pulse crops has been disposed of through non-commercial channels, then 75 percent of the county average yield as determined in accordance with § 1412.32(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

#### § 1412.35 Incorrect or false production evidence of oilseeds and pulse crops.

(a) If production evidence submitted in accordance with § 1412.34 is false or incorrect, as determined by the county committee, the county committee will determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took any action to defeat or undermine the purpose of the program, the county committee will:

(i) Require a refund of all direct and counter-cyclical payments earned for the farm for the first year such payments were made;

(ii) For designated oilseeds or pulse crops, reduce both the direct and counter-cyclical payment yields to 75 percent of the county average yield as determined in accordance with § 1412.32(b)(4). That yield will then be reduced by the applicable direct payment yield factor in accordance with § 1412.32(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, regarding the first year of payments, require a refund of an amount equal to the following for designated oilseeds or pulse crops for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to, any or all of the following:

(i) Make a further yield reduction for part or all of the designated oilseeds or pulse crops on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts unless the Deputy Administrator determines otherwise; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee will:

(1) Correct the counter-cyclical yield for the applicable covered commodity or peanuts to equal the yield that would have been calculated in accordance with § 1412.33 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false,

incorrect, or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

#### **Subpart D—Direct and Counter-Cyclical Program and ACRE Program Contract Terms and Enrollment Provisions for Covered Commodities and Peanuts 2008 through 2012**

##### **§ 1412.41 Direct and counter-cyclical program contract or ACRE program contract.**

(a) Except as specified in subpart G of this part, the following provisions apply to DCP and ACRE program contracts:

(1) With respect to Fiscal Year 2008 payments, CCC will offer to enter into an annual DCP contract with eligible producers of covered commodities and peanut producers through the date announced by CCC. With respect to Fiscal Years 2009 through 2012, CCC will offer to annually enter into a DCP or ACRE program contract with an eligible producer on a farm having base acres with respect to a covered commodity or peanuts, at the beginning of each such fiscal year 2009 through 2012 through June 1 of each such year.

(2)(i) Eligible producers must execute and submit a DCP or ACRE program contract and furnish supportive and necessary contractual documents to the county FSA office where the records for the farm are administratively maintained not later than June 1 of the fiscal year in which the direct and counter-cyclical or ACRE payments are requested.

(ii) Except as may otherwise be provided in statute for 2008, enrollment is not allowed after September 30 of the fiscal year in which the direct and counter-cyclical payments or ACRE program payments are requested.

(3) Under no circumstances will enrollment be permitted except as specified in this section. Contracts will not be approved unless all producers sharing in contract acreage with more than a zero share have submitted all applicable contracts and documentation necessary to make such approval, as determined by the Deputy Administrator. For those producers with an interest but a zero share of contract acreage, the contract will not be approved before all producers have signed the contract or furnished supportive and necessary contractual documents (such as cash leases in lieu of signing for a zero share). A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the

enrollment deadline will not be considered submitted to CCC for any purpose and will not be acted on or approved. Those contracts enrolled by a producer on or before June 1 that were not signed by other producers according to this section will be deemed withdrawn and will not be approved. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(4) Eligible producers who elect to enter into a contract with CCC must enroll all base acres on the farm. Enrollment of fewer than all base acres on the farm is not allowed.

(b) Eligible producers may withdraw from a contract at any time on or before June 1 of the year of the contract provided all signatories to the contract, including CCC, agree to the withdrawal in writing. DCP contracts enrolled prior to the decision of producers on a farm to elect the ACRE option for a fiscal year are considered withdrawn as specified in § 1412.72. Producers electing the ACRE option according to § 1412.72(d) must subsequently decide whether or not to enroll the farm in an ACRE program contract in accordance with the rules of this part.

(c) All contracts expire on September 30 of the fiscal year of the contract unless:

(1) Withdrawn in accordance with paragraph (b) of this section;

(2) Terminated in accordance with paragraphs (d) or (e) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(d) A transfer or change in the interest of an owner or producer in the farm or in acreage on the farm subject to a contract will result in the termination of the contract and a refund of all direct and counter-cyclical and ACRE payments issued for the farm. The contract termination will be effective on the date of the transfer or change. Successors to the interest in the farm or crops on the farm subject to the contract may enroll the farm in a new contract and assume all obligations under the contract, only after all payments previously issued for the farm have been refunded to CCC.

(e) In the event a farm reconstitution is completed of a properly enrolled farm or farms in accordance with part 718 of this title, FSA will issue notices to the operator and owners of record on a farm that all producers with an interest in the base acres on the farm must sign a new DCP or ACRE program contract and provide supporting documentation such as leases and other contractual supportive documents not later than September 30 of the fiscal year direct

and counter-cyclical or ACRE program payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. It is the responsibility of the operator and owners on a farm that producers with an interest in base acres are notified of the reconstitution and requirement for a new contract. If all producers have not signed the new contract by September 30, then no producers on the contract will be eligible for a direct or counter-cyclical payment or ACRE program payment for that farm for the year the contract was terminated.

#### § 1412.42 Eligible producers.

(a) Producers eligible to enter into a contract are:

(1) An owner of a farm who assumes all or a part of the risk of producing a crop;

(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract;

(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner is not required to enter into the contract;

(4) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring before September 30 of the year of the contract. The owner of such farm must also enter into the same contract; or

(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, direct and counter-cyclical payments will not begin under the contract until the lease held by the tenant ends.

(b) A minor child will be eligible to enter into a contract only if one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(c) The owner of the farm may be considered the "producer" if there is no other producer, but the owner could have shared in the crop had a crop been

produced, but only if the farm otherwise meets all the requirements for payment.

#### § 1412.43 Reconstitutions.

Farms will only be reconstituted in accordance with part 718 of this title.

#### § 1412.44 Notification of base acres.

The operator and owners of record of a farm will be notified in writing of the number of base acres eligible for enrollment in a contract, unless such operator or owners of record of a farm requests in writing not to be furnished with the notice. The operator and owners of record are responsible for notifying all other producers of a farm of the notice.

#### § 1412.45 Reducing or terminating base acreage.

(a)(1) Subject to the limitation in paragraph (a)(2) of this section, a permanent reduction of all or a portion of a farm's base acreage will be allowed when all owners of the farm execute and submit a written request for such reduction on a CCC-approved standard, uniform form designated by CCC to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm's base acres to negate or reduce a program violation is not allowed.

(b) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acres on the farm will be reduced accordingly regardless of the submission of a request for such reduction.

