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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560-AI24

[Docket ID FSA-2019-0008]

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 Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs authorized by the Agricultural Act of 2014 (the 2014 Farm Bill), as amended. The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended 2014 Farm Bill provisions regarding ARC and PLC, and authorized the ARC and PLC Programs for the 2019 through 2023 program years. The ARC and PLC Programs are continuing, with some changes. This rule also includes conforming changes to Farm Service Agency (FSA) general regulations that apply to multiple programs. The ARC and PLC Programs provide producers a choice between a counter-cyclical payment support type program (PLC) and an income support program (ARC). In a defined election and enrollment period, producers can elect different programs for different covered commodities on a farm, for example, choosing PLC for corn and ARC

for soybeans on the same farm. There is also an option to elect ARC individual coverage (ARC-IC); however, if that option is elected, all the farm's covered commodities are elected with that option. This rule specifies the eligibility requirements, enrollment procedures, and payment calculations for the ARC and PLC Programs.

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

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SUPPLEMENTARY INFORMATION:

Background

The 2018 Farm Bill (Pub. L. 115-334) amended the 2014 Farm Bill (Pub. L. 113-79) and authorized the continuation of the ARC and PLC Programs for the 2019 through 2023 crop years. This rule discusses the how the ARC and PLC Programs will be conducted, which is similar to how they were conducted in 2014 through 2018, with the changes made by the 2018 Farm Bill. ARC continues to have two options: a county option (ARC-CO) or an individual farm coverage option (ARC-IC). ARC and PLC are Commodity Credit Corporation (CCC) programs administered by FSA.

Consistent with the 2018 Farm Bill changes, this rule makes discretionary changes to the ARC and PLC Programs including the treatment of base acres on farms that had all cropland planted to grass or pasture, including cropland that was idle land or fallow, from January 1, 2009, through December 31, 2017; the requirement that producers on the farm in 2019 make an irrevocable program election of ARC or PLC in

order for the enrolled farm's producers to be potentially eligible for 2019 benefits; a default program election based on the election that was applicable to the farm under the 2014 Farm Bill; and the opportunity for farm owners to update a covered commodity's PLC yield on the farm in 2020.

This rule discusses the basis for all payments to farms and producers under the ARC and PLC Programs; the program election that is required from all producers on a farm in the 2019 crop year; the opportunity for producers to enroll farms on a covered commodity-by-covered commodity basis in each crop year 2019 through 2023; the opportunity for producers to annually change the program election between ARC and PLC on a covered commodity basis beginning in 2021, and the one-time opportunity for owners to update yields in 2020.

Mandatory changes being made by this rule to implement the 2018 Farm Bill provisions include:

- Permit revised program elections of ARC or PLC in each of the 2021, 2022, and 2023 crop years;
- Establish separate irrigated and non-irrigated ARC-CO county yields;
- Calculate ARC-CO payments based on the physical location of base acres on the farm;
- Increase the percentage of a county's transitional yield (T-yield) that will be used in determining the benchmark yield;
- Provide for trend adjustment ARC-CO yields similar to how yield adjustment is done for crop insurance;

- Specify that Risk Management Agency (RMA) yields will have priority in determining ARC-CO yields;
- Provide for the division of as many as 25 counties each into two administrative units when county size and base acre limitations are reached and where FSA determines it appropriate to have administrative units;
- Provide producers with the option of entering into multiple-year ARC and PLC contracts;
- Specify that for 2019 through 2023, PLC payments will issue when an effective reference price, a new term defined in the 2018 Farm Bill and this rule, is greater than the applicable effective price;
- Specify that if fruits and vegetables are planted on a covered commodity's base acres that are on payment acres there will be a corresponding payment reduction for those, but that those payment reduced covered commodity base acres will be considered planted to the covered commodity that was the subject of the reduction;
- Amend the more than 10-base acres on a farm provision to continue the prohibition of payment eligibility of producers on that farm unless the sum of the base acres on the farm, when combined with the base acres of other farms in which the producer has an interest, is more than 10 acres; and
- Expand those producers not subject to the more than 10-base acre provision to include beginning farmers or ranchers, veteran farmers or ranchers, or limited resource farmers or ranchers.

The rule details the requirements necessary to carry out administration of ARC and PLC. As amended, the rule clarifies and reaffirms which farms are eligible, which producers are eligible, actions that owners and producers can and must perform, election periods, enrollment periods, and, more specifically, the things that owners and producers have to perform in order to ensure producer and farm payment eligibility.

Because of the timing of enactment of the 2018 Farm Bill and when this rule will be published, 2019 farmers will have planted and harvested their 2019 crops before:

1) producers make election; and 2) producers make annual enrollment decisions.

Producers will know their 2019 production and yields before they have to decide whether to elect and subsequently enroll in ARC or PLC. The 2019 producers on a farm must all unanimously elect ARC or PLC on each covered commodity having base acres and may enroll each or all of those covered commodities for 2019. For each of the 2020 and subsequent crop years, the producers on the farm in each crop year are eligible for crop year enrollment. Because the opportunities and actions that owners and producers have or are required to take are specific to the producers or owners that are on a farm in a contract period, the terms “owners” and “producers” under this rule are defined as the person or legal entity for the applicable contract period for which that person or legal entity is signing forms or performing actions under this rule. Many of the actions required under the ARC and PLC Programs (program election, enrollment, yield update, and subsequent opportunity to perform program election) can only be performed by the farm’s owners and producers in that contract or program year. For 2019, as is discussed in greater detail below, and as required by the 2014 Farm Bill, as amended, the farm’s

2019 producers must unanimously irrevocably elect ARC or PLC during a prescribed election period. FSA will announce the election period.

Continuation of ARC and PLC Programs

This rule includes a choice between two types of programs for commodity programs.

The ARC Program is an income support program that provides payments when actual crop revenue declines below a specified guarantee level. The PLC Program provides payments when the price for a covered crop declines below its “effective reference price.” Similar to the 2014 through 2018 crop years, eligible producers are required to make a decision to participate in either ARC-CO or PLC, but not both for a single covered commodity on the farm, for the 2019 through 2023 crop years. An election of ARC-IC will apply to all covered commodities on the farm. Beginning in 2021 and in each subsequent contract year, the farm’s producers can unanimously choose a different program election for each of their covered commodities.

Under the 2014 Farm Bill, expected yield, revenue, and price were based on the most recent 5 crop years. Because the most recent yield and price data for the immediately preceding 5 crop years is not available in the current crop year, this rule uses the term “most recent 5 crop years available” which is defined as the 5 years preceding the most immediately preceding crop year. This means that for the 2019 crop year, the most recent 5 years available are 2013 through 2017.

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 (7 U.S.C. 9011-9019). The Bipartisan Budget Act of 2018 (Pub. L. 115-123) amended the 2014

Farm Bill by adding seed cotton as a “covered commodity” beginning with the 2018 crop year. Accordingly, there are now 22 covered commodities: wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing), corn, grain sorghum, long grain rice, medium grain rice, seed cotton, pulse crops, soybeans, other oilseeds, and peanuts.

Under the 2018 Farm Bill amendments, effective reference prices will be used. An effective reference price is the lesser of 115 percent of the reference price for a covered commodity or an amount equal to the greater of the reference price for the covered commodity or 85 percent of the average of the market year average (MYA) price of the covered commodity for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest MYA price.

Under the 2018 Farm Bill amendments, all of a farm’s 2019 producers must make a unanimous program election between the ARC and PLC Programs. That election will be effective for the 2019 through 2023 crop years, unless the farm’s 2021 and subsequent crop year producers in each of the 2021 and subsequent crop years choose to change the election. Under the 2014 Farm Bill, once the farm’s producers elected ARC or PLC, the decision was irrevocable from the year of election through the 2018 crop year. Under the 2018 Farm Bill, all 2019 producers of covered commodities on the farm are required to affirmatively and unanimously elect PLC or ARC and, if an election is not made, the farm’s covered commodity will be ineligible for payments in the 2019 crop year and the producers on the farm will default to the same ARC or PLC for each covered commodity on the farm for the 2020 through 2023 crop years as was applicable for the 2015 through 2018 crop years. This provision is specified in the 2018 Farm Bill and neither FSA nor

CCC has any discretion to deviate from the ineligibility of producers for payments on farms that do not have a valid election made during the election period. Farms with 2019 producers who do not make a valid election in the 2019 election period will not be eligible for 2019 crop year payments.

The 2014 Farm Bill, as amended, specifies that a producer on a farm is not eligible to receive ARC and PLC payments if the sum of the base acres on the farm is 10 acres or less unless the sum of the base acres on the farm, when combined with the base acres of other farms in which the producer has an enrolled producer share interest greater than zero, is more than 10 acres. The 10-acre limitation will not apply to a socially disadvantaged farmer or rancher, a beginning farmer or rancher, a veteran farmer or rancher, or a limited resource farmer or rancher as defined in 7 CFR part 718.

The 2018 Farm Bill amended the 2014 Farm Bill to specify that a farm on which all of the cropland was planted to grass or pasture, including cropland that was idle or fallow from January 1, 2009, through December 31, 2017, will have base acres and yields maintained for the covered commodities on the farm, except that no payment will be made with respect to those base acres under this part for the 2019 through 2023 crop years. Additionally, the producers on a farm for which all of the base acres are maintained under this provision are ineligible to change the election applicable to the producers on the farm. The producers are also not permitted to reconstitute the farm to void or change this treatment of base acres.

Base Acres

Base acres are central to the payment formulas for ARC and PLC. Section 1111 of the 2014 Farm Bill provides that the base acres in effect under sections 1001 and 1301

of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246; 7 U.S.C. 8702, 8751) (2008 Farm Bill), as adjusted, that were in effect September 30, 2013, constitute the base acres for the ARC and PLC Programs, subject to any reallocation, adjustment, or reduction under section 1112 of the 2014 Farm Bill, as amended. The adjustments to base acres for various reasons including, but not limited to, land no longer being devoted to agricultural uses are required. The term base acres includes unassigned base acres. However, as specified in this rule, payment acres for a covered commodity are a specified percentage of either the farm's specific covered commodity base acres or all the farm's covered commodity base acres (for ARC-IC) and in neither case do covered commodity base acres include unassigned base acres.

ACR-CO 2018 Farm Bill Changes

Income support under ARC will be provided for producers satisfying all requirements who have a share of eligible base acres of the enrolled covered commodity. The sum of the base acres on a farm are based on the farm's constitution according to 7 CFR part 718. FSA farm records and PLC yields are based on the administrative county of the farm. Based on 2018 Farm Bill amendments, ARC-CO assistance will be based on the physical location of base acres on a farm; FSA will:

- Calculate actual crop revenue and ARC guarantee for irrigated and non-irrigated covered commodities;
- Determine a historical irrigated percentage for use in determining actual crop revenue and benchmark revenue for ARC-CO;
- Increase the transitional yield plug to 80 percent;

- Prioritize RMA data in the calculation of the ARC-CO guarantee and actual yields; and
- Implement a trend adjustment yield factor similar to that which is performed under the Federal Crop Insurance endorsement.

For ARC-CO election and enrollment on a covered commodity on a farm, the covered commodity will have its actual crop revenue and ARC guarantee, including an irrigated and non-irrigated covered commodity, weighted and summarized to the farm level in order to determine a per acre payment rate, if applicable, for the covered commodity.

In addition to revising the ARC regulation to accommodate these 2018 Farm Bill amendments with regard to physical location of the farm, FSA is making conforming changes to 7 CFR part 718, which are discussed below.

Additionally, FSA will, for no more than 25 counties nationwide, divide a county into not more than two administrative units. Eligible counties for consideration of administrative units are those that are larger than 1,400 square miles and contain more than 190,000 base acres.

Reducing Administrative Burdens on Producers and Practicability of Multiyear Contracts

Section 1706 of the 2018 Farm Bill specified that, to the maximum extent practicable, FSA would offer an option to sign a multiyear contract for ARC and PLC. This option will be made available to the producers on the farm and such enrollment, if chosen by the farm's producers, will be considered valid for the year of enrollment and each subsequent year unless there is a change to any of the following:

- The farm's constitution;
- The farm's base acres or PLC yield of any covered commodity;
- Any of the producers or producer shares of covered commodities on the farm;
- Either election or enrollment of any covered commodity on the farm; or
- Any other change, including a withdrawal of any enrolled producer, that would require the producers on the farm to have to reaffirm enrollment.

Unanimous Election of ARC or PLC Programs

During the election period that will be announced by FSA, all of the producers on a farm must make a unanimous election of either of the two following options:

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

The election, if valid as described in this rule, will apply to the farm for the 2019 through 2023 crop years, unless changed by the 2021, 2022, or 2023 producers on the farm.

Payment Yields

The 2018 Farm Bill amended the 2014 Farm Bill to permit owners of farms an opportunity to update in 2020, for each covered commodity, the payment yield that will be used to calculate PLC payments. An owner's decision to update yields is independent of subsequent decisions of producers to elect or enroll. In other words, an owner can

update yields for PLC in 2020 even though the 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, this rule specifies how an equivalent average yield will be established for that commodity for the purpose of PLC.

FSA will use a press release to announce specific periods for the yield update and it is only during this period that owners of a farm can update yields.

Owners Make Yield Update Decisions, and Producers Elect and Producers Enroll

As previously discussed, owners are allowed to update records incidental to yield updates for a farm. The 2019 producers of covered commodities on a farm must unanimously elect ARC or PLC. If during the established period in 2020 for yield update, owners exercise the option to update yields, that yield update will apply to the farm unless the yield update is either withdrawn, rescinded, or modified by an owner on the farm during the established yield update period. CCC is under no obligation to notify owners on a farm if a yield update has been filed, rescinded, modified, or withdrawn during the yield update period. If a person or legal entity acquires ownership of a farm that has already had an election of ARC or PLC made by 2019 producers or by 2021, 2022, or 2023 producers, FSA will provide the election status to that person or legal entity on request, but CCC is under no obligation to notify new owners or new producers whether an election has previously been made on that particular farm.

All 2019 producers on a farm must unanimously elect ARC, PLC, or a combination of ARC and PLC for each covered commodity and farm. If producers cannot agree, the farm's covered commodity will default to the same coverage for each

covered commodity on the farm for the 2020 through 2023 crop years as was applicable for the 2015 through 2018 crop years and the farm's covered commodity will not be eligible for 2019 payments. Election is not enrollment.

In order to be eligible for payments, producers must annually enroll their respective share interest of base acres or interest of covered commodities. Only producers that annually enroll, or who are subject to a valid multiyear enrollment, may receive payments. In each crop year or program year, the producers on the farm in that crop year or program year may choose to enroll the farm in ARC and PLC on a covered commodity-by-covered commodity basis.

The role of owners versus the roles for producers is specified in the 2014 Farm Bill. FSA does not have the discretion to set different requirements.

ARC and PLC Payments

As is discussed in significant detail with examples, ARC has two options – a county option (ARC-CO) and an individual farm coverage option (ARC-IC). For ARC-CO, the benchmark revenue is based on average revenues at the county level for covered commodities; for ARC-IC, the benchmark revenue target is based on the average revenue for that specific farm. For ARC-CO, 85 percent of the specific covered commodity base acres for a commodity will be “payment acres” that are used to calculate payments; for ARC-IC, 65 percent of all covered commodity base acres on the farm will be “payment acres.” On a covered commodity-by-covered commodity basis, the farm's 2019 producers can elect either ARC-CO and PLC for a farm. In other words, they can elect ARC-CO for some covered commodities and PLC for others. However, if the farm's

current producers elect ARC-IC, the election applies to all the covered commodities and the whole farm.

The regulation specifies the calculations that will be used for payments to producers, the one-time opportunity owners will have to update yields and planting history, the program election that is required from all producers on a farm in the 2019 crop year, and the opportunity for producers to annually enroll on a covered commodity-by-covered commodity basis on each farm (for ARC-CO and PLC program elections) for each year.

There are several factors that affect payments and therefore, the decision making relative to participation in ARC or PLC. ARC and PLC are intended to supplement, not replace, regular crop insurance. ARC payments are limited to 10 percent of the benchmark revenue per acre. The PLC calculation does not include current yields, so if market year prices were above the effective reference price, but current yields were low, there would be no PLC payment.

Both ARC and PLC Programs are subject to a \$125,000 per year per person or legal entity payment limitation for all commodities except peanuts, with a separate \$125,000 limit for payments for peanuts. Loan Deficiency Payments (LDP), and gains on Market Assistance Loans (MAL) are no longer included in the ARC and PLC per year per person or legal entity payment limitation.

PLC Payment Calculations

As noted above, PLC is a counter-cyclical price program that makes a payment when the effective price for a covered crop falls below its effective reference price specified in the 2014 Farm Bill, as amended. The effective price is the higher of the

national average market price for the 12 month MYA price, or the national average loan rate (the MAL rate) for that crop year. Usually, the market price will be the effective price. The reference prices are set through 2023.

As was the case under the 2014 Farm Bill and in 7 CFR part 1412, temperate japonica rice will have separate reference prices set by USDA for high altitude or high latitude areas versus other areas of the United States where rice is grown. It was 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.

Payments for a given crop year will be made after October 1 of the following year. For example, 2019 crop year payments will be made after October 1, 2020, and 2020 crop year payments will be made after October 1, 2021.

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

PLC Example Corn – 100 base acres	
Effective reference price	\$3.70/bu.
MYA price	\$3.55/bu.
Payment rate (reference price - MYA 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 x payment yield x 85 % of base acres)	\$0.15 x 150 bu. x (85 % of 100 base acres) =\$1,913

bu. - bushel

As noted above, the payment is based on effective reference prices and the farm's PLC yields. In the example above, the producer would receive a payment of \$1,913 for 100 base acres using the farm's PLC yield. Corn base acres are always included for payment in this example, even if no corn was planted on the farm in the year of the payment because the payment is made on the base acres.

ARC Payment Calculations

As discussed above, ARC is an income support program that is designed to cover a portion of a farmer's out-of-pocket cost when crop revenues fall below guarantee revenue levels, with the benchmark revenue based on either county level historic revenue (ARC-CO) or the individual farm's historic revenue (ARC-IC). Farmers may elect ARC-CO as an alternative to PLC on a covered commodity-by-covered commodity basis, or ARC-IC for all the covered commodities and the whole farm. For both ARC-CO and PLC, the payment calculation is based on covered commodity base acres.

Under ARC-CO, payments are issued 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 county data for yields and national prices, not individual farm data.

The ARC-CO guarantee is 86 percent of the crop's benchmark revenue in the county. Benchmark revenue is calculated using the most recent available previous 5-year MYA price, excluding years with the highest and lowest prices (the ARC-CO benchmark price), multiplied by the most recent 5-year average county yield available, excluding the

years with the highest and lowest yields (the ARC-CO benchmark yield). The payment is equal to 85 percent of a farm’s base acres of the covered commodity multiplied by 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 average historical benchmark price times the ARC-CO average historical benchmark yield). That is because ARC is intended to supplement crop insurance, so the producer also has crop insurance that would pay for greater losses. An example of an ARC-CO payment calculation using estimated 2019 soybean prices and yields as follows:

ARC-CO Payment Calculation Example Soybeans– 100 base acres	
2019 MYA price (estimate only)	\$9.65/bu.
2019 Actual average county yield.....	56
Benchmark revenue (2013 through 2017 prices x yields for the county).....	\$670
Base acres.....	100
2019 Actual crop revenue (MYA x actual county yield).....	\$540
ARC CO guarantee (86 % x benchmark revenue).....	\$576.20
Maximum payment (the ARC-CO average historical benchmark price x the ARC-CO average historical benchmark yield x 10 %).....	\$67
Payment rate (ARC-CO guarantee of \$576 - actual crop revenue of \$540, not to exceed maximum payment of \$67).....	\$36.20
Payment (payment rate of \$36.20 x 85 % of 100 base acres).....	\$3077

ARC-IC provides payments when the actual individual’s revenues, averaged across all covered commodities planted on the ARC-IC farm, are less than ARC-IC guarantees, averaged across those covered commodities on the farm. As specified in the 2014 Farm Bill, as amended, the farm for ARC-IC purposes is the sum of the producer’s interest in all enrolled 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 from each of those farms. The farm’s ARC-IC guarantee equals 86 percent of the farm’s individual benchmark guarantee (5-year average of the annual benchmark revenues), excluding the years with the highest and lowest annual benchmark revenues, then averaging across all crops on the farm. The actual revenue is similarly calculated, with both the guarantee and actual revenue calculated using planted acreage on the farm. The ARC-IC payment is equal to 65 percent of the sum of the base acres of all covered commodities on the farm multiplied by the difference between the individual guarantee revenue and the actual individual crop revenue across all covered commodities planted on the farm. Payments may not exceed 10 percent of the individual benchmark revenue. Since the payment is based on yields for that individual farm, the producers enrolled on ARC-IC elected farms must report acreage and yield data to qualify for payment.

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)).....	\$770.40
Guarantee (86 % of total benchmark revenue)	\$662.54
Actual revenue (2019 MYA price of each commodity x each commodity’s actual yield times ratio of planted of 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))	\$637.20
Maximum payment (10 % of benchmark revenue of \$770).....	\$77.04
Payment rate (ARC-IC Guarantee minus Actual Crop Revenue; adjusted, if needed to not exceed maximum payment).....	\$25.34
Payment (payment rate x 65 % of 100 base acres).....	\$1647

Election of ARC and PLC

Election of ARC and PLC will occur in a defined period that will be announced by FSA in a press release. Producers are those that perform the election. Each election

will be based on the farm structure for the 2019 crop year or, as may be applicable, the 2021, 2022, or 2023 crop year. In this context, the term “farm structure” means the farm as last constituted in the crop year. Reconstitutions of farms initiated after August 1, 2019, will not be considered by FSA until after the 2019 election period has ended. Unless changed under provisions of this rule in the 2021, 2022, or 2023 years, the election of ARC and PLC for a farm will apply to that farm in all years 2019 through 2023 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 producers of a covered commodity on a farm agree to the unanimous election during the election period or the valid election that was made by those producers.

If no election is made in 2019 for a covered commodity’s base acres, the farm will default to the same coverage for the covered commodity on the farm for the 2020 through 2023 crop years as was applicable for the 2015 through 2018 crop years and the producers on that farm will not be eligible for 2019 crop year payments (even if the farm is enrolled in 2019 ARC or PLC). During the 2019 election period, all producers of a covered commodity on a farm must unanimously make the election as discussed in this rule in order to preserve the payment eligibility of all producers of the covered commodity on the farm for 2019. If a valid election is submitted by all producers of a covered commodity’s base acres on a farm during the election period, that election will be recognized as valid for the farm in the 2019 through 2023 crop years unless that election is either rescinded or terminated by any 2019 producer on the farm during the election period, or unless the valid 2019 election is modified and replaced by another

valid election by 2019 producers during the election period. At any time during the election period, a producer of a covered commodity's base acres can rescind an election or terminate an election by withdrawing from the election or by providing written notice to FSA requesting to have the election rescinded.

If a new producer acquires an interest in a farm on or after the filing of a valid election in an election period by all of a farm's producers, that new producer will be subject to any previously submitted valid election made in an election period unless that new producer changes the election during the remaining time in the election period. While FSA will respond to inquiries submitted by such new producers, neither FSA nor CCC has any obligation to notify new owners or new producers of whether or not a valid election exists or is in place or whether a producer has rescinded or terminated an election. Additionally, neither FSA nor CCC have any role or responsibility of advising any producers or current producers on a farm of who all the farm's current producers are in the election period. It is the responsibility of the current producers on a farm to ensure that a valid election occurs in the prescribed election period.

The election and the requirement that the election reflects the unanimous agreement of all the producers on a farm are specified in the 2014 Farm Bill, as amended, and neither FSA nor CCC has discretion to waive these requirements. Additionally, election is not enrollment. Producers on farms that have completed an election (and those that have not completed an election and who might want to participate in ARC or PLC for the 2020 and subsequent crop years) must still annually enroll in order to be eligible for ARC and PLC payments on farms in those crop years, as applicable.

Eligibility for Crop Insurance

Election and enrollment can impact eligibility for some forms of crop insurance. Producers who elect and enroll in PLC also have the option of purchasing Supplemental Coverage Option (SCO) through RMA. Producers of covered commodities on farms that have elected under ARC are ineligible for SCO. Producers of upland cotton who choose to enroll upland cotton are ineligible for stacked income protection plan under section 508B of the Federal Crop Insurance Act (7 U.S.C. 1508b). Specifically, section 11003 of the 2014 Farm Bill authorizes SCO under the Federal Crop Insurance Act (7 U.S.C. 1501-1524). 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 RMA. Only PLC participants are eligible for SCO. Producers of covered commodities with a valid ARC election and enrollment, as well as acres that are enrolled in the stacked income protection plan under section 508B of the Federal Crop Insurance Act (7 U.S.C. 1508b), are not eligible for SCO.

Sharing ARC and PLC Payments on Enrolled Farms Between Producers on a 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;

- 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.

CCC and FSA will determine eligibility for payments similarly to how CCC and FSA made those determinations for the 2014 through 2018 crop years for ARC and PLC. 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; the contract will be approved by the FSA county committee. At FSA's discretion, each producer leasing a farm will be required to 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.

At the discretion of FSA, 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. This would allow the producer with the cash lease to claim 100 percent of the payments. Such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the contract by the end of the enrollment period for the contract year, as announced by FSA.

Deadlines for ARC and PLC Actions

Annual enrollment for each covered commodity and crop year or multiyear contract enrollment will be as announced by FSA.

The contract year is based on the fiscal year, October 1 to September 30 of the next calendar year, with the enrollment occurring in the contract year. For 2019, the 2019 producers will enroll by a deadline announced by FSA for the 2019 crop year, the deadline will be in the 2020 contract year for a retroactive contract period that ended September 30, 2019. For each subsequent year, the enrollment deadline will be for a contract that began on the previous October 1. For example, the producer will enroll by June 1, 2020, for a 2020 contract that runs from October 1, 2019, to September 30, 2020.

The enrollment deadline announced by FSA will be consistent with the deadline for similar FSA and CCC programs and take into consideration the reporting of cropland and crop acreage on the farm. The 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.

