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

§ 1412.3 Definitions.

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

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

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

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

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

Considered planted means acreage approved as prevented planted in accord-

ance with §718.103 of this title or the acreage considered planted to a covered commodity pursuant to §1412.48.

Contract means the CCC-approved standard, uniform forms and appendixes specified by CCC that constitute the agreement for participation in the Direct and Counter-Cyclical Program or ACRE program, as applicable.

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

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

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

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

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

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

Developed means:

(1) Land has been approved by the local government for uses other than commercial agricultural uses; and

(2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

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

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

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

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

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

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

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

(1) Barley, oats, and wheat: June 1–May 31;

(2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1–June 30;

(3) Upland cotton, peanuts, and rice: August 1–July 31; and

(4) Corn, grain sorghum, soybeans, sunflowers, safflower, mustard, crambe, sesame, and chickpeas: September 1–August 31.

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

Payment acres means:

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

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

Payment yield means:

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

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

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

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

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

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

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

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

§ 1412.4 Appeals.

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

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

§ 1412.21 Election of base acres.

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

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

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

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

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

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

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

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

(d) If the calculation in paragraph (c) of this section results in a negative

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

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

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

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

§ 1412.22 Failure to make pulse crop election.

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

§ 1412.23 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (b) and (c) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of production