



This document is scheduled to be published in the Federal Register on 09/26/2014 and available online at <http://federalregister.gov/a/2014-22879>, and on [FDsys.gov](http://FDsys.gov)

Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Parts 1412 and 1416

RIN 0560-AI24

Agriculture Risk Coverage and Price Loss Coverage Programs

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the new Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs authorized by the Agricultural Act of 2014 (the 2014 Farm Bill). It also includes conforming changes to certain Farm Service Agency (FSA) regulations that apply to multiple programs. ARC and PLC provide producers a choice between a program that provides counter-cyclical type of payment support—PLC, and a revenue support type of program—ARC. During a defined election period, current producers can elect different programs for different covered commodities on a farm, for example, choosing PLC for corn and ARC county option for soybeans on the same farm. ARC offers the additional choice of a revenue guarantee based on average revenue for a county or on actual historical revenue for an individual farm. If a producer elects ARC individual coverage based on historical revenue for that specific farm, however, all the farm's covered commodities are elected with that option, with no option for PLC on that

farm. This rule specifies the eligibility requirements, enrollment procedures, and payment calculations for ARC and PLC.

DATES: *Effective date:* [Insert date of publication in the FEDERAL REGISTER].

*First annual enrollment date:* By June 1, 2015, for the 2014 and 2015 crop years.

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#### SUPPLEMENTARY INFORMATION:

##### Background

The 2014 Farm Bill (Pub. L. 113-79) authorizes the new ARC and PLC Programs. ARC and PLC are Commodity Credit Corporation (CCC) programs operated for CCC by FSA. This rule discusses:

- The basic structure for all payments to farms and producers under the ARC and PLC Programs;
- The one-time opportunity owners will have to reallocate base acres;
- The one-time opportunity for owners to update yields;
- The one-time irrevocable program election that is required from all producers on a farm for the 2014 through 2018 crop years; and
- The opportunity for producers to annually enroll farms in ARC and PLC each year from 2014 through 2018.

As specified in the 2014 Farm Bill, the following are covered commodities under ARC and PLC: wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing); corn; grain sorghum; long grain rice; medium grain rice; pulse

crops; soybeans; other oilseeds; and peanuts. This is the same list of commodities that were previously eligible for Average Crop Revenue Election (ACRE) Program and the counter-cyclical payments portion of the previous Direct and Counter-cyclical Payment Program (commonly known as DCP), which were repealed by the 2014 Farm Bill, except that cotton is not a covered commodity. In separate rulemaking implementing the Cotton Transition Assistance Payment (CTAP) Program, published on August 8, 2014 (79 FR 46335-46348), FSA previously explained that what were upland cotton base acres under the 2008 Farm Bill are now “generic base acres” under ARC and PLC. Provisions for generic base acres are described in detail later in this document. In that separate rulemaking, FSA also implemented some of the general provisions applicable to ARC and PLC (such as the requirement to report all cropland acres on a farm, and planting flexibility provisions), so those provisions are already in the regulation in 7 CFR part 1412.

The rule specifies what farms are eligible for ARC and PLC, what producers are eligible, actions that owners and producers must perform to be eligible for payments, election periods, and enrollment periods. Enrollment for both the 2014 and 2015 crop year will take place by June 1, 2015. That means that producers will have planted and harvested their 2014 crops before:

- 1) Farm owners update their farm’s planting history and yields;
- 2) Farm owners reallocate base acres;
- 3) Producers make election; and
- 4) Producers make annual enrollment decisions.

Producers will know their 2014 planted acres and actual yields before they decide whether to elect and subsequently enroll for ARC or PLC. Several universities have partnered with USDA to provide web-based decision tools and calculators to help producers evaluate the available options under these programs for their farm, and these tools and calculators will be available in time for election decisions.

Any payments under ARC or PLC for the 2014 crop year will not be issued until late 2015 because, as specified in the 2014 Farm Bill, payments cannot be made until after October 1, 2015.

### Overview of ARC and PLC

Both the 2014 Farm Bill and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, referred to as the 2008 Farm Bill) included a choice between two types of commodity programs. Both the 2008 and 2014 Farm Bills give producers a choice between a revenue program whose revenue target can move up and down with the market and a price program whose target price is fixed for the duration of the respective Farm Bill. In nearly all cases, eligible producers for ARC and PLC would also have been eligible for DCP and ACRE, the previous programs authorized by the 2008 Farm Bill that were repealed by the 2014 Farm Bill.

ARC and ACRE both establish revenue targets, not price targets. The guarantee for ARC elected with county option (ARC-CO) is based on average yields and U.S. crop market year average (MYA) prices as was the guarantee revenue target for ACRE. A 5-year Olympic average is used for yields (removing high and low) of the past 5 years under both ARC-CO and ACRE. ARC-CO uses a 5-year Olympic average (removing

high and low) for price while ACRE used a 2-year average. This means that under ARC-CO as with ACRE, the guarantee moves with the market (increasing when market revenue is increasing and decreasing when market revenue is decreasing).

The guarantee for ARC elected with individual farm coverage option (ARC-IC) is based on average revenues at the farm level. The guarantee for ARC-IC is the farm's individual benchmark revenue based on the 5-year average of the annual benchmark revenues excluding the years with the highest and lowest annual revenues then averaging against all crops on the farm. (Benchmark revenue calculations are described in more detail later in this document.) Under ACRE, producers who elected ACRE agreed to a reduction in direct payments on the farm. The 2014 Farm Bill contains no direct payments.

Under the 2008 Farm Bill, the yield for the State was used to determine the ACRE guarantee. Under the 2014 Farm Bill, the yield for the county is used for ARC-CO. ARC is likely to provide better protection against low yield than ACRE did because producer yields are likely to be better represented by yields in their farm's county than in their State, because of similar growing conditions in the smaller geographic area of a county. Under ACRE, producers agreed to a reduction in a crop's loan rate for marketing assistance loans (MALS) and loan deficiency payments (LDPs); no similar loan rate reduction applies to producers on farms that elect ARC (loan rates for commodities are the same regardless of election).

PLC prices are set in the 2014 Farm Bill for the duration of the 2014 Farm Bill, as was the case with DCP with respect to the 2008 Farm Bill. For PLC, these are called reference prices. PLC makes payments based on historical base acres, although the base

acres of covered commodities under the 2014 Farm Bill may differ from those under the 2008 Farm Bill based on the option owners have to reallocate base acres of covered commodities, upland cotton not being a covered commodity, and the use of generic base acres. (Base acre reallocation is described in more detail later in this document.) Under ARC and PLC, generic base acres planted to a covered commodity will be recognized as base acres of the planted covered commodity in certain instances (without regard to the base acres of that covered commodity that may be on the farm). In other words, when there are generic base acres on a farm and covered commodities are planted or there are eligible subsequently planted crop acreage, the acres planted to the covered commodity or eligible subsequently planted crop acreage that are attributed to the generic base acres become base acres of the covered commodity for the purposes of ARC and PLC, thereby increasing the base acres of that covered commodity on the farm (by virtue of planting covered commodities, or eligible subsequently planted crop acreage on generic base acres) only in the year of planting. As specified in § 1412.45, generic base acres on a farm will be attributed to a covered commodity as follows:

1. If a single covered commodity is planted or is eligible subsequently planted crop acreage and the total planted or eligible subsequently planted crop acreage exceeds the generic base acres on the farm, the generic base acres are attributed to that covered commodity in an amount equal to the total number of generic base acres on the farm.
2. If multiple covered commodities are planted or are eligible subsequently planted crop acreage and the total number of acres planted or eligible subsequently planted crop acreage to all covered commodities on the farm

exceeds the generic base acres on the farm, the generic base acres will be attributed to each of the covered commodities on the farm on a pro rata basis to reflect the ratio of:

- The planted and eligible subsequently planted crop acreage to a covered commodity on the farm; to
  - The total planted and eligible subsequently planted crop acreage to all covered commodities on the farm.
3. If the total number of planted and eligible subsequently planted crop acreage to all covered commodities on the farm does not exceed the generic base acres on the farm, the number of planted and eligible subsequently planted crop acreage to a covered commodity is attributed to that covered commodity.

In the 2014 Farm Bill, there is the one-time program irrevocable election between the ARC and PLC Programs that must be made by all current producers on a farm (current owners who have a share of crops on the farm are included as current producers).

In contrast, under the 2008 Farm Bill, once a farm's producers and owners elected ACRE, the decision was irrevocable from the year of election through the 2012 crop year and an election for only the 2013 crop year was required for the 1-year extension of the 2008 Farm Bill. If ACRE was not elected in a crop year, the producers and owners on the farm could elect ACRE in the next crop year. Under the 2014 Farm Bill, all current producers on a farm are required to affirmatively and unanimously elect PLC or ARC during the single election period, and, if an election is not made, the farm will be ineligible for payments in the 2014 crop year and default to PLC for the 2015 through

2018 crop years. This provision is specified in the 2014 Farm Bill and neither FSA nor CCC has any discretion to specify a different policy for farms that do not have a valid election made during the election period. Farms with producers who do not make a valid election in the election period announced in this rule will not be eligible for 2014 crop year payments.

Under the 2008 Farm Bill, producers were ineligible for payments under the DCP and ACRE if the sum of base acres of covered commodities and peanuts on a farm was 10 acres or less. The 10-acre limitation did not apply to producers on a farm that was at least 50 percent owned by a socially disadvantaged farmer or rancher or a limited resource farmer or rancher. The 2014 Farm Bill likewise has a 10-acre limitation; however, producer payment eligibility on a farm having 10 or less base acres (including generic base acres) is no longer contingent upon the ownership of the farm. Rather, it depends solely on the number of base acres. A producer is not eligible for ARC or PLC payments on a farm having a sum total of 10 or less base acres; however, if that producer is a socially disadvantaged farmer or rancher or a limited resource farmer or rancher, such limitation does not apply.

#### ARC and PLC Decisions Must be Made by Current Owners and Current Producers

This rule includes specific actions that must be made by owners and producers. The timing of enactment of the 2014 Farm Bill and publication of this regulation require FSA to distinguish “current owners” and “current producers” under this rule from “owners” and “producers” as defined in 7 CFR part 718. Many of the actions required under ARC and PLC (updating of planted and considered planted (P&CP) acres,

reallocation of base acres, and yield updates) can only be made by the farm's current owners as of the date of those actions. As is discussed in greater detail below, current producers will be required to unanimously elect ARC or PLC during the specified election period and such election is irrevocable. That election period will be announced in a press release. The terms "current owner" and "current producer" are defined in this rule to mean the person or legal entity who is the owner or producer, as applicable, on the date the action, which is required by this rule, is actually made (during a prescribed period). Defining these terms is a clarification necessary to determine who is included as the relevant owner or producer eligible for the actions required under the ARC and PLC Programs.

Following the election period, enrollment will occur. Producers who were producers in 2014 (2014 producers on the farm) are eligible for 2014 enrollment; 2015 and subsequent crop year producers on a farm are eligible for 2015 and subsequent crop year enrollment. The core principle is that if the producers change from year to year, the producers who were on the farm in a given year are the ones who make the enrollment for that year, even if they are different from last year, and different from the ones who made the election.

## Base Acres

Base acres are a key part of the payment formulas for CTAP, ARC, and PLC. Section 1111 of the 2014 Farm Bill specifies that the base acres in effect under sections 1001 and 1301 of the 2008 Farm Bill (7 U.S.C. 8702 and 8751), as adjusted, as of September 30, 2013, and used for DCP and ACRE constitute the base acres for CTAP,

ARC, and PLC, subject to any reallocation, adjustment, or reduction as specified in Section 1112 of the 2014 Farm Bill. The 2014 Farm Bill requires adjustments to base acres for various reasons including, but not limited to, land no longer being devoted to agricultural uses. The term base acres includes generic base acres, which are the same as upland cotton base acres (upland cotton base acres are used only for CTAP; generic base acres are used in ARC and PLC).

As is discussed in more detail later in this document, ARC has two options, a county option – ARC-CO, and an individual farm option – ARC-IC. Base acres are key to payment eligibility for both programs. For ARC-CO, the benchmark revenue is based on average revenues at the county level for covered commodities; for ARC-IC, the guarantee is based on the average revenue for that specific farm. For ARC-CO, the “payment acres” used to calculate payments are equal to 85 percent of the base acres for a covered commodity; for ARC-IC, “the payment acres” used to calculate payments are equal to 65 percent of base acres on the farm. The farm’s current producers can elect either ARC-CO or PLC on a covered commodity by covered commodity basis. In other words, they do not have to elect ARC-CO or PLC for all of the covered commodities; they can elect ARC-CO for some covered commodities and PLC for others. If the farm’s current producers elect ARC-IC, however, the election applies to all the covered commodities on the farm.

#### ARC and PLC Programs Election

During the election period that will be announced in a press release, all of the current producers on a farm must make an irrevocable, one-time, unanimous election of either of the two following options:

- ARC-CO or PLC on a covered commodity-by-covered commodity basis (the election for each covered commodity on the farm can be for ARC-CO or PLC); or
- ARC-IC for all covered commodities on a farm.

The election made, if valid as prescribed in this rule, will apply to the farm for the 2014 through 2018 crop years. There are consequences of not making a unanimous or timely election. In the absence of a valid election on the farm, producers will be deemed to have elected PLC for all covered commodities on the farm for the 2015 through 2018 crop years and are not eligible for any 2014 crop year payment.

There are several factors that affect payments and therefore, the decision whether to elect ARC, PLC, or both. ARC and PLC are intended to supplement, not replace, regular crop insurance, so ARC payments are capped at 10 percent of the benchmark revenue. The PLC calculation does not include current yields, so if market year prices are above the reference price but current yields are low, no PLC payment would trigger. Both programs are subject to a \$125,000 annual payment limit. That means that the total payments received, directly or indirectly by a person or legal entity (except for a joint venture or general partnership) for any crop year for ARC, PLC, LDPs, and marketing loan gains combined for all commodities except peanuts cannot exceed \$125,000. Peanuts have a separate \$125,000 payment limit for payments received from those same programs. Producers who enroll in PLC also have the option of purchasing Supplemental

Coverage Option (SCO) through the USDA Risk Management Agency (RMA).

Producers of covered commodities on farms that have elected and enrolled under ARC are ineligible for SCO on all ARC commodities. A separate regulation for SCO was published on July 1, 2014 (79 FR 37155-37166).

#### Base Acre Reallocation and Opportunity to Update Records

Current owners of farms will have a one-time opportunity to either retain the farm's 2013 base acres or reallocate base acres (except for cotton base acres, which, as discussed in the next section, become generic base acres for the purposes of ARC and PLC and cannot be reallocated) to reflect actual planting history for 2009 through 2012. Partial reallocations are not allowed; the only choice for reallocation is to reallocate the base acres on the farm to reflect actual planted and considered planted (P&CP) or subsequently planted crop acreage history for 2009-2012. The reallocation cannot increase the total number of base acres on the farm. A current owner can only reallocate base acres based on the actual P&CP or subsequently planted crop acreage history for 2009 through 2012; the owner cannot reallocate base acres to covered commodities that were not P&CP or subsequently planted crop acreage to a covered commodity on the farm in those years, or in proportions other than those reflected in the actual history. For example, if a farm has 100 percent corn base acres, but it planted 50 percent corn and 50 percent soybeans, on average, in 2009 through 2012, it can keep all corn base acres for ARC and PLC, or choose a 50 percent corn and 50 percent soybean reallocation, but it cannot reallocate to other covered commodities or other percentage allocations.

As required by the 2014 Farm Bill, FSA will provide current owners of farms with base acres a one-time opportunity to update planting records, including records of yields. Previously, base acres for DCP and ACRE eligibility were based on historical plantings that dated back several decades in most cases. Actual P&CP and subsequently planted crop acreage in 2009 through 2012 may differ greatly from the history that was the basis for establishment of the base acres. In advance of this reallocation opportunity provided for ARC and PLC, FSA will provide the farm operator and farm owners of record with a summary of the history of all covered commodities for their farm during the 2009 through 2012 crop years (as reported to FSA on acreage reports in each of those years). Acreage not reported to FSA will not be included in the summary. Although farm operators are not eligible to reallocate base acres or update yields unless they are also the owner, FSA will send a copy of this information to the farm operator who may assist the current owner with analyzing this information. Current owners will be provided an opportunity to update the records, provided that there are crop insurance records or other verifiable documentation available to support the updates. Updating the records to provide accurate information on P&CP acreage for covered commodities is independent of the decision whether or not to reallocate – a farm may decide to update the records, but then not reallocate.

Owners that update records should be aware that updating 2009 through 2012 records could adversely impact previously earned payments from other FSA or CCC programs that were conducted in those years based on those records (before any update). If a farm record is updated to reflect a new crop other than the one already recorded, any prior year program benefit under a variety of programs that may have been conducted in

that year may be impacted. If, for example, a farm has recorded soybeans as an initial crop in 2010 and the farm owner updates the record to show that corn was the initial planted crop instead of soybeans, then if an amendment is made to change the previously recorded acreage of soybeans to corn, that change could impact benefits in 2010.

In the event that an update to a farm's records for 2009 through 2012 causes any payment under another FSA or CCC program to become unearned, the overpayment must be refunded to FSA or CCC in accordance with the rules for that program and FSA or CCC's rules governing the overpayment (7 CFR parts 718 and 1403). That would include payments to producers who may not be current owners, payments that were issued to either current or previous owners who were producers at the time those payments were made, as well as other current producers and previous producers.

Persons responsible for refunding any unearned payments will be determined using the rules for the program under which the overpayment was issued as well as either FSA or CCC's debt settlement rules (7 CFR parts 792 or 1403). Current owners are under no obligation to update records, but if they wish to do so, they must do so before reallocating base acres because record updates cannot be made after reallocation.

Once records have been updated, the owner(s) will have the opportunity to reallocate the farm's base acres based on a proration of each covered commodity's P&CP acres in crop years 2009 through 2012 to the total P&CP acres of all covered commodities during that time. As discussed above, the reallocation of the farm's base acres will be based on a proration of each covered commodity's P&CP or subsequently planted crop acreage in crop years 2009 through 2012 to the total P&CP acres and subsequently planted crop acreage of all covered commodities on the farm during that

time. The table provides an example of base acre reallocation for a farm with 500 acres of cropland and shows the relevant information required to see how an owner decided to reallocate the farm's base acres.

**Base Acre Reallocation Example Table**

Crop	2013 Base Acres	2009 P&CP <sup>1</sup>	2010 P&CP	2011 P&CP	2012 P&CP	Average P&CP 2009 through 2012	Reallocation Percentage	2014 Base Acre Reallocation
Wheat .....	200	150	150	150	200	162.5	41.94	167.76
Barley .....	0	50	50	50	50	50	12.9	51.60
Dry Peas	100	200	150	200	150	175	45.16	180.64
Canola .....	100	0	0	0	0	0	0	0
Subtotal .....	400	400	350	400	400	387.5	100	400.00
Upland								
Cotton.....	100	100	50	100	150	N/A	N/A	100
Generic								
Base Acres <sup>2</sup> ..	N/A	N/A	N/A	N/A	N/A	N/A	N/A	100
Total .....	500	400	350	400	400	387.5	100	500

<sup>1</sup>For the purpose of the example shown in this table, P&CP history shown reflects either P&CP or subsequently planted crop acreage.

<sup>2</sup>The 100 upland cotton base acres that were in existence as of September 30, 2013, become generic base acres for the purposes of ARC and PLC and are not included in the reallocation or in the proration of P&CP or subsequently planted crop acreage of each covered commodity to the P&CP or subsequently planted crop acreage of all covered commodities.

In the base acre reallocation example table above, the owner has the following options:

- Retain the 2013 base acres of 200 wheat, 100 dry peas, 100 canola and 100 acres of generic (do not reallocate any acres); or
- Retain 100 acres of generic base acres, and reallocate base acres of covered commodities (based on the farm's P&CP or subsequently planted crop acreage history) to 167.76 wheat base acres (400 total base acres times 41.94 reallocation percentage), 51.6 barley base acres (400 total base acres times 12.9 reallocation percentage), 180.64 dry peas base acres (400 total base acres times 45.16 reallocation percentage). Therefore, the

total base acres are 100 generic base acres and 400 reallocated base acres, for a total of 500 base acres.

### Generic Base Acres

The 2014 Farm Bill does not include upland cotton as a covered commodity for ARC and PLC. Upland cotton base acres that were in existence as of September 30, 2013, are generic base acres for the purposes of ARC and PLC as of October 1, 2013 (fiscal year 2014).

Generic base acres are treated for the purposes of ARC and PLC like other base acres, except that they cannot be reallocated. Generic base acres may:

- Be planted to any crop including covered commodities, fruits, vegetables, minor oilseeds, or other crops;
- Receive payment for the acres planted to a covered commodity
- Be reduced for CRP participation;
- Be reduced when taken out of agriculture production;
- Be reduced on farms having more base acres than available cropland.

As stated in an example above, if generic base acres are planted to a covered commodity or eligible subsequently planted crop acreage, the covered commodity's crop acreage will be treated as base acres for that crop year for ARC and PLC payment calculations.

## Payment Yields

The 2014 Farm Bill specifies that the payment yield for PLC is either the counter-cyclical yield from the previous DCP program, or 90 percent of the farm's average yield from 2008 through 2012 for that commodity. The farm owner must choose which yield applies to the farm. (Note that, as specified in the 2014 Farm Bill, planted acres can be updated, and if that is done, the updated acres will be based on 2009 through 2012 data, while payment yield can be updated, and if done, the updated yields will be based on 2008 through 2012 data.) Therefore, FSA is providing owners of farms an opportunity to update, for each covered commodity on the farm, the payment yield that will be used for calculating PLC. The opportunity to update yields will occur before the election period. A current owner's decision to update yields is independent of subsequent decisions of current producers on that farm as to what program(s) to elect or subsequent enrollment decisions. In other words, a current owner can update yields for PLC and then the current producers on that farm may later elect and enroll in ARC.

