

**§ 1412.301**

**7 CFR Ch. XIV (1-1-05 Edition)**

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

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

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

(b) The Deputy Administrator shall give the owner of the farm the opportunity to select the covered commodity base acres or peanut base acres, against which the reduction required in this section will be made.

(c) In applying paragraph (a) of this section, CCC will take into account the practice of double cropping on a farm, as determined by CCC.

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

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

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

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

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

lar yield capability, including similar land and cultural practices.

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

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

(b) For the purposes of this section popcorn shall be considered as corn.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 37939, June 26, 2003]

**§ 1412.302 Direct payment yield for soybeans and other oilseeds.**

(a) The direct payment yield for soybeans and each other oilseed for the farm shall be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1985 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b)(1) The yield per planted acre for soybeans and each other oilseed on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years shall be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year shall be zero:

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(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.304; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section shall be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

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

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

(a)(1) The counter-cyclical payment yield for covered commodities on the farm shall be equal to the direct payment yield for the covered commodity on the farm unless the owner elects to partially update the yield for all covered commodities on the farm in accordance with paragraph (b) of this section.

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

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

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

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

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

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

(1) The sum of the following:

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

(ii) 70 percent of the result of:

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

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

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

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

(i) The sum of the production of the crop for 1998 through 2001 crop years, as determined in accordance with paragraph (c)(2) of this section, divided by