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

- 2019 producers unanimously make ARC and PLC election;
- 2020 owner updates PLC yield;
- 2020 subsequent crop year producers enroll the farm during the crop year's enrollment period announced by FSA; and
- 2021, 2022, and 2023 producers on a farm can unanimously make a new ARC and PLC election and subsequently enroll.

The following is a summary of deadlines for ARC and PLC.

Activity	Deadline
2019 acreage reports by 2019 operator or producers on farm	Not later than July 15, 2019, 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.)
2020 PLC yield update.....	As announced in a press release issued by FSA.
Election of ARC and PLC by 2019 producers on farms in election period.....	As announced in a press release issued by FSA.
2019 contract year enrollment by 2019 producers on farms.....	As announced in a press release issued by FSA.
2020 contract enrollment by 2020 producers on farms.....	As announced in a press release issued by FSA.
2019 production report of covered commodities by ARC-IC producers	July 15, 2020.
2020 and subsequent crop year acreage reports by 2020 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.
2021 and subsequent years contract enrollment by 2021 and subsequent year producers.....	As announced in a press release issued by FSA.
2020 and subsequent year production report of covered commodities by ARC-IC producers.....	July 15 of the year following the program year (for example, the 2020 production report is due July 15, 2021).

General Provisions that 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.

As was the case under the 2014 Farm Bill, ARC and PLC continue to have provisions for planting flexibility and reductions of payment acreage for plantings of fruits, vegetables, and wild rice on base acres. These reductions are specified in 7 CFR part 1412. The 2018 Farm Bill amendments with regard to this, however, specified that

for each crop year for which this reduction in payment acres is made, those acres will be considered to be planted and considered planted (P&CP) to a covered commodity for the purpose of any adjustment or reduction of base acres for the farm. This change is reflected in § 1412.46. FSA is also updating the list of counties in § 1412.46(f) that have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice.

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

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 is in excess of \$900,000. These provisions have not been changed; however, as will be discussed in greater detail in other rulemaking, beginning with the 2019 crop year, the per crop year annual payment limitation for ARC and PLC will no longer take into consideration loan deficiency payments or marketing assistance loan gains.

As was the case under the 2014 Farm Bill, 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.

Crop insurance is not required as a condition of eligibility for ARC and PLC, but ARC and PLC elections and enrollment may impact eligibility for crop insurance. Those impacts are covered under separate regulations for crop insurance.

Amendments to 7 CFR Part 718

As previously discussed, the 2018 Farm Bill amendments to ARC and PLC provisions require amendments to the provisions applicable to multiple programs in 7 CFR part 718. This rule revises the definitions of "common land unit" and "tract" to clarify these farm record terms in light of a new term "physical location," and its definition. Changes are being made to explain when FSA will update records and how FSA will go about updating records. Changes also clarify or specify when an owner may request changes to farm records based on physical location and when those changes are effective. FSA is revising § 718.8 to distinguish requests for changes to a servicing FSA county office and when those changes impact a farm's administrative county. This is not so much a change, but rather a clarification. An operator or owner may request a different servicing FSA county office. Generally administrative counties are designated by FSA and an operator or owner does not request an administrative county. This rule also adds the definition for "veteran farmer or rancher," consistent with how that term is defined in 7 U.S.C. 2279 by the 2018 Farm Bill, and specifies how the definition of "limited resource farmer or rancher" applies to legal entities. This rule specifies in §

718.4 that program participants requesting program benefits as a beginning, limited resource, socially disadvantaged, or veteran farmer or rancher must provide a certification of their status as a member of one of those groups as required by the applicable program provisions. This rule also updates the controlled substance provisions to remove “Direct and Counter-cyclical Program” from the paragraph referring to part 1412 and clarify what benefits are covered by the provisions; updates provisions regarding measurement services in § 718.101 and late-file acreage reports in § 718.104; clarifies that participants may be ineligible for benefits under a program that requires accurate crop acreage reports if their crop acreage report is outside of the tolerance for that crop; makes a minor technical correction to § 718.103(i); and amends provisions in § 718.204 to clarify that FSA will establish procedures regarding when reconstitutions requested after August 1 will become effective. The amendments and clarifications will help to ensure that ARC and PLC are implemented effectively.

Effective Date, Notice and Comment, and Paperwork Reduction Act

As specified in 7 U.S.C. 9091, the regulations to implement the provisions of Title I and the administration of Title I of the 2018 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).

The APA provides that the 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs the program for ARC and PLC payments and thus falls within that exemption.

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808, which provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the regulations expeditiously to provide assistance to producers, FSA and CCC find that notice and public procedure are contrary to the public interest.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the *Federal Register*.

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. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits to loans apply to rules that are determined to be significant. Executive Order 13777,

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

OMB designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executives Orders 12866 or 13563.

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. As this rule is designated not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FSA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

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 analysis of any rule whenever an agency is required by APA 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 as noted above, this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this 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 FSA regulations for compliance with NEPA (7 CFR part 799). The rule implements primarily mandatory changes required by the 2018 Farm Bill; the discretionary aspects are limited to eligibility requirements, enrollment procedures, and payment calculations. ARC and PLC provide revenue support to eligible producers. The discretionary provisions would not alter any environmental impacts resulting from implementing the mandatory changes to ARC and PLC. Accordingly, these discretionary aspects are covered by the following Categorical Exclusion, found at 7 CFR 799.31(b)(6)(vi) Safety net programs administered by FSA, and no Extraordinary Circumstances (§799.33) exist. Therefore, as this rule presents only discretionary clarifications of mandatory requirements that will not have an impact to the human environment, individually or cumulatively, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action; this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected 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 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.

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.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that required Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of American Indian, in Washington, DC. The portion of the Tribal Consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of Title I session. There were no specific comments from Tribes on this rule during Tribal consultation. If a Tribe requests additional comments, FSA will work with OTR ensure meaningful consultation is provided with changes, additions, and modifications identified in this rule are expressly mandated by legislation.

Unfunded Mandates

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.

Federal Assistance Programs

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

10.113 - Agriculture Risk Coverage

10.112 - Price Loss Coverage

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

Acres 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.

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

PART 718 -- PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. Revise the authority citation for part 718 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. Amend § 718.2 as follows:
 - a. For the definition of “Common land unit”, add “located in one physical location (county), as defined in this part,” immediately after “border”;
 - b. For the definition of “Limited resource farmer or rancher”, add paragraph (3);
 - c. Add the definition of “Physical location” in alphabetical order;
 - d. In the definition of “Tract”, add “located in one physical location (county), as defined in this part” immediately after “ownership”; and
 - e. Add definition of “Veteran farmer and rancher” in alphabetical order.

The additions read as follows:

§ 718.2 Definitions.

* * * * *

Limited resource farmer or rancher * * *

(3) For legal entities, the sum of gross sales and household income must be considered for all members.

* * * * *

Physical location means the political county and State determined by FSA for identifying a tract or common land unit, as applicable, under this part. FSA will consider all the DCP cropland within an original tract to be in one single physical location county and State based upon 95 percent or more of the tract's DCP cropland. For DCP cropland that FSA determines lies outside the physical location (county) of the original tract that is 10 acres or more and more than 5 percent of the original tract, FSA will divide that land from the original tract and establish a new tract for that area.

* * * * *

Veteran farmer or rancher means a farmer or rancher who has served in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components and who:

- (1) Has not operated a farm or ranch;
- (2) Has operated a farm or ranch for not more than 10 years; or
- (3) Is a veteran (as defined as a person who served in the active duty or either active duty for training or inactive duty during which the individual was disabled, and who was discharged or released therefrom under conditions other than dishonorable) who has first obtained status as a veteran during the most recent 10-year period.

* * * * *

3. Add § 718.4(d) to read as follows.

§ 718.4 Authority for farm entry and providing information.

* * * * *

(d) Program participants requesting program benefits as a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher must provide a certification of their status as a member of one of those groups as required by the applicable program provisions.

§ 718.6 [Amended]

4. Amend § 718.6 as follows:

- a. In paragraph (b)(1)(i), remove “the Direct and Counter Cyclical Program (DCP) in accordance with”;
- b. In paragraph (b)(1)(ii), remove “trees, crops,” and add “crops” in its place; and
- c. In paragraph (b)(1)(iv), remove “or payment”.

5. Revise § 718.8 to read as follows.

§ 718.8 Administrative county and servicing FSA county office.

(a) FSA farm records are maintained in an administrative county determined by FSA. Generally, a farm’s administrative county is based on the physical location county of the farm. If all land on the farm is physically located in one physical location county, the farm’s records will be administratively located in that physical location county.

(b) In cases where there is no FSA office in the county in which the farm is physically located or where a servicing FSA county office is responsible for more than one administrative county, the farm records will be administratively located as specified

in paragraph (a) of this section and with a servicing FSA county office that FSA as designated as responsible for that administrative county.

(c) Farm operators and owners can conduct their farm's business in any FSA county office. FSA's designation of a farm's administrative county is based on where land of the farm is located as specified in paragraph (a) of this section or as might be required under paragraph (b) of this section.