(c) The base acres of covered commodities and peanuts on a farm will be proportionately reduced when it is determined that the land has been subdivided and developed for multiple residential units or other nonfarming uses if, in the judgment of the county committee, the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless either of the following applies:

(1) The producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use and such land has not been divided from the farm with a farm reconstitution performed according to part 718 of this title or

(2) A properly constituted or reconstituted farm contains sufficient land that has not yet been subdivided and developed for multiple residential units or other nonfarming uses, and the producers on the farm demonstrate that the land remains devoted to commercial

agricultural production or is likely to be returned to the previous agricultural use.

(d)(1) Except as provided in paragraph (d)(2) of this section, for the 2009 and subsequent crop years, crop acreage bases will be not be established with respect to land owned by Federal agencies and any crop acreage base previously established with respect to such land will be terminated.

(2) Paragraph (d)(1) of this section will not apply to Federally-owned land that was subject to a lease agreement entered into prior to December 23, 2008 during the length of the lease agreement. Upon termination of such agreement, all crop acreage bases established with respect to Federally-owned land will be terminated. To the extent a lease contains an option to extend the terms of the lease, crop acreage bases will be terminated as of the date the original lease would expire without regard to any exercise of such an option.

(3) In the event a Federal agency transfers of ownership of land to another party, crop acreage bases will not be re-established with respect to such land.

#### § 1412.46 Succession-in-interest.

(a) A succession in interest to a DCP or ACRE program contract is required if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) An other change determined by the Deputy Administrator to be a succession that will not adversely affect nor defeat the purpose of the program.

(b) A succession in interest to the contract is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(2) Adversely affects or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to receive direct and counter-cyclical payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner of an enrolled farm must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

(f) The failure of the party eligible to succeed to the contract to do so will be considered a contract violation.

#### § 1412.47 Planting flexibility.

(a) Any crop may be planted and harvested on base acreage on a farm, except as limited elsewhere in this section. Any crop may be planted on DCP cropland in excess of the base acreage on a farm.

(b) Base acreage may be hayed or grazed at any time.

(c) Planting perennial fruits, vegetables (except mung beans, and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract. Harvesting non-perennial fruits, vegetables (except mung beans and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables, and wild rice may be planted on base acreage of a farm enrolled in a contract, and non-perennial fruits, vegetables, and wild rice may be harvested on base acreage of a farm enrolled in a contract if:

(1) A producer double-crops fruits, vegetables, or wild rice with a covered commodity or peanuts in any region described in paragraph (e) of this section, in which case direct and counter-cyclical payments will not be reduced for the planting or harvesting of the fruit, vegetable, or wild rice;

(2) The farm has a history of planting fruits, vegetables, or wild rice, as determined by CCC, in which case the payment acres for the farm will be reduced on an acre-for-acre basis; or

(3) The producer has a history of planting a specific fruit, specific vegetable, or wild rice, as determined by CCC, the producer may plant and

harvest the specific fruit, specific vegetable, or wild rice for which the producer has a planting history, subject to the following:

(i) The acreage harvested must not exceed the simple average of the sum of acreage of the specific fruit, specific vegetable, or wild rice planted for harvest by the producer during the crop years 1991 through 1995 or 1998 through 2001, as designated by the producer, excluding any year in which the specific fruit, specific vegetable, or wild rice was not planted; and

(ii) The payment acres for the farm will be reduced on an acre-for-acre basis.

(e) Double-cropping for purposes of this section means planting for harvest fruits, vegetables, or wild rice on the same acres in cycle with a covered commodity or peanuts planted and harvested for peanuts, grain, or lint in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

#### Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

#### Alaska

None.

#### Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

#### Arkansas

Ashley, Benton, Clay, Craighead, Crawford, Cross, Faulkner, Franklin, Greene, Independence, Jackson, Jefferson, Lee, Lincoln, Logan, Lonoke, Mississippi, Phillips, Pulaski, St. Francis, Sebastian, Woodruff, and Yell.

#### California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

#### Caribbean Office

None.

#### Colorado

Otero.

#### Connecticut

None.

#### Delaware

All counties.

#### Florida

All counties except Monroe.

#### Georgia

All counties.

#### Hawaii

None.

#### Idaho

None.

#### Illinois

Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolph, St. Clair, Tazewell, Union, Vermilion, White, and Whiteside.

#### Indiana

Allen, Bartholemew, Daviess, Gibson, Hamilton, Jackson, Johnson, Knox, LaGrange, Lake, LaPorte, Madison, Marion, Martin, Miami, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.

#### Iowa

Kossuth, Mitchell, Palo Alto, and Winnebago.

#### Kansas

None.

#### Kentucky

Daviess.

#### Louisiana

Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

#### Maine

None.

#### Maryland

Baltimore, Calvert, Caroline, Carroll, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

#### Massachusetts

None.

#### Michigan

None.

Minnesota	North Dakota	Webb, Willacy, Wilson, Yoakum, and Zavala.
Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.	None.	Utah
Mississippi	Ohio	None.
Adams, Calhoun, Carroll, Coahoma, Covington, DeSoto, George, Humphreys, Jefferson Davis, Lowndes, Madison, Marshall, Monroe, Montgomery, Prentiss and Rankin.	Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingum, Scioto, and Stark.	Vermont
Missouri	Oklahoma	None.
Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Ripley, Scott, and Stoddard.	Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.	Virginia
Montana	Oregon	Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.
None.	Morrow and Umatilla.	Washington
Nebraska	Pennsylvania	Yakima.
None.	Adams, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Montour, Northumberland, Schuylkill, Synder, Union, and York.	West Virginia
Nevada	Puerto Rico	None.
None.	None.	Wisconsin
New Hampshire	Rhode Island	Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth, Washington, Waukesha, Waushara, and Winnebago.
None.	None.	Wyoming
New Jersey	South Carolina	None.
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.	All counties.	(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity or peanuts with lowest direct payment amount per acre until the acreage reduction amount is satisfied. Producers may agree to adjust the acre reduction between covered commodities and peanuts on the farm, only to the extent the total acre reduction amount does not change for the farm, and all producers affected by the adjustment agree to the adjustment in writing.
New Mexico	South Dakota	
Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.	None.	
New York	Tennessee	
Cayuga, Genesee, Livingston, Monroe, Ontario, Orange, Orleans, Suffolk, Wayne, and Wyoming.	Bledsoe, Cannon, Chester, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Maury, McNairy, Obion, Overton, Pickett, Putnam, Rhea, Robertson, Rutherford, Sumner, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.	
North Carolina	Texas	
Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Tyrell, Union, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.	Atascosa, Bailey, Baylor, Brooks, Cameron, Castro, Cochran, Cottle, Dallam, Dawson, Deaf Smith, Dimmit, Duval, Floyd, Foard, Frio, Gaines, Hale, Hartley, Haskell, Hidalgo, Hockley, Jim Wells, Kleberg, Knox, Lamb, LaSalle, Lubbock, Lynn, Maverick, Medina, Moore, Parmer, Presidio, San Patricio, Sherman, Starr, Swisher, Terry, Uvalde,	

(g) For the purposes of this part, fruits, vegetables, and wild rice planted on base acreage of a farm under a DCP or ACRE program contract:

(1) Will be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the fruit, vegetable, or wild rice has been destroyed before harvest, as determined by the Deputy Administrator, or

(2) Will not be considered as planted to a fruit, vegetable, or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by the Deputy Administrator, and a fee to cover the cost of a farm visit is paid by the producer, in accordance with part 718 of this title, to verify that the crop has not been harvested.

(h) Unless otherwise specifically included as a covered commodity in accordance with this part, fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: Acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries, elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, mucrots, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo,

oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recaio, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

#### **§ 1412.48 Planting Transferability Pilot Project.**

(a) Notwithstanding § 1412.47, for each of the 2009 and subsequent crop years, the Planting Transferability Pilot Project (Project) will permit, in accordance with the limitations and provisions of this section only, the planting of certain crops in certain States on base acres without violating the DCP or ACRE contract. Base acres on farms participating in the Project will be reduced an acre (or portion thereof) for every acre (or portion thereof) planted in the Project, for the year in which the farm is participating in the Project.

(b) Producers interested in participating in the Project must first be enrolled in either a DCP or ACRE program contract and submit an offer for participation in the Project accompanied by a copy of the contract mentioned in paragraph (f) of this section no later than March 1 of the fiscal year in which participation in the Project is desired. At the conclusion of the signup period, CCC will determine if it received more offers than the acreage limitation paragraph (e) of this section allows. If the offers exceed the acreage limitation in the State, CCC will conduct a lottery style selection process and approve offers for participation in the Project that will ensure that the number of base acres eligible for each year under the Project are not exceeded. In the event that CCC cannot approve an offer in its entirety, at CCC's discretion, CCC may give the producers the opportunity to enroll less acres in the Project. CCC will also notify producers of the results of the selection process. Under no circumstances can producers challenge either the selection process itself or the results via administrative appeal. Producers in each of the States mentioned in this section can elect to participate in the Project with their offer

as accepted by CCC, or, if CCC elects to offer approval of part of an offer, participate with their offer as reduced by CCC, or the producers can elect not to participate in the Project.

(c) Signup for the Project will be conducted as announced by the Deputy Administrator.

(d) Under the Project, crops permitted on DCP base acres are cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes. These crops eligible for participation in this Project must be grown for processing.

(e) The States and the number of base acres eligible during each crop year for the Project under paragraph (a) of this section are:

- (i) 9,000 acres in Illinois,
- (ii) 9,000 acres in Indiana,
- (iii) 1,000 acres in Iowa,
- (iv) 9,000 acres in Michigan,
- (v) 34,000 acres in Minnesota,
- (vi) 4,000 acres in Ohio, and
- (vii) 9,000 acres in Wisconsin.

(f) To be eligible to participate in the Project, producers on a farm must do all of the following for the commodity specified in paragraph (d) of this section:

(i) Enter into a contract to produce the commodity for processing;

(ii) Agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits;

(iii) Report acreage and production of the crop according to § 1412.66 and provide evidence of disposition of the crop; and

(iv) File a notice of loss according to § 1412.67, if the crop is either prevented from being planted or is impacted by disaster after planting.

(g) If base acres are recalculated while a farm is participating in this Project, the planting and production of a crop of a commodity specified in paragraph (d) of this section on base acres for which a temporary reduction was made under this section will be considered to be the same as the planting and production of the covered commodity or peanuts that was reduced.

(h) Reports will be prepared for Congress to periodically evaluate the supply and price of fresh and processed fruits and vegetables and evaluate if producers of fresh fruits and vegetables are being negatively impacted or existing production capacities are being supplanted.

(i) If DCP payments were issued prior to enrollment in this Project, the participants acknowledge that for the particular year of participation in the Project according to this section, DCP payments will be based on temporarily reduced base acres.

(j) In the event an ACRE program contract was approved either before or after enrollment in this Project according to this section, the ACRE program contract participants acknowledge that for the particular year of participation in the Project according to this section, ACRE payments will be based on the temporarily reduced base acres.

**§ 1412.49 Apportionment of long and medium grain rice.**

(a) Rice base acres are established pursuant to section 1101 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) in effect on September 30, 2007, specified in § 1412.3.

(b) Owners will designate the rice base acres in paragraph (a) of this section into two categories:

- (i) Long grain rice, and
- (ii) Medium grain rice. Medium grain rice includes short grain rice.

(c) Owners on a farm will elect rice base acres according to paragraph (b) of this section, based on the 4-year average of the percentages of:

- (i) Acreage planted on the farm to long grain rice and medium grain rice during the 2003 through 2006 crop years, plus
- (ii) Any acreage on the farm that producers were prevented from planting to long grain and medium grain rice during the 2003 through 2006 crop years because of drought, flood, other natural disaster, or other condition beyond the control of the producers.

(d) If long grain or medium grain rice was not planted on the farm in one or more years during the 2003 through 2006 crop years, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be substituted for the "not planted" years on the farm in paragraph (c) of this section.

(e) If an election is not made according to this section, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be used in determining the base acres required in paragraph (b) of this section for the farm.

(f) The purpose of this section is to determine long grain rice base and medium grain rice base on the farm. This section will not increase or decrease the:

- (i) Number of base acres on the farm;
- (ii) Number of payment acres on the farm; or
- (iii) Payment yield on the farm from that for rice under sections 1101 and 1102 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911,

7912), as in effect on September 30, 2007, subject to any adjustment required in this part.

**§ 1412.50 Matters of general applicability.**

These regulations and CCC's interpretation of the regulations and internal agency directives issued to State and county FSA offices are matters of general applicability and are not individually appealable in administrative appeals according to §§ 11.3 and 780.5 of this title. Additionally, these rules and any decisions of CCC and FSA that are not based on facts derived from an individual participant's application, contract, or file, including but not limited to, decisions of whether or not to conduct a lottery, lottery selection process and results, signup deadlines, direct payment rates, counter-cyclical payment rates, or any other generally applicable payment rate or rates, national average market prices, determinations of production of crops produced in a State or States, actual State yields, benchmark State yields, program guarantee price or prices, or determinations of CCC regarding the percentage of acreage of a crop in State that is irrigated or non-irrigated, or any other similar determination that is made by CCC or FSA for use in all similarly situated applications, are not appealable under part 11 or part 780 of this title. The only extent by which the matters referenced in this section, and like similar generally applicable matters, are reviewable administratively in an appeal forum is whether FSA's or CCC's decision to apply the generally applicable matter is factually accurate and in conformance with the regulations in this part.