If the Secretary at any time designates an oilseed or pulse crop as a covered commodity for PLC and there is not a counter-cyclical yield already established for that commodity, this rule specifies how an equivalent average yield will be established for that type of commodity for the purposes of PLC in section §1412.33.

A press release will announce specific periods for yield updates and it is only during those periods that current owners of a farm can update yields.

**Current Owners Make Yield Updates and Base Acre Reallocation Decisions; Current Producers Elect and Producers Enroll**

As discussed above, current owners are allowed to update acreage records incidental to reallocating base acres and yield updates for a farm. Current producers on the farm elect ARC or PLC or a combination of ARC-CO and PLC. If during the established periods for yield updates or base reallocation which occur before the election period, current owners exercise the option to update yields or reallocate base acres, that yield update and base reallocation will apply to the farm and to any subsequent election unless the yield update or base reallocation is either withdrawn during the yield update or base reallocation period by any current owner, or rescinded, modified, or withdrawn by a current owner on the farm in the established yield update or base reallocation period.

Neither FSA nor CCC is under any obligation to notify owners on a farm if a yield update or base reallocation has been filed, rescinded, modified, or withdrawn during the base reallocation period or yield update period. If a person or legal entity acquires ownership of a farm before the end of the election period and that farm already had an election of ARC or PLC made by current producers, FSA will provide the election status to the new owner on request, but is under no obligation to notify new owners or new producers whether an election has previously been made on that particular farm.

All current producers on a farm must unanimously make the one-time election of ARC or PLC for each covered commodity on the farm. If the current producers on the farm do not make a unanimous election, then the current producers on the farm are deemed to have elected PLC from 2015 through 2018. Although the 2014 Farm Bill provides that the current producers on the farm are deemed to have elected PLC

commencing with the 2015 crop year, for administrative purposes, the farm will be deemed to have elected PLC commencing with the 2014 crop year. Nevertheless, per the 2014 Farm Bill, the farm is not eligible for any 2014 payments. To deem such election to occur commencing with the 2014 crop year serves to resolve any potential ambiguity with respect to eligibility for SCO.

Election is not enrollment. In order to be eligible for payments, producers on the farm must annually enroll their respective share interest of base acres or interest of covered commodities. Only producers that annually enroll are eligible to receive payments. The role of owners versus the roles for producers is specified in the 2014 Farm Bill; FSA does not have discretion to do otherwise for these actions.

### PLC Payment Calculations

As noted above, PLC makes a payment when the “effective price” for a covered crop is less than its “reference price” specified in the 2014 Farm Bill. The reference prices are already specified in 7 CFR part 1412. The “effective price” is the higher of the national average market price received by producers during the 12 month marketing year for that covered commodity, or the national average loan rate (the MAL rate) for that crop year. The reference price for each covered commodity is set through 2018 and does not change from year to year.

As authorized by the 2014 Farm Bill and as specified in 7 CFR part 1412, temperate japonica rice will have a separate reference price set by USDA for high altitude or high latitude areas versus other areas of the United States where rice is grown. The Secretary has determined that the applicable high altitude or high latitude areas of the

United States for which this applies is California. Therefore, this rule specifies a separate reference price for temperate japonica rice in § 1412.52.

Since neither the effective price nor the reference price is based on the price the individual producer receives, the producer does not need to provide FSA any price or yield data to qualify for PLC payment.

As specified in the 2014 Farm Bill, payments for a given crop year will be made after October 1 of the following year. So, for example, 2014 crop year payments will be made after October 1, 2015. The 2015 crop year payments will be made after October 1, 2016.

An example of a PLC payment calculation using the corn reference price is as follows:

PLC Example Corn	
Reference price .....	\$3.70/bu.
Effective price.....	\$3.55/bu.
Payment rate (reference price minus effective price) .....	\$0.15/bu.
Payment yield.....	150 bu./acre
Base acres (including any corn planted and attributed to generic base acres).....	100
Payment (payment rate times payment yield times 85 percent of base acres).....	$\begin{aligned} & \$0.15 \times 150 \text{ bu.} \times \\ & 85 \text{ percent} = \\ & \$1,913 \end{aligned}$

As noted above, the payment is based on a reference price (\$3.70/bu.) and payment yield (150 bu./acre). In the example above, the producer would receive a payment of \$1,913 for 100 base acres of corn (\$3.70/bu. reference price minus \$3.55/bu. effective price = \$0.15 payment rate times 85 percent of the 100 corn base acres times the 150 bushels per acre payment yield. Corn base acres are always included for payment, even if the corn base acres were planted to another covered commodity. Corn planted or

eligible subsequently planted crop acreage that is attributed to generic base acres become corn base acres for PLC payment purposes. Therefore, PLC payment is made on corn base acres and not necessarily corn planted on the farm. In the above example, the number of corn base acres attributed from generic base acres is not broken out or specified.

### ARC Payment Calculations

ARC is a revenue-based program that is designed to cover a portion of a farmer's out-of-pocket loss when crop revenues fall below the guarantee, with the benchmark revenue based on either county level historic revenue for ARC-CO or the individual farm's historic revenue for ARC-IC. For both PLC and ARC-CO, the payment calculation is based on base acres including any base acres attributed to a covered commodity from generic base acres based on P&CP or eligible subsequently planted crop acreage.

Under ARC-CO, payments are triggered when actual county crop revenue of a covered commodity is less than the ARC-CO guarantee for the covered commodity. Since payment is not based on the revenue or yield of the individual farm, the producer does not need to provide FSA any additional price or yield data to qualify for ARC-CO payment. The data used in the calculation is national data for prices and county data for yields, not individual farm data. The ARC-CO guarantee is 86 percent of the crop's benchmark revenue. Under ARC-CO, benchmark revenue is calculated by multiplying the 5-year average county yield, excluding the years with the highest and lowest yields (the ARC-CO guaranteed yield) times the previous 5-year MYA price, excluding years

with the highest and lowest prices. The ARC-CO payment for a covered commodity is 85 percent of the farm's base acres of the covered commodity times the difference between the county guarantee and the actual county revenue for the covered commodity.

The ARC-CO payment cannot exceed 10 percent of the county benchmark revenue (the ARC-CO guaranteed price times the ARC-CO average historical benchmark yield). An example of an ARC-CO payment calculation using estimated 2014 soybean prices and yields is as follows:

ARC-CO Payment Calculation Example Soybeans	
2014 MYA price (estimate only) .....	\$9.65/bu.
2014 Actual average county yield (bu./acre) .....	56
Benchmark revenue (average historical county yield x average MYA for 2009 through 2013).....	\$670
Base acres (including any generic base acres attributed to soybeans).....	100
2014 Actual crop revenue (2014 MYA times 2014 actual county yield).....	\$540
ARC-CO guarantee (86 percent times benchmark revenue) .....	\$575
Maximum payment (benchmark revenue times 10 percent).....	\$67
Payment rate (ARC-CO guarantee of \$575 minus actual crop revenue of \$540, not to exceed maximum payment of \$67).....	\$35
Payment (payment rate of \$35 times 85 percent of 100 base acres).....	\$2,975

Under ARC-IC, payments are triggered when the actual crop revenue, averaged across all covered commodities planted or eligible subsequently planted crop acreage on the ARC-IC farm, is less than ARC-IC guarantee, averaged across those covered commodities planted or eligible subsequently planted crop acreage on the farm. The farm for ARC-IC purposes is the sum of all of that producer's interests in all ARC-IC farms in the State, meaning that if a producer has an interest in multiple farms that have elected and enrolled in ARC-IC, the ARC-IC benchmark revenue for that producer will be a weighted average of the benchmark revenue for all of those farms. The farm's ARC-IC guarantee equals 86 percent of the farm's individual benchmark revenue (5-year average

of the annual benchmark revenues), excluding the years with the highest and lowest annual benchmark revenues, then averaging across all covered commodities planted or eligible subsequently planted crop acreage on the farm. The actual revenue is similarly computed, with both the guarantee and actual revenue computed using planted acreage on the farm. The ARC-IC payment equals 65 percent of the sum of the base acres of all covered commodities on the farm, times the difference between the individual guarantee revenue and the actual individual crop revenue across all covered commodities planted or eligible subsequently planted crop acreage on the farm. Payments cannot exceed 10 percent of the individual's benchmark revenue. Since the payment is based on yields for that individual farm, the producers enrolled in ARC-IC elected farms must report acreage and yield data to qualify for payment. Producers of covered commodities enrolled in ARC-IC elected farms must, as a condition of payment eligibility, file a report of production by the crop reporting date the immediate year after the production and contract year. The failure to report production will render the producers sharing in any of the covered commodities on that farm ineligible for payments on all ARC-IC elected and enrolled farms for which the producer has an interest in covered commodities in the State.

In the case of a total prevented planting situation, USDA has made a discretionary decision to calculate ARC-IC payments as if the producer had planted some acreage to each covered commodity on the farm. The reason for this decision is as follows: If a producer who has elected ARC-IC has all of their acreage prevented from being planted across their entire farm for a crop year, the ARC-IC calculation without this planting provision would result in a zero payment, an unintended result. The purpose of ARC-IC is to provide a safety net payment to a producer based on the individual's actual farm

revenue. To preclude any payment if the producer suffered a complete prevented planting on all of the farm's acreage in which the producer has an interest would defeat the safety net purposes of ARC, particularly when compared to the theoretical example of a producer who suffered an almost complete prevented planting, which would trigger a payment. Therefore, if a producer has all prevented planted acreage across all acres of their farm, FSA will deem sufficient acres as being planted for each covered commodity in proportion to the approved prevented planted acreage of covered commodities on the farm to trigger an ARC-IC payment. This is being done within the Secretary's general discretion to operate the ARC program, as it is reasonably related to the purposes of ARC.

An example of an ARC-IC payment calculation is shown in the following table:

ARC-IC Payment Calculation Example	
Corn and Soybeans – 100 base acres	
60 acres planted with corn and 40 acres planted with soybeans	
Benchmark revenue corn*	\$826
Benchmark revenue soybean	\$687
Benchmark revenue total for the farm ((0.6 x \$826) + (0.4 x \$687))	\$770
Guarantee (86 percent of total benchmark revenue)	\$662
Actual revenue (2014 MYA price of each commodity times each commodity's actual yield times ratio of planted covered commodity to farm's base acres 0.6 corn and 0.4 soybeans – in this case (0.6 x \$702) + (0.4 x \$540))	\$637
Payment rate (difference between guarantee and actual revenue)	\$25
Maximum payment (10 percent of benchmark revenue of \$770)	\$77
Payment rate (ARC-IC Guarantee minus Actual Crop Revenue; adjusted, if needed to not exceed maximum payment)	\$25
Payment (payment rate times 65 percent of total base acres)	\$1,625

\*The benchmark revenue numbers are calculated as the 5-year Olympic average of the annual revenue for the farm, excluding the high and low years.