(d) Farm operators and owners can request a change to their servicing FSA county office and that request may necessitate a change to the farm's administrative county as specified in paragraph (a) or (b) of this section. If the requested servicing FSA county office is not responsible for and does not have an administrative county for the physical location of the farm according to paragraphs (a) or (b) of this section and FSA approves the request for change of servicing FSA county office, FSA will designate the administrative county for the farm from those available in the requested servicing FSA county office.

(e) If a county contiguous to the county in which the farm is physically located in the same State does not have a servicing FSA county office, the farm will be administratively located by FSA in a contiguous county in another contiguous State that is convenient to the farm operator and owner. Requests for changes to a farm's servicing FSA county office, which may or may not result in a change to a farm's administrative county under this section, must be submitted to FSA by August 1 of each year for the change to take effect that calendar year.

(f) When land on the farm is physically located in more than one county, the farm will be administered by a servicing FSA county office determined by FSA to be the

administrative county responsibility for administration of programs for one or more of the physical counties involved in the farm's constitution. Paragraph (b), (c), or (d) of this section applies if changes occur to the servicing FSA county office and administrative county.

(g) Farm operators and owners cannot request a change to a farm's administrative county. The operator and owner of a farm serviced by an FSA county office responsible for a farm's administrative county can request a change of servicing FSA county office to another FSA servicing county office in the same State by August 1 for the change to take effect that calendar year. Review and approval of any change to the servicing FSA county office is solely at the discretion of FSA. Requests for change in servicing FSA county office, which may or may not result in a change to a farm's administrative county, will be reviewed and approved by county committee if all the following can be determined to apply:

- (1) The requested change does not impact the constitution of a farm;
- (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 servicing FSA county office and, if applicable, administrative county being made; and
- (3) The change is not to circumvent any of the provisions of other program regulations to which this part applies.

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

Subpart B—Determination of Acreage and Compliance

6. Revise § 718.101 to read as follows.

§718.101 Measurements.

(a) Measurement services include, but are not limited to, measuring land and crop areas, measuring quantities of farm-stored commodities, and appraising the yields of crops in the field when required for program administration purposes. The county committee will provide measurement service if the producer requests such service and pays the cost, except that measurement service is not available and will not be provided to determine total acreage or production of a crop when the request is made:

(1) For acreage, after the established final reporting date for the applicable crop, unless a late filed report is accepted as provided in §718.104; or

(2) After the farm operator has furnished production evidence when required for program administration purposes except as provided in this subpart.

(b) Except for measurements and determinations performed by FSA in accordance with late-filed acreage reports filed in accordance with § 718.104, when a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage is guaranteed to be correct and used for all program purposes for the current year even though an error is later discovered in the measurement.

§ 718.103 [Amended]

7. Amend § 718.103(i) by removing “may will” and adding the word “will” in its place.

8. Amend § 718.104 as follows:

a. In paragraph (a) introductory text, add “through the crop’s immediately subsequent crop year’s final reporting date” after the word “date”;

- b. In paragraph (a)(2), remove “amount of acreage” and add “crop acreage and common land unit for which the reported crop acreage report is being filed” in its place;
- c. Redesignated paragraphs (b) through (d) as paragraphs (c), (e), and (f), respectively;
- d. Add new paragraph (b);
- e. Revise newly redesignated paragraph (c);
- f. Add new paragraph (d);
- g. In newly redesignated paragraph (e) introductory text, remove “with respect to 2005 and subsequent years”; and
- h. In newly redesignated paragraph (f) introductory text, remove “shall” and add “will” in its place.

The additions and revision read as follows.

§718.104 Late-filed and revised acreage reports.

* * * * *

(b) Acreage reports submitted later than the date specified in paragraph (a) of this section will not be processed by FSA and will not be used for program purposes.

(c) The person or legal entity filing a report late must pay the cost of a farm inspection and measurement unless FSA determines that failure to report in a timely manner was beyond the producer's control. The cost of the inspection and measurement is equal to the amount FSA would charge for measurement service; however, FSA’s determination of acreage as a result of the inspection and measurement is not considered a paid for measurement service under § 718.101. The acreage measured will be entered as determined acres.

(d) When an acceptable late-filed acreage report is filed in accordance with this section, the reported crop acreage will be entered for the amount that was actually reported to FSA before FSA determined acres, and the determined crop acreage will be entered as it was determined and established by FSA.

* * * * *

9. Amend § 718.105 as follows:

- a. Revise the section heading;
- b. Remove paragraphs (d) and (e);
- c. Redesignate paragraph (f) as paragraph (d);
- d. In newly redesignated paragraph (d)(1), remove “, and”;
- e. In newly redesignated paragraph (d)(2), remove the period and add “; and” in

its place; and

f. Add new paragraph (d)(3).

The revision and addition read as follows.

§ 718.105 Tolerances and adjustments.

* * * * *

(d) * * *

(3) Participants may be ineligible for all or a portion of payments or benefits under a program that requires accurate crop acreage reports under rules governing the program.

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Base Acres

10. Amend §718.201 as follows:

- a. Redesignate paragraph (d) as paragraph (e); and

b. Add new paragraph (d).

The addition reads as follows.

§ 718.201 Farm constitution.

* * * * *

(d) An owner can file a written request to have FSA reconstitute from original tracts areas that are less than 10 DCP cropland acres and less than 5 percent of the original tract, if such request is accompanied by sufficient data from which FSA can determine the political county and State of land in both the original tract and the proposed tract. Any owner-initiated requests for tract divisions for physical location will be performed and effective prospectively from date of request and approval by FSA.

* * * * *

§ 718.204 [Amended]

11. Amend § 718.204(c) by adding “and when those reconstitutions will become effective” at the end of the last sentence.

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

12. 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

13. Amend § 1412.1 as follows:

a. In paragraph (a), remove “may make a one-time election” and add “make an election and enroll” in its place;

- b. Remove paragraph (b);
- c. Redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively;
- d. In newly redesignated paragraph (b), remove “or application made” and remove “CCC” and add “FSA” in its place;
- e. In newly redesignated paragraph (c), remove “CCC” and add “FSA” in its place;
- e. Revise newly redesignated paragraph (d).

The revision reads as follows:

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

* * * * *

(d) For ARC and PLC, assistance under this part will be provided for producers satisfying all requirements of this part who have a share of eligible base acres of the covered commodity. The sum of the base acres on a farm are based on the farm’s constitution according to part 718 of this title. FSA farm records and PLC yields are based on the administrative county of the farm. ARC-CO assistance under this part will be determined by FSA for the enrolled covered commodity base acres based on the physical location of covered commodity base acres on a farm weighted and summarized to the farm.

14. Amend § 1412.3 as follows:

- a. In the definition of “2014 Farm Bill”, add “, as amended” at the end of the definition;

- b. Revise the definition of “Actual average county yield”;
- c. In the definition for “Actual crop revenue”:
 - i. In paragraph (1), add a sentence at the end of the paragraph; and
 - ii. In paragraph (2)(i), add “enrolled” immediately before the word “farms”;
- d. Add the definition of “Administrative units” in alphabetical order;
- e. In the definition of “ARC guarantee”, remove “86 percent of the benchmark revenue for”;
- f. Revise the definitions of “Average historical county yield” and “Benchmark revenue for ARC-CO”;
- g. In the definition for “Benchmark revenue for ARC-IC”:
 - i. In the introductory text of paragraph (1), add “planted” immediately before the word “covered” and remove “years” and add “years available” in its place;
 - ii. In paragraph (1)(i), remove “70” everywhere it appears and add “80” in its place;
 - iii. In paragraph (1)(ii), add “effective” immediately before the word “reference” both times it appears;
 - iv. In paragraph (2), add “available” immediately after the words “5 crop years”;
- and
- v. In paragraph (3), remove “2014” and “2018” and add “2019” and “2023” in their places, respectively;
- h. Remove the definition of “Contract or application”;
- i. Add the definition of “Contract” in alphabetical order;

j. In the definitions of “Contract period” and “Contract year or program year”, remove “2014” and add “2019” in its place each time it appears and remove “2013” and add “2018” in its place each time it appears;

k. In the definition of “Counter-cyclical payment yield”, remove “upland cotton” and add “covered commodity” in its place;

l. Add the definition of “Covered commodity base acres” in alphabetical order;

m. In the definition of “Crop year”, remove “2014” and add “2019” in its place both times it appears and remove “2013” and add “2018” in its place;

n. Remove the definitions of “Current owner” and “Current producer”;

o. In the definition of “Double-cropping”, remove “CCC” and add “FSA” in its place both times it appears;

p. Add the definitions of “Effective reference price” and “Fallow” in alphabetical order;

q. In the definition of “Fiscal year”, remove “2014” and add “2019” in its place both times it appears, and remove “2013” and add “2018” in its place;

r. In the definition of “Generic base acres”, remove “For 2018, generic” and add the word “Generic” in their place;

s. Add the definitions of “Grass or pasture”, “Historical irrigated percentage”, “Idle”, “Most recent 5 crop years available”, “NASS”, and “Owner” in alphabetical order;

t. Revise the definition of “Payment acres”;

u. Add the definitions of “Producer” and “RMA” in alphabetical order,

v. Remove the definition of “STAX”;

w. In the definitions of “Supportive and necessary contractual documents” and “Temperate japonica rice”, remove “CCC” and add “FSA” in its place both times it appears; and

x. Add the definition of “Trend-adjusted yield” in alphabetical order.

The additions and revisions read as follows:

§ 1412.3 Definitions.

* * * * *

Actual average county yield means the yield, which 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.

(1) For wheat, corn, grain sorghum, barley and oats, planted acres are the harvested acres plus unharvested acres.

(2) In determining the yield for a county, FSA uses data in order from the following data sources: RMA and yields determined by State committee.

(3) Separate irrigated and non-irrigated yields will be established in a county having farms with P&CP acreage history of a covered commodity in 2013 through 2017. These separate yields will be established where FSA determines the covered commodity's P&CP acreage was both irrigated and non-irrigated in 2013 through 2017.

(4) At FSA’s discretion, FSA will calculate and use a trend-adjusted yield factor to adjust the yield taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under the crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501 - 1524).

Actual crop revenue * * *

(1) * * * If a county has separate irrigated and non-irrigated yields established for a covered commodity, the actual crop revenue calculated for a farm with that covered commodity will be weighted by FSA based on the farm's historical irrigated percentage.

* * * * *

Administrative units means, for the purposes of ARC-CO, the division of specific counties into two areas for counties that are each larger than 1,400 square miles and have more than 190,000 base acres where appropriate based on the differences in weather patterns, soil types, and other factors.

* * * * *

Average historical county yield means the 5-year Olympic determined by FSA as the average of actual average county yields for the most recent 5 years for which data is available, substituting 80 percent of the county transitional yield as defined in this part in each year in which the actual average county yield is less than 80 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 2013 through 2017. These separate yields will be established for counties where a covered commodity's P&CP acreage was both irrigated and non-irrigated in 2013 through 2017. If needed, a trend-adjusted yield factor will be used to adjust the yield taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under the crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501- 1520).

* * * * *

Benchmark revenue for ARC-CO is calculated as the product obtained by multiplying the average historical county yield times the average MYA price for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest prices and substituting the effective reference price in each year where the MYA price is less than the effective reference price. If a county has separate irrigated and non-irrigated yields established for a covered commodity, the benchmark revenue calculated by FSA for that farm and covered commodity will be weighted based on the farm's historical irrigated percentage.

* * * * *

Contract means the CCC-approved forms and appendixes that constitute the agreement for participation of producers and covered commodities in ARC or PLC Program, as applicable.

* * * * *

Covered commodity base acres means base acres of any covered commodity. The term does not include unassigned base acres on the farm.

* * * * *

Effective reference price means the lesser of the following:

(1) An amount equal to 115 percent of the reference price for a covered commodity; or

(2) An amount equal to the greater of:

(i) The reference price for a covered commodity; or

(ii) 85 percent of the average of the MYA price of the covered commodity for the most recent 5 crop years available, excluding each of the crop years with the highest and lowest MYA price.

* * * * *

Fallow means any cropland or DCP cropland that is not devoted to any crop or trees.

* * * * *

Grass or pasture means any cropland or DCP cropland devoted to grass, native grass, mixed forage two or more interseeded grass mix, and mixed forage native grass interseeded.

* * * * *

Historical irrigated percentage means the percentage of the covered commodity on a farm that was irrigated (P&CP, including subsequently planted crop acreage) divided by the total acreage of the covered commodity (P&CP, including subsequently planted crop acreage) between the years 2013 through 2017, or, at FSA's discretion, such other similar 5 year-period (such as 2015 through 2019).

Idle means any cropland or DCP cropland that is not devoted to any crop or trees.

* * * * *

Most recent 5 crop years available means the 5 years preceding the most immediately preceding crop year. For example, for the 2019 crop year, the most recent 5 years available are 2013 through 2017.

NASS means the National Agricultural Statistics Service.

* * * * *

Owner means the person or legal entity meeting the definition of owner in part 718 of this title for the applicable contract period for which that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of an “owner” is required under this part, the person or legal entity must be an owner for the applicable contract period for which the person or legal entity is signing the form or performing the action required under this part.

Payment acres means:

(1) For the purpose of ARC-CO and PLC, subject to planting flexibility provisions as specified § 1412.46, the payment acres for each covered commodity on a farm will be equal to 85 percent of the covered commodity’s base acres on the farm.

(2) For the purpose of ARC-IC, subject to planting flexibility provisions as specified in § 1412.46, the payment acres for a farm will be equal to 65 percent of all the covered commodity base acres on the farm.

* * * * *

Producer means the person or legal entity meeting the definition of producer in 7 CFR part 718 for the applicable contract period for which that person or legal entity is signing any form or performing any action required under this part. For example, if a signature of a “producer” is required under this part, the person or legal entity must be a

producer during the applicable contract period for which that person or legal entity is signing the form or performing the action required under this part.

* * * * *

RMA means the Risk Management Agency.

* * * * *

Trend-adjusted yield means the yield computed by multiplying the benchmark yield by a factor determined by taking into consideration, but not exceeding, the trend-adjusted yield factor that is used to increase yield history under crop insurance endorsement under the Federal Crop Insurance Act (7 U.S.C. 1501 - 1524) for that crop and county.

* * * * *

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

§ 1412.23 [Amended]

15. Amend § 1412.23(a) by removing “CCC” and adding “FSA” in its place.

§ 1412.24 [Amended]

16. Amend § 1412.24(b) and (c) by removing “CCC” and adding “FSA” in its place each time it appears.

17. Amend § 1412.25 by revising paragraphs (a) introductory text, (b) through (d), and (f) through (h) to read as follows.

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

(a) Any or all of the 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:

* * * * *

(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 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 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 owners of farms with the one-time opportunity for generic base acre allocation as provided in this section. Any 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 this paragraph (c).

(d) 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 (part 718 of this title and part 1403 of this chapter).

* * * * *

(f) 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 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 owner or another owner. If another owner subsequently files a different allocation request in whatever time remains in the stated allocation period or if there are conflicting allocation requests of owners in the allocation period, FSA will not make the allocation unless the conflict is resolved via written agreement between the 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 during 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.

18. Add § 1412.26 to read as follows:

§ 1412.26 Treatment of base acres on farms entirely in pasture, grass, idle, or fallow.

(a) A farm on which all of the cropland was planted to grass or pasture, including cropland that was idle or fallow from January 1, 2009, through December 31, 2017, will have base acres and yields maintained for the covered commodities on the farm, except that no payment will be made with respect to those base acres under this part for the 2019 through 2023 crop years.

(b) The producers on a farm for which all of the base acres are maintained under paragraph (a) of this section are:

(1) Ineligible to change the election applicable to the producers on the farm under subpart G of this part; and

(2) Not permitted to reconstitute the farm to void or change the treatment of base acres under paragraph (a) of this section.

Subpart C—Establishment of Price Loss Coverage Yields and Submitting

Production

19. Amend § 1412.32 as follows:

a. Revise paragraph (a);

b. In paragraphs (b) and (d), remove the words “current owner” and add “owner” in their place each time it appears; and

c. In paragraph (f), remove the words “current owner’s” and add “owner’s” in their place.

The revision reads as follows:

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

(a) For any covered commodity on the farm that has base acres as adjusted, in excess of zero acres, an 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 2013 through 2017 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 2013 through 2017 is less than 75 percent of the average of the county yield, then 75 percent of the average of the 2013 through 2017 county yield will be substituted for that year, excluding from the average any year when no acreage was planted to the covered commodity, multiplied by the ratio obtained by dividing:

(1) The average of the 2008 through 2012 national average yield per planted acre for the covered commodity; by

(2) The average of the 2013 through 2017 national average yield per planted acre for the covered commodity.

* * * * *

20. Amend § 1412.33 as follows:

a. Revise paragraph (a);

b. In paragraphs (b) and (d), remove “current owner” and add “owner” in its place; and

c. In paragraph (f), remove “current owner’s” and add “owner’s” in its place.

The revision reads 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, an 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 seed cotton's 2013 through 2017 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 2013 through 2017 is less than 75 percent of the average of the county yield, then 75 percent of the average of the 2013 through 2017 county yields will be substituted for that year, excluding from the average any year when no acreage was planted to the covered commodity, multiplied by the ratio obtained by dividing:

(1) The average of the 2008 through 2012 national average yield per planted acre for the covered commodity; by

(2) The average of the 2013 through 2017 national average yield per planted acre for the covered commodity.

* * * * *

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

21. Revise § 1412.41 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) The 2019 contract period ends September 30, 2019. Accordingly, the enrollment for 2019 is the only program year a retroactive contract can be approved.

(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.

(iii) If a 2019 farm did not have a valid election made by producers in accordance with subpart G of this part, no producer on that farm is eligible for any 2019 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's producers failed to make a valid election in 2019.

(2) Except as specified in this section for ARC-CO and PLC 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 approve the contract.

(i) For ARC-IC contracts there are no exceptions to this provision for signatures and documentation.

(ii) A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the enrollment deadline is incomplete and will not be considered by FSA or CCC for any purpose and will not be acted on or approved.

(iii) Contracts enrolled by a producer by the date specified in paragraph (a)(1) of this section that were not signed by other producers as required by this section will be withdrawn and will not be approved.

(iv) An exception to this signature and documentation provision applies to ARC-CO and PLC offers of enrollment. In those instances in which, at the discretion of the Deputy Administrator and where no dispute of shares or other disagreement between producers is evident or suspected, ARC-CO and PLC offers of enrollment can be approved for the covered commodity to permit payment to only those eligible producers who did enroll and without regard to shares that do not have signatures. In this exception, the covered commodity on the farm will be considered enrolled. 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.

(v) 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 in paragraph

(a)(2)(iv) for ARC-CO and PLC enrollments, as that is discretionary. CCC and FSA are not responsible for ensuring that producers annually enroll in ARC or PLC.

(3) An eligible producer's valid share of enrolled base acres on a farm is always limited to the producer's share of reported crop acreage on the farm. For example, if a producer enrolled with a 75 percent share of a farm's 1,000 base acres, the producer's enrollment would only be valid if the producer had 100 percent share interest in 750 or more reported crop acres on that farm. Valid claimed shares of base acres must always be supported by reported crop acres on the farm.

(4) Except for enrollments of ARC-IC, eligible producers who choose to enter into a contract with FSA do so on a covered commodity-by-covered commodity basis. If the decision is made to enroll a covered commodity on a farm, producers having not less than 100 percent of the interest in those covered commodity base acres must enroll all covered commodity base acres of the covered commodity on the farm. Enrollment of fewer than all base acres of the covered commodity by all the producers having a share interest in that covered commodity on the farm is not allowed and such covered commodity will not be considered enrolled unless all producers who share in the base acres complete enrollment by the end of the enrollment period. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(5) Producers who have enrolled according to this section must submit all required documents necessary to determine payment eligibility as specified in §§ 1412.51 and 1412.67.

(b) Any eligible producer of an enrolled covered commodity or ARC-IC contract may withdraw from a contract at any time by the end of the contract period. The

withdrawal must be filed in writing and submitted to CCC and FSA by the end of the contract period. If any producer of a covered commodity or ARC-IC contract submits a written request to withdraw, FSA will consider the enrollment of that covered commodity or ARC-IC contract withdrawn.

(c) If the multiyear annual contract option is selected by all of a farm's producers of covered commodity base acres on the farm, the enrollment of any covered commodity on the farm in a year will be presumed by CCC and FSA to be the enrollment for following subsequent crop years unless any of the following, occur:

(1) A change to the farm's constitution;

(2) A change to any of the farm's base acres or PLC yield of any covered commodity;

(3) A change to any of the producers or producer shares of covered commodities on the farm;

(4) A change in either election or enrollment of any covered commodity on the farm; or

(5) Any change, including a withdrawal of any enrolled producer, that FSA determines to require producers on the farm to reaffirm enrollment.

(d) 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 paragraph (e) or (f) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(e) 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 covered commodities on the farm in a new contract for the current year and assume all obligations under the contract.

(f) In the event a 2019 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 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.

22. Amend § 1412.46 as follows:

a. In paragraph (c), remove “paragraph (d)” and add “paragraph (e)” in its place and remove “CCC” and add “FSA” in its place;

b. Redesignate paragraphs (d) through (h) as paragraphs (e) through (i), respectively;

c. Add new paragraph (d); and

d. In newly redesignated paragraph (e), remove “paragraph (e)” and add “paragraph (f)” in its place;

e. Revise newly redesignated paragraph (f);

f. In newly redesignated paragraph (h) introductory text, remove “paragraph (h)” and add “paragraph (i)” in its place;

g. In newly redesignated paragraph (h)(1), remove “, or” and add “; or” in its place; and

h. In newly redesignated paragraphs (h)(1) and (2), remove “CCC” and add “FSA” in its place both times it appears.

The addition and revision read as follows:

§ 1412.46 Planting flexibility.

* * * * *

(d) For each crop year for which a reduction in payment acres is made according to paragraph (c) of this section, those acres will be considered to be P&CP to a covered commodity for the purpose of any adjustment or reduction of base acres for the farm.

* * * * *

(f) Double-cropping for purposes of this section means planting for harvest non-perennial fruits, vegetables, or wild rice on the same acres in cycle with a planted covered commodity harvested for grain in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

(1) *Alabama*. Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

(2) *Alaska*. None.

(3) *Arizona*. Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

(4) *Arkansas*. Ashley, Benton, Clay, Craighead, Crawford, Crittenden, Cross, Faulkner, Franklin, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Logan, Lonoke, Mississippi, Monroe, Phillips, Pulaski, St. Francis, Sebastian, Washington, Woodruff, and Yell.

(5) *California*. Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

(6) *Caribbean Office*. None.

(7) *Colorado*. Otero.

(8) *Connecticut*. None.

(9) *Delaware*. All counties.

(10) *Florida*. All counties except Monroe.

(11) *Georgia*. All counties.

(12) *Hawaii*. None.

(13) *Idaho*. None.

(14) *Illinois*. Adams, Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Edwards, Effingham, Franklin, Gallatin, Hamilton, Iroquois, Jefferson, Jersey, Johnson, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Peoria, Randolph, Sangamon, St. Clair, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, White, Woodford, and Whiteside.

(15) *Indiana*. Allen, Bartholemew, Daviess, Gibson, Jackson, Johnson, Knox, LaGrange, LaPorte, Madison, Marion, Martin, Miami, Pike, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.

(16) *Iowa*. Kossuth, Mitchell, Palo Alto, and Winnebago.

(17) *Kansas*. None.

(18) *Kentucky*. All counties.

(19) *Louisiana*. Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

(20) *Maine*. None.

(21) *Maryland*. Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

(22) *Massachusetts*. None.

(23) *Michigan*. St. Joseph and Kalamazoo.

(24) *Minnesota*. Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Stearns, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.

(25) *Mississippi*. All counties.

(26) *Missouri*. Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Perry, Ripley, Scott, and Stoddard.

(27) *Montana*. None.

(28) *Nebraska*. None.

(29) *Nevada*. None.

(30) *New Hampshire*. None.

(31) *New Jersey*. Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

(32) *New Mexico*. Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

(33) *New York*. Cayuga, Columbia, Dutchess, Erie, Genesee, Greene, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Putnam, Rensselaer, Saratoga, Schoharie, Seneca, Steuben, Suffolk, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates.

(34) *North Carolina*. Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Martin, McDowell, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank,

Pender, Perquimans, Person, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Vance, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

(35) *North Dakota*. None.

(36) *Ohio*. Carroll, Champaign, Clermont, Fulton, Henry, Jackson, Lucas, Miami, Morgan, Muskingum, Scioto, Stark, Tuscarawas, Wood, and Vinton.

(37) *Oklahoma*. Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

(38) *Oregon*. Clackamas, Marion, Morrow, Multnomah, Polk, Umatilla, and Yamhill.

(39) *Pennsylvania*. Adams, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Erie, Franklin, Indiana, Lancaster, Lehigh, Montgomery, Monroe, Montour, Northampton, Northumberland, Schuylkill, Snyder, Union, and York.

(40) *Puerto Rico*. None.

(41) *Rhode Island*. None.

(42) *South Carolina*. All counties.

(43) *South Dakota*. None.

(44) *Tennessee*. Benton, Bledsoe, Cannon, Chester, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Henry,

Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Marion, Maury, McNairy, Obion, Overton, Pickett, Putnam, Rhea, Robertson, Rutherford, Sequatchie, Shelby, Sumner, Tipton, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

(45) *Texas*. Anderson, Andrews, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bexar, Borden, Bosque, Bowie, Brazos, Brazoria, Briscoe, Brooks, Brown, Burleson, Caldwell, Callahan, Cass, Cameron, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fischer, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Gillespie, Glasscock, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hansford, Hardeman, Hardin, Harris, Hartley, Haskell, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones Karnes, Kent, Kinney, Kleberg, Knox, Lamar, Lamb, LaSalle, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Rains, Randall, Red River, Refugio, Reeves, Robertson, Runnels, San Saba, San Patricio, Scurry, Sherman, Smith, Somervell, Starr, Stonewall, Swisher, Tarrant, Taylor, Terry, Tom Green, Upton, Uvalde, Van Zandt, Victoria, Walker, Washington, Webb, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wise, Wilson, Wood, Wise, Wood, Yoakum, Young, Zapata, and Zavala.

(46) *Utah*. None.

(47) *Vermont*. None.

(48) *Virginia*. Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

(49) *Washington*. Yakima.

(50) *West Virginia*. Monroe.

(51) *Wisconsin*. Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth, Washington, Waukesha, Waushara, and Winnebago.

(52) *Wyoming*. None.

* * * * *

§ 1412.49 [Amended]

23. Amend § 1412.49(a) by removing “in this part and CCC's” and adding “in this part and FSA and CCC's” in its place.

Subpart E—Financial Considerations Including Sharing Payments

24. Amend § 1412.51 as follows:

a. In paragraph (b), remove “together with any marketing loan gains or loan deficiency payments” and remove “other than peanuts under subtitle B of title I of the 2014 Farm Bill”;

b. In paragraph (c), remove “together with any marketing loan gains or loan deficiency payments under subtitle B of title I of the 2014 Farm Bill for peanuts”;

c. Revise paragraph (d); and

d. Add paragraph (e).

The revision and addition read as follows:

§ 1412.51 Limitation of payments.

* * * * *

(d) 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 on the farm is 10 acres or less unless the sum of the base acres on the farm, when combined with the base acres of other farms in which the producer has an enrolled producer share interest greater than zero, is more than 10 acres. The 10-acre limitation of this section will not apply to a socially disadvantaged farmer or rancher, a beginning farmer or rancher, a veteran farmer or rancher, or a limited resource farmer or rancher.

(e) Any person or legal entity interested in obtaining a payment under this part for a crop year, in addition to satisfying all eligibility requirements of this part, must

submit any and all documents from which payment eligibility can be determined to FSA by March 1 of the second year after the end of the annual contract period for which payments are being made. For example, to obtain a payment for a 2019 contract, which ends in calendar year 2020, all documents must be submitted to FSA by March 1, 2021. This includes any payment eligibility document required under part 12 or part 1400 of this title. For example, for the 2019 contract year, the final date for submission of documents from which payment eligibility will be determined and apply is March 1, 2021. Payments will not issue to any person or legal entity who fails to submit required forms and documents by this date. Further these payments will not be considered denied, as the person or legal entity is presumed to have forfeited their interest in the payment.

§ 1412.52 [Amended]

25. Amend § 1412.52 as follows:

a. In paragraph (a) introductory text, remove “the 2018 contract years” and add “a contract year” in place;

b. In paragraphs (a)(1) and (c), add “effective” immediately before “reference price” both times they appear; and

c. In the paragraph (e) introductory text, add “has forfeited interest in the payment as specified under § 1412.51,” immediately before “or is”.

26. Revise § 1412.53 as follows:

§ 1412.53 ARC payment provisions.

(a) Effective with the 2019 and subsequent crop years, ARC-CO actual crop revenue and guarantee will be based on the physical location of base acres of the farm.

(1) FSA will divide up to 25 counties into administrative units. Each of the resulting administrative unit will be viewed as a county for ARC-CO payment purposes.

(2) If a farm has base acres physically located in more than one physical location county, the ARC-CO actual revenue and ARC-CO guarantee will be weighted and summarized to the farm level.

(3) If determined applicable by FSA, a historical irrigated percentage and trend-adjusted yield factor will be used to determine guarantee and revenue, which will also be weighted and summarized to the farm level.

(b) Provided all provisions of this part, including but not limited to ARC-CO election and enrollment, have been satisfied for the contract year, 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 and covered commodity were enrolled in ARC-CO and the farm's weighted and summarized ARC-CO actual crop revenue was less than the farm's weighted and summarized ARC-CO guarantee.

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

(c) In a county having farms with P&CP acreage history of a covered commodity in 2013 through 2017, where a covered commodity's P&CP acreage was both irrigated

and non-irrigated in 2013 through 2017, a separate irrigated and non-irrigated benchmark revenue, guarantee, and actual revenue will be maintained by FSA for the affected county. For farms in those counties with covered commodities enrolled in ARC-CO, the average 2013 through 2017 reported acreage of each covered commodity on the farm with irrigated and non-irrigated status will be used by FSA 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.

(d) FSA has determined the irrigated and non-irrigated counties and crops for the 2019 program year.

(e) Provided all provisions of this part, including but not limited to ARC-IC election and enrollment, have been satisfied for the contract year, 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.

(f) 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.

(g) 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.

27. Amend § 1412.54 as follows:

a. Revise paragraph (b);

b. In paragraph (d)(4):

i. Add “FSA or” immediately before “CCC is known”;

ii. Add “either FSA or” immediately before “CCC believes”;

iii. Remove “on CCC’s behalf”; and

iv. Remove “and CCC are” and add the word “is” in its place; and

c. In paragraph (h):

i. Remove “CCC’s” and add “FSA’s” in its place;

ii. Add “on behalf of CCC” immediately after “shares under this part”; and

iii. In the third sentence, remove “CCC” and add “On CCC’s behalf, FSA” in its place.

The revision reads as follows:

§ 1412.54 Sharing of payments.

* * * * *

(b) When required by FSA, each person or legal entity leasing a farm who enrolls in ARC or PLC 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.

(1) If a farm is cash leased (that is, the landowner receives a zero share of covered commodities planted on the farm or a zero share of any base acres) and the producers on the farm cash leased the farm in the immediately preceding year, then the tenant(s) who enters a producer signature and has a share greater than zero on the contract, if the same was true for the immediately preceding year, is considered to have satisfied ARC and PLC Program requirements of landowner(s) signing to a zero share on the contract. The evidence must have been submitted for the immediately preceding contract year or was referred to in that contract year to an immediately preceding contract year.

(2) When required by FSA, an owner's or landlord's signature affirming a zero share on either an application for assistance or contract under this part, as applicable, may be accepted as evidence of a cash lease between the owner or landlord and tenant.

(3) For the purposes of obtaining payments under this part, the signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, are required to be provided by the enrollment deadline established by CCC for the assistance or payment.

* * * * *

Subpart G—ARC and PLC Election

28. Amend § 1412.71 as follows:

- a. Revise paragraph (a) introductory text;
- b. In paragraph (a)(2), add “through 2020” immediately after “Irrevocable”;
- c. In paragraphs (b) introductory text and (c), remove the word “current” each

time it appears;

- d. Remove paragraph (d);
- e. Redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively;
- f. In newly redesignated paragraph (d), remove “current” each time it appears;
- g. Revise newly redesignated paragraph (e); and
- h. Add paragraph (f).

The revisions and addition read as follows:

§ 1412.71 Election of ARC or PLC.

(a) For the 2019 through 2023 crop years, subject to paragraph (f) of this section, all of the producers on a farm must make a one-time election in the 2019 enrollment and election period that is both:

* * * * *

(e) Even if completed during the same period of time, election is separate from enrollment; producers on farms that have validly completed an election in the prescribed election period must enroll as specified in subpart D of this part for ARC and PLC payments, as applicable.

(f) Except for those farms specified under § 1412.26, for the 2021 and each subsequent crop year, all the producers on a farm may change the election under paragraph (a) of this section.

29. Amend § 1412.72 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b), remove “in all 2014 through 2018 crop years” and remove “current” each time it appears;

- c. In the first sentence of paragraph (c), remove “the” and add “an” in its place the first time it appears and remove “current”;
- d. Revise paragraphs (d) and (e);
- e. In paragraph (f), remove “current” and add “, as amended” immediately after “Farm Bill” both times it appears.

The revisions read as follows:

§ 1412.72 Election period.

(a) Election will be conducted in a defined period as announced by FSA. During the election period, all producers on a farm must unanimously make the irrevocable election as described in § 1412.71 to preserve the payment eligibility for 2019 and determine whether the default election under § 1412.74 will apply to the farm.

* * * * *

(d) FSA is under no obligation to notify producers or owners on a farm that an election has been submitted, filed, rescinded, or terminated. Producers of a farm are solely responsible for filing a valid election during an 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 producers or owners of whether or not a valid election exists or is in place or whether any producer has rescinded or terminated an election. FSA will respond to inquiries regarding the status of election of a farm by any producer or owner on a farm including a producer or owner who gains a producer or owner interest on the farm during the election period.

* * * * *

§ 1412.73 [Amended]

30. Amend § 1412.73(b) by removing “2014” and adding “2019” in its place.

31. Amend § 1412.74 as follows:

a. In paragraph (a), remove “current” and remove “2014” and add “2019” in its place;

b. Revise paragraph (b); and

c. Remove paragraph (c).

The revision reads as follows:

§ 1412.74 Failure to make election.

* * * * *

(b) If a valid election is not made for a farm in the 2019 crop year, FSA will not make any payments with respect to the farm for the 2019 crop year and the producers on the farm will, subject to § 1412.71(f), default to the same coverage for each covered commodity on the farm for the 2020 through 2023 crop years as was applicable for the 2015 through 2018 crop years.

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