**Subpart E—Financial Considerations Including Sharing Payments**

**§ 1412.51 Limitation of payments.**

(a) The provisions of part 1400 of this chapter apply to this part. Payments under this part will not exceed the amounts specified in part 1400 of this chapter. As determined under that part, no person may receive more than \$40,000 in direct payments or \$65,000 in counter-cyclical payments with respect to any contract or crop year. For ACRE participants, no person may receive more than in ACRE and counter-cyclical payments and direct payments combined, more than the sum of:

- (1) \$65,000 and
- (2) The amount of the reduction in direct payments required by the ACRE contract.

(b) The amount of 2008 direct and counter-cyclical payments for a farm

will not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 22, 2008.

(c) Except as provided in this section, notwithstanding any other provision of this part, for the 2009 and subsequent crops, a producer on a farm will not receive direct payments, counter-cyclical payments, or ACRE payments if the sum of the base acres of covered commodities and peanuts on the farm is 10 acres or less. The 10-acre limitation of this subsection will not apply to a farm that is wholly-owned by a socially disadvantaged farmer or rancher (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003 (e))) or a limited resource farmer or rancher, as defined by the Secretary. If such farm is owned by a legal entity, such as a corporation, each individual or entity with any interest in the entity must be a socially disadvantaged or limited resource farmer or rancher.

**§ 1412.52 Direct payment provisions.**

(a) For 2008 through 2012 contracts, a final direct payment will be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) For 2008 through 2011 contracts, at the option of the producer, 22 percent of the direct payment for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established will be paid in any month from December through September of the fiscal year of the contract, as requested by the producer, as an advance direct payment. Advance direct payments are not available for the 2012 crop year. For any participant on the contract to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

(1) Be in compliance with all requirements of the contract and the requirements in this part at the time of the advance payment;

(2) Sign the DCP or ACRE program contract designating payment shares and provide supporting and necessary contractual documentation. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, the contract will not be considered approved and no contract participant will be eligible for any payment for that farm for that contract. FSA has no



obligation or responsibility to obtain signatures or requisite documents for DCP or ACRE program contract participants; and

(3) Comply with the provisions of parts 12 and 1400 of this title.

(c) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the direct payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof will not become available to or for any other producer and

(2) The producer must refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(d) The payment rates used to calculate direct payments with respect to covered commodities and peanuts on a farm enrolled in a contract are:

- (1) Wheat—\$0.52/bu.
- (2) Corn—\$0.28/bu.
- (3) Grain sorghum—\$0.35/bu.
- (4) Barley—\$0.24/bu.
- (5) Oats—\$0.024/bu.
- (6) Upland cotton—\$0.0667/lb.
- (7) Long grain rice—\$2.35/cwt.
- (8) Medium grain rice—\$2.35/cwt.
- (9) Soybeans—\$0.44/bu.
- (10) Other oilseeds—\$0.80/cwt.
- (11) Peanuts—\$36.00/ton.

(e) For 2008 through 2012 contracts, subject to the limitations of § 1412.51 and part 1400 of this chapter, the final direct payment amount to be paid to participants on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

(1) The payment rate specified in paragraph (d) of this section, multiplied by

(2) The relevant payment acres of the covered commodity or peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with § 1412.76(g), multiplied by

(3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with §§ 1412.31 and 1412.32, minus

(4) Any reduction calculated in accordance with subpart F of this part, minus

(5) Any advance payment received in accordance with paragraph (b) of this section.

(f)(1) The payment of any amount due any participant on a farm enrolled in a contract will be made only after all participants subject to the contract are

determined to be in full compliance with the contract and the requirements of this part.

(2) A producer on a farm enrolled in a contract may receive a payment amount due without respect to the payment eligibility of other producers on the farm if all the following apply:

- (i) The contract participant is in compliance with all contractual provisions;
- (ii) The participant is in full compliance with the contract and the requirements in this part;
- (iii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and
- (iv) The payment is approved by the Deputy Administrator.

#### **§ 1412.53 Counter-cyclical payment provisions.**

(a) For the 2008 through 2012 contracts, except as provided in subpart G of this part, a counter-cyclical payment will be made to eligible participants on a farm enrolled in a DCP contract with respect to covered commodities and peanuts for which payment yield and base acres are established:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section and

(2) As soon as practical, as determined by the Deputy Administrator, after the end of the 12-month marketing year for the covered commodity or peanuts, as applicable.

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity or peanuts, respectively, is equal to the sum of the following:

- (1) The higher of:
  - (i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary, or
  - (ii) For the 2008 crop year the following rates:
    - (A) Wheat—\$2.75/bu.
    - (B) Corn—\$1.95/bu.
    - (C) Grain sorghum—\$1.95/bu.
    - (D) Barley—\$1.85/bu.
    - (E) Oats—\$1.33/bu.
    - (F) Upland cotton—\$0.52/lb.
    - (G) Extra long staple cotton—\$0.7977/lb.
    - (H) Long grain rice—\$6.50/cwt.
    - (I) Medium grain rice—\$6.50/cwt.
    - (J) Soybeans—\$5.00/bu.

(K) Other oilseeds—\$0.30/cwt.

(L) Peanuts—\$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in § 1412.52(d).

(c) For the purposes of paragraphs (a) and (g) of this section, the target prices are as follows:

- (1) For the 2008 and 2009 crop years (except as indicated):
  - (i) Wheat—\$3.92/bu.
  - (ii) Corn—\$2.63/bu.
  - (iii) Grain sorghum—\$2.57/bu.
  - (iv) Barley—\$2.24/bu.
  - (v) Oats—\$1.44/bu.
  - (vi) Upland cotton—\$0.7125/lb.
  - (vii) Long grain rice—\$10.50/cwt.
  - (viii) Medium grain rice—\$10.50/cwt.
  - (ix) Soybeans—\$5.80/bu.
  - (x) Other oilseeds—\$10.10/cwt.
  - (xi) Peanuts—\$495.00/ton.
  - (xii) Dry peas—\$8.32/cwt. (2009 crop only).
  - (xiii) Lentils—\$12.81/cwt. (2009 crop only).
  - (xiv) Small chickpeas—\$10.36/cwt. (2009 crop only).
  - (xv) Large chickpeas—\$12.81/cwt. (2009 crop only).

