

§ 1412.503

7 CFR Ch. XIV (1-1-08 Edition)

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

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

[67 FR 64751, Oct. 21, 2002, as amended at 71 FR 17983, Apr. 10, 2006]

§ 1412.503 Counter-cyclical payment provisions.

(a) For the 2002 through 2007 contracts, a counter-cyclical payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities for which payment yield and base acres are established, and with respect to peanuts on a farm enrolled in a contract for 2003 through 2007:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section.

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

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity and peanuts, respectively, is equal to the sum of the following:

(1) The higher of:

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary; or

(ii) For 2002 and 2003 crop years the following rates:

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

(iii) For 2004 through 2007 crop years the following rates:

- (A) Wheat—\$2.75/bu.
- (B) Corn—\$1.95/bu.
- (C) Grain sorghum—\$1.95/bu.
- (D) Barley—\$1.85/bu.
- (E) Oats—\$1.33/bu.
- (F) Upland cotton—\$0.52/lb.
- (G) Rice—\$6.50/cwt.
- (H) Soybeans—\$5.00/bu.
- (I) Other oilseeds—\$0.0930/lb.
- (J) Peanuts—\$355.00/ton.

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

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

(1) For 2002 and 2003 crop years:

- (i) Wheat—\$3.86/bu.
- (ii) Corn—\$2.60/bu.
- (iii) Grain sorghum—\$2.54/bu.
- (iv) Barley—\$2.21/bu.
- (v) Oats—\$1.40/bu.
- (vi) Upland cotton—\$0.7240/lb.
- (vii) Rice—\$10.50/cwt.
- (viii) Soybeans—\$5.80/bu.
- (ix) Other oilseeds—\$0.0980/lb.
- (x) Peanuts—\$495.00/ton.

(2) For 2004 through 2007 crop years:

- (i) Wheat—\$3.92/bu.
- (ii) Corn—\$2.63/bu.
- (iii) Grain sorghum—\$2.57/bu.
- (iv) Barley—\$2.24/bu.
- (v) Oats—\$1.44/bu.
- (vi) Upland cotton—\$0.7240/lb.
- (vii) Rice—\$10.50/cwt.
- (viii) Soybeans—\$5.80/bu.
- (ix) Other oilseeds—\$0.1010/lb.
- (x) Peanuts—\$495.00/ton.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

(1) The target price of the covered commodity as determined in accordance with paragraph (c) of this section, minus

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

(e) For 2002 through 2007 contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with §1412.501 and

part 1400 of this chapter, the final counter-cyclical payment amount to be paid to producers on a farm enrolled in a contract with respect to the covered commodities and peanuts for which payment yields and base acres are established shall be equal to the product of:

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

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

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

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

(4) Any reduction calculated in accordance with subpart F of this part that was not satisfied by a reduction in the direct payments for the farm calculated in accordance with §1412.502(e), minus

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

(f) For 2002 through 2006 contracts, advance counter-cyclical payments shall be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts, respectively, will be required in accordance with paragraph (a)(1) of this section.

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

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

(ii) Be an amount determined by the Secretary not to exceed 35 percent of the projected counter-cyclical payment

for the covered commodity or peanuts, respectively;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If a producer declines to accept, or is determined to be ineligible for all or

§ 1412.504

7 CFR Ch. XIV (1-1-08 Edition)

any part of the producer's share of the counter-cyclical payment computed for the farm in accordance with the provisions of this section:

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

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(i)(A) The payment of any amount due any producer on a farm enrolled in a contract shall be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

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

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

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

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

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

§ 1412.504 Sharing of contract payments.

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

(1) Each producer must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written

description of the terms and conditions of any oral agreement or lease.

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

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease. The leasing of grazing or haying privileges is not considered cash leasing.

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

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

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

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

(c) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent the provisions of part 1400 of this chapter.

§ 1412.505 Provisions relating to tenants and sharecroppers.

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

(a) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled