

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Parts 1405, 1412**

RIN 0560-AG71

Direct and Counter-Cyclical Program**AGENCY:** Commodity Credit Corporation, Agriculture.**ACTION:** Final rule.

SUMMARY: This rule implements the provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) regarding direct and counter-cyclical payments for the crop years 2002 through 2007. These 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. They replace the Production Flexibility Contract (PFC) payments made under the Federal Agriculture Improvement and Reform Act of 1996 for the crop years 1996 through 2002. In addition to the commodities that were eligible for PFC payments, the 2002 Act also provides for direct and counter-cyclical payments for peanuts, soybeans, sunflower seed and other oilseeds.

EFFECTIVE DATE: October 16, 2002.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Notice and Comment**

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

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been

reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

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.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Review

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment 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. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has an effect on their planting and marketing decisions. Thus, CCC is attempting to satisfy both the Congressional mandate and its public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 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. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act requires that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or

transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the 2002 Direct and Counter-Cyclical Program for historic peanut producers, and Direct and Counter-Cyclical Program for covered commodities are not yet fully implemented for the public to conduct business with FSA electronically.

Applications for all programs may be submitted at the FSA county offices by mail or FAX. At this time, electronic submission is not available. Full implementation of electronic submission is underway.

Background

In addition to implementing the Direct and Counter-Cyclical Program (DCP), this rule also codifies a provision of the 2002 Act related to benefit reductions due to Uruguay Round Agreements.

7 CFR Part 1405—Benefit Reductions Due to Uruguay Round Agreements

Section 1601(e) of the 2002 Act provides that if the Secretary of Agriculture determines that outlays under subtitles A through E of Title I of the 2002 Act will, in any required reporting period, result in expenditures of the United States exceeding the levels for domestic measures of support that were agreed to in the Uruguay Round Agreements, as defined in section 2 of the Uruguay Round Agreements Act, then the Secretary shall, to the maximum extent practicable, make adjustments in the amount of such expenditures to ensure compliance with these commitments. Accordingly, 7 CFR part 1405 is revised to set forth this obligation under the aforementioned circumstances for CCC to reduce, or to collect refunds of, payments and benefits made under these subtitles of the 2002 Act.

7 CFR Part 1412—Direct and Counter-Cyclical Program

The Federal Agriculture Improvement and Reform Act of 1996 (FAIR), which was authorized for the crop years 1996 through 2002, contained several important changes to U.S. farm policy. The most important change was the replacement of deficiency payments under previous programs, which made up the difference between the market

price and a target price, with fixed annual Production Flexibility Contract (PFC) payments for producers of grains and upland cotton. PFC payments were based on historical yields and acreage. They were received whether or not a crop was planted, and did not depend on what crop was planted, (except for fruit and vegetable restrictions). This decoupling of payments from production controls was a departure from the earlier Acreage Reduction Program (ARP), which mandated strict acreage limitations and mandatory acreage idling or set-aside requirements.

The 2002 Act authorized for crop years 2002 through 2007 not only fixed, direct payments for wheat, corn, barley, grain sorghum, oats, upland cotton and rice, (the same crops eligible for PFC payments and same type of payment as the PFC payment), but also included oilseed crops, including soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, as additional crops eligible for fixed direct payment. Additionally, the 2002 Act authorized counter-cyclical payments (counter-cyclical payments are similar to the deficiency payments authorized under ARP) for the crop years 2002 through 2007 for these same crops. Because authorization expired September 30, 2002, for PFC payments issued under AMTA, the direct and counter-cyclical payments authorized under the 2002 Act replace the PFC payments that were made to producers on farms with 1996 wheat, corn, barley, grain sorghum, oats, upland cotton and rice crop acreage bases who entered into Production Flexibility contracts with the Commodity Credit Corporation (CCC) for the crop years 1996 through 2002.

The 2002 Act set a precedent, in that soybeans and other oilseeds are eligible for the same program as wheat, feedgrains, cotton, and rice. Peanuts are also eligible for direct and counter-cyclical payments, but have slightly different requirements. The acreage bases used to calculate the 2002 through 2007 direct DCP payments for wheat, feedgrains, cotton, and rice are those that were considered the contract acreage (as defined in section 102 of FAIR) used by the Secretary to calculate the fiscal year 2002 payment authorized under section 114 of FAIR. The yields used to calculate the 2002 through 2007

direct DCP payments for wheat, feedgrains, cotton and rice shall be the farm program payment yield established for the 1995 crop of the crops. If a 1995 yield is unavailable for one of these crops on a farm, the FSA county Committee will establish a direct payment yield for that crop by using three similar farms. Additionally, a farm owner has the opportunity to update the yields for counter-cyclical payments for all applicable crops, provided acceptable production evidence is provided to the county committee for the years 1998 through 2001 for a crop on the farm; and, the owner has selected the base option allowed under the 2002 Act which determines the applicable bases for a farm by using the four-year average of 1998 through 2001 planted or approved prevented-planted acreage of a covered commodity.

The 2002 Act also set forth provisions that allow farm owners multiple options for establishing bases and yields for covered commodities that will be used to calculate 2002 through 2007 direct and counter-cyclical payments. Because of the numerous options available for establishing bases and yields, FSA utilized existing records to determine each applicable covered commodity's 1998 through 2001 acreage history for every farm on record at the FSA county office. This information was provided to farm owners and operators so they could verify the information on record at FSA, and update, or correct, if the county committee determined that sufficient proof of the correct acreage was provided.

The 2002 Act set forth certain requirements to which the producer shall agree to be eligible for direct and counter-cyclical payments. Included in these requirements is the requirement to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices.

The following table provides information regarding the notification processes FSA has undergone to ensure that farm owners are aware of the provisions of the 2002 Act and that farm owners have all applicable information available on record at FSA to assist them in making base and yield selections for 2002 through 2007 direct and counter-cyclical payments.

Date	FSA action
April 25, 2002	Issued Notices to State and County Offices to prepare for implementation of the 2002 Farm Bill. These notices: <ul style="list-style-type: none"> • Provided instructions to produce an acreage history report for every producer to ensure 1998 through 2001 acreage history for each farm is correct. • Instructed County Offices to send each farm owner and operator a letter asking them to review the acreage history report for accuracy and completeness and providing instructions on making necessary corrections and additions. • Provided authorization and instructions for producers to correct previously filed acreage reports or to late-file acreage reports.
May 24, 2002	Began mailing of a letter to all farm owners, operators, and producers which contained provisions of the 2002 Act.
July 3, 2002	Issued a DCP Notice which notified County Offices that software was available to print notification letters to historic peanut producers. The letters were printed and mailed to all historic peanut producers on record in FSA County Offices. This letter notified each historic peanut producer of acreage and actual yields for each farm in the county, as recorded with the County Office of origin. Producers were instructed in the letter to notify the county office of any errors or omissions in, or corrections to, the data in the letter.
July 16, 2002	Issued a DCP Notice which notified County Offices that software was available that allowed them to print and mail to each farm owner and operator a Summary Acreage History Report, along with a notification letter, which contained the following information: <ul style="list-style-type: none"> • 2002 PFC crops and contract acreage. • Acreage history by crop for each of the years 1998 through 2001 for commodities covered under the 2002 Act.
August 9, 2002	Authorization provided to County Offices to process 2002 farm divisions and tract divisions to accommodate need of all owners on a farm to agree to base and yield selections for the Direct and Counter-cyclical Program (DCP).
September 2002	Began accepting production evidence for DCP payment yields.
October 2002	Began mailing notification letter giving owners and producers base options and minimum yield for their farms.

As provided in the rule, an annual sign-up deadline of June 1 has been established. Under the AMTA program, producers who did not sign the contract by the established deadline often requested relief to allow the acceptance of the late-filed signature. The processing of those requests involved a great expenditure of time at the county, state, and national levels. Using an average personnel cost of \$26.65 per hour at the county level, \$28.99 at the State level, and \$39.77 at the National level, each case would involve a minimum of \$94.91 in associated processing costs if only one hour was expended in processing the case at each level. Most such cases involved more than one hour at each level. Some may have consumed as much as several days in case preparation and review time. In lieu of incurring these costs a \$100 fee will be assessed if a producer has not signed a DCP contract by June 1. This fee will cover costs of any necessary site visits to establish that the farm has been in compliance for the months retroactive to the signing of the contract, additional work on the part of the COC and county office, and possibly the State office to ensure that the contract should in fact be approved and to process the approval.

Another important change in Federal farm programs, as a result of the 2002 Act, is that section 1309 of the 2002 Act repealed the marketing quota program for peanuts authorized by Title III of the

Agricultural Adjustment Act of 1938 (the 1938 Act). Other provisions of the 2002 Act set forth payment and marketing assistance loan programs for the 2002 through 2007 crops of peanuts that are similar to other major CCC commodity programs. Section 1309 also provides for CCC to pay eligible peanut quota holders as part of the transition from the repealed market quota program to the new programs. The rules for the Peanut Quota Buyout Program were published October 1, 2002, for codification at 7 CFR part 1412. Sections 1301 through 1308 of the 2002 Act set forth direct and counter-cyclical payment provisions for peanuts, beginning with the 2002 crop. For only the 2002 crop of peanuts, direct and counter-cyclical payments will be issued to historic peanut producers. A historic peanut producer is defined in section 1301 of the 2002 Act, and in this rule, as "a producer on a farm in the United States that produced or was prevented from planting peanuts during any or all of the 1998 through 2001 crop years." The 2002 Act set forth provisions for establishing a peanut base and yield for each historic peanut producer that were to be used to calculate the 2002 peanut direct and counter-cyclical payments to 2002 historic peanut producers. Because the previous Peanut Program regulations at 7 CFR part 729, as it was codified on January 1, 2002, required extensive record keeping by peanut producers

concerning their prior production of peanuts and related information necessary for the establishment of previous years' quotas, FSA has highly accurate records of 1998 through 2001 peanut planting history and production for each peanut producer. To further ensure that these records are correct, all historic peanut producers on record at FSA were sent a letter with peanut acreage and yield data on file at the FSA office. If more than one historic peanut producer shared in the risk of producing the crop on the farm, the historic peanut producers shall receive their proportional share of the number of acres planted (or prevented from being planted) to peanuts for harvest on the farm based on the sharing arrangement that was in effect among the producers for the crop.

Before March 1, 2003, each historic peanut producer must assign the average peanut yield and average peanut acreage determined for that producer to the cropland on a farm. Beginning with the 2003 crop, after applicable peanut bases and yields are assigned to a farm, peanuts will be included on the Direct and Counter-Cyclical Program (DCP) contract for that farm along with the applicable covered commodities.

In summary, FSA has, in administering the provisions of the 2002 Act, utilized every 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 selections for a farm. Because the 2002 Act very explicitly set forth many of the terms and provisions of the DCP, administration of the program is subject to very little variation or flexibility from the statutory authority.

Cost/Benefit Assessment Summary

The underlying policy structure under the 2002 Act is largely unchanged from the policy structure under the 1996 Act. The 2002 Act continues planting flexibility, continues marketing assistance loan provisions at higher levels (except for soybeans, oil-type sunseed, flaxseed, and rice) compared with 2001 levels, replaces production flexibility contract (PFC) payments with

direct payments, adds counter-cyclical payments, and includes oilseeds and peanuts as a covered commodity eligible for direct and counter-cyclical payments. The net fiscal impact of the changes made by the 2002 Act and promulgated by this rule compared with continuing PFC payments under the 1996 Act will be to increase governmental outlays as shown in the following table.

AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

Program	Average Annual Outlay Change ¹ (billion dollars)
Direct Payments ²	0.8
Counter-cyclical Payments ²	4.3
Total	5.1

¹ For direct payments represents the difference between direct payments under 2002 Act provisions compared with PFC payments assuming 1996 Act provisions are extended.

² Includes payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, other oilseeds, and peanuts.

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. Nonetheless, there could be some production effects due to increased wealth resulting from these payments as well as reduced revenue risk associated with counter-cyclical payments. However, direct payments and counter-cyclical payments were assumed in this analysis to have no impact on production.

Direct payments are projected to total \$3.8 billion in FY 2003 and rise to \$5.2 billion in FY 2004 and each of the subsequent fiscal years until the legislation expires with the 2007 crops. These payments represent an increase of about \$1.2 billion each crop year compared with PFC payments if the provisions of the 1996 Act were extended during the same period.

Counter-cyclical payments are projected to total \$5.8 billion in FY 2003 and increase to \$6.6 billion in FY 2004, but then to decline in the remaining years of the 2002 Act, reflecting expected price strengthening in crop year 2004 and until the end of the program in 2007.

FOR FURTHER INFORMATION CONTACT: Phil Sronce, 202–720–2711, *Phil.sronce@usda.gov*.

List of Subjects

7 CFR Part 1405

Loan programs-agricultural; Price support programs.

7 CFR 1412

Direct and counter-cyclical payments, Grains, Oilseeds, Peanuts.

Accordingly, 7 CFR parts 1405 and 1412 are amended as set forth below.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

1. The authority citation for part 1405 is revised to read as follows:

Authority: 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

2. Add § 1405.7 to read as follows:

§ 1405.7 Uruguay Round Agreements Act

In the event the outlays by the United States for domestic support measures will exceed, in any required reporting period, the allowable levels under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act), CCC will, as determined by the Secretary of Agriculture, reduce the amount of payments and benefits to be made in any such reporting period, and/or collect a refund of payments or benefits previously made with respect to such reporting period, under parts 1412, 1413, 1421, 1427, 1430, 1434 and 1435 of this chapter in order to ensure that the level of domestic support provided by the United States complies with the commitments of the United States in the Uruguay Round Agreements.

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

3. The authority citation for Part 1412 is revised to read as set forth below.

3a. Redesignate subpart A (§§ 1412.1 through 1412.11) as subpart H (§§ 1412.801 through 1412.811, respectively).

4. Amend part 1412 by revising the part heading and by adding new subparts A and G and by revising subparts B through F to read as follows:

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

Subpart A—General Provisions

Sec.

- 1412.101 Applicability.
- 1412.102 Administration.
- 1412.103 Definitions.
- 1412.104 Appeals.

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

- 1412.201 Election of base acres.
- 1412.202 Failure to make election.
- 1412.203 Base acres and Conservation Reserve Program.
- 1412.204 Limitation of total base acreage on a farm.

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

- 1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.
- 1412.302 Direct payment yield for soybeans and other oilseeds.
- 1412.303 Payment yield for counter-cyclical payments for covered commodities.
- 1412.304 Submitting production evidence.
- 1412.305 Incorrect or false production evidence.

Subpart D—Direct and Counter-Cyclical Program Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007.

- 1412.401 Direct and counter-cyclical program contract.
- 1412.402 Eligible producers.
- 1412.403 Reconstitutions.
- 1412.404 Notification of base acres.
- 1412.405 Reducing base acreage.
- 1412.406 Succession-in-interest to a direct and counter-cyclical program contract.
- 1412.407 Planting flexibility.

Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments.

- 1412.501 Limitation of direct and counter-cyclical payments.
- 1412.502 Direct payment provisions.
- 1412.503 Counter-cyclical payment provisions.
- 1412.504 Sharing of contract payments.
- 1412.505 Provisions relating to tenants and sharecroppers.

Subpart F—Contract Violations and Diminution in Payments

- 1412.601 Contract Violations.
- 1412.602 Fruit, vegetable and wild rice acreage reporting violations.
- 1412.603 Contract Liability.
- 1412.604 Misrepresentation and scheme or device.
- 1412.605 Offsets and assignments.
- 1412.606 Acreage reports.
- 1412.607 Compliance with highly erodible land and wetland conservation provisions.
- 1412.608 Controlled substance violations.

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

- 1412.701 Determination of 4-year peanut acreage average.
- 1412.702 Determination of average peanut yield
- 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

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Authority: 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1412.101 Applicability.

This part governs: how crop acreage bases and farm program payment yields are established or updated by owners of a farm 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, and other oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2002 through 2007; the month in which producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) contracts with CCC for

each of the years 2002 through 2007; the month in which peanut producers may establish such bases and yields in order to receive 2002 direct and counter-cyclical payments; and the month in which peanut producers may assign such bases and yields to a farm for each of the years 2003 through 2007.

§ 1412.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall 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 shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall 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 shall preclude the Executive Vice President, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, 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.

(f) A representative of CCC may execute the FSA forms entitled “Direct and Counter-Cyclical Program Contract”; and “2002 Peanut Direct and Counter-Cyclical 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 the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and the operator or any other producer on the farm.

§ 1412.103 Definitions

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

Base acres means the number of acres established with respect to a covered commodity on a farm by the election made by the owner of the farm in accordance with subpart B of this part.

Base acres for peanuts means the number of acres assigned to a farm by historic peanut producers in accordance with subpart G of this part.

Contract means the CCC-approved standard, uniform forms and appendixes specified by CCC which constitute the agreement for participation in the Direct and Counter-Cyclical Program, and the 2002 Peanut Direct and Counter-Cyclical Program.

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 and subpart G of this part for 2002 historic peanut producers.

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

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.

Direct payment means a payment made to eligible producers on a farm for peanuts and covered commodities in accordance with subpart E and for 2002 historic peanut producers under subpart G.

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 § 1412.503 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 established on the farm that exceeds the total 2002 Production Flexibility Contract acres on the farm established under the Federal Agriculture Improvement and Reform Act of 1996.

Historic peanut producer means a producer on a farm in the United States that planted or was prevented from

planting peanuts during any or all of the 1998 through 2001 crop years.

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

- (1) Barley, oats, wheat, canola, flax, and rapeseed: June 1–May 31;
- (2) Upland cotton, peanuts, and rice: August 1–July 31; and
- (3) Corn, grain sorghum, soybeans, sunflowers, safflower, and mustard: September 1–August 31.

