



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN: 0560-AI40

Seed Cotton Changes to Agriculture Risk Coverage (ARC), Price Loss Coverage (PLC) Programs

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

ACTION: Final rule.

SUMMARY: This rule revises the eligibility requirements, enrollment procedures, and payment calculation for ARC and PLC required to conform with the Bipartisan Budget Act of 2018 (BBA). BBA amends the Agricultural Act of 2014 (the 2014 Farm Bill) to add seed cotton as a covered commodity and remove generic base acres from ARC and PLC. This rule also amends provisions to include seed cotton yields, allocation of generic base acres, election of ARC-County Option (ARC-CO) or PLC for seed cotton base acres, and enrollment for 2018. This rule also makes some minor, clarifying changes to the administration section.

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

2018 ARC and PLC signup deadline: September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Brent Orr; telephone, (202) 720-7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The ARC Program is an income support program which provides payments on historical base acres when actual crop revenue for a covered commodity declines below a specified guarantee level. The PLC Program provides payments on historical base acres when the price for a covered commodity declines below its “reference price.” Eligible producers were required to make a decision to participate in either ARC or PLC, but not both, for the 2014 through 2018 crop years. ARC and PLC are Commodity Credit Corporation (CCC) programs administered by the Farm Service Agency (FSA).

The regulation in 7 CFR part 1412 as implemented in 2014 for the ARC and PLC Programs specified covered commodities authorized by the 2014 Farm Bill (Pub L. 113-79; 7 U.S.C. 9011-9019). BBA amends the 2014 Farm Bill by adding seed cotton as a “covered commodity” for the 2018 crop year. Since seed cotton will be included in the existing ARC or PLC programs, FSA must establish certain program values including yields and prices to implement the changes.

Upland cotton, which had previously been a covered commodity under prior FSA administered CCC commodity programs, was no longer a covered commodity beginning with the 2014 Farm Bill; therefore, producers with historical upland cotton base acres were ineligible for assistance under ARC and PLC. Base acres of upland cotton under the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) in effect as of September 30, 2013, subject to any adjustment or reduction, became “generic base acres” beginning with the 2014 crop year. Under terms of BBA, if a covered commodity, including seed cotton, was not planted or prevented from being planted on the farm

during the 2009 through 2016 years, the generic base acres become unassigned base acres, which are not eligible for any ARC or PLC benefits. Generic base acres no longer exist beginning with the 2018 crop year.

Seed cotton Changes; PLC Yield; Generic Base Acres Allocation

In order for an owner to take advantage of the BBA provisions for seed cotton, BBA specifies that a covered commodity, including seed cotton, must have been planted or prevented from being planted on the farm during the 2009 through 2016 years. If the farm had land enrolled under a Conservation Reserve Program contract and base acres were reduced as a result of that enrollment during the 2009 through 2016 years, the owner of that farm may allocate generic base acres to seed cotton base acres or other base acres based on the provisions of BBA.

PLC requires a reference price for all covered commodities; BBA has established a reference price for seed cotton of \$0.367 per pound.

Determining a covered commodity yield is a necessary component to PLC. As amended, the 2014 Farm Bill and 7 CFR 1412.31 provide that the farm PLC yield for seed cotton will be initially set at 2.4 times the payment yield for upland cotton established under the 2008 Farm Bill (7 U.S.C. 8714(e)(3)). As amended, the 2014 Farm Bill and 7 CFR 1412.33, specify that any current owner of the farm has a one-time option to update the PLC yield. Any current owner of a farm may update the PLC yield, which was the counter-cyclical payment yield under the former Direct and Counter-cyclical Program, by certifying pounds of upland cotton lint in years in which upland cotton was planted on base acres from 2008 through 2012, which will then be averaged. Years in which the producer had no planted acres are not included in the simple average

computation. The average yield for 2008 through 2012, excluding years in which no upland cotton was grown, will be multiplied by 90 percent, and the result will be multiplied by 2.4 to obtain a new PLC payment yield of pounds of seed cotton.

In addition to updating the payment yield, current owners of a farm with generic base acres will be allowed to determine how those generic base acres are allocated as base acres of other covered commodities on the farm. As specified in BBA and in § 1412.25, there are three options as follows; the producers may choose only one for allocating generic base acres on the farm:

1. Multiply the number of generic base acres in crop year 2018 by 80 percent to determine a total for seed cotton base acres. The remaining 20 percent will become unassigned base acres.

2. If a farm has history of planting upland cotton from 2009 through 2012 and the simple average of planted and prevented from being planted upland cotton during that time period is greater than 80 percent of the generic base acre total in crop year 2018, generic base acres may be allocated to seed cotton base acres based on that simple average, not to exceed 100 percent of the generic base acres on the farm. If the simple average is less than 100 percent of the number of generic base acres, the residual generic base acres will become unassigned base acres.

3. Allocate the generic base acres on the farm to the 4-year simple average of the planted and prevented from planted covered commodities on the farm during the 2009 through 2012 crop years. The allocation is based on the share of each covered commodity in the total of covered commodities planted on the farm multiplied by the number of generic base acres on the farm. Years in which there were no covered

commodities planted on generic acres will be used in the calculation of the simple average. Using this option eliminates unassigned base acres on the farm. For example:

- a. A farm has 100 cropland acres, 100 generic base acres, and had the following planted acres:
 - For 2009, 25 acres of upland cotton and 75 acres of corn;
 - For 2010, 75 acres of upland cotton and 25 acres of corn;
 - For 2011, no acres of covered commodities; and
 - For 2012, 100 acres of upland cotton.
- b. The simple average of the two planted covered commodities is 25 acres of corn and 50 acres of upland cotton.
- c. Corn, from b. above, is 33.33 percent of the total covered commodities planted on the farm (25 divided by 75 equals 33.33 percent), leaving 66.67 percent planted to upland cotton.
- d. Completing the calculation, 33.33 percent times 100 generic base acres equals 33.33 base acres of corn and 66.67 percent multiplied by 100 generic base acres equals 66.67 base acres of seed cotton.

If an owner fails to make an allocation of generic base acres and has a covered commodity, including seed cotton, that was planted or prevented from being planted during the 2009 through 2016 crop years, seed cotton base acres will be determined by FSA using the first option listed above, as is required by BBA.

PLC and ARC-CO Election, Allocation by FSA and Enrollment

After the yield update and base acre allocation is completed, all current producers on a farm with seed cotton base acres, except for farms having a valid ARC-Individual

Farm Option (ARC-IC) election, must affirmatively and unanimously elect PLC or ARC-CO for seed cotton base acres during the single election period following a similar method to the previous election process in 2015. As required by BBA, if a unanimous election is not made, the producers on the farm will be deemed to have elected PLC for the seed cotton base acres for the 2018 crop year as specified in 7 CFR 1412.74; if the farm is enrolled for 2018, it will be deemed to have PLC or ARC-CO benefits, as may be applicable for any covered commodity (including seed cotton), based on any valid or default election on the farm. This provision is specified in the 2014 Farm Bill and is not changed by BBA; 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. During the previous election period under the 2014 Farm Bill, the producers on farms with generic base acres had the opportunity to make an election on all 21 covered commodities or have a default election of PLC apply; those elections remain in place and therefore, for the 2018 crop year it will only be necessary for all current producers on the farm to make an election of PLC or ARC-CO for seed cotton base acres. New elections for ARC-IC or for other covered commodities will not be permitted. Farms having a valid election of ARC-IC will continue to have ARC-IC as the election for the entire farm and for all covered commodities including seed cotton that was added as a covered commodity effective with the 2018 crop year for the life of the 2014 Farm Bill.

Implementing these changes is a multi-step process and all steps must be completed in order by the appropriate person or legal entity as follows:

1. FSA will make a determination that a covered commodity was planted or prevented planted on the farm from 2009 through 2016;

2. FSA will make a determination of the planting history of covered commodities on the farm from 2008 through 2012;
 - 2008 through 2012 is for calculating a seed cotton PLC yield, and
 - 2009 through 2012 is for determining how generic base acres on a farm may be allocated;
3. A current owner will make an allocation of generic base acres according to § 1412.25;
4. A current owner will make a determination of the PLC yield and update of that yield according to 7 CFR § 1412.31;
5. The current producer(s) will make an election of either PLC or ARC-CO for seed cotton base acres according to § 1412.71; and
6. The current producer(s) will enroll the applicable farm for the 2018 crop year according to § 1412.41.

As indicated above, the last step in the multi-step process is to enroll the farm for 2018. To participate in 2018, all eligible producers on farms must enroll following allocation and election to be potentially eligible for PLC and ARC benefits. BBA was enacted on February 9, 2018, and 2018 PLC and ARC enrollment had already begun. However, because BBA changed the conditions of contract participation for any farms having generic base acres, all farms having generic base acres that previously enrolled for 2018 must go through the process outlined above and, after that process is completed, reenroll the farm for 2018. Previous 2018 enrollments of farms having generic base acres will not be recognized as valid, as the provisions of BBA eliminate generic base acres. CCC has no authority to enter into 2018 contracts having generic base acres. As was the

case with previous crop year enrollments, enrollments of portions of a farm are not allowed.

General Eligibility Requirements

The general eligibility requirements are explained in the ARC or PLC contract appendix and in 7 CFR part 1412, except for adding seed cotton to the list of covered commodities.

Sharing Payments

Each eligible producer on a farm will be given the opportunity to enroll in ARC or PLC for a payment share determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee. As specified in § 1412.54(b), each producer leasing a farm must provide the FSA county committee with a copy of their written lease or, in the absence of a written lease, must provide a complete written description of the terms and conditions of any oral agreement or lease. The general eligibility requirements are explained in the ARC or PLC contract appendix and on 7 CFR part 1412, except for adding seed cotton to the list of a covered commodity. An owner's or landlord's signature, as applicable, affirming a zero 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. For farms with seed cotton base acres, such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the application by September 30, 2018.

Signup Deadline

The signup deadline is September 28, 2018 for 2018 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. This rule involved matters relating to benefits and is therefore being published as a final rule without the prior opportunity for comments. In addition, 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.

Executive Orders 12866, 13563, 13771 and 13777

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. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

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. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. The OMB guidance in M-17-21, dated April 5, 2017, specifies that “transfer rules” are not covered by Executive Order 13771. Transfer rules are Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries. Therefore, this is considered a transfer rule by OMB and is not covered by Executive Order 13771.

Cost Benefit Analysis Summary

Estimates of transfer payments from these ARC and PLC programs are based on supply, demand and price conditions and FSA projections for the 2018 crop. Based on the projections, the net increase in 2018-crop ARC and PLC payments is expected to be around \$743 million. Allocation of generic base is expected to increase ARC and PLC payments by \$1,067 million (\$917 million for seed cotton and \$150 million for other covered commodities) with offsets of \$324 million from eliminating ARC and PLC payments on attributed generic base.

The changes are expected to have marginal impacts on supply, demand, and prices because the impacts are spread across the covered commodities and acreage shifts are expected to represent a small percentage of the respective covered commodity planted

acreage. Peanut planted acreage is expected to decrease by approximately 15 percent, but peanut prices are not expected to change significantly because of ample peanut supplies. Peanut acres are expected to shift to other commodities such as corn and soybeans with greater market returns because eliminating generic base decouples ARC and PLC payments from planting decisions. Most seed cotton base acres are expected to elect and enroll in PLC.

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, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act 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 CCC nor FSA are not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

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). This final rule will revise ARC and PLC, as mandated by BBA, to add a single commodity, seed cotton. The legislative intent for revising ARC and PLC programs is to

provide income support to the same group of producers that were previously eligible for the earlier and now-discontinued programs, direct and counter-cyclical payment program and average crop revenue election program. On February 22, 2017, FSA completed an environmental review of ARC and PLC. FSA has determined that the addition of the commodity to the programs does not alter the environmental impacts, as assessed, or the related decisions. Therefore, FSA will not prepare a new environmental evaluation, assessment, or impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. 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 to 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 will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must 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 for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The Executive Order 13175 requires to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments 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 required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

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 must 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.