(2) For each of the 2010 through 2012 crop years, the target prices are as follows:

- (i) Wheat—\$4.17/bu.
- (ii) Corn—\$2.63/bu.
- (iii) Grain sorghum—\$2.63/bu.
- (iv) Barley—\$2.63/bu.
- (v) Oats—\$1.79/bu.
- (vi) Upland cotton—\$0.7125/lb.
- (vii) Long grain rice—\$10.50/cwt.
- (viii) Medium grain rice—\$10.50/cwt.
- (ix) Soybeans—\$6.00/bu.
- (x) Other oilseeds—\$12.68/cwt.
- (xi) Peanuts—\$495.00/ton
- (xii) Dry peas—\$8.32/cwt.
- (xiii) Lentils—\$12.81/cwt.
- (xiv) Small chickpeas—\$10.36/cwt.
- (xv) Large chickpeas—\$12.81/cwt.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

(1) The target price of the covered commodity or peanuts as determined in accordance with paragraph (c) of this section, minus

(2) The effective price of the covered commodity or peanuts as determined in accordance with paragraph (b) of this section.

(e) For 2008 through 2012 DCP contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with § 1412.51 and part 1400 of this chapter, the final counter-cyclical payment amount to be paid to producers

on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

- (1) The payment rate determined in accordance with paragraph (d) of this section, multiplied by
- (2) The relevant payment acres of the covered commodity or peanuts, as applicable, minus any acre reduction in accordance with § 1412.47(g), multiplied by
- (3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with § 1412.33, minus
- (4) Any reduction calculated in accordance with subpart F of this part that was not satisfied by a reduction in the direct payments for the farm calculated in accordance with § 1412.52(e), minus
- (5) Any partial payment received in accordance with paragraphs (f) or (g) of this section.
- (f) For 2008 through 2012 DCP contracts, partial counter-cyclical payments will be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts, respectively, will be required in accordance with paragraph (a)(1) of this section. The first partial counter-cyclical payment will:
  - (1) Be calculated in accordance with paragraphs (e)(1) through (4) of this section;
  - (2) Be an amount determined by the Secretary not to exceed 40 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively; and
  - (3) Be made after completion of the first 180 days of the marketing year for that crop;
  - (g) To the extent practicable, the final partial payment will be made beginning on October 1 of the fiscal year starting in the same calendar year as the end of the marketing year for that crop.
  - (1) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the counter-cyclical payment computed for the farm in accordance with the provisions of this section:
    - (i) The payment or portions thereof will not become available for any other producer and
    - (ii) The producer will refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(2)(i) The payment of any amount due any producer on a farm enrolled in a contract will be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(ii) A participant on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other participants on the enrolled and in compliance with contract farm if:

(A) The participant is in full compliance with the contract and the requirements in this part;

(B) The payment of such amount does not adversely affect or defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

(C) The payment is approved by the Deputy Administrator, or designee.

(h) The participants on a farm who receive any advance counter-cyclical payment must refund the portion of such advance payments that exceeds the actual counter-cyclical payment actually earned for the covered commodity or peanuts, as applicable.

#### **§ 1412.54 Sharing of contract payments.**

(a) Each eligible producer on a farm will be given the opportunity to annually enroll in a DCP or ACRE program contract, as applicable, and receive payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(b) Each producer leasing a farm must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease. An owner's or landlord's signature, as applicable, affirming a zero share on a contract may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by CCC. Such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the contract no later than as prescribed in § 1412.41.

(c) When base acres are leased on a share basis, neither the landlord nor the tenant will receive 100 percent of the contract payment for the farm.

(d) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants, and sharecroppers sign the contract and

agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent either the provisions of this part or the provisions of part 1400 of this chapter.

(e) For the 2008 crop year only:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a share lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments. The leasing of grazing or haying privileges is not considered cash leasing.

(f) For the 2009 through 2012 crop years:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a cash lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct, counter-cyclical, or ACRE program payments. The leasing of grazing or haying privileges is not considered cash leasing.

#### **§ 1412.55 Provisions relating to tenants and sharecroppers.**

(a) Neither direct nor counter-cyclical nor ACRE program payments will be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the

purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine must be refunded to CCC; or

(2) The landlord terminated a lease in violation of state law as determined by a state court.

(b) [Reserved]

#### **Subpart F—Contract Violations and Reduction in Payments**

##### **§ 1412.61 Contract violations.**

(a) Except as provided in paragraph (b) of this section, violations of contract requirements will result in the termination of the contract. Upon such termination, all producers subject to the contract forfeit all rights to receive direct, counter-cyclical, and ACRE program payments on the farm for the contract and must refund all payments received, plus interest, to run from the date of the CCC disbursement, as determined in accordance with part 1403 of this chapter.

(b)(1) If there is a violation of § 1412.47 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, payments may be made to the producers specified on the contract, but in an amount that is reduced by an amount equal to the sum of:

(i) The per-acre market value of the fruits, vegetables, and wild rice, as determined by the State Committee, times the number of acres in violation, plus

(ii) The direct, counter-cyclical, and ACRE program payments for each such acre.

(2) Producers must protect land enrolled in DCP from weeds, including noxious weeds, and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the total direct payments for the farm. The second violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the total direct payments for the farm. For the 2009 and subsequent crop years, a third violation of this provision will result in a complete reduction of all payments

under the DCP or ACRE program contract.

##### **§ 1412.62 Fruit, vegetable, and wild rice acreage reporting violations.**

(a)(1) If an acreage report of fruits, vegetables, or wild rice planted on base acreage of a farm enrolled in DCP or the ACRE program is inaccurate but within tolerance as provided in paragraph (b) of this section and CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers must accept a reduction in the direct, counter-cyclical, and ACRE program payments for each such acre.

(2) If an acreage report of fruits, vegetables, or wild rice planted on base acreage of a farm enrolled in DCP is inaccurate and exceeds the tolerance as provided in paragraph (b) of this section, but CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers must accept a reduction in the direct, counter-cyclical, and ACRE program payments for the farm in an amount equal to the sum of:

(i) The direct, counter-cyclical, and ACRE program payments in such year for each such acre, plus

(ii) Twice the average dollar value of the direct payment for the covered commodity and peanut base acres reduced because of the fruit, vegetable, and wild rice plantings on such acre, multiplied by the total number of acres in violation.

(3) The contract will be terminated if an acreage report of fruits, vegetables, or wild rice planted on base acres of a farm enrolled in DCP or ACRE program is inaccurate, and the county committee determines the producer did not make a good faith effort to comply with the provisions of this section. Upon such termination, producers subject to such contract must:

(i) Forfeit all rights to receive direct, counter-cyclical, and ACRE program payments for the farm;

(ii) Refund all direct, counter-cyclical, and ACRE program payments received for the farm under the contract, plus interest as determined in accordance with part 1403 of this chapter; and

(iii) Be determined to be ineligible for all program benefits according to part 718 of this title.

(b) For the purposes of this section, tolerance is the amount by which the determined acreage may differ from the reported acreage and still be considered in compliance with program requirements. Tolerance for fruits, vegetables, and wild rice plantings is 5 percent of the reported fruit, vegetable,

and wild rice acreage, not to exceed 50 acres.