Other oilseeds means a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if determined and announced by CCC, another oilseed.

Payment acres means:

(1) For the 2002 crop year, 85 percent of the average acres determined in accordance with § 1412.701 for a historic peanut producer.

(2) For the 2003 through 2007 crop years, 85 percent of the base acres for peanuts assigned to a farm in accordance with § 1412.703.

(3) For the 2002 through 2007 crop years, 85 percent of the base acres of a covered commodity on a farm, as established in accordance with subpart B.

Payment yield means:

(1) For peanuts, the yield determined in accordance with § 1412.702.

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

Prevented planted means, for the purpose of establishing base acres under § 1412.201, the inability to plant a crop with proper equipment during the established planting period for the crop or commodity. A producer must prove that the producer intended to plant the crop and that such crop could not be planted due to a natural disaster rather than managerial decisions. The natural disaster that caused the prevented planting must have occurred during the established planting period for the crop.

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.

Updated payment yield means the payment yield of covered commodities, elected by the owner of a farm under § 1412.303, to be used in calculating the counter-cyclical payments for the farm.

§ 1412.104 Appeals.

A producer 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

§ 1412.201 Election of base acres.

(a) No later than April 1, 2003, owners on a farm may select one of the following methods to establish base acres for all covered commodities on the farm:

(1) Subject to the limitations in accordance with paragraph (d) of this section and § 1412.204, the base acres for each covered commodity shall be equal to the sum of the following:

(i) For each covered commodity, the 4-year average of the acreage planted to the covered commodity 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) For each covered commodity, 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.

(2) The sum of the following:

(i) For each covered commodity, the contract acreage used to calculate the fiscal year 2002 Production Flexibility Contract payment for the covered commodity on the farm in accordance with the regulations of this part in effect on January 1, 2002 (see 7 CFR part 1412 revised as of January 1, 2002), plus

(ii) Subject to paragraphs (b) and (c) of this section, the 4-year average of eligible oilseed acreage on the farm for the 1998 through 2001 crop years, as determined in a manner provided in paragraph (a)(1) of this section, except that the limitation in paragraph (d) of this section shall not apply.

(b) Subject to paragraph (c) of this section, the total acreage of soybeans and other oilseeds on the farm calculated in accordance with paragraph (a)(2)(ii) of this section shall not exceed:

(1) The total acreage determined in accordance with paragraph (a)(1) of this section for the crop year, minus

(2) The total contract acreage for all covered commodities determined in accordance with paragraph (a)(2)(i) of this section.

(c) If the calculation in paragraph (b) of this section results in a negative number, the soybean and other oilseed acreage on the farm for that crop year shall be zero for the purposes of determining the 4-year average, in

accordance with paragraph (a)(2)(ii) of this section.

(d) 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 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 shall not select both the initial commodity and subsequent commodity.

(e)(1) An owner may increase the eligible acres of soybeans and other oilseeds on a farm by reducing the contract acreage determined in accordance with paragraph (a)(2)(i) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acreage for soybeans and each other oilseed on the farm may not exceed the four-year average of each oilseed determined under paragraph (a)(2)(ii) 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 covered commodity was not planted shall not be excluded.

§ 1412.202 Failure to make election.

If an owner fails to make an election for establishing base acres on a farm by April 1, 2003 in accordance with § 1412.201, that owner shall be deemed to have made the election to determine all base acres for all covered commodities on the farm as set forth in § 1412.201(a)(2).

§ 1412.203 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (d) and (e) 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 crop acreage base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Act) that expired or was voluntarily terminated on or after May 13, 2002.

(b) Subject to paragraphs (d) and (e) 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 cropland acres reduced by a producer on a CCC-approved standard, uniform form designated by CCC in order to enroll such acres in a conservation reserve program contract entered into under section 1231 of the 1985 Act. Eligible producers may adjust base acres only

when the Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(c) Subject to paragraphs (d) and (e) of this section, if neither paragraphs (a) nor (b) of this section apply, the Deputy Administrator may allow eligible producers to adjust base acres for covered commodities and peanuts with respect to the farm in a manner determined acceptable by the Deputy Administrator when a Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(d) The total base acreage on a farm shall not exceed the limitation in accordance with § 1412.204.

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

(f) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm shall elect to receive either direct payments and counter-cyclical payments 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.

§ 1412.204 Limitation of total base acreage on a farm.

(a) The sum of the following shall 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 subpart, plus

(2) Any base acres established for the farm for peanuts in accordance with subpart G of this part, plus

(3) Any cropland acreage on the farm enrolled in a conservation reserve program contract in accordance with part 1410 of this chapter, plus

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

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

(b) The Deputy Administrator shall 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

§ 1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.

(a)(1) The direct payment yield for each covered commodity, except soybeans and other oilseeds, shall be the payment yield established for the commodity for the farm in accordance with the regulations for feed grain, rice, upland cotton and extra long staple cotton, wheat and related programs at part 1413 of this chapter in effect on January 1, 1996 (see 7 CFR part 1413, revised as of January 1, 1996). CCC shall adjust the payment yield to reflect the additional payments made in accordance with 7 CFR 1413.15.

(2) In the case of a farm for which a payment yield in accordance with paragraph (a)(1) of this section is unavailable for a covered commodity, except soybeans and other oilseeds, the county committee shall assign a payment yield for such covered commodity on the farm based upon the direct payment yield for such covered commodity on at least three similar farms physically located in the county with similar yield capability, including similar land and cultural practices.

(i) If fewer than three similar farms are physically located in the county, the State committee shall assign a payment yield for such covered commodity based upon the direct payment yield for such covered commodity on at least three similar farms in the surrounding area with similar yield capability, including similar land and cultural practices, or as determined by the Deputy Administrator.

(ii) Payment yields of similar farms shall be based on the farms' payment yields before such yields are updated in accordance with this section.

(b) [Reserved]

§ 1412.302 Direct payment yield for soybeans and other oilseeds.

(a) The direct payment yield for soybeans and each other oilseed for the farm shall 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 soybeans and each other oilseed 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 shall 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 shall be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.304; 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 shall 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 shall assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

§ 1412.303 Payment yield for counter-cyclical payments for covered commodities.

(a)(1) The counter-cyclical payment yield for covered commodities on the farm shall be equal to the direct payment yield for the covered commodity on the farm unless the owner elects to partially update the

yield for all covered commodities on the farm in accordance with paragraph (b) of this section.

(2) Only owners who establish base acres for the farm in accordance with § 1412.201(a)(1) shall have the opportunity to partially update the counter-cyclical payment yield for the covered commodities on the farm.

(3) The partially updated yield shall be used for the calculation of the counter-cyclical payments only. The partially updated counter-cyclical yield shall not be used for the calculation of any direct payments for any covered commodity.

(4) Owners who elect to partially update counter-cyclical payment yields in accordance with this section must:

(i) Make such election at the same time such owner makes the base election in accordance with § 1412.201; and

(ii) Update counter-cyclical payment yields for all covered commodities on the farm using the same method. Updating counter-cyclical payment yields for fewer than all covered commodities on the farm is not allowed. Updating counter-cyclical payment yields for covered commodities on a farm using different methods for different covered commodities is not allowed.

(b) Owners on a farm who established base acres for the farm in accordance with § 1412.201(a)(1) may select one of the following methods to partially update counter-cyclical payment yields for all covered commodities on the farm. The same method must be used to partially update the counter-cyclical payment yield for all covered commodities on the farm.

(1) The sum of the following:

(i) The payment yield calculated for the covered commodity in accordance with §§ 1412.301 or 1412.302, as applicable, plus

(ii) 70 percent of the result of:

(A) The average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (c) of this section, minus

(B) The payment yield calculated for the covered commodity in accordance with §§ 1412.301 or 1412.302, as applicable.

(2) 93.5 percent of the average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (c) of this section.

(c)(1) The yield per planted acre for covered commodities on the farm is calculated as follows:

(i) The sum of the production of the crop for 1998 through 2001 crop years, as determined in accordance with

paragraph (c)(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 shall 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 shall be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.304; 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 (c)(2) of this section shall 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 where the yields in paragraphs (c)(3)(i) and (ii) of this section are unavailable.

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

§ 1412.304 Submitting production evidence.

(a)(1) Reports of production evidence must be submitted by producers when the owner elects to:

(i) Partially update the yield for all covered commodities on the farm in accordance with § 1412.303; or

(ii) Establish a direct payment yield for soybeans or other oilseeds for the farm in accordance with § 1412.302.

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

(3) Reports of production evidence for all covered commodities shall 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) Gin records;

(iv) Settlement sheets;

(v) Warehouse ledger sheets;

(vi) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

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

(viii) 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 covered commodity has been disposed of through non-commercial channels, such as used for feed, grazing, or silage, if Loan Deficiency Payments are not available, but crop insurance records or other FSA records indicate that the use of the crop was for silage, hay, or grazing, then county committee will assign production for that year based on the actual grain yield of three similar farms for the applicable year. If producers cannot meet any of these requirements or their crop suffered a low yield, then 75 percent of the county average yield as determined in accordance with § 1412.302(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.

§ 1412.305 Incorrect or false production evidence.

(a) If production evidence is false or incorrect, as determined by the county committee, the county committee shall 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 action to defeat the purpose of the program, the county committee shall:

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

(ii) Reduce the counter-cyclical payment yields for all crops on the farm to equal the direct payment yield for all crops except oilseeds. For all oilseeds on the farm, both the direct and counter-cyclical payment yields shall be reduced to 75 percent of the county average yield as determined in accordance with § 1412.302(b)(4). That yield shall then be reduced by the applicable direct payment yield factor in accordance with § 1412.302(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, 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:

(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 covered commodities and peanuts 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; 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 shall:

(1) Correct the counter-cyclical yield for the applicable crop to equal the yield that would have been calculated in accordance with § 1412.303 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 Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007

§ 1412.401 Direct and counter-cyclical program contract.

(a)(1) With respect to Fiscal Year 2002 payments, CCC will offer to enter into a contract with eligible producers of covered commodities and historical peanut producers on October 1, 2002 through the date announced by CCC.

With respect to Fiscal Years 2003 through 2007, CCC shall offer to annually enter into a contract with an eligible producer on a farm having base acreage with respect to a covered commodity; and for a farm with peanut base acreage and yield assigned in accordance with subpart G of this part, at the beginning of each such fiscal year 2003 through 2007 through the date announced by CCC for each such year.

(2)(i) Eligible producers may execute and submit a contract 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 payments are requested.

(ii) Because CCC will incur additional expenses which may not be possible to quantify with certainty, including the additional cost to ensure payments are issued timely to all producers, a late signup fee in the amount of \$100 per farm will be assessed by CCC for any farm enrolled after June 1 of the fiscal year in which the direct and counter-cyclical payments are requested unless the Deputy Administrator determines a waiver of the late signup fee is appropriate. Enrollment is not allowed after September 30 of the fiscal year in

which the direct and counter-cyclical payments are requested.

(3) 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 September 30 of the year of the contract provided all signatories to the contract, including CCC, agree to the withdraw.

(c) All contracts shall 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 shall result in the termination of the contract, and a refund of all direct and counter-cyclical payments issued for the farm. The contract termination shall 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 direct and counter-cyclical payments previously issued for the farm have been refunded to CCC.

(e) In the event a farm reconstitution is completed in accordance with part 718 of this title, all producers with an interest in the base acres on the farm must sign a new contract and provide supporting documentation as specified in part 12 of this title, and parts 1400, and 1412 of this chapter not later than September 30 of the fiscal year direct and counter-cyclical payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. If all producers have not signed the new contract by September 30, no producers on the contract will be eligible for a direct or counter-cyclical payment for that farm for the year the contract was terminated.

§ 1412.402 Eligible producers.

Producers eligible to enter into a contract are:

(a)(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 an eligible 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 shall not begin under the contract until the lease held by the tenant ends.

(b) A minor child shall 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.

§ 1412.403 Reconstitutions.

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

§ 1412.404 Notification of base acres.

The owner and all producers on a farm shall be notified in writing of the number of base acres eligible for enrollment in a contract, unless such owner or producer requests in writing that such owner or producer not be furnished with the notice.

§ 1412.405 Reducing base acreage.

(a)(1) Subject to the limitation in paragraph (a)(ii) of this section, a permanent reduction of all or a portion of a farm's base acreage shall 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 acreage 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 acreage on the farm shall be reduced accordingly regardless of the submission of a request for such reduction.

§ 1412.406 Succession-in-interest to a direct and counter-cyclical program contract.

(a) A succession in interest to a 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 of 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) As otherwise determined by the Deputy Administrator, if the succession 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 set forth in § 1412.505; 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 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)(1) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment shall not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.401(d). If the predecessor refunds such payments, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

(2) A succession in interest shall not increase the liability of CCC.

§ 1412.407 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) Harvesting non-perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, or designee, is prohibited on base acreage of a farm enrolled in a contract. Planting perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a 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 shall 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 shall 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, but not both, as determined 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 shall 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 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, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arkansas

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

Arizona

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

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.

Connecticut

None.

Colorado

None.

Delaware

Kent, New Castle, and Sussex.

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, Union, Vermilion, White, and Whiteside.

Indiana

Allen, Bartholemew, Gibson, Hamilton, Jackson, Knox, LaGrange, Lake, LaPorte, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

Iowa

Kossuth, Mitchell, Palo Alto, and Winnebago.

Kansas

None.

Kentucky

Daviess.

Louisiana

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

Maine

None.

Maryland

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

Massachusetts

None.

Michigan

None.

Minnesota

Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Redwood, Renville, Rice, Scott, Sibley, Steele, Waseca, Wabasha, Watonwan, and Winona.

Mississippi

Calhoun, Carroll, Coahoma, Covington, DeSota, Georgia, Humphreys, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, Prentiss and Rankin.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

None.

New Jersey

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

New Hampshire

None.

New Mexico

Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Orange and Suffolk.

North Carolina

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.

North Dakota

None.

Ohio

Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingham, Scioto, and Stark.

Oklahoma

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.

Oregon

Benton, Clackamas, Columbia, Jackson, Josephine, Lane, Linn, Marion, Morrow, Multnomah, Polk, Umatilla, Washington, and Yamhill.

Pennsylvania

Adams, Bucks, Centre, Chester, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Northumberland, Schuylkill, and York.

Puerto Rico

None.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Maury, Obion, Overton, Pickett, Rhea, Robertson, Rutherford, Sumner, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

Texas

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, Webb, Willacy, Wilson, Yoakum, and Zavala.

Utah

None.

Vermont

None.

Virginia

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.

Washington

Yakima.

West Virginia

None.

Wisconsin

Adams, Calumet, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Portage, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waukesha, Waushara, and Winnebago.

Wyoming

None.

(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity 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 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.

(g) For the purposes of this part, fruits, vegetables and wild rice planted

on base acreage of a farm under contract:

(1) Shall 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.

(2) Shall 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) 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, chickpeas/garbanzo beans, 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, murcotts, 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.

(i) For 2002 contracts only, fruits, vegetables, and wild rice may be planted on excess base acres. Such plantings shall:

(1) Not be a violation of the contract

(2) Result in a reduction of direct and counter-cyclical payments in accordance with paragraph (f) of this section.

Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments

§ 1412.501 Limitation of direct and counter-cyclical payments.

(a) The sum total of all annual direct payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(b) The sum total of all annual counter-cyclical payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(c) The amount of 2002 direct and counter-cyclical payments for a farm shall 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 13, 2002.

(d) The provisions of part 1400 of this chapter apply to this part.

§ 1412.502 Direct payment provisions.

(a) For 2003 through 2007 contracts, a final direct payment shall 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 2003 through 2007 contracts, at the option of the producer, 50 percent of the direct payment for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established, shall 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. For any producer 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; and

(2) Sign the contract designating payment shares and provide supporting documentation as specified in part 12 of this title and parts 1400 and 1405 of this chapter, if applicable. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, then no producer shall be eligible for any payment for that farm for that contract.

(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 shall not become available for any other producer; and

(2) The producer shall 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 shall be 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 shall be as follows:

- (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) Rice—\$2.35/cwt.
- (8) Soybeans—\$0.44/bu.
- (9) Other oilseeds—\$0.0080/lb.
- (10) Peanuts—\$36.00/ton.

(e) For 2003 through 2007 contracts, subject to the limitation in accordance with § 1412.501 and part 1400 of this chapter, the final direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities and peanuts for which payment yields and base acres are established shall be equal to the product of:

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

(2) The payment acres of the covered commodity and peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with § 1412.407(g), multiplied by

(3) The payment yield for the covered commodity and peanuts on the farm enrolled in a contract as determined in accordance with § 1412.301, § 1412.302 and subpart G of this part, 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) For 2002 contracts, the direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities for which payment yields and base acres are established shall be equal to the result of the amount calculated in accordance with paragraphs (e)(1) through (3) of this section minus all of the following:

(1) Any amount of payment received under a production flexibility contract for fiscal year 2002 in accordance with the Federal Agriculture Improvement and Reform Act of 1996;

(2) Any reduction calculated in accordance with subpart F of this part, with credit for any amount reduced under the production flexibility contract for the farm for fiscal year 2002 for the same contract violation; and

(3) Any reduction calculated in accordance with § 1412.407(j).

(g)(1) The payment of any amount due any producer on a farm enrolled in a contract shall 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.

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

(i) The producer is in full compliance with the contract and the requirements in this part;

(ii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and

(iii) The payment is approved by the Deputy Administrator.

(h) For 2002 contracts, the direct payment amount to be paid to the historical peanut producer shall be made to the historical peanut producer on the base and yield established for the historical peanut producer, in accordance with subpart G of this part.

§ 1412.503 Counter-cyclical payment provisions.

(a) For the 2002 through 2007 contracts, a counter-cyclical payment shall be made to eligible producers on a farm enrolled in a contract with

respect to covered commodities for which payment yield and base acres are established, and with respect to peanuts on a farm enrolled in a contract for 2003 through 2007:

(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.

(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 and 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 2002 and 2003 crop years the following rates:

- (A) Wheat—\$2.80/bu.
- (B) Corn—\$1.98/bu.
- (C) Grain sorghum—\$1.98/bu.
- (D) Barley—\$1.88/bu.
- (E) Oats—\$1.35/bu.
- (F) Upland cotton—\$0.52/lb.
- (G) Rice—\$6.50/cwt.
- (H) Soybeans—\$5.00/bu.
- (I) Other oilseeds—\$0.0960/lb.
- (J) Peanuts—\$355.00/ton.

(iii) For 2004 through 2007 crop years 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) Rice—\$6.50/cwt.
- (H) Soybeans—\$5.00/bu.
- (I) Other oilseeds—\$0.0930/lb.
- (J) Peanuts—\$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in § 1412.502(d).

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

(1) For 2002 and 2003 crop years:

- (i) Wheat—\$3.86/bu.
- (ii) Corn—\$2.60/bu.
- (iii) Grain sorghum—\$2.54/bu.
- (iv) Barley—\$2.21/bu.
- (v) Oats—\$1.40/bu.
- (vi) Upland cotton—\$0.7240/lb.
- (vii) Rice—\$10.50/cwt.
- (viii) Soybeans—\$5.80/bu.

(ix) Other oilseeds—\$0.0980/lb.

(x) Peanuts—\$495.00/ton.

(2) For 2004 through 2007 crop years:

(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—\$0.7240/lb.

(vii) Rice—\$10.50/cwt.

(viii) Soybeans—\$5.80/bu.

(ix) Other oilseeds—\$0.1010/lb.

(x) Peanuts—\$495.00/ton.

(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 as determined in accordance with paragraph (c) of this section, minus

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

(e) For 2002 through 2007 contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with § 1412.501 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 and peanuts for which payment yields and base acres are established shall be equal to the product of:

(1) The payment rate determined in accordance with paragraph (d) of this section, multiplied by

(2) The payment acres of the covered commodity and peanuts, as applicable, minus any acre reduction in accordance with § 1412.407(g), multiplied by

(3)(i) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with § 1412.303 and subpart G of this part if the owner of the farm elected base acreage for the farm in accordance with § 1412.201(a)(2), or the owner elected to not update the payment yields for the covered commodities on the farm, or

(ii) The updated payment yield for the covered commodity on the farm enrolled in a contract as determined in accordance with § 1412.303 if the owner of the farm elected base acreage for the farm in accordance with § 1412.201(a)(1) and elected to update the yields for the covered commodities on the farm in accordance with § 1412.303, 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 § 1412.502(e), minus

(5) Any partial advance payment received in accordance with paragraphs (f) or (g) of this section.

(f) For 2002 through 2006 contracts, advance counter-cyclical payments shall 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.

(1) The first advance counter-cyclical payment shall:

(i) Be calculated in accordance with paragraphs (e)(1) through (4) of this section;

(ii) Be an amount determined by the Secretary not to exceed 35 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively;

(iii) Not be made earlier than October 1 after the end of the contract year in which the counter-cyclical payment was earned; and

(iv) To the maximum extent practical, be made no later than October 31 after the end of the contract year in which the counter-cyclical payment was earned.

(2) The second partial advance counter-cyclical payment shall:

(i) Be calculated in accordance with paragraphs (e)(1) through (4) of this section.

(ii) Be an amount determined by the Secretary not to exceed the result of:

(A) 70 percent of the projected counter-cyclical payment, including any revision thereof, for the covered commodity or peanuts, respectively, minus

(B) The amount of payment made under paragraph (f)(1) of this section; and

(iii) Not be made earlier than February 1 after the end of the contract year in which the counter-cyclical payment was earned.

(g) For 2002 contract, the counter-cyclical payment amount to be paid to the historic peanut producer shall be made using the base and yield established for the historic peanut producer, in accordance with subpart G of this part.

(h) For 2007 contracts, an advance counter-cyclical payment shall be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts will be required in accordance with paragraph (a)(1) of this section. The advance payment shall:

(1) Be calculated in accordance with paragraphs (e)(1) through (e)(4) of this section;

(2) Not exceed 40 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively, as determined by the Secretary; and

(3) Be made after the first 6 months of the marketing year of the covered commodity or peanuts, as applicable.

(i) 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:

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

(2) The producer shall 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 shall be applicable to all unearned payments.

(i)(A) The payment of any amount due any producer on a farm enrolled in a contract shall 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.

(B) A producer on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other producers on the farm if:

(1) The producer is in full compliance with the contract and the requirements in this part;

(2) The payment of such amount does not adversely affect nor defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

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

(j) The producers on a farm who receive any advance counter-cyclical payment shall refund the portion of such advance payments that exceeds the actual counter-cyclical payment to be made for the covered commodity or peanuts, as applicable.

§ 1412.504 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to annually enroll in a contract and receive direct and counter-cyclical payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(1) Each producer 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.

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

(3) 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 shall be considered to be a share lease. The leasing of grazing or haying privileges is not considered cash leasing.

(4) If a lease provides for the greater of a guaranteed amount or share of the crop or crop proceeds, such agreement shall be considered a share lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and
(ii) A share of the crop proceeds.

(5) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(c) 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 the provisions of part 1400 of this chapter.

§ 1412.505 Provisions relating to tenants and sharecroppers.

Neither direct nor counter-cyclical payments shall be made by CCC if:

(a) 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 shall be refunded to CCC; or

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

Subpart F—Contract Violations and Diminution in Payments

§ 1412.601 Contract violations.

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

(b)(1) If there is a violation of § 1412.407 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, direct and counter-cyclical 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 and counter-cyclical 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.

§ 1412.602 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 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 shall accept a reduction in the direct and counter-cyclical 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 shall accept a reduction in the direct and counter-cyclical payments for the farm in an amount equal to the sum of:

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

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

(3) The contract shall be terminated if an acreage report of fruits, vegetables or wild rice planted on base acreage of a farm enrolled in DCP 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 shall:

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

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

(iii) 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.

§ 1412.603 Contract liability.

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

§ 1412.604 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to either direct or counter-cyclical payments and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter.

(b) A producer shall refund to CCC all direct and counter-cyclical payments, plus interest as determined in accordance with part 1403 of this

chapter, received by such producer with respect to all contracts if the producer is determined to have knowingly done any of the following. In addition, the producer's interest in all such contracts shall be terminated.

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

§ 1412.605 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall 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 shall be applicable to contract payments.

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

§ 1412.606 Acreage reports.

As a condition of eligibility for direct and counter-cyclical payments, the operator or owner must submit a report of all cropland acreage on the farm in accordance with part 718 of this title. If such operator or owner does not report all cropland acreage on the farm in accordance with part 718 of this title, the contract shall be terminated with respect to such farm unless the provisions part 718 of this title are applicable.

§ 1412.607 Compliance with highly erodible land and wetland conservation provisions.

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

§ 1412.608 Controlled substance violations.

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

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

§ 1412.701 Determination of 4-year peanut acreage average.

(a) The Deputy Administrator shall determine, for each historic peanut producer under this part, the 4-year average of the following:

(1) The acreage planted to peanuts on each farm on which the historic peanut

producer planted peanuts for harvest for the 1998 through 2001 crop years; and

(2) Any acreage on each farm that the historic peanut producer was prevented from planting to peanuts during the 1998 through 2001 crop years because of natural disaster, or any other condition beyond the control of the historic peanut producers, as determined by the Deputy Administrator.

(b) For the purposes of determining the 4-year acreage average for a historic peanut producer under this part, the Deputy Administrator shall not exclude any crop year in which the producer did not plant peanuts.

(c) If more than one historic peanut producer shared in the risk of producing the crop on a farm, the historic peanut producers shall receive the proportional share of the number of acres planted or prevented from being planted to peanuts for harvest on the farm, based on the sharing arrangement that was in effect among the producers for the crop.

(d) When a historic peanut producer is no longer living or when an entity composed of historic peanut producers has been dissolved, and in other similar situations, the Deputy Administrator shall make the base determinations under this subpart in the manner determined to be fair and reasonable.

§ 1412.702 Determination of average peanut yield.

(a) The Deputy Administrator shall determine, for each historic peanut producer, the average yield for peanuts on each farm the historic peanut producer planted peanuts for harvest for the 1998 through 2001 crop years, excluding any crop year in which the producer did not plant or was prevented from planting peanuts. Production information reported according to part 729 of this chapter will be used by the Deputy Administrator for determining yields under this section.

(b)(1) For the purposes of determining the 4-year average yield for a historic peanut producer under paragraph (a) of this section, the historic peanut producer may elect to substitute for a farm for not more than 3 of the 1998 through 2001 crop years in which the historic peanut producer planted peanuts on the farm, the average harvested yield for peanuts produced in the county in which the farm is located for the 1990 through 1997 crop years.

(2) The average harvested yield for peanuts produced in a county which will be used in paragraph (b)(1) of this section shall be the NASS irrigated and non-irrigated yields or, in States and counties where the irrigated and non-irrigated NASS data is unavailable, the NASS blended yield for the county.

(3) If NASS harvested peanut yield data is unavailable, for the purposes set forth in paragraph (b)(1) of this section, the harvested county average peanut yield, determined according to peanut production information reported according to part 729 of this chapter, shall be used.

(c) The average harvested yield, to be used at the producer's option in paragraph (b)(1) of this section, shall be determined by calculating the weighted 7-year average for each type of yield for the years 1990 through 1997 of:

(1) The NASS harvested peanut irrigated yield for the county for each year;

(2) The NASS harvested peanut non-irrigated yield for the county for each year;

(3) The NASS harvested peanut blended yield for all counties where the yields in paragraphs (c)(1) and (c)(2) of this section are unavailable for each year for all acreage regardless of whether or not the acres were irrigated or nonirrigated;

(4) The average yield for the county, determined in accordance with paragraph (b)(3) of this section for each year.

§ 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

(a) The Deputy Administrator shall give each historical peanut producer an opportunity to assign the average peanut yield determined in accordance with § 1412.702 and average acreage determined in accordance with § 1412.701 for each farm of the historic peanut producer to cropland on that farm or another farm in the same State or a contiguous State.

(b) Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous county only if either of the following apply:

(1) The historic peanut producer making the assignment produced peanuts in that State during at least one of the 1998 through 2001 crop years; or

(2) As of March 31, 2003, the historic peanut producer is a producer on a farm in that State.

(c) The Deputy Administrator shall provide notice to historic peanut producers regarding the opportunity to assign average peanut yields and average acreages to farms under paragraph (a) of this section. The notice shall provide the following information:

(1) Notice that the opportunity to make the assignments is being provided only once;

(2) A description of the limitations in paragraph (b) of this section on their ability to make their assignments; and

(3) Information regarding the manner in which the assignments must be made and the time periods and manner in which notice of the assignments must be submitted to the Deputy Administrator.

(d) Not later than March 31, 2003, an historic peanut producer shall submit to the Deputy Administrator notice of the assignments made by the producer under this section. If a historic peanut producer fails to submit such notice by that date, that base and yield shall be assigned to the most recent farm

associated with such base and yield, as determined by FSA records.

(e) The average of all yields assigned by a historic peanut producer under paragraph (a) of this section to a farm shall be considered to be the payment yield for that farm for the purpose of making direct and payments and counter-cyclical payments under this part, beginning with crop year 2003.

(f) Subject to paragraph (g) of this section, the total number acres assigned by historic peanut producers under paragraph (b) of this section to a farm shall be considered to be the farm's base acres for peanuts for the purpose of

making direct payments and counter-cyclical payments under this part, beginning with crop year 2003.

Subpart H—Peanut Quota Buyout Program

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Signed in Washington, DC, October 15, 2002.

Verle E. Lanier,
Executive Vice President, Commodity Credit Corporation.

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