SBREFA

This rule is a major rule under the SBREFA (Pub. L. 104-121). 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, as amended, 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 of seed cotton as a covered commodity for ARC and PLC as required by the 2014 Farm Bill, as amended. The regulation needs to be effective to provide adequate time for producers to update base acres and yields in preparation for enrollment for 2018. Therefore, this rule is effective on the September 30, 2018.

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

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 section 1601(c) 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 in 7 CFR Part 1412

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

For the reasons discussed above, CCC amends 7 CFR part 1412 as follows:

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

1. The authority citation for part 1412 continues to read as follows:

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

2. Amend § 1412.1 as follows:

a. In paragraph (a), remove the words and punctuation “, generic base acres,” and add the words and punctuation “seed cotton;” immediately before the words “pulse crops”.

b. Revise paragraph (b).

c. In paragraph (c), remove the words “CTAP application or the”;

d. In paragraph (d), remove the words “CTAP application or”; and

e. In paragraph (e), remove the words and punctuation “and for CTAP, assistance under this part will be based on the physical location of the farm, as specified in part 718 of this title”.

The revision reads as follows:

§ 1412.1 Applicability, changes in law, interest, application, and contract provisions.

* * * * *

(b) For crop year 2018, this part specifies how:

(1) Generic base acres are allocated to seed cotton base acres and unassigned base acres (generic base acres are not in effect for crop year 2018);

(2) A payment yield for seed cotton base acres is established;

(3) An election is made on seed cotton base acres; and

(4) Contracts are enrolled with seed cotton base acres.

* * * * *

3. Amend § 1412.2 as follows:

a. In paragraph (a), remove the words and punctuation “, PLC, and CTAP” and add the words “and PLC” in their place; and

b. Revise paragraphs (e) and (f).

The revisions read as follows:

§ 1412.2 Administration.

* * * * *

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify any non-statutory deadline specified in this part.

(f) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, yields, and payment factors established for ARC or PLC, are not subject to appeal in accordance with part 780 of this title.

4. Amend § 1412.3 as follows:

a. Remove the definitions of “2014 farm structure” and “Application”;

b. In the definition of “Base acres”, revise the last sentence;

c. In the definition of “Contract period”, remove the words “or application” and words and punctuation “or “application””, and remove the word “the” immediately before the words “each program year”;

d. Add the definition of “Counter-cyclical payment yield” in alphabetical order;

e. In the definition of “Covered commodity”, add the words and punctuation “seed cotton,” immediately before the words “pulse crops”;

- f. Remove the definition of “Eligible subsequently planted crop acreage”;
- g. In the definition of “Generic base acres”, remove the last two sentences and add in their place one new sentence;
- h. In the definition of “Initial crop”, remove the words “or cotton”;
- i. In paragraph (3) of the definition of “Marketing year”, add the words and punctuation “, seed cotton,” immediately after the word “Peanuts”;
- j. In the definition of “Payment acres”, remove paragraph (3);
- k. Revise the definition of “Payment yield”;
- l. Amend the definition of “Reference price” as follows:
 - i. In paragraph (13) remove the word “and”;
 - ii. In paragraph (14) remove the punctuation “.” and add in its place the words and punctuation “; and”; and
 - iii. Add new paragraph (15);
- m. Add the definition of “Seed cotton” in alphabetical order;
- n. In the definition of “Supportive and necessary contractual documents”, remove the words “or CTAP application”; and
- o. Add the definition of “Unassigned base acres” in alphabetical order.

The revisions and additions read as follows:

§ 1412.3 Definitions.

* * * * *

Base acres * * * * * The term “base acres” includes any unassigned base acres.

* * * * *

Counter-cyclical payment yield means the farm’s upland cotton yield as specified in the regulations for 7 CFR part 1412 that were in effect as of September 30, 2013.

* * * * *

Generic base acres * * * For 2018, generic base acres are subject to allocation according to § 1412.25.

* * * * *

Payment yield means for a farm for a covered commodity, the yield established under subpart C of this part.

* * * * *

Reference price * * *
(15) Seed cotton, \$0.367 per pound.

* * * * *

Seed cotton means unginning upland cotton that includes both lint and seed.

* * * * *

Unassigned base acres means the number of acres derived from generic base acres where no ARC or PLC payments are generated or earned.

* * * * *

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

5. Amend § 1412.23 as follows:

a. Revise the section heading; and

b. In paragraphs (a), (b), and (c), remove the words “and generic base acres” in each place they appear.

The revision reads as follows:

§ 1412.23 Base acres, and Conservation Reserve Program.

* * * * *

6. Amend § 1412.24 as follows:

a. Revise the section heading;

b. In paragraph (a)(1), remove the words and punctuation “and generic base acres (which are equal to upland cotton base acres used for CTAP)”;

c. Revise paragraph (b);

d. In paragraph (d)(1), remove the words and punctuation “, including generic base acres (and the equal amount of upland cotton base acres),”; and

e. In paragraph (f), remove the words and punctuation “and generic base acres (resulting in an equal amount of upland cotton base acres)”.

The revisions read as follows:

§ 1412.24 Limitation of total base acres on a farm.

* * * * *

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the base acres against which any reduction required in this section will be made.

Absent the owner selecting the base acres for reduction, CCC will apply a pro-rata reduction against the base acres before computing and issuing any payments for the program year when a reduction becomes necessary.

* * * * *

7. Revise § 1412.25 to read as follows:

§ 1412.25 Allocation of generic base acres on a farm and updating of records.

(a) Any or all of the current owner(s) of a farm with generic base acres adjusted as of February 9, 2018, will have a one-time opportunity in an allocation period as announced by FSA, if a covered commodity including upland cotton was planted or prevented from being planted during the 2009 through 2016 crop years, to:

(1) Allocate the farm's generic base acres to seed cotton base acres in a quantity equal to the greater of:

(i) 80 percent of the generic base acres on the farm; or

(ii) The average number of upland cotton acres planted and prevented from being planted on the farm during the 2009 through 2012 crop years, not to exceed the total generic base acres on the farm; or

(2) Allocate base acres for covered commodities, including seed cotton, by applying paragraph (e) of this section.

(b) Under no circumstances will the allocation of generic base acres 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 statement that conflicts with the allocation request or expresses written disagreement with the allocation filed according to paragraph (a) of this section, no allocation will be approved for the farm unless all the current owners of the farm provide FSA with written evidence of the dispute resolution during the allocation 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 2008

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 of records specified in paragraph (c) of this section is intended to assist current owners of farms with the one-time opportunity for generic base acre allocation 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.

(d) Current owners will be provided a one-time opportunity to update the records identified in paragraph (c) of this section during the allocation period, 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 allocate the farm's generic base acres during the allocation 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) Current owners can allocate generic base acres at any time during the allocation 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 allocation period.

(g) The option to allocate generic base acres is an “all or nothing” decision for the farm. Generic base acres will not be retained, partially or in whole. A decision by any current owner to allocate generic base acres on a farm in accordance with this section is final and binding if made according to this section during the allocation period unless that allocation is withdrawn in writing by that current owner or another current owner. If another current owner subsequently files a different allocation request in whatever time remains in the stated allocation period or if there are conflicting allocation requests of current owners in the allocation period, FSA will not make the allocation unless the conflict is resolved via written agreement between the current owners who filed the conflicting requests. In the event that a resolution is not presented, the provisions of paragraph (h) of this section will take effect. In the case of submitting evidence of resolution, the written agreement must be filed with FSA in the allocation period. Any and all updates and allocation requests mentioned in this section are subject to review and approval or disapproval by FSA for CCC.

(h) In the event that an owner fails to make an allocation according to this part and the farm has met the planting requirement in paragraph (a) of this section, the farm will receive an allocation of seed cotton base acres in accordance with paragraph (a)(1)(i) of this section.

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

8. Amend § 1412.31 as follows:

a. In paragraph (a), remove the word “The” and add the words “Except for seed cotton” in its place and remove “§ 1412.33 or § 1412.34, whichever is applicable” and add “§ 1412.34” in their place.

b. Redesignate paragraph (b) as paragraph (c) and add new paragraph (b).

c. In newly redesignated paragraph (c), remove the words and punctuation “or for which a covered commodity is planted on generic base acres,”.

§ 1412.31 PLC yields for covered commodities.

* * * * *

(b) The PLC yield for seed cotton on the farm is equal to the counter-cyclical payment yield established for upland cotton on the farm as in effect September 30, 2013, times 2.4, unless the PLC yield is updated as specified in § 1421.33.

* * * * *

9. Amend § 1412.32 as follows:

a. Revise the section heading;

b. In paragraph (a), remove the words and punctuation “(except generic base acres),”; and

c. In paragraph (e), remove the reference to “§ 1412.35” and add “§ 1412.36” in its place.

The revision reads as follows:

§1412.32 Updating PLC yield for all covered commodities except seed cotton.

* * * * *

§§ 1412.33 through 1412.35 [Redesignated as §§ 1412.34 through 1412.36]

10. Redesignate §§ 1412.33 through 1412.35 as §§ 1412.34 through 1412.36.

11. Add new § 1412.33 to read as follows:

§ 1412.33 Updating PLC yield for seed cotton.

(a) For a farm that has seed cotton 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 the PLC yield equal to 90 percent of the upland cotton's 2008 through 2012 average yield per planted acre, excluding from the average any year that no acreage was planted to upland cotton, times 2.4. 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 yields will be substituted for that year.

(b) The current owner of the farm may retain the PLC yield or update the PLC yield.

(c) PLC yields are exclusively used for PLC. However, any owner of a farm can update the seed cotton PLC yield as specified in paragraph (a) of this section, regardless of program election, enrollment, or participation.

(d) A decision by any current owner of a farm to update the seed cotton 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 § 1412.36. 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 § 1412.35 to support the certified yield.

§ 1412.34 [Amended]

12. In newly redesignated § 1412.34(b)(2)(i) and (c), remove each cross reference to “§ 1412.34” and add “§ 1412.35” in their place.

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

13. Amend § 1412.41 as follows:

a. Revise paragraph (a)(2);

b. In paragraph (b), remove the words and punctuation “June 1 of the applicable contract year,” and add in their place “September 30, 2018,”;

c. In paragraph (e), remove “2015 or subsequent” and add “2018” in its place, and remove “2015 and subsequent crop year”; and

d. Add paragraph (f).

The revision and addition read as follows:

§ 1412.41 ARC or PLC program contract.

(a) * * *

(2) For program year 2018, the enrollment period will end on September 30, 2018.

(i) Eligible producers must execute and submit an ARC or PLC program contract not later than September 30, 2018, for fiscal year 2018 contracts.

(ii) Except 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. 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.

* * * * *

(f) Any 2018 contract for a farm that includes generic base acres, whether or not that contract was approved on behalf of CCC, is invalid and withdrawn. Eligible producers on farms that had generic base acres must enroll in accordance with paragraph (a) of this section after allocation has been completed. Any contract executed before allocation in § 1412.25 will not be recognized by CCC for any purpose.

§§ 1412.44 and 1412.45 [Removed and Reserved]

14. Remove and reserve §§ 1412.44 and 1412.45.

§ 1412.46 [Amended]

15. In § 1412.46 (f), remove the last sentence.

Subpart E—Financial Considerations Including Sharing Payments

§ 1412.51 [Amended]

16. Amend § 1412.51 as follows:

- a. Remove paragraph (b);
- b. Redesignate paragraphs (c) through (e) as (b) through (d), and;
- c. In newly redesignated paragraph (d), remove the words “including any generic base acres”.

§ 1412.52 [Amended]

17. In § 1412.52(a), remove the words “each of the 2014 through” and add the word “the” in their place.

18. Amend § 1412.53 as follows:

- a. In paragraph (a) introductory text, remove “each of the 2014 through” and add “the” in their place;
- b. In paragraph (b) introductory text, remove “each of the 2014 through” and add “the” in their place; and
- c. Revise paragraph (e).

The revision reads as follows:

§ 1412.53 ARC payment provisions.

* * * * *

(e) FSA has determined the irrigated and non-irrigated counties and crops for the 2018 program year.

* * * * *

§ 1412.54 [Amended]

19. Amend § 1412.54 as follows;

a. In paragraph (a), remove the words “apply for CTAP as specified in subpart H of this part and annually”;

b. In paragraph (b), remove the words “applies for CTAP or elects and”;

c. In paragraph (c), remove the words “CTAP payment or”;

d. In paragraph (d)(4), remove the words “ARC, PLC, or CTAP” and add the words “ARC or PLC” in their place both times they appear;

e. In paragraph (f) introductory text, remove the first sentence;

f. In paragraph (f)(2), remove the words “of this part”; and

f. In paragraph (h), remove the words “a CTAP application or” and add the word “an” in their place, and remove the words and punctuation “CTAP application, or” in both places.

§ 1412.55 [Amended]

20. In § 1412.55(a)(1), remove the words and punctuations “ARC, PLC, or CTAP”, and add “ARC or PLC” in their place.

Subpart F—Violations and Compliance Provisions

§ 1412.61 [Amended]

21. In § 1412.61, remove “or CTAP application, as applicable” and remove “or CTAP application”.

§ 1412.63 [Amended]

22. In § 1412.63, remove the words “or CTAP application”.

§ 1412.64 [Amended]

23. Amend § 1412.64 as follows:

a. In paragraph (a), remove “ARC, PLC, and CTAP” and add “ARC or PLC” in its place, and remove the words “or application”;

b. In paragraph (b) introductory text, remove “ARC, PLC, or CTAP” and add “ARC or PLC” in its place; and

c. In paragraph (b)(3), remove the words and punctuation “, CTAP application,”.

§ 1412.66 [Amended]

24. In § 1412.66(a), remove “ARC, PLC, and CTAP” and add “ARC or PLC” in their place.

§ 1412.69 [Amended]

25. In § 1412.69, remove “CTAP participants and enrolled” and add “Enrolled” in its place.

Subpart G—ARC and PLC Election

26. Amend § 1412.71 as follows:

a. Remove paragraph (c);

b. Redesignate paragraph (d) as paragraph (c);

c. In newly redesignated paragraph (c), remove the first sentence, remove “The” and add “In general, a” in its place; and

d. Add new paragraph (d).

The addition reads as follows:

§ 1412.71 Election of ARC or PLC.

* * * * *

(d) Beginning with the 2018 crop year, a valid election for seed cotton is required for all current producers on a farm where seed cotton is added as a covered commodity, as specified in § 1412.25, unless the farm contains a valid ARC-IC election. A valid ARC-IC election on a farm is for all covered commodities and will include the added covered commodity of seed cotton. This election is for seed cotton only. All other covered commodities on a farm with seed cotton base acres have an election on file and will be bound by that prior election. The election by all current producers is to obtain:

- (1) PLC for seed cotton base acres, or
- (2) ARC-CO for seed cotton base acres.

* * * * *

27. In § 1412.74, add paragraph (c) to read as follows:

§ 1412.74 Failure to make election.

* * * * *

(c) If a valid election is not made for seed cotton base acres on a farm, the producers of seed cotton base acres on the farm are deemed to have elected PLC for acres allocated on the farm to seed cotton for the 2018 crop year.

Steven Peterson,
Acting Administrator,
Farm Service Agency,

Robert Stephenson,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 2018-17681 Filed: 8/15/2018 8:45 am; Publication Date: 8/16/2018]