

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.

*ACRE guarantee price* means the simple average, as determined by CCC, of the national average market prices of the covered commodity or peanuts for the most recent two crop years preceding the relevant current crop year. For example, for the 2009 program the relevant crop year is the 2009 crop year. Therefore, for the 2009 program, the ACRE guarantee price for the covered commodity or peanuts is equal to the simple average of the national average market prices of the covered commodity or peanuts for the 2007 and 2008 crops.

*ACRE plug yield* means the resulting yield determined by taking the applicable NASS county average yield for the covered commodity or peanuts, by practice if applicable, and multiplying it by 95 percent. The ACRE plug yield may be used by a farm in establishing an initial benchmark farm yield or reporting actual production in accordance with instructions issued by the Deputy Administrator. The ACRE plug yield is also used on a farm for a covered commodity or peanuts in a year where there are no acres of the covered commodity or peanuts planted. The ACRE plug yield may be found on the FSA Web site at: <http://www.fsa.usda.gov/dcp/> by clicking "ACRE County Yields." ACRE plug yields are used in benchmark farm yields. If the National Agricultural Statistical Service (NASS) data is not available for a particular practice of a covered commodity or peanuts from which an ACRE plug yield can be established, the Deputy Administrator may establish an ACRE plug yield for the practice of the covered commodity or peanuts based a computation of multiplying 95 percent times the yield determined based on production data available from FSA farm records in the county, or in the event sufficient records do not exist, another data source determined appropriate by the Deputy Administrator.

*ACRE price* means the higher of the following, as determined by CCC, for the covered commodity or peanuts:

(1) The national average price received by producers during the 12-month marketing year (as defined in this part) for the relevant current crop of the covered commodity or peanuts (the relevant current crop for a program year is the corresponding crop for commodity for that year—for example, the current crop for the 2009 program is the 2009 crop), or

(2) 70 percent of the marketing assistance loan rate for the relevant current crop of the commodity under 7 U.S.C. 8731–8757.

*Actual farm production* means all of a farm's harvested and appraised production, including grazed acres, of a covered commodity or peanuts. Appraisals must be performed by appraisers acceptable to FSA. Appraisals performed according to the Non-Insured Crop Disaster Assistance Program (NAP) or crop insurance guidelines are generally deemed acceptable to FSA for DCP and ACRE Program purposes.

*Actual farm revenue* means the per acre amount computed by multiplying the actual farm yield, which is a per acre amount, of a covered commodity or peanuts times the ACRE price for the relevant current crop year. The relevant current crop year for these and other purposes is the crop year that corresponds to the calendar year in which the relevant program year ends. Therefore, for the 2009 contract or 2009 program, the relevant crop year would be the 2009 crop (that is, the crop considered to be the crop for the 2009 crop year).

*Actual farm yield* means for the relevant current crop year, the per acre amount determined by dividing the actual farm production of a covered commodity or peanuts by the farm's total planted and considered planted acres of the covered commodity or peanuts.

*Actual State yield* means the State's per acre amount for the relevant current crop year for a commodity determined by dividing the actual production in the State of the covered commodity or peanuts by the total planted acres of the covered commodity or peanuts in the State.

*Actual State revenue* means the per acre amount for a covered commodity or peanuts determined for the relevant current crop year by multiplying the actual State yield by the covered commodity or peanuts times the ACRE price.

*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.

*Average yield per planted acre* means the actual farm production of a covered commodity or peanuts for a year divided by the farm's planted acres.

*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.

*Benchmark farm yield* means, except as otherwise provided, a per acre yield for a covered commodity or peanuts computed using the Olympic average of the average yield per planted acre for the farm for the commodity for the 5 most recent crop years. The term "Olympic average" means that the highest and lowest per acre yields for the 5 years will be eliminated and the remaining annual entries will be averaged. CCC may make such adjustments as it deems necessary to create a fair yield for the farm so as to ensure the integrity of the ACRE Program. For purposes of determining a benchmark farm yield, yields on planted acres only will be considered except to the extent that the farm does not have a sufficient history to make a fair yield determination in which case a yield may be assigned by CCC.

*Benchmark State yield* means for a covered commodity or peanuts a per acre yield computed using the Olympic average of the average yield per planted acre for the State for the commodity for the 5 most recent crop

years. To the extent practicable, it will be calculated using data from NASS. The benchmark State yield is used in determining the State ACRE guarantee. CCC may make such adjustments in these yields as it deems necessary to provide for a fair yield and to ensure the integrity of the program.

*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 period* means the compliance period set out for the contract for the particular program year. The program year is designated in item 1 of the contract. Contracts for different program years will be referenced by their program year. Thus, for example, a reference to the “2009 contract” means the contract for the 2009 program year and the relevant current crop for a program year is the corresponding crop for that commodity. Therefore, the relevant current crop for the 2009 program is, with respect to a particular commodity, the 2009 crop. References to the “contract” period refer to the compliance period for the particular program year. The compliance periods for the various program years are as follows:

- (1) For the 2009 contract (and therefore for the 2009 program), the period that begins on October 1, 2008 and ends on September 30, 2009;
- (2) For the 2010 contract, the period that begins on October 1, 2009 and ends on September 30, 2010;
- (3) For the 2011 contract, the period that begins on October 1, 2010 and ends on September 30, 2011;
- (4) For the 2012 contract, the period that begins on October 1, 2011 and ends on September 30, 2012.

