

Commodity Credit Corporation, USDA

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fail to maintain tenancy on the acreage under the application, including failure to comply with provisions under applicable State law, may be removed from an application by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a participant specified in the application.

PART 1413—COMMODITY INCENTIVE PAYMENT PROGRAMS

Subpart A—Durum Wheat Quality Program

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AUTHORITY: 7 U.S.C. 8788 and 15 U.S.C. 714.

SOURCE: 75 FR 41965, July 20, 2010, unless otherwise noted.

Subpart A—Durum Wheat Quality Program

§ 1413.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Durum Wheat Quality Program (DWQP) as authorized by section 1613 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) will be administered.

(b) This program will operate only to the extent appropriated funding is available.

(c) Subject to available funding, eligible producers of durum wheat will be partially compensated for the cost of purchasing and applying fungicides to a crop of durum wheat to control Fusarium head blight on acres accurately certified as planted to durum wheat. “Available funding” requires that

there be a specific appropriation for the program that applies to a particular crop for which the producer seeks compensation under this program.

§ 1413.102 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application period means the dates established by the Deputy Administrator for Farm Programs for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

Crop year means the calendar year in which the wheat was harvested or intended to be harvested. For example, a reference to the 2010 crop year of wheat means wheat that when planted was intended for harvest in calendar year 2010.

Durum wheat means all varieties of white (amber) durum wheat as defined in the U.S. Standards for Wheat (7 CFR part 810, subpart M) including, but not limited to, hard amber durum wheat and amber durum wheat.

Flowering stage means the period of time during the wheat growth stage, after the head emergence has completed and prior to milk development in the kernel.

State committee, county committee or county office means the respective FSA committee or office.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

USDA means the United States Department of Agriculture.

§ 1413.103 Administration.

(a) DWQP will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Agency (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this

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subpart, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the provisions of this subpart that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in compliance with the provisions of this subpart.

(2) Require a county FSA committee to not take an action that is not in compliance with the provisions of this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the Administrator, Deputy Administrator, or a designee from determining any question arising under the program in this subpart, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory program requirements of this subpart in cases where failure to meet such requirements does not adversely affect operation of the program in this subpart. Producers have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

§ 1413.104 Eligibility.

(a) To be considered eligible for DWQP payments, the person or entity must have a share in the treated wheat crop on those acres planted to durum wheat on which an eligible fungicide was applied, as certified on the application, have incurred the cost of acquiring and applying eligible fungicide, and meet the requirements in paragraph (b) of this section.

(b) To be eligible for benefits, a person or entity must be a:

- (1) Citizen of the United States;
- (2) "Lawful alien" as defined in §1400.3 of this chapter;
- (3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

(c) A minor child is eligible to apply for DWQP payments if all the eligibility requirements of this subpart are met and the requirements in part 1400 of this chapter that apply to minor children are met.

(d) A person or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm.

(e) State and local governments and their political subdivisions and related agencies are not eligible for DWQP payments.

(f) To be considered an eligible fungicide under this subpart, the fungicide must be:

(1) Registered with the U.S. Environmental Protection Agency, as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), unless exempt from FIFRA requirements;

(2) In compliance with State pesticide regulations, if applicable, in the State in which benefits are being requested; and

(3) Applied specifically to control Fusarium head blight on acres certified as planted by the producer to durum wheat for the applicable crop year.

(g) CCC will provide program benefits to reimburse eligible costs for a maximum of one fungicide treatment, including application cost, during the flowering stage, to a crop of durum wheat per crop year. Multiple or additional fungicide treatments, beyond a single treatment, to the same crop of wheat are not eligible for benefits.

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§ 1413.106 Application process.

(a) To apply for DWQP payment, the producer must submit, to the FSA county office that maintains the producer's farm records for the agricultural operation, a completed application as specified in paragraph (c) of this section, including any supporting

documentation required by FSA, and a report of acreage.

(b) The producer must submit a completed application for payment and required supporting documentation to the administrative FSA county office during the relevant, for the crop, application period announced by FSA which will end no later than September 15 of the crop year in which the fungicide was applied to a crop of durum wheat.

(c) A complete application includes all of the following:

(1) An application form provided by FSA;

(2) Certification of the total number and location of acres planted to durum wheat on which an eligible fungicide was applied specifically to control Fusarium head blight;

(3) Certification of the date durum wheat, on which an eligible fungicide was applied specifically to control Fusarium head blight, was planted;

(4) Certification of the type of eligible fungicide applied to acres certified as planted to durum wheat;

(5) Certification of the date eligible fungicide was applied to acres certified as planted to durum wheat;

(6) Documentation providing adequate proof, as determined by FSA, of the producer's actual cost of purchasing and applying eligible fungicide to acres certified as planted to durum wheat for one treatment; and

(7) Any other documentation as determined by FSA to be necessary to make a determination of eligibility of the producer.

(d) The producer requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information provided is subject to verification by FSA.

(e) Data furnished by the producer will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

§ 1413.107 Availability of funds.

(a) The 2008 Farm Bill authorizes up to \$10 million to be appropriated for each of the 2009 through 2012 fiscal

years for DWQP. Payments will not be made for claims for a particular crop year until after the application deadline, which is September 15 of that crop year, for the crop for which payment for the fungicide application is sought and only if funds are made available through an appropriation.

(b) In the event that approval of all eligible applications for fungicide treatments for a particular crop would result in expenditures in excess of the amounts appropriated for that crop year, the FSA Deputy Administrator will prorate the funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will prorate the payments in such manner as it determines appropriate and reasonable.

(c) Claims that are unpaid or paid at a reduced rate for a crop year for any reason will not be carried forward for payment under other funds for later crop years, unless provided for by law and approved by the Deputy Administrator. Such unpaid claims will be considered, as to any unpaid amount, void and nonpayable.

§ 1413.108 Payment calculation.

(a) Subject to the availability of DWQP funds, the payment to an eligible producer will be the result of adding (adjusted for the producer's share of the crop):

(1) The lesser of:

(i) The result of multiplying the number of acres certified by the producer as planted to durum wheat on which an eligible fungicide was applied, during the flowering stage, times the per acre national fungicide acquisition payment rate as set by the Deputy Administrator; or

(ii) Fifty percent of the producer's actual cost of purchasing eligible fungicide for acres certified as planted to durum wheat and treated for the applicable crop year in a manner that would otherwise generate a payment under paragraph (a)(1)(i) of this section; plus

(2) The result of multiplying the number of acres certified as planted to durum wheat on which an eligible fungicide was applied during the flowering stage, times the State application per-acre payment rate set by the State

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committee, with such application payment not to exceed 50 percent of the actual application cost certified to by the producer.

(b) The national fungicide acquisition payment rate set by the Deputy Administrator will be based on 50 percent of the national average cost of eligible fungicide (only including the cost of the chemical itself), applied to one acre of durum wheat for the applicable crop year.

(c) The State application payment rate set by the State committee will be based on 50 percent of the State average cost of applying an eligible fungicide to one acre of durum wheat for the applicable crop year.

§ 1413.109 Refunds, joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this subpart, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and otherwise determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an application for payment as having an interest in an operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

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§ 1413.110 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, a producer will be ineligible for payment through the DWQP if the producer is determined by CCC to have:

(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.

(b) Any funds disbursed pursuant to this subpart to any producer engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of disbursement of the CCC funds. Any producer engaged in acts prohibited by this section and any producer receiving payment as specified in this subpart will be jointly and severally liable with other persons or producers involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1413.111 Miscellaneous provisions.

(a) *Other interests.* Any payment to any producer under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government.

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

(c) *Offsets.* CCC may offset or withhold any amount due to CCC from any benefit provided under this subpart in accordance with the provisions of part 1403 of this chapter and part 792 of this title.

(d) *Violations of highly erodible land and wetland conservation provisions.* The provisions of part 12 of this title apply

to this subpart. That part sets out certain conservation requirements as a general condition for farm benefits.

(e) *Violations regarding controlled substances.* The provisions of §718.6 of this title, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

§ 1413.112 Appeals.

(a) *Appeals.* Appeal regulations set forth at parts 11 and 780 of this title apply to determinations made under this subpart.

(b) *Determinations not eligible for administrative review or appeal.* CCC determinations and policies that are not limited to a specific individual producer's application are not to be construed to be individual program eligibility determinations or adverse decisions and are, therefore, not subject to administrative review or appeal under 7 CFR part 11 or part 780 of this title (but nothing in the regulations for this program will limit the ability of the National Appeals Division to decide its own jurisdiction under part 11). Such determinations include, but are not limited to, application periods, deadlines, crop years, prices, general statutory or regulatory provisions that apply to similarly situated producers, national average payment prices, and payment factors established by CCC for DWQP for which this subpart applies or similar matters requiring CCC determinations.

§ 1413.113 Deceased individuals or dissolved entities.

(a) Payment may be made for an eligible application on behalf of an eligible producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract on behalf of the producer signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolu-

tion or their duly authorized representatives must sign the application for payment.

§ 1413.114 Records and inspections.

(a) Any producer receiving DWQP payments, or any other legal entity or person who provides information for the purposes of enabling a producer to receive a DWQP payment, must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the U.S. Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable acreage in which the producer has an interest for the purpose of confirming the accuracy of information provided by or for the producer.

(b) [Reserved]

Subparts B–C [Reserved]

PART 1415—GRASSLANDS RESERVE PROGRAM

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AUTHORITY: 16 U.S.C. 3838n–3838q.