#### Election of ARC and PLC

The specified period in which producers may elect ARC or PLC will be announced in a press release. Current producers, as defined in this rule, will make the

election. The election will be based on the farm structure that is in effect as of September 30, 2014. Reconstitutions of farms initiated after August 1, 2014 will not be considered by FSA until after the election period has ended. The election of ARC and PLC for a farm will apply to that farm in all years 2014 through 2018 and, in the case of that farm being reconstituted, the farms resulting from that reconstitution. Neither the requesting of a farm reconstitution nor the reconstitution of any farm will change either the requirement that all current producers on a farm must unanimously agree to the irrevocable election during the election period or that a valid election was made by those current producers.

If no election is made, or if all producers on the farm cannot unanimously agree, the farm will default to a PLC election, and producers on that farm will not be eligible for 2014 crop year payments (even if the farm is enrolled in 2014 PLC). During the election period, all current producers on a farm must unanimously make the irrevocable election as discussed in this rule in order to preserve the payment eligibility of all producers on the farm for 2014. If a valid election is made by all current producers on a farm during the election period, that election will be recognized as valid for the farm in the 2014 through 2018 crop years unless that election is rescinded or terminated by any current producer on the farm during the election period, or unless the valid election is modified and replaced by another valid election by all current producers during the election period. At any time during the election period, a current producer can rescind an election or terminate an election by providing FSA with written notice of the current producer's withdrawing from the election or by providing written notice to FSA requesting to have the election rescinded.

If a producer acquires an interest in a farm on or after a valid election has been made in the election period by all of a farm's current producers, that producer will be subject to any previously valid election made in the election period unless that producer changes the election during the remaining time in the election period by either withdrawing the election or getting all of the producers to agree to the new election in writing. While FSA will respond to inquiries submitted by such producers, neither FSA nor CCC has any obligation to notify owners or producers of whether or not a valid election exists or is in place or whether a producer has rescinded or terminated a previously made valid election. Additionally, neither FSA nor CCC have any role or responsibility of advising any producers on a farm of who all the farm's current producers are in the election period. The identity of all current producers for a farm may only be known to each of the current producers and that information may or may not be on file with FSA during the election period. It is the responsibility of the current producers on a farm to ensure that a valid election is made in the prescribed election period.

The election itself, its irrevocability, and the requirement that the election be made unanimously by all the current producers on a farm are required by the 2014 Farm Bill and neither FSA nor CCC has any discretion to waive these requirements. Additionally, election does not result in enrollment in ARC or PLC. Current producers on farms that have made a valid election (and those that have not completed an election and producers who might want to participate in PLC for the 2015 and subsequent crop years) must still annually enroll the farm with that election (or default election) in order to be eligible for ARC and PLC payments on farms in those crop years, as applicable.

The election made is important-it affects eligibility for some forms of crop insurance. Specifically, section 11003 of the 2014 Farm Bill amends the Federal Crop Insurance Act (7 U.S.C. 1508(c)) to authorize SCO. SCO covers a portion of the deductible for regular crop insurance on either a yield or revenue basis. As with other forms of crop insurance offered through RMA, SCO premiums are subsidized, and no payment limit or AGI limit applies. Additional details regarding SCO and benefits available under SCO can be obtained from an approved insurance provider. SCO coverage is available for crops subject to a PLC election. Producers of covered commodities on farms with a valid ARC election and enrollment, as well as acres that are enrolled in the stacked income protection plan for cotton under section 508B of the Federal Crop Insurance Act (7 U.S.C. 1508b), are not eligible for SCO coverage.

**Sharing ARC and PLC Payments on Enrolled Farms Between Producers on a Farm**

FSA will determine eligibility for shared payments similarly to how FSA made those determinations for DCP and ACRE. Each eligible producer on a farm will be given the opportunity to enroll and receive payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the FSA county committee. Each producer leasing a farm is required to provide a copy of their written lease to the county committee and, in the absence of a written lease, is required to provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease, to the satisfaction of the county committee in order to make any determinations necessary under these programs.

An owner's or landlord's signature, as applicable, affirming a zero owner or landlord share on a contract may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by FSA. This would allow the producer with the cash lease to claim 100 percent of any payments made, assuming all eligibility requirements and other conditions have been met. Such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, is required to be entered on the contract by June 1, 2015, for the 2014 and 2015 contract year and for subsequent crop years, June 1 of each subsequent year.

#### Deadlines for ARC and PLC Actions

After the conclusion of the election period, the enrollment period begins. Starting with the 2015 crop year, the enrollment period ends June 1 of the relevant crop year. This means that enrollment of farms for the 2015 crop year will occur at the same time as the 2014 crop year enrollment.

The contract year is based on the fiscal year, October 1 to September 30 of each year, with the enrollment period occurring in the middle of the contract year. For 2014, the producer will enroll by June 1, 2015, for a retroactive contract that ends September 30, 2014. For each subsequent year, the June 1 enrollment deadline will be for a contract that began on October 1 of the previous year. For example, the producer must enroll by June 1, 2015 to be eligible to receive payments for a 2015 contract that runs from October 1, 2014 to September 30, 2015.

The June 1 enrollment deadline is consistent with the deadline for similar types of programs since 2002. The June 1 date is also in advance of compliance activities that are

required to occur for the crop year (acreage and production reporting), and the final date for seeking reconstitution of farms. After the one-time election period ends, in each crop year or program year the producers on the farm in that crop year or program year may choose whether or not to enroll the farm.

When a farm's base acres are leased on a share basis, neither the landlord nor the tenant will receive 100 percent of payments for the farm. FSA will approve an ARC and PLC contract and approve the division of payment when all the following, as applicable, occur or have been determined to have occurred:

- Landlords, tenants, and sharecroppers sign the application and agree to the payment shares shown;
- FSA determines that the interests of tenants and sharecroppers are being protected; and
- FSA determines that the payment shares do not circumvent either the provisions of this rule or the payment limitation provisions of 7 CFR part 1400.

The general order of activities associated with participation in ARC and PLC is:

- Current owner updates P&CP acres and subsequently planted crop acreage and reallocation of base acres during acreage update and reallocation periods;
- Current owner updates PLC yield during yield update period;
- Current producers unanimously make ARC and PLC election during the election period; and
- Producers enroll the farm during enrollment periods.

The following table provides a summary of deadlines for ARC and PLC.

Activity	Deadline
2014 acreage reports by 2014 operator or producers on farm .....	Not later than July 15, 2014, for covered commodities. For all other cropland on the farm, the acreage reporting date for the crop or crops in the State (NOTE: This deadline is unchanged by this rule.)
Update acreage history.....	To be announced in a press release.
PLC yield update.....	To be announced in a press release.
Base acres reallocation.....	To be announced in a press release.
Election of ARC and PLC by current producers on farms in election period.....	To be announced in a press release.
2014 contract year enrollment by 2014 producers on farms and 2015 contract enrollment by 2015 producers on farms .....	June 1, 2015
2014 production report of covered commodities by ARC-IC producers .....	July 15, 2015
2015 and subsequent crop year acreage reports by 2015 and subsequent operator or producers on farm .....	Not later than July 15 for covered commodities. For all other cropland on the farm, the acreage reporting date for the crop or crops in the State
2016 and subsequent years contract enrollment by 2016 and subsequent year producers.....	June 1 of applicable program year
2015 and subsequent year production report of covered commodities by ARC-IC producers.....	July 15 of the year following the program year (for example, the 2015 production report is due July 15, 2016)

#### General Provisions that Apply to ARC and PLC

As noted above, the rule published on August 8, 2014, to implement the CTAP program implemented some general provisions that also apply to ARC and PLC. The regulations in 7 CFR part 1412 specify certain requirements to which the participant must agree to be eligible for payments. One such requirement is to effectively control noxious

weeds and otherwise maintain the land in accordance with sound agricultural practices. Since that rule was published, the Secretary has determined to amend the applicable regulations to remove P&CP acreage and specify that only planted and eligible subsequently planted crop acreage of covered commodities will attribute generic base acres to covered commodities.

Base acres for covered commodities for ARC and PLC will be reduced for cropland that is on land that has been subdivided and developed for multiple residential units or other non-farming uses if the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use. The regulation for the reductions in base acres is already in 7 CFR 1412.24, and was implemented through the CTAP final rule.

ARC and PLC have provisions for planting flexibility and reductions for plantings of fruits, vegetables, and wild rice on base acres. These reductions are already specified in 7 CFR part 1412.

Common provisions in 7 CFR part 718 that apply to all FSA and CCC programs, including those for base acres and farm reconstitutions, apply to CTAP and ARC and PLC.

#### Miscellaneous

As specified in the 2014 Farm Bill and in 7 CFR part 1400, payment limits and average adjusted gross income (AGI) limits apply to ARC and PLC. A person or legal

entity is ineligible for payments if the person's or legal entity's AGI for the applicable ARC and PLC contract or AGI compliance program year exceeds \$900,000.

Producers eligible for ARC and PLC are required to be a person or legal entity who is actively engaged in farming and otherwise eligible for payment, as specified in 7 CFR part 1400; and who complies with other general program eligibility requirements including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions specified in 7 CFR part 12.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

Neither crop insurance nor coverage under noninsured crop disaster assistance program is required as a condition of eligibility for ARC or PLC. Additionally, ARC and PLC benefits are not subject to the multiple benefit exclusion provisions of the catastrophic plan of insurance or noninsured crop disaster assistance.

#### FSA Notifications of General 2014 Farm Bill Information for FSA Programs and ARC and PLC Provisions

The following provides information regarding the notifications FSA made to ensure that farm owners are aware of the provisions of the 2014 Farm Bill and that participants have all applicable information available on record at FSA to assist them in making participation elections. (NOTE: The FSA notices are available on FSA's public website.)

Date	FSA action
March 11, 2014 .....	Issued a 2014 Farm Bill Fact Sheet discussing what is in the 2014 Farm Bill for Farm Service Agency customers.
March 28, 2014 .....	Published an extension of authorization rule in the <u>Federal Register</u> (79 FR 17388-17390) regarding Continuation of Certain Benefit and Loan Programs, Acreage Reporting, Average Adjusted Gross Income, and Payment Limit.
April 7, 2014 .....	Issued FSA Notice ARCPLC-1 to FSA State and county offices discussing Fruits and Vegetables and Wild Rice (FAV) provisions for 2014 through 2018 crop years.
April 7, 2014 .....	Issued FSA Notice ARCPLC-2 to FSA State and county offices regarding establishing FAV and Wild Rice (WR) double-cropping regions.
May 23, 2014 ..	Issued FSA Notice ARCPLC-4 to FSA State and county office regarding 2014 Farm Bill information regarding ARC and PLC.
May 29, 2014 ..	Issued a press release concerning \$6 million award for educational efforts to prepare farmers for new ARC and PLC programs.
May 29, 2014 ..	FSA posted ARC and PLC information and several links to: <a href="http://fsa.usda.gov/FSA/webapp?area=home&amp;subject=arpl&amp;topic=landing">http://fsa.usda.gov/FSA/webapp?area=home&amp;subject=arpl&amp;topic=landing</a>
June 18, 2014 ..	Issued FSA Notice ARCPLC-5 to FSA State and county office regarding ARC and PLC P&CP and subsequently planted crop acreage history update.
July 18, 2014 ..	Issued FSA Notice ARCPLC-6 to FSA State and county office regarding maintaining base acres.
September 25, 2014 .....	FSA issues a document entitled ARC and PLC Backgrounder and makes the document available in FSA service centers and on the FSA public website.
August 8, 2014	Published the final rule implementing CTAP and announced some general ARC and PLC provisions.
<b>[Insert date of publication of this rule in the <u>FEDERAL REGISTER</u>]</b> ..	This rule specifies the implementing regulations for ARC and PLC.

## Structure of the Regulation

This rule revises 7 CFR part 1412 to add the specific requirements for ARC and PLC. Subpart A covers general administration; subpart B cover base acres; subpart C covers yields and production for ARC and PLC; subpart D covers ARC and PLC contract terms and enrollment provisions; subpart E covers financial considerations including

sharing payments; subpart F covers violations; subpart G covers PLC and ARC election; and subpart H covers CTAP. This rule amends subparts A, B, D, and E, and adds subparts C and G.

This rule also makes minor clarifications and amendments to 7 CFR part 718 to clarify how FSA determines a farm's administrative county, how and when a farm's administrative county can, or needs to, be changed, and a producer's options regarding the selection of an administrative county. The rule also amends farm reconstitution provisions in part 718 to remove references to obsolete programs, clarifies the deadline for initiating farm reconstitutions, and provides the effective date of farms that are reconstituted. These amendments and clarifications, which are not required by the 2014 Farm Bill, will help to ensure that ARC and PLC are implemented effectively. This rule also moves some terms and definitions from part 1416 to part 718 because those terms and definitions are used in multiple programs, including ARC and PLC.

#### Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553

and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

#### Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register. This rule allows FSA to provide adequate notice to producers about the new ARC and PLC regulation so they will have time to update base acres and yields and make the required election before the enrollment period for ARC and PLC in spring 2015. Therefore, to begin providing benefits to producers in a timely fashion, this final rule is effective when published in the Federal Register.

#### Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. This regulatory action is being taken to implement a major budgetary program required by the 2014 Farm Bill. Consistent with OMB guidance, this type of action is considered a budgetary transfer representing a payment from taxpayers to program beneficiaries unrelated to the provision of any goods or services in exchange for the payment. As such, the benefits and payments to those who receive such a transfer are matched by the costs borne by taxpayers. The estimated transfer payments for ARC and PLC provided by this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

### Cost Benefit Analysis Summary

ARC and PLC payments are estimated to total \$28.6 billion for crop years 2014 through 2018 based on supply, demand and price conditions as of May, 2014. Nearly all producers on farms with base acres are expected to participate in PLC or ARC or both. Annual payments are projected at \$0.8 billion for crop year 2014, \$10.1 billion for crop year 2015, \$10.9 billion for crop year 2016, \$3.9 billion for crop year 2017, and \$2.9 billion for 2018.

## Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because neither FSA nor CCC is required by any law to publish a proposed rule for public comment for this rulemaking initiative.

## Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). While ARC and PLC are new, their creation is mandated by the 2014 FB, and is therefore not subject to review under NEPA. The legislative intent for creating these new programs is to provide revenue support to the same group of producers eligible for the earlier and now-discontinued programs, DCP and ACRE. The discretionary provisions defined by FSA for ARC and PLC were administrative clarifications of the mandatory elements and FSA determined that they would not alter any environmental impacts resulting from implementing the mandatory programs. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory

action.

#### Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule has retroactive effect in that the contracts will include a retroactive period. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

## Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

## Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in Section 808 of SBREFA be used in implementing the changes required by Title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of

the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation ARC and PLC as required by the 2014 Farm Bill. The regulation needs to be effective to provide adequate time for producers to update base acres and yields in preparation for enrollment in spring 2015. Therefore, this rule is effective when published in the Federal Register.

#### Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.112 - Price Loss Coverage

10.113 - Agriculture Risk Coverage

10.114 - Cotton Transition Assistance Program

#### Paperwork Reduction Act of 1995

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in subsection 1601(c)(2)(B) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

#### E-Government Act Compliance

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased

opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects

##### 7 CFR Part 718

Acreage allotments, Drug traffic control, Loan programs-agriculture, Marketing quotas, Price support programs, Reporting and recordkeeping requirements.

##### 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

##### 7 CFR Part 1416

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC and FSA amend 7 CFR parts 718, 1412, and 1416 as follows:

#### **PART 718 -- PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS**

1. Revise the authority citation to read as follows:

Authority: 7 U.S.C. 1501-1531, 1921-2008v, 7201-7334, and 15 U.S.C. 714b.

#### **Subpart A – General Provisions**

2. In § 718.2, add definitions in alphabetical order for “limited resource farmer or rancher” and “socially disadvantaged farmer or rancher” to read as follows:

**§ 718.2 Definitions.**

\* \* \* \*

Limited resource farmer or rancher means a farmer or rancher who is both of the following:

(1) A person whose direct or indirect gross farm sales do not exceed \$176,800 (2014 program year) in each of the 2 calendar years that precede the most immediately preceding complete taxable year before the relevant program year that corresponds to the relevant program year (for example, for the 2014 program year, the two years would be 2011 and 2012), adjusted upwards in later years for any general inflation; and

(2) A person whose total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1) of this definition. (Limited resource farmer or rancher status can be determined using a website available through the Limited Resource Farmer and Rancher Online Self Determination Tool through National Resource and Conservation Service at <http://www.lrftool.sc.egov.usda.gov/.>)

\* \* \* \*

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

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

\* \* \* \*

3. Revise § 718.8 to read as follows:

**§ 718.8 Administrative county.**

- (a) If all land on the farm is physically located in one county, the farm will be administratively located in that county, except as provided in the rest of this section.
- (b) In cases where there is no FSA office in the county in which the farm is physically located or FSA county offices have been consolidated, the farm will be administratively located in a county contiguous to the physical county in the same State that is most convenient for the farm operator and owner.
- (c) If a county contiguous to the county in which the farm is physically located in the same State does not have an FSA county office, the farm will be administratively located in a contiguous county in another contiguous State that is convenient to the farm operator and owner. Requests for changes made to administrative county under this paragraph must be made to FSA by August 1 of each year for the change to take effect that calendar year.
- (d) When land on the farm is physically located in more than one county, the farm will be administered in one county office responsible for administration of programs

for one or more of the physical counties involved in the farm's constitution as determined by FSA. Paragraph (b) or (c) of this section apply if changes occur to that administrative county.

(e) The operator and owner of a farm administered in any county can request a change of administrative county to another county in the same State by August 1 for the change to take effect that calendar year. Requests for change in administrative county will be reviewed and approved by COC if all the following can be determined to apply:

(1) The requested change does not impact the constitution of a farm; and  
(2) The requested change will not result in increased program eligibility or additional benefits for the farm's producers that would not be earned absent the change in administrative county being made.

(f) The change is not to circumvent any of the provisions of other program regulations to which this part applies.

(g) The State committee will submit all requests for exceptions from regulations specified in this section to the Deputy Administrator.

4. Revise § 718.204 to read as follows:

**§ 718.204 Reconstitution of base acres.**

(a) Farms will be reconstituted in accordance with this subpart when it is determined that the land areas are not properly constituted and, to the extent practicable as determined by county committee, the reconstitution will be based on the facts and conditions existing at the time the change requiring the reconstitution occurred.

(b) Reconstitutions will be effective for the calendar year if initiated by August 1 of that year. Any reconstitution initiated after August 1 will not be effective for that year; it will be effective for the subsequent year.

(c) The Deputy Administrator may approve an exception to permit a reconstitution initiated after August 1 to be effective for the same year, if FSA determines that the failure is due to administrative problems as determined by FSA at the local or national level. Producers have no right to seek an exception under this paragraph. When such situations exist, FSA will establish procedures under which reconstitutions will be accepted.

## **PART 1412 –AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS**

Authority: 7 U.S.C. 1508b, 7911-7912, 7916, 8702, 8711-8712, 8751-8752, and 15 U.S.C. 714b and 714c.

### **Subpart A—General Provisions**

5. Amend § 1412.3 as follows:

a. Add definitions in alphabetical order for “2014 farm structure”, “actual average county yield”, “actual crop revenue”, “ARC guarantee”, “ARC-IC farm”, “average historical county yield”, “benchmark revenue for ARC-CO”, “benchmark revenue for ARC-IC”, “current owner”, “current producer”, “effective price”, “farm structure”, “marketing year”, “market year average (MYA) price”, “national average loan rate”, and “transitional yield”; and

b. In the definition of “base acres”, remove the term “P&CP” and add the word “planted” in its place.

The additions read as follows:

### **§ 1412.3 Definitions.**

\* \* \* \*

2014 farm structure means the farm as it was last constituted effective as of September 30, 2014.

Actual average county yield is calculated as the crop year production of a covered commodity in the county divided by the commodity's total planted acres for a crop year in the county, as determined by FSA. Separate irrigated and non-irrigated yields will be established in a county having a sufficient number of farms with P&CP acreage history of a covered commodity in 2009 through 2012, as determined by FSA. These separate yields will only be established where at least an average of 25 percent of a covered commodity's P&CP acreage was irrigated in 2009 through 2012 and at least an average of 25 percent of the same covered commodity's P&CP acreage in that county was non-irrigated in 2009 through 2012.

Actual crop revenue is calculated as follows for:

- (1) ARC-CO, for a crop year of a covered commodity: the actual average county yield per planted acre of the covered commodity times the higher of either the market year average (MYA) price of the covered commodity or the national average loan rate for the covered commodity.
- (2) ARC-IC, for a producer on a farm for a crop year, which is based on the producer's enrolled share of planted acres of all covered commodities on all farms for which ARC-IC has been elected and in which the producer has an interest for which the producer enrolled: the sum of the results of the following calculation for each covered commodity on the farm:

- (i) The total production of the covered commodity for all farms in the State in which the producer has an interest; times
- (ii) The higher of either the MYA price or national loan rate for the covered commodity; divided by
- (iii) The producer's share of the planted acres of the covered commodity in the State.

\* \* \* \*

ARC guarantee is calculated for a crop year for a covered commodity, and is equal to 86 percent of the benchmark revenue for ARC-CO and 86 percent of the benchmark revenue for ARC-IC, as defined in this part.

\* \* \* \*

ARC-IC farm is calculated as the sum of the producer's interests in all of the producer's farms having an ARC-IC election and enrollment in the State.

Average historical county yield means the 5-year Olympic average of actual average county yields for the most recent 5 years (substituting 70 percent of the county transitional yield as defined in this part in each year where the actual average county yield is less than 70 percent of the county transitional yield). Separate irrigated and non-irrigated yields will be established in a county having a sufficient number of farms with P&CP acreage history of a covered commodity in 2009 through 2012, as determined by FSA. These separate yields will only be established where at least an average of 25 percent of a covered commodity's P&CP acreage was irrigated in 2009 through 2012 and at least an average of 25 percent of the same covered commodity's P&CP acreage in that county was non-irrigated in 2009 through 2012.

\* \* \* \*

Benchmark revenue for ARC-CO is calculated as the product obtained by multiplying the average historical county yield times the MYA price for the most recent 5 crop years, excluding each of the crop years with the highest and lowest prices and substituting the reference price in each year where the MYA price is less than the reference price.

Benchmark revenue for ARC-IC means a producer's share of all covered commodities planted on all farms in the State for which individual ARC has been elected and enrolled and in which the producer has an interest. FSA will calculate the benchmark revenue for ARC-IC using the following three steps, based on the producer's planted commodities:

- (1) For each covered commodity for each of the most recent 5 crop years:
  - (i) Yield per planted acre (substituting 70 percent of the county transitional yield in each year where the yield per planted acre is less than 70 percent of the county transitional yield); times
  - (ii) The MYA price for the most recent 5 crop years, excluding each of the crop years with the highest and lowest prices and substituting the reference price in each year where the MYA price is less than the reference price.
- (2) For each covered commodity, the average of the revenues determined under paragraph (1) of this definition for the most recent 5 crop years, excluding each of the crop years with the highest and lowest revenues; and
- (3) For each of the 2014 through 2018 crop years, the benchmark revenue for the ARC-IC farm is the sum of the amounts determined under paragraph (2) of this definition

for all covered commodities on such farms, adjusted to reflect the ratio between the total number of P&CP acres and eligible subsequently planted crop acreage on such farms to a covered commodity and the total P&CP acres and eligible subsequently planted crop acreage of all covered commodities planted on such farms. If a producer has an interest in multiple farms that have enrolled in ARC-IC, the ARC-IC benchmark revenue for that producer will be a weighted average of the benchmark revenue for those multiple farms.

\* \* \* \*

Current owner means the person or legal entity meeting the definition of owner in 7 CFR part 718 on the day that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of a “current owner” is required under this part, the person or legal entity must be an owner on the day the person or legal entity is signing the form or performing the action required under this part.

Current producer means the person or legal entity meeting the definition of producer in 7 CFR part 718 on the day that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of a “current producer” is required under this part, the person or legal entity must be a producer on the day the person or legal entity is signing the form or performing the action required under this part.

\* \* \* \*

Effective price is, the higher of the—

(1) National average market price received by producers during the 12-month marketing year for the covered commodity (also known as the MYA price), as determined by FSA; or

(2) National average loan rate as defined in this part for the covered commodity in effect for the crop year, which is the same as the loan rate for a marketing assistance loan for the commodity for that crop year.

\* \* \* \*

Farm structure means the constitution of the farm. References to “farm structure” can be by date or crop year. When references to farm structure are by crop year, that means the farm as was last constituted as specified in 7 CFR part 718 subpart C in that crop year.

\* \* \* \*

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 through May 31;
- (2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1 through June 30;
- (3) Peanuts and rice: August 1 through July 31; and
- (4) Corn, grain sorghum, soybeans, sunflowers, safflower, mustard, crambe, sesame, and chickpeas: September 1 through August 31.

Market year average (MYA) price means the national average price received by producers during the 12-month marketing year (as defined in this part), as determined by FSA for the relevant crop of the covered commodity.

\* \* \* \*

National average loan rate means the loan rate established for a crop year of the covered commodity as specified in 7 CFR part 1421.

\* \* \* \*

Transitional yield means the yield determined according to section 502(b) of the Federal Crop Insurance Act (7 U.S.C. 1502(b)).

\* \* \* \*

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

6. Add § 1412.25 to read as follows:

**§ 1412.25 Reallocation of base acres on a farm and updating of records.**

(a) Any or all of the current owners of a farm with base acres of covered commodities as of September 30, 2013, as adjusted, will have a one-time opportunity in a reallocation period as announced by FSA to:

(1) Reallocate the farm's base acres of covered commodities (upland cotton is not a covered commodity) based on P&CP and subsequently planted crop acreage as specified in this section; or

(2) Retain the farm's base acres as of September 30, 2013.

(b) Under no circumstances will reallocation of base acres of covered commodities on a farm as specified in paragraph (a) of this section result in any increase in total base acres on a farm. Additionally, if any current owner submits a written conflicting reallocation request or expresses written disagreement with a reallocation filed in according to paragraph (a), no reallocations will be approved for the farm unless all the current owners of the farm provide CCC with written evidence of the dispute resolution during the reallocation period.

(c) FSA will provide the farm operator and owners of record with a summary of all covered commodities P&CP acres and subsequently planted crop acreage for the 2009

through 2012 crop years (as reported to FSA on acreage reports filed with FSA in each of those years). Acreage not reported to FSA by producers will not be included in the summary. The summary will reflect the 2014 farm structure.

(d) Current owners will be provided a one-time opportunity to update the records identified in paragraph (c) of this section during the reallocation period specified in paragraph (a) of this section, provided that there are crop insurance records (or other verifiable documentation available to support those requested updates). In the event that an update to a farm's P&CP acres of a covered commodity for 2009 through 2012 causes any payment under another FSA or CCC program to become unearned, the overpayment must be refunded to FSA or CCC in accordance with the rules for that program and the FSA or CCC regulations governing overpayment (7 CFR parts 718 and 1403).

(e) After an update as specified in paragraph (d) of this section, the owner may redistribute the farm's base acres during the reallocation period, based on a proration of each covered commodity's P&CP acres or subsequently planted crop acreage in crop years 2009 through 2012 to the total P&CP acres or subsequently planted crop acreage of all covered commodities during that time.

(f) Upland cotton base acres that were in existence as of September 30, 2013, are considered generic base acres for the purposes of ARC and PLC. Generic base acres cannot be reallocated to a covered commodity, but will be eligible for ARC and PLC payments as specified in this part.

(g) The summary of records specified in paragraph (c) of this section is intended to assist current owners of farms with the one-time opportunity for base acre reallocation as provided in this section. Any current owner of a farm may also at any time visit the

FSA county office and request to obtain a copy of the summary referenced in paragraph (c) of this section. Current owners can reallocate base acres at any time during the reallocation period without receiving or requesting the summary records, and, therefore, failure to receive a summary record from FSA is not grounds for appeal or extension of the reallocation period.

(h) The option to retain or reallocate base acres is an “all or nothing” decision for the farm. Partial retention of base acres or partial reallocation of base acres is not permissible. A decision by any current owner to reallocate base acres on a farm in accordance with this section is final and binding if made according to this section during the reallocation period unless that reallocation is withdrawn in writing by that current owner or another current owner. If another current owner subsequently files a different reallocation request in whatever time remains in the stated reallocation period or if there are conflicting reallocation requests of current owners in the reallocation period, FSA will deem no reallocation to have been performed unless the conflict is resolved via written agreement between the current owners who filed the conflicting requests. In the case of submitting evidence of resolution, the written agreement must be filed with FSA in the reallocation period. Any and all updates and reallocation requests mentioned in this section are subject to review and approval or disapproval by FSA for CCC.

7. Add subpart C to read as follows:

**Subpart C—Establishment of Price Loss Coverage Yields and Submitting Production**

Sec.

- 1412.31 PLC yields for covered commodities.
- 1412.32 Updating PLC yield.
- 1412.33 PLC yield for additional oilseeds.

1412.34 Submitting production evidence.

1412.35 Incorrect or false production evidence.

**§ 1412.31 PLC yields for covered commodities.**

(a) The PLC yield for covered commodities on the farm is equal to the counter-cyclical payment yield established for each covered commodity on the farm that was effective September 30, 2013, unless the PLC yield is updated as specified in § 1421.32. If the Secretary designates an additional oilseed or pulse crop as a covered commodity that does not have a counter-cyclical payment yield, the PLC yield for that commodity will be established as specified in § 1412.33 or § 1412.34, whichever is applicable.

(b) If a PLC yield is not already established for a covered commodity on a farm for which base acres are allocated through the base acres reallocation process or for which a covered commodity is planted on generic base acres, a yield will be established for the covered commodity on the farm using the yield on similarly situated farms, as determined by FSA. The yield on similarly situated farms will then be used as the 2013 county average counter-cyclical yield for the covered commodity.

**§ 1412.32 Updating PLC yield.**

(a) For any covered commodity on the farm that has base acres (except generic base acres), as adjusted, in excess of zero acres, a current owner of the farm has a one-time opportunity in a specified period, as announced by FSA to update PLC yields on a covered commodity-by-covered commodity basis equal to 90 percent of each covered commodity's 2008 through 2012 average yield per planted acre, excluding from the average any year when no acreage was planted to the covered commodity. If the yield per planted acre in any of the years 2008 through 2012 is less than 75 percent of the

average of the county yield, then 75 percent of the average of the 2008 through 2012 county yield will be substituted for that year.

(b) The current owner of the farm may retain the counter-cyclical yield as the PLC yield or update the PLC yield, on a covered commodity-by-covered commodity basis.

(c) PLC yields are exclusively used for PLC. However, any owner of a farm can update the PLC yields, regardless of program election or decision on enrollment or participation.

(d) A decision by any current owner of a farm to update any PLC yield as specified in this section is final and binding unless that decision to update the yield is withdrawn by that current owner or a different yield update is made by that current owner or another current owner. If that current owner or another current owner requests a different PLC yield update for the covered commodity during the yield update period specified in paragraph (a) of this section that update will become final.

(e) All PLC yield updates are subject to review and approval by FSA as specified in § 1412.35. FSA's decision to issue payments based on the PLC yield updated by an owner is subject to verification and spot check by FSA at any time.

(f) Yield updates in this section will be permitted using the current owner's certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the owner must submit evidence specified in § 1412.34 to support the certified yield.

**§ 1412.33 PLC yield for additional oilseeds.**

(a) The PLC yield for the farm for additional oilseeds designated by the Secretary will be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in paragraph (b) of this section, times the ratio resulting from:

- (1) The national average yield for the crop, as determined by FSA, divided by
- (2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by FSA.

(b)(1) The yield per planted acre for such designated oilseed on the farm is calculated as follows:

- (i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in 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 will 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 will be zero:

- (i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.34; 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 will 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 will assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

(c) The establishment of PLC yield for an additional oilseed in this section will be permitted using a producer certification of yield. The certification is subject to spot check or verification by FSA at any time. If selected for spot check or verification, the producer must submit evidence as specified in § 1412.34 to support the certified yield.

**§ 1412.34 Submitting production evidence.**

(a) When required by FSA as specified in this part, documentary evidence supporting any certification of yield or production must be provided to the county committee of the county where the farm is administratively located.

(b) Documentary evidence acceptable to FSA includes, but is not limited to:

(1) Production approved by the county committee for some other FSA program purpose;

(2) Commercial receipts;

(3) Settlement sheets;

(4) Warehouse ledger sheets;

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

(6) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance; or

(7) Other production evidence determined acceptable by the Deputy Administrator.

(c) Production evidence specified in paragraph (b) of this section must show:

(1) The producer's name,

(2) The commodity,

(3) The buyer or name of storage facility,

(4) The date of transaction or delivery, and

(5) The quantity.

(d) FSA may verify the production evidence submitted with records on file at the warehouse, Risk Management Agency, or other entity that received or may have received the reported production.

**§ 1412.35 Incorrect or false production evidence.**

(a) If a certification of production and yield or production evidence submitted in support of that certification is false or incorrect, as determined by the county committee,

the county committee will determine whether the owner, operator, or producer submitting the certification or production evidence for a farm acted in good faith or took action to defeat the purpose of ARC or PLC.

(b) If the county committee determines the owner or producer who submitted the certification or production evidence referenced in paragraph (a) of this section acted in good faith and did not take action to defeat the purpose of ARC or PLC, the county committee will, as applicable:

(1) Correct the PLC yield for the applicable covered commodity to equal the yield that would have been calculated as specified in § 1412.32 based on accurate production evidence; and

(2) Recalculate any payments based on the correct yield and require refunds of any payments that were issued as a result of the incorrect yield. Unearned payments must be refunded together with interest from the date of disbursement and are due from any producers who received payments that would not have issued absent the error or incorrect yield.

(c) If the county committee determines the owner, operator, or producer who submitted the false or incorrect evidence did not act in good faith or took any action to defeat or undermine the purpose of ARC or PLC, the county committee will require a full refund of any payments, with interest, that were issued to any persons based on that false or erroneous certification or production evidence and the yield update request is invalid.

#### Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

8. In subpart D, add §§ 1412.41, 1412.42, and 1412.43 to read as follows:

**§ 1412.41 ARC or PLC program contract.**

- (a) The following provisions apply to ARC and PLC program contracts:
- (1) Eligible producers (as specified in § 1412.42) of covered commodities with base acres may enroll in ARC and PLC contracts during the enrollment period announced by FSA.
- (i) For program year 2014, the enrollment period will end June 1, 2015.
- (ii) The 2014 contract period ends September 30, 2014. Accordingly, the enrollment for 2014 is the only program year a retroactive contract can be approved.
- (iii) If a 2014 farm did not have a valid election made by producers in accordance with subpart G, no producer on that farm is eligible for any 2014 ARC or PLC payment for that farm. This is not an adverse decision for any enrolled producer on that farm; rather, the farm's producers are simply not eligible for payments on the enrolled farm because the farm does not have a valid election.
- (2) For program years 2015 through 2018, the enrollment period will end on June 1 of each such fiscal year. This means that the enrollment period for both 2014 and 2015 will end on June 1, 2015.
- (i) Eligible producers must execute and submit an ARC or PLC program contract not later than June 1, 2015, for 2014 and 2015 fiscal year contracts and not later than June 1 of the applicable year for 2016 through 2018 fiscal year contracts.
- (ii) Except as may otherwise be provided for the 2014 crop year as stated in this section, enrollment is not allowed after September 30 of the fiscal year in which the ARC or PLC payments are requested. Except as specifically stated for the 2014 crop year, FSA will not process offers of enrollment for a contract period after the contract period

has ended. This is not a compliance provision but a rule of general applicability and will apply to every offer to contract in each contract year.

(3) Except as discussed in this section for PLC and ARC-CO enrollments, contracts will not be approved unless all producers sharing in contract acreage with more than a zero share have submitted all applicable signatures on the contract and documentation necessary for FSA to make such approval, as determined by the Deputy Administrator. For those producers with an interest but a zero share of contract acreage, the contract will not be approved before all producers have signed the contract or furnished supportive and necessary contractual documents (such as cash leases in lieu of signing for a zero share). A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the enrollment deadline are deemed incomplete and will not be considered submitted to CCC for any purpose and will not be acted on or approved. For ARC-IC contracts there are no exceptions to this provision. Additionally, contracts enrolled by a producer by the date specified in paragraph (a)(2)(i) of this section that were not signed by other producers according to this section will be deemed withdrawn and will not be approved. An exception to this applies to PLC and ARC-CO offers of enrollment. In those instances, at the discretion of the Deputy Administrator and where no dispute of shares or other disagreement between producers is evident or suspected, PLC and ARC-CO offers of enrollment can be approved to permit payment to only those eligible producers who did enroll and without regard to shares that do not have signatures. This exception will be made only if, in the sole judgment and discretion of FSA, FSA is satisfied that those producers who did sign in accordance with this section ensure compliance with all contract provisions and

requirements of this part. Producers have no right to payment on any farm that is not enrolled in ARC or PLC and they are not entitled to a decision to authorize the exception for PLC and ARC-CO enrollments as discussed above, as that is discretionary. CCC and FSA are not responsible for ensuring that producers annually enroll in ARC or PLC. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(4) Eligible producers who choose to enter into a contract with FSA 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 by June 1 of the applicable contract year provided all producer signatories to the contract, including FSA, agree to the withdrawal in writing.

(c) All contracts 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 will result in the termination of the contract.

The contract termination will 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 for the current and assume all obligations under the contract.

(e) In the event a 2015 or subsequent crop year farm reconstitution is completed on a properly enrolled farm or farms in accordance with part 718 of this title, FSA will

issue notices to the 2015 and subsequent crop year farm operator and owners of record on a farm that all producers with an interest in the base acres on the farm must sign a new ARC or PLC program contract within the later of 30 days of the notice or September 30 of the fiscal year program payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. It is the responsibility of the operator and owners on a farm that producers with an interest in base acres are notified of the reconstitution and requirement for a new contract.

**§ 1412.42 Eligible producers.**

- (a) Producers eligible to enter into a contract are:
  - (1) An owner of a farm who has an ownership share of a crop and who assumes all or a part of the risk of producing a crop that is commensurate with that claimed ownership share of the crop; or
  - (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; or
  - (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; or
  - (4) A producer, other than an owner, on a 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, failing which the farm is not enrolled; 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, payments will not begin under the contract until the lease held by the tenant ends.

- (b) A minor child will 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 law;
  - (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.

- (c) The owner of the farm may be considered the "producer" if there is no other producer, but the owner could have shared in the crop had a crop been produced, but only if the farm and owner otherwise meet all the requirements for payment.

#### **§ 1412.43 Reconstitutions.**

Farms will only be reconstituted in accordance with subpart G of this part and part 718 of this title.

#### **§ 1412.45 [Amended]**

9. In § 1412.45, remove the term "P&CP" each time it appears and add the word "planted" in its place.

#### **§ 1412.46 [Amended]**

10. In § 1412.46, paragraph (c)(2), remove the words "percent of a farm" and add the words "percent of the base acres of a farm" in their place.

11. Add § 1412.50 to subpart D to read as follows:

**§ 1412.50 Transfer of land and succession-in-interest.**

(a) Land subject to an election in subpart G will continue to be subject to the election even if there is a transfer of land or change in interest of any producer or owners on the farm. If a new owner or operator or producer purchases or obtains the right and interest in, or right to occupancy of, the land subject to an election option, such new owner or operator or producer, upon the approval of FSA, may enroll and participate under a new contract with FSA with respect to such transferred land in accordance with § 1412.41.

(b) A succession in interest to an ARC or PLC program contract is required if there has been a change in the operation of a farm such as:

- (1) A sale of land;
- (2) A change of operator or producer, including a change in a partnership that increases or decreases the number or changes who are partners;
- (3) A foreclosure, bankruptcy, or involuntary loss of the farm;
- (4) A change in the producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or
- (5) Another change as otherwise determined by the Deputy Administrator by which the succession will not adversely affect nor defeat the purpose of the program.

(c) A succession in interest to an ARC program contract is not permitted if FSA determines that the change:

- (1) Is not for all the time remaining under the ARC or PLC program contract;
- (2) Results in a violation of the landlord-tenant provisions specified in § 1412.55;

or

- (3) Adversely affects or otherwise defeats the purpose of the program.
- (d) If a producer who is entitled to receive ARC or PLC 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.
- (e) A producer or owner of an enrolled farm 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.
- (f) In any case in which either an ARC or PLC payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

#### **Subpart E—Financial Considerations Including Sharing Payments**

12. In § 1412.51, add paragraph (e) to read as follows:

##### **§ 1412.51 Limitation of payments.**

\* \* \* \*

(e) Notwithstanding any other provision of this part, a producer on a farm is not eligible to receive ARC and PLC payments if the sum of the base acres including any generic base acres on the farm is 10 acres or less. The 10-acre limitation of this subsection will not apply to a socially disadvantaged farmer or rancher or a limited resource farmer or rancher as specified in this part.

13. Add §§ 1412.52 and 1412.53 to read as follows:

**§ 1412.52 PLC payment provisions.**

(a) Provided all provisions of this part including but not limited to election have been satisfied for each of the 2014 through 2018 contract years, a PLC payment will be made to eligible participants on a farm enrolled in PLC with respect to covered commodities for which a PLC yield and base acres are established:

(1) When the effective price for a covered commodity in a crop year is less than the reference price for the PLC enrolled covered commodity for that crop year as specified in this part; and

(2) As soon as practical, as determined by the Deputy Administrator, after October 1 following the end of the 12-month marketing year for the covered commodity as applicable.

(b) The effective price for a covered commodity is equal to the higher of the:

(1) MYA price received by producers during the 12-month marketing year for the crop year of the covered commodity, as determined by FSA, or

(2) National loan rate for a marketing assistance loan for the covered commodity for such crop year.

(c) The payment rate used to calculate PLC payments with respect to covered commodity for which PLC yields and base acres are attributed to the covered commodity on a farm enrolled in a PLC contract is the reference price of the covered commodity minus the effective price of the covered commodity for a crop year, as determined in accordance with paragraph (b) of this section.

(d) For PLC contracts, when PLC payments are triggered in accordance with paragraph (a) of this section, subject to the limitation in § 1412.51 and in part 1400 of this

chapter, the PLC payment to be paid to producers on a farm enrolled in a contract with respect to a covered commodity for which a PLC yield and base acres are attributed is equal to the product of:

- (1) The payment rate determined in accordance with paragraph (c) of this section, multiplied by
- (2) The relevant payment acres of the covered commodity, as applicable, minus any payment acre reduction in accordance with § 1412.46, multiplied by
  - (3) The PLC payment yield for the covered commodity on the farm enrolled in a PLC contract as determined in accordance with § 1412.31, minus
  - (4) Any reduction calculated in accordance with subpart F of this part.
- (e) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the PLC payment computed for the farm in accordance with the provisions of this section, the:
  - (1) Payment or portions thereof will not become available for any other producer and
  - (2) Producer is required to refund to CCC any amounts representing payments that exceed the payments determined by FSA to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.
- (f) The payment of any amount due any producer on a farm enrolled in a PLC contract will 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 or any other applicable part.