*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.

*Double-cropping* means for covered commodities and peanuts, notwithstanding the meaning in § 1412.47(e) for fruits and vegetables, the planting of a

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covered commodity or peanuts for harvest in a crop year, in cycle with another covered commodity or peanuts on the same acres for harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by CCC (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping the covered commodities or peanuts, as determined by CCC, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of Subpart G of this part. Notwithstanding any of the provisions of § 718.103, in those instances where the subsequently planted or approved prevented planted covered commodity or peanuts cannot be recognized as double-cropped acreage under this definition, the subsequently planted covered commodity or peanuts will not be considered planted or prevented planted for any purpose.

*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.

*Farm ACRE guarantee* means, for a crop year of a covered commodity or peanuts, the per acre producer-paid crop insurance premium (if any) added to the result of multiplying the benchmark farm yield, which is a per acre amount, times the ACRE guarantee price. The farm ACRE guarantee is used in determining whether a farm is eligible for ACRE payments for a covered commodity or peanuts.

*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.

*Initial crop* means acreage of a covered commodity or peanuts planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

*Limited resource farmer* means, as determined in accordance with § 1412.51, a farmer or rancher who meets both of the following criteria:

(1) The person did not have, counting both direct and indirect interests, total gross farm sales for all farms in which that person has an interest of not more than the triggering level in both of the two calendar years that precede the calendar year in which the contract year begins. The triggering level is an indexed number that was originally set at \$100,000. Beginning in October 2004, that number has been adjusted for inflation using the Prices Paid by the Farmer Index compiled by NASS. The triggering level for the DCP or ACRE contract will be the indexed number (see <http://www.lrfstool.sc.egov.usda.gov/tool.asp>) as adjusted for the fiscal year that begins on the first day of the contract period.

(2) The person's total household income is at or below the national poverty level for a family of 4 or less than 50 percent of county median household income in each of the two most recent calendar years ending before the end of the program year, as CCC determines using U.S. Commerce Department Data.

*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.

*Medium grain rice* means medium and short grain rice.

*Minimum and maximum guarantee* means, with respect to the State ACRE guarantee for each of the 2010 through 2012 crop years, the adjusted amounts that assure that the State ACRE guarantee for a program year for a covered commodity or peanuts will not decrease or increase more than 10 percent from the announced State ACRE guarantee for the preceding program year.

*National loan rate* means the loan rate established as specified in §1421.9 of this chapter.

*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.

*Per acre producer-paid crop insurance premium* means the insurance premiums paid by all producers of a farm for insurance on a covered commodity or peanuts, provided that at least some of the insured crop acreage is subject to a DCP contract and ACRE contract, divided by the total acres of the covered commodity or peanuts covered by the insurance; regardless of whether or not all of the acres insured are included on the farm's reported acreage for other programs, or are subject to a DCP contract and ACRE contract. Fees for catastrophic risk protection plan of insurance coverage or noninsured crop disaster assistance program coverage are not per acre producer-paid crop insurance premiums. Example: Producers A, B, and C have an interest in barley on a farm and the farm is enrolled in ACRE. Producers A and B paid crop insurance premiums totaling \$800 on 100 insured barley acres. Regardless of how many acres of barley are planted, the per acre producer-paid crop insurance premium for barley is equal to \$8.

*Planted acres for a State* means for:

(1) Corn, sorghum, barley, oats, and wheat, the sum of harvested acres in a State, as reported by NASS and the sum of failed acres in a State, as reported by producers to FSA.

(2) All other crops, the sum of planted acres in a State, as reported by NASS.

(3) Crops where NASS data is not available, the planted acres as determined by CCC using other sources.

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

*Processing* means with respect to uses of a crop, non-fresh intended uses of crops enrolled in the project referred to

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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.

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planted acreage of a covered commodity or peanuts not in a recognized double-cropping sequence (as specified in this section). Replacement crops that are covered commodities or peanuts are not eligible for planted and considered planted credit under this part and cannot generate payments under this part.

*Reseeded or replanted crop* means the second planting of a covered commodity or peanut crop on the same acreage after the first planting of that same crop has failed.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

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

*State ACRE guarantee* means the per acre amount for the crop which is 90 percent of the benchmark State yield times the ACRE guarantee price, subject to the minimum and maximum guarantee specified in these regulations.

*Subdivided* means land has been approved or designated by the local government, or a unit thereof, for develop-

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ment 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.

[73 FR 79289, Dec. 29, 2008, as amended at 75 FR 19191, Apr. 14, 2010]

#### § 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