##### **§ 1412.63 Contract liability.**

All signatories to a DCP or ACRE program contract are jointly and severally liable for contract violations and resulting repayments and penalties.

##### **§ 1412.64 Inaccurate representation, misrepresentation, and scheme or device.**

(a) Producers must report and certify program matters accurately. Errors in reporting may impact eligibility or extent of eligibility. Benefits under this part will be based on the most correct information available. Producers are responsible for refunding, with interest from the date of the CCC disbursement, any program benefits that were paid based on incorrect program information.

(b) For those cases in which FSA determines that an inaccurate representation or certification is a misrepresentation or scheme or device, such person will be ineligible to receive DCP or ACRE payments and will have the person's interest in all contracts terminated if it is determined that such person has done any of the following:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a DCP, ACRE program, or determination made pursuant to part 1400 of this chapter; or

(4) Violated or been determined ineligible under § 1400.5 of this chapter.

(c) Any remedies taken by FSA or CCC in accordance with this section will be in addition to any other civil or other remedies that may be available, including, but not limited to, those provided in part 1400 of this chapter.

##### **§ 1412.65 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

##### **§ 1412.66 Acreage and production reports.**

(a) As a condition of eligibility for payments under this part, the operator

or owner must accurately submit a report of all cropland acreage on the farm in accordance with part 718 of this title.

(b) Producers enrolled in the Project according to § 1412.48 and those seeking payments under subpart G of this part, must accurately submit a report of production, no later than the acreage reporting date for the crop in the year immediately following the crop year of the reported crop acreage, for each crop either enrolled in the Project according to § 1412.48 or for each covered commodity or peanuts on a farm enrolled in an ACRE program contract for which an acreage report greater than zero acres was filed according to paragraph (a) of this section. The report of production must be accompanied by documentation acceptable to CCC. The report must include the date harvest was completed. Records of production acceptable to CCC may include those specified in:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries of the crop that was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the crop has been fed to livestock or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the crop acreage prior to harvest.

#### **§ 1412.67 Notices of loss.**

(a) Provided that a notice of loss pursuant to part 1437 of this chapter has not already been filed, at least one producer having a share of a crop planted either pursuant to § 1412.48 or a producer with a share of crop of each covered commodity or peanuts on a farm enrolled in an ACRE program contract must provide a notice of loss to CCC in the administrative FSA office for the farm, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural

occurrence or date loss of the crop or commodity becomes apparent for low yield claims or

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, for example, prevented planting or low yield;

(7) Practices employed to grow the crop, for example, irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, etc.; and

(iv) What and when land preparation measures, for example, cultivation, etc. were completed and indicate what has been done or will be done with the acreage, for example, abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;

(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, for example, cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, for example, harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Crop acreage that will not be harvested, that is acreage that is to be abandoned or destroyed, must be left intact and producers must request, in the administrative FSA office for the acreage, a crop appraisal and release of crop acreage by a FCIC- or CCC-approved loss adjuster:

(1) Prior to destruction or

abandonment of the crop acreage or

(2) No later than the normal harvest date, as determined by CCC.

#### **§ 1412.68 Compliance with highly erodible land and wetland conservation provisions.**

The provisions of part 12 of this title apply to this part.

#### **§ 1412.69 Controlled substance violations.**

The provisions of part 718 of this title apply to this part.

### **Subpart G—Average Crop Revenue Election (ACRE) Program**

#### **§ 1412.71 Administration.**

(a) All of the provisions of this part apply to this subpart. To the extent that there is a conflict with the provisions of this part and subpart G of this part, the provisions of subpart G of this part apply.

(b) [Reserved]

#### **§ 1412.72 Availability and election of alternative approach.**

(a) As an alternative to receiving counter-cyclical payments under § 1412.53, and in exchange for a 20-percent reduction in direct payments under § 1412.52, as well as 30-percent reduction in established marketing assistance loan rates with respect to all covered commodities and peanuts on a farm, during each of the 2009, 2010, 2011, and 2012 crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until June 1 of 2009 to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the 2009 crop year through and including the 2012 crop year. During each of the 2010, 2011, and 2012, crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until June 1, or such earlier date as may be determined and announced at the discretion of the Deputy Administrator, of 2010, 2011,

and 2012, as applicable, to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the initial crop year for which the election is made through and including the 2012 crop year.

(b) If producers elect the ACRE option for a farm in accordance with paragraphs (a) and (d) of this section, any DCP contract enrolled prior to a timely election in a fiscal year will be considered withdrawn according to § 1412.41(b). The producers must still choose whether or not to enroll the ACRE elected farm in an ACRE program contract. DCP payments issued for the fiscal year of such election, including advance and partial program payments, must be refunded. No payments will be made available to participants under an ACRE program contract until such time as refunds have been remitted and enrollment has occurred as provided in this part, unless the Deputy Administrator determines to collect the refund instead by a setoff against the ACRE payment. Under no circumstances will election be construed to be an intent to enroll or an enrollment in the ACRE program.

(c) If a marketing assistance loan (including marketing assistance loans that have been repaid or immediately repaid) or loan deficiency payment has been computed prior to election of the ACRE option, the persons electing the ACRE option:

(1) Acknowledge that such marketing assistance loan (including any loan repayments) and loan deficiency payments will be recomputed based on reduced marketing assistance loan rates,

(2) Agree to immediately refund to CCC the difference in the amount of marketing assistance loan (including loan repayments) and loan deficiency payments as a result of the ACRE election.

(d) Eligible producers, including owners, on a farm electing ACRE participation by June 1 of:

(1) 2009, will be considered to have irrevocably elected the ACRE option for the 2009, 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2009 DCP contracts according to § 1412.41(b);

(2) 2010, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2010 DCP contracts according to § 1412.41(b);

(3) 2011, or such earlier date determined and announced at the

discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2011 and 2012 crop years and, if applicable, withdrew prior enrolled 2011 DCP contracts according to § 1412.41(b); or

(4) 2012, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2012 crop year and, if applicable, withdrew prior enrolled 2012 DCP contracts according to § 1412.41(b).

(e) If all of the producers on a farm fail to make an election under paragraphs (a) and (d), make different elections under paragraph (a), or fail to timely elect as required by paragraph (d), all of the producers on the farm will be deemed to have not made the ACRE election option and instead, provided DCP contract enrollment was previously made pursuant to this part, receive counter-cyclical payments under § 1412.53 for all covered commodities and peanuts on the farm, and to otherwise not have made the election described in paragraph (a), for the applicable crop years.