- (g) A participant on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other participants on the farm if the:
- (1) Participant is in full compliance with the contract and the requirements in this part or any other applicable part;
  - (2) Payment of such amount does not adversely affect or defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and
  - (3) Payment is approved by the Deputy Administrator, or designee.
- (h) Temperate japonica rice or medium and short grain rice grown:
- (1) In California will receive the effective price and guarantee for medium and short grain based only on the prices that temperate japonica or medium and short grain rice receives in California.
  - (2) Outside of California will receive the effective price and guarantee for medium and short grain rice based only on the prices that temperate japonica or medium and short grain rice receives outside of California.

**§ 1412.53 ARC payment provisions.**

- (a) Provided all provisions of this part including but not limited to ARC-CO election and enrollment have been satisfied for each of the 2014 through 2018 contract years, CCC will issue, as applicable and consistent with the election and enrollment:
  - (1) An ARC-CO payment beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity to the producers on a farm for a covered commodity in each crop year if the farm was enrolled in ARC-CO and the ARC-CO actual crop revenue was less than the ARC-CO guarantee.

(2) Payment is equal to the result of multiplying the payment acres for the covered commodity times the difference between the actual crop revenue and the ARC-CO guarantee, not to exceed 10 percent of the ARC-CO benchmark revenue.

(b) Provided all provisions of this part including but not limited to ARC-IC election and enrollment have been satisfied for each of the 2014 through 2018 contract years, CCC will issue, as applicable and consistent with the election and enrollment:

(1) An ARC-IC payment beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the farm if the farm was enrolled in ARC-IC and the ARC-IC actual crop revenue for that farm is less than the ARC-IC guarantee.

(2) Payment is equal to the result of multiplying the payment acres for the covered commodities times the difference between actual crop revenue and the ARC-IC guarantee, not to exceed 10 percent of benchmark revenue for ARC-IC.

(c) If a producer has an interest in multiple farms that have enrolled in ARC-IC, the ARC-IC benchmark revenue for that producer used in the payment calculation will be a weighted average of the benchmark revenue for those multiple farms.

(d) In a county having a sufficient number of farms with P&CP acreage history of a covered commodity in 2009 through 2012, as determined by FSA, where at least an average of 25 percent of a covered commodity's P&CP acreage was irrigated in 2009 through 2012 and at least an average of 25 percent of the same covered commodity's P&CP acreage in that county was non-irrigated in 2009 through 2012, a separate irrigated and non-irrigated benchmark revenue, guarantee, and actual revenue will be maintained by FSA for the affected county. For farms in these counties with covered commodities

enrolled in ARC-CO and ARC-IC, the average 2009 through 2012 reported acreage of each covered commodity on the farm with irrigated and non-irrigated status will be used to calculate a percentage of each applicable covered commodity that will be applied against the irrigated and non-irrigated benchmark revenue, guarantee, and actual revenue as determined by FSA.

(e) FSA will determine the irrigated and non-irrigated counties and crops prior to the 2014 enrollment period and that determination will be effective through the 2018 program year, unless there is a substantial change in the irrigated and non-irrigated practices in the county, as determined by the FSA.

(f) The effective price and guarantee for temperate japonica rice will be based on the price that all medium and short grain (including glutinous) rice receives in California. The effective price and guarantee for medium grain rice outside California will be based on the price that all medium and short grain rice receives outside California.

#### **§ 1412.54 [Amended]**

14. In § 1412.54(f) introductory text, remove the term “P&CP” each time it appears and add the word “planted” in its place.

15. Amend § 1412.66 by adding paragraph (c) to read as follows:

#### **§ 1412.66 Acreage and production reports, prevented planting, and notices of loss.**

\* \* \* \*

(c) As a condition of producer payment eligibility for all ARC-IC payments under this part, all producers of all covered commodities on enrolled ARC-IC elected farms must accurately submit a report of production by the acreage reporting date for the crop in the year immediately following the crop year of the reported crop acreage for all

the covered commodities elected and enrolled in ARC-IC. The report is due for each covered commodity for which an acreage report greater than zero planted acres was filed for the farm according to paragraph (a) of this section. The report of production for all of such covered commodity or covered commodities can be submitted by any of the producers of the covered commodity or covered commodities on the farm, the farm operator, or an owner on the farm. The absence of the required production report of any covered commodity being filed on an enrolled ARC-IC elected farm will cause all of the producers who share in any of the covered commodities on that farm to be ineligible for payment on that farm and on any other ARC-IC elected and enrolled farm in the State for the crop year for which the production report was not filed or is missing. At the discretion of CCC, the report of production must be accompanied by documentation acceptable to CCC. The report must include the date harvest was completed. Records of production acceptable to CCC may include those specified in:

- (1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries of the crop that was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and
- (2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the crop has been fed to livestock or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the crop acreage prior to harvest.

16. Add subpart G to read as follows:

**Subpart G—ARC and PLC Election**

Sec.

1412.71 Election of ARC or PLC.

1412.72 Election period.

1412.73 Reconstitutions of farms and election.

1412.74 Failure to make election.

**§ 1412.71 Election of ARC or PLC.**

(a) All of the current producers on a farm must make a one-time election that is

both:

(1) Unanimous, and

(2) Irrevocable.

(b) The election by current producers is to obtain—

(1) Either PLC or ARC-CO on a covered commodity-by-covered-commodity

basis on the farm; or

(2) ARC-IC for all covered commodities on the farm.

(c) The election will be based on the 2014 farm structure (including any reconstitutions of farms that were initiated by August 1, 2014).

(d) Valid elections specified in paragraphs (a) and (b) of this section by current producers will apply to the 2014 farm structure and 2014 producers on the farm. The valid election will also apply to any subsequent year parent to the farm reconstitution as well as farms resulting from the parent farm as specified in § 1412.73. Neither the requesting of a farm reconstitution nor the reconstitution of any farm will impact either the requirement that all current producers on a farm must make the unanimous

irrevocable election in the defined election period or the valid election that was previously made by those current producers.

(e) FSA will process elections from current producers on a farm based on the election as submitted. For example, if the current producers of a farm attest that they are all or the only current producers on the farm and FSA later learns that there was another current producer at the time of election who did not agree to the election, the election is invalid. If at any time FSA determines that an election fails to satisfy the requirements of this subpart because it did not include the unanimous agreement of all current producers on the farm at the time of election, the election will immediately be invalid. This is not a compliance provision. Only valid elections by all current producers will be recognized and used by CCC. All ARC and PLC payments that were issued to any producers on a farm based on an election later determined by CCC to be invalid, for whatever reason, regardless of whether those producers who were issued unearned payments personally made or participated in the invalid election, must be refunded with interest.

(f) Election is separate from enrollment; producers on farms that have validly completed an election by the current producers in the prescribed election period must still annually enroll as specified in subpart D for PLC and ARC payments, as applicable.

### **§ 1412.72 Election period.**

(a) The election period will be conducted in a defined period as announced by FSA. During the election period, all current producers on a farm must unanimously make the irrevocable election as described in § 1412.71 to preserve the payment eligibility of all producers on the farm for 2014 and determine whether the default election (PLC) or

elected option (either a combination of ARC-CO and PLC or ARC-IC) will apply to the farm.

(b) If an election is submitted by all current producers on a farm as specified in § 1412.71 and paragraph (a) of this section, that election will be recognized as valid for the farm in all 2014 through 2018 crop years unless any of the following occur:

- (1) The election is rescinded or terminated by any current producer on the farm in accordance with paragraph (c) of this section during the election period;
- (2) The valid election is modified and replaced by another valid election by all current producers during the election period;
- (3) A subsequent valid election by all current producers is made with FSA during the election period; or
- (4) FSA determines the election at the time it was made was invalid for any reason.

(c) At any time during the election period, a current producer can rescind or terminate an election by providing written notice to FSA during the election period. The written notice to rescind or terminate must be physically received by FSA for CCC during the election period in order to be recognized. Immediately following receipt of such notice to rescind or terminate, the farm will be viewed as not having any effective valid election (in other words, no valid election will be determined to exist -- even if there was another previous election in effect before the election that is rescinded, or terminated as specified in with this paragraph).

(d) FSA is under no obligation to notify producers, owners, current producers, or current owners on a farm that an election has been rescinded or terminated. Current

producers of a farm are solely responsible for filing a valid election during the election period or in whatever time remains in an election period following the rescission or termination of an election.

(e) FSA is under no obligation to notify current producers, current owners, producers, or owners or new producers or owners of whether or not a valid election exists or is in place or whether any current producer has rescinded or terminated an election. However, FSA will respond to inquiries regarding the status of election of a farm by any current producer or current owner on a farm including a producer or owner who gains a producer or owner interest on the farm during the election period.

(f) The election period and final day in that election period in which current producers can unanimously and irrevocably elect are not a compliance requirement or provision. The requirement of an election is mandated in the 2014 Farm Bill and as such is not subject to any of the equitable relief provisions of 7 CFR part 718, subpart D. Further, because the requirement of a unanimous irrevocable election and ramifications for not having a valid election are specified in the 2014 Farm Bill, FSA will not consider any equitable relief. There are no late-file provisions for election.

#### **1412.73 Reconstitutions of farms and election.**

(a) If a new producer or new owner gains an interest in a farm after the filing of a valid election on that farm during the election period, that new producer or new owner, whether or not known to FSA or the other producers or owners on the farm, will be subject to any previously submitted valid election under §§ 1412.71 and 1412.72 unless that new producer or new owner modifies, rescinds, or terminates the election as a

producer or owner as specified in § 1412.72(c) during the remaining time in the election period.

(b) Any reconstitution request initiated after August 1, 2014, will not be made until after the end of the election period specified in § 1412.72. Following the close of the election period in § 1412.72, a valid election on any farm cannot be changed by any reconstitution. This means that valid elected farms can only be combined with farms having an identical election for each and every covered commodity on the farm regardless of whether there are any base acres for any and all covered commodities on the farm. Reconstitutions will not be permitted to alter a valid election or the default election that may apply to a farm.

**§ 1412.74 Failure to make election.**

(a) If all current producers on a farm do not make a unanimous election during the period specified in § 1412.72, that farm will not have a valid election and any producer on the farm is not eligible for 2014 ARC or PLC enrollment or payments.

(b) If a valid election is not made for a farm, FSA will not make any payments with respect to the farm for the 2014 crop year and the producers on the farm will default to a PLC election for all covered commodities on the farm for the 2015 through 2018 crop years.

PART 1416 – EMERGENCY AGRICULTURAL DISASTER ASSISTANCE  
PROGRAMS

17. The authority for part 1416 continues to read as follows:

Authority: Title III, Pub. L. 109-234, 120 Stat. 474; 16 U.S.C. 3801, note.

§ 1416.102 [Amended]

18. In § 1416.102, remove the definitions for “limited resource farmer or rancher” and “socially disadvantaged farmer or rancher”.

Signed on September 17, 2014.

Val Dolcini,  
Executive Vice President,  
Commodity Credit Corporation, and  
Administrator,  
Farm Service Agency.

[FR Doc. 2014-22879 Filed 09/25/2014 at 8:45 am; Publication Date: 09/26/2014]