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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 program 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).

(f) Producers who have reported a share interest on an acreage report of covered commodities and peanuts planted or prevented from being planted on a farm are not automatically considered successors. In accordance with §1412.73, such producers who have not already signed the ACRE program

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contract have until the end of the contract period to sign the ACRE program contract or that share will not receive payment consideration.

[73 FR 79289, Dec. 29, 2008, as amended at 75 FR 19192, Apr. 14, 2010]

§ 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 the end of the contract period 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.

[73 FR 79289, Dec. 29, 2008, as amended at 75 FR 19193, Apr. 14, 2010]

§ 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.