(f) Eligible producers on a farm who elect the ACRE option according to this section are making the irrevocable election for all of the farm as constituted on the date of election irrespective of whether the same producers are present on the farm in subsequent years and irrespective of whether there is a change of ownership. That is, the producer election is binding on the farm, not just the producers on the farm at the time of the election. An election is for the entire farm and not for part of a farm. If the total number of planted and considered planted acres to all covered commodities and peanuts of the producers on the farm exceeds the total base acreage of the farm that is enrolled pursuant to this part, the producers on the farm may choose which commodity or commodities the ACRE option will apply to under this section. Although the election according to paragraph (b) of this section is irrevocable, for a farm enrolled as specified in this part, each year following the election by the final acreage reporting date for the crop the producers on a farm already having the ACRE option elected may choose the commodity or commodities the ACRE option will apply to under this section.

(g) "Timely elected" under this section means all requisite signatures of eligible producers on a farm are entered on the election form and accompanied by supportive and necessary contractual documents according to § 1412.3.

(h) Unless an earlier date is determined and announced at the

discretion of the Deputy Administrator, the election deadline for the ACRE option is June 1 as specified in § 1412.72(d) and there is no late file election period. The enrollment deadlines specified in this part and § 1412.41 apply to enrollments of farms under DCP contracts or ACRE program contracts. For election of ACRE in a fiscal year, all requisite signatures and supportive documentary evidence must be furnished by June 1, or such earlier date determined and announced at the discretion of the Deputy Administrator. ACRE elections will not be construed to be ACRE contract enrollments. Participants must enroll in an ACRE contract to participate in ACRE following election.

(i) Under no circumstances will the ACRE election option be permitted except as provided in this section. ACRE elections will not be approved unless all producers, including owners, on a farm at time of election have signed the form electing the option. The ACRE election will not be approved before all producers, including owners, on a farm have signed the ACRE election form. A producer's signature with other producers on a DCP contract enrolled prior to the submission of an election form will not be deemed evidence of the producer's agreement with those other producers with regard to election. An election of the ACRE option not having all requisite signatures of producers on a farm by the election deadline of the year in which election is made will not be considered submitted to CCC for the purpose of election in that fiscal year and will not be acted on or approved. In all cases, it is the responsibility of the operator and owners of a farm to submit all requisite signatures of producers necessary for election.

(j) Except as provided in paragraph (k) of this section, electing the ACRE option is irrevocable. Eligible producers may not withdraw an ACRE election option at any time. The provisions of § 1412.41(b) do not apply to ACRE elections.

(k) Any producer with an interest in a farm having made the ACRE election according to this section may unilaterally revoke the election for all of the farm if the election and revocation are both filed by the producer prior to the election deadline established for the initial year of election. The revocation must be submitted in writing to CCC no later than close of business on the date of the election deadline of the initial year of election. There are no late file provisions available for revocation of the ACRE election. No other revocations of the ACRE election will be permitted under this part in order to comply with

the irrevocability mandated in law. Accordingly, relief provisions in part 718, subpart D, of this title are not applicable to revocation of the ACRE election.

(l) In the event an ACRE election is revoked according to paragraph (k) of this section, the ACRE program contract, if enrolled, will be considered likewise withdrawn according to § 1412.41(b) and any and all payments issued under such contract must be refunded according to part 1403 of this chapter.

#### **§ 1412.73 Sharing of ACRE payments.**

(a) Each eligible producer on a farm will be given the opportunity to elect the ACRE option and receive payments determined to be fair and equitable as agreed to by all producers on the farm and approved by the county committee.

(b) The provisions of § 1412.54(f) regarding the classification of leases apply to ACRE.

#### **§ 1412.74 Prior enrollment in DCP.**

(a) If a farm was enrolled in a DCP contract according to subpart D of this part in a crop year prior to the time in which the producer elected the ACRE option according to § 1412.72:

(1) The ACRE election option in such crop year will be considered a request to have the DCP contract withdrawn for that crop year. To participate in an annual ACRE program contract following election, the farm must be enrolled under an ACRE program contract by the producers according to this part. The election will in no way be construed by CCC to be an enrollment.

(2) All direct and counter-cyclical payments issued to any participant on that farm must be refunded to CCC.

(b) [Reserved]

#### **§ 1412.75 Notice of Election.**

(a) CCC will provide notice to operators and owners of record regarding the opportunity to make each of the elections described in § 1412.72. The notice will include information:

(1) On the opportunity of the producers on a farm to make the election and

(2) Regarding the manner in which the election must be made and the time periods and manner in which notice of the election must be submitted to the CCC.

(b) CCC will provide the notice mentioned in paragraph (a) of this section to the operator and owners of record. The operator and owners are responsible for notifying all producers on the farm of the information contained in the notice.

#### **§ 1412.76 Payments.**

In the case of producers on a farm who make an election to receive ACRE payments for any of the 2009 through 2012 crop years for all covered commodities and peanuts and where enrollment according to this part has subsequently occurred, and where all other eligibility provisions have been satisfied, CCC will make ACRE payments available to the producers on a farm in accordance with this subpart. For each of the 2009 through 2012 crop years, as applicable when enrollment has occurred following election, CCC will make ACRE payments beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity or peanuts.

(a) CCC will make ACRE payments available to the producers on a farm for each crop year if the farm was enrolled according to this part following the election and:

(1) The actual State revenue for the crop year for the covered commodity or peanuts in the State determined under paragraph (c) of this section is less than

(2) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under paragraph (d) of this section.

(b) Provided that the farm is enrolled following election and all other eligibility provisions are met, CCC will make ACRE payments available to the producers on a farm in a State for a crop year only if (as determined by CCC):

(1) The actual farm revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (h) of this section is less than

(2) The farm ACRE benchmark revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (i) of this section.

(c) The amount of the actual State revenue for a crop year of a covered commodity or peanuts will equal the product obtained by multiplying the average actual State yield for each planted acre for the crop year for the covered commodity or peanuts determined under paragraph (c)(1) of this section and the national average market price for the crop year for the covered commodity or peanuts determined under paragraph (c)(2) of this section.

(1) The average actual State yield for each planted acre for a crop year for a covered commodity or peanuts in a State will equal, as determined by CCC,

(i) The quantity of the covered commodity or peanuts that is produced in the State during the crop year, divided by

(ii) The number of acres that are planted to the covered commodity or peanuts in the State during the crop year and

(2) The national average market price for a crop year for a covered commodity or peanuts in a State will equal the greater of

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as determined by the Secretary, or

(ii) The established marketing assistance loan rate for the covered commodity or peanuts as reduced according to § 1412.72.

(d) The ACRE program guarantee for a crop year for a covered commodity or peanuts in a State will equal 90 percent of the product obtained by multiplying

(1) The average benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in a State determined under paragraph (e) of this section and

(2) The ACRE program guarantee price for the crop year for the covered commodity or peanuts determined under paragraph (f) of this section.

(i) In the case of each of the 2010 through 2012 crop years, the ACRE program guarantee for a crop year for a covered commodity or peanuts in paragraph (d) of this section will not decrease or increase more than 10 percent from the guarantee for the preceding crop year. The increase or decrease in the state revenue guarantee for a covered commodity or peanuts will be applicable to all ACRE program participants in a State, regardless of the year the participant first elected ACRE or enrolled.

(ii) [Reserved]

(e) The average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State is equal to the average yield per planted acre for the covered commodity or peanuts in the State for the most recent 5 crop year yields, excluding each of the crop years with the highest and lowest yields, using National Agricultural Statistics Service data to the extent possible.

(1) If CCC cannot establish the average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State in accordance with this paragraph or if the yield determined is an unrepresentative average yield for the State (as determined by the CCC), CCC will assign a benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in the State on the basis of:

(i) Previous average yields for a period of 5 crop years, excluding each of the crop years with the highest and lowest yields or

(ii) Average benchmark State yields for planted acres for the crop year for the covered commodity or peanuts in similar States.

(2) [Reserved]

(f) The ACRE program guarantee price for a crop year for a covered commodity or peanuts in a State is the simple average of the national average market price received by producers of the covered commodity or peanuts for the most recent 2 crop years, as determined by CCC.

(g) In the case of a State in which at least 25 percent of the acreage planted to a covered commodity or peanuts in the State is irrigated and at least 25 percent of the acreage planted to the covered commodity or peanuts in the State is not irrigated, CCC will calculate a separate ACRE program guarantee for the irrigated and non-irrigated areas of the State for the covered commodity or peanuts.

(h) The amount of the actual farm revenue for a crop year for a covered commodity or peanuts will equal the amount determined by multiplying:

(1) The actual yield for the covered commodity or peanuts of the producers on the farm and

(2) The national average market price for the crop year for the covered commodity or peanuts.

(i) The farm ACRE benchmark revenue for the crop year for a covered commodity or peanuts will equal the sum obtained by adding:

(1) The amount determined by multiplying

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields and

(ii) The ACRE program guarantee price for the applicable crop year for the covered commodity or peanuts in a State and

(2) The amount of the per acre crop insurance premium required to be paid by the producers on the farm for the applicable crop year for the covered commodity or peanuts on the farm.

(j) If ACRE payments are required to be paid for any of the 2009 through 2012 crop years of a covered commodity or peanuts under this section, the amount of the ACRE payment to be paid to the producers on the farm for the crop year under this section will be equal to the product obtained by multiplying:

(1) The lesser of—

(i) The difference between—

(A) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State and

(B) The actual State revenue from the crop year for the covered commodity or peanuts in the State and

(ii) 25 percent of the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State;

(2)(i) For each of the 2009 through 2011 crop years, 83.3 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year and

(ii) For the 2012 crop year, 85 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year; and

(3) The quotient obtained by dividing—

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields, by

(ii) The benchmark State yield for the crop year.

#### **§ 1412.77 Transfer of land and succession-in-interest.**

(a) Land subject to an ACRE election will continue to be subject to the election even if there is a transfer of land or change in interest of any producer on the farm. If a new owner or operator or producer purchases or obtains the right and interest in, or right to occupancy of, the land subject to an ACRE election option, such new owner or operator or producer, upon the approval of CCC, may choose to become a participant to a new ACRE contract with CCC with respect to such transferred land in accordance with § 1412.41.

(b) A succession in interest to an ACRE program contract may be permitted if there has been a change in the operation of a farm such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in the producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) Another change as otherwise determined by the Deputy Administrator by which the succession will not adversely affect nor defeat the purpose of the program.

(c) A succession in interest to an ACRE program contract is not permitted if CCC determines that the change:

(1) Is not for all the time remaining under the ACRE program contract;

(2) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(3) Adversely affects or otherwise defeats the purpose of the program.

(d) The provisions of § 1412.46(c) and (d) apply to ACRE participation.

(e) In any case in which a payment or payments have previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

#### **§ 1412.78 Violations.**

(a)(1) If a participant fails to carry out the terms and conditions of an ACRE contract, CCC may terminate the ACRE contract.

(2) If the ACRE contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under such contract and refund all payments previously received together with interest;

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(iii) The acreage is ineligible for further DCP and ACRE participation from the time of termination through 2012 regardless of the reason or reasons for such termination; and

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate. Participants are not entitled to either relief or even the consideration of relief under this paragraph. Relief under this paragraph is solely discretionary by the Deputy Administrator.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

#### **§ 1412.79 Executed ACRE contract not in conformity with regulations.**

If, after an ACRE contract is approved by CCC, it is discovered that such ACRE contract is not in conformity with the provisions of this part, the provisions of this part will prevail.



**§ 1412.80 Division of program payments and provisions relating to tenants and sharecroppers.**

(a) Payments received under this subpart will be divided in the manner specified in the applicable contract or agreement and CCC will ensure that producers, who would have an interest in acreage being offered, receive treatment that CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in ACRE.

(b) CCC may remove an operator or tenant from an ACRE contract when the operator or tenant:

(1) Requests, in writing to be removed from the ACRE contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the ACRE contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants must maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a ACRE participant specified in the applicable contract.

Signed in Washington, DC, December 19, 2008.

**Glen L. Keppy,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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**FEDERAL RESERVE SYSTEM****12 CFR Part 201****[Regulation A]****Extensions of Credit by Federal Reserve Banks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

**DATES:** The amendments to part 201 (Regulation A) are effective December 29, 2008. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer J. Johnson, Secretary of the Board (202/452-3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263-4869.

**SUPPLEMENTARY INFORMATION:** The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to decrease by 75 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 1.25 percent to 0.50 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 1.75 percent to 1.00 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 75-basis-point decrease in the primary credit rate was associated with a decrease in the target for the federal

funds rate (from 1.00 percent to a target range of 0 to ¼ percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

Since the Committee's last meeting, labor market conditions have deteriorated, and the available data indicate that consumer spending, business investment, and industrial production have declined. Financial markets remain quite strained and credit conditions tight. Overall, the outlook for economic activity has weakened further.

Meanwhile, inflationary pressures have diminished appreciably. In light of the declines in the prices of energy and other commodities and the weaker prospects for economic activity, the Committee expects inflation to moderate further in coming quarters.

The Federal Reserve will employ all available tools to promote the resumption of sustainable economic growth and to preserve price stability. In particular, the Committee anticipates that weak economic conditions are likely to warrant exceptionally low levels of the federal funds rate for some time.

**Regulatory Flexibility Act Certification**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

**Administrative Procedure Act**

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

**12 CFR Chapter II****List of Subjects in 12 CFR Part 201**

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

**Authority and Issuance**

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows: