

Are Your Bases Covered?

The 2002 Farm Bill's New Direct and Counter-Cyclical Payment Program

By Jill Krueger

The 2002 Farm Bill was enacted on May 13, 2002. This law, officially known as the "Farm Security and Rural Investment Act of 2002," sets out the general framework for national agricultural policy for the next several years. The text of this law—Public Law 107-171—can be found in the Congressional Record for May 1, 2002, or see FLAG's web site: www.flaginc.org/flag.

This special edition of *FLAR* describes the new commodity payment program established by the 2002 Farm Bill: the Direct and Counter-Cyclical Payment Program, or "DCP." DCP combines elements of commodity programs created under previous farm bills with some new features. Under DCP, direct payments will be made in every year, similar to the annual commodity payments under the 1996 Farm Bill. However, DCP also provides for so-called counter-cyclical payments to be made in years when the "effective price" for a commodity goes below a certain level, similar to the commodity payments under the 1985 Farm Bill. DCP also extends full eligibility for commodity program payments to many oilseed crops.

Designate Acreage Base and Yields by APRIL 1

Farmers only have until April 1, 2003, to designate acreage and yields that will be used to calculate payments under DCP. In general, farmers who fail to make a designation by April 1 must accept default base acreage and yields established by FSA.

See inside for more details about designating base acreage and yields.

USDA implemented DCP through a final rule published on October 21, 2002, beginning at page 64,747 of volume 67 of the *Federal Register*. The Farm Service Agency (FSA) is the USDA agency responsible for

administering DCP, and FSA has issued an internal agency handbook about DCP along with numerous policy statements. Copies of the handbook—called "Direct and Counter-Cyclical Program, 1-DCP"—and notices should be available from FSA state and local offices.

I. DCP Eligibility

A key issue for any new USDA program is eligibility. Although DCP is quite similar to previous commodity payment programs, farmers interested in DCP should review the requirements to ensure that they meet the DCP eligibility requirements.

A. Eligible Land

FSA has indicated that the definition of cropland used under previous commodity payment programs will not be changed for purposes of DCP. In general, land is eligible to be considered base acreage for DCP benefits if the FSA county or area committee determines that the land (1) is currently tilled for the production of a crop for harvest; (2) was tilled in a prior year and remains suitable for crop production; (3) is in terraces that were previously cropped; (4) is currently devoted to a shelterbelt, sod waterways, or filter strips planted to a perennial cover; or (5) is subject to a Conservation Reserve Program contract.

According to FSA, land will be eligible for DCP if it (1) currently meets the definition of cropland; (2) met the definition of cropland at the time it was enrolled in a Production Flexibility Contract under the 1996 Farm Bill and is still used for an agricultural or related activity; or (3) met the definition of cropland on or before April 4, 1996, and continues to be used for an agricultural or related activity.

B. Eligible Crops

DCP payment calculations are based upon acreage and yield history for "covered commodities." Covered commodities for

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purposes of DCP include wheat, corn, barley, grain sorghum, oats, upland cotton, rice (but not wild rice), soybeans, sunflower, rapeseed, canola, safflower, flaxseed, mustard seed, and other oilseeds as determined by USDA. Peanuts are subject to a unique subset of rules under DCP that are not addressed in these materials.

C. Eligible Persons

Persons eligible to enter into a DCP contract and receive payments include:

(1) A farm owner who assumes part of the risk of producing a crop;

(2) A producer, other than an owner, who farms under a share-rent lease if the owner of the farm enters into the same DCP contract;

(3) A producer, other than an owner, who cash rents a farm under a lease expiring before September 30 of the year of the DCP contract if the owner of the farm also enters into the same contract;

(4) A producer, other than an owner, who cash rents a farm under a lease expiring on or after September 30 of the year of the DCP contract. The farm owner is not required to enter into the contract; or

(5) An owner of a farm rented for cash if the lease term expires before September 30 of the year of the DCP contract and the tenant declines to enter into a DCP contract for the applicable year. In such cases, payments will not begin under the DCP contract until the lease ends.

II. DCP Benefits

Under DCP, participating farm owners are able to designate a program "base" made up of program acres and program yields. The base a farm owner selects will determine the amount of payments received under DCP. DCP payments will be paid on 85 percent of the base acres.

Farmers who have a history of farming rented land may want to work with the farm owners to establish a DCP base that will be most beneficial to both parties.

Due to the complexity of the 2002 Farm Bill and the significant changes it could have on commodity program participation, FSA is requiring farm owners to revise any existing power-of-attorney agreements for decisions relating to participation in DCP.

A. Direct Payments

Direct payments under DCP will be paid each year that a participant enrolls in the program. DCP direct payments are not affected by commodity prices or the participant's planting decisions so long as fruit, vegetable, and wild rice restrictions (discussed later in this article) are satisfied. DCP direct payments will be calculated by multiplying a national, commodity-specific payment rate by the participant's DCP yield for that commodity and 85 percent of the participant's base acreage for that commodity. In general, USDA will make DCP direct payments to participants no earlier than October 1. However, participants may elect to receive 50 percent of the scheduled DCP direct payment before October 1 as an advance payment.

B. Counter-Cyclical Payments

Like DCP direct payments, the amount of any DCP counter-cyclical payments will be based on the farmer's historical production of the commodity—as reflected in his or her DCP base acreage and yields. Counter-cyclical payments under DCP will be paid to a farmer under an annual DCP contract if USDA determines that the "effective

DCP Counter-Cyclical Payment Calculation

(1) Take the higher of the National Average Market Price for the commodity and the marketing loan rate for the commodity.

(2) Add the DCP direct payment rate for that commodity.

(3) Subtract the Step 2 result (called the "effective price") from the target price for the commodity.

If the result of Step 3 is greater than 0, there will be a counter-cyclical payment for the commodity. The result of Step 3 will be the per unit DCP counter-cyclical payment rate.

(4) Multiply the base acreage for the commodity by 85 percent (.85).

(5) Multiply the result of Step 4 (acreage eligible for payment) by the result of Step 3 (payment rate).

(6) Multiply the result of Step 5 by the counter-cyclical payment yield for the commodity.

price” of one or more commodities included in the farmer’s base is below the target price for that commodity. In general, the effective price of a commodity is the DCP direct payment rate for that commodity plus the higher of the USDA marketing loan rate or the national average market price.

USDA will set the final level of DCP counter-cyclical payments, if any, after the end of the marketing year for the commodity. If USDA determines during the marketing year that a DCP counter-cyclical payment will be required for a given commodity, a farmer enrolled in DCP whose base includes that commodity will be able to receive advance payments. An initial advance of up to 35 percent of the expected payment should be available in October, and a second advance of up to 35 percent of the expected payment (for a total of 70 percent in advance payments) should be available after February 1 of the following year. The balance of the DCP counter-cyclical payment will be paid after the end of the marketing year for the commodity. Farmers should be aware that if they receive advance DCP counter-cyclical payments and the commodity price rises over the year such that the advance is higher than the calculated final DCP counter-cyclical payment, the farmers will be required to refund the excess amount.

C. Payment Limitations

As with previous commodity payment programs, there are a variety of limitations on the amount of payments available under DCP. In

general, a farmer is limited to receiving \$40,000 per year in DCP direct payments and \$65,000 per year in DCP counter-cyclical payments.

D. Offsets and Assignments

DCP payments are subject to administrative offset for delinquent debts owed to the United States.

Any producer entitled to DCP payments may assign the payments in accordance with established FSA rules.

III. Determining DCP Program Base

As mentioned earlier, payments under DCP are determined by a farmer’s historical production—the types of commodities grown, the acreage devoted to each commodity, and their yields. Under DCP, farm owners are given the opportunity to update the acreage and yield data that is used as a program “base.” What this means in practice is that DCP payments may be based upon historical acreage and production records utilized for commodity programs under the 1996 Farm Bill or upon acreage and production records from 1998 through 2001.

A. Deadline to Make Program Base Election

Farm owners interested in participating in DCP have until *April 1, 2003*, to choose from five DCP base acreage and yield options. Acreage and yield elections made at this time will be effective for DCP through the 2007 crop year. All owners of a farm must agree to the same acreage and yield

Contact us for a copy of our earlier report on the 2002 Farm Bill, including agricultural credit issues.

Payments under DCP are determined by a farmer’s historical production—the types of commodities grown, the acreage devoted to each commodity, and their yields.

DCP Counter-Cyclical Payment Factors: Marketing Loan Rates, DCP Direct Payment Rates and Target Prices for Eligible Commodities					
	Marketing Loan Rate		DCP Direct Payment	Target Price	
	2002-2003	2004-2207		2002-2007	2002-2003
Wheat (bu)	\$2.80	\$2.75	\$0.52	\$3.86	\$3.92
Corn (bu)	\$1.98	\$1.95	\$0.28	\$2.60	\$2.63
Sorghum (bu)	\$1.98	\$1.95	\$0.35	\$2.54	\$2.57
Barley (bu)	\$1.88	\$1.85	\$0.24	\$2.21	\$2.24
Oats (bu)	\$1.35	\$1.33	\$0.024	\$1.40	\$1.44
Cotton (lb)	\$0.52	\$0.52	\$0.0667	\$0.724	\$0.724
Rice (cwt)	\$6.50	\$6.50	\$2.35	\$10.50	\$10.50
Soybeans (bu)	\$5.00	\$5.00	\$0.44	\$5.80	\$5.80
Minor Oilseeds (bu)	\$0.096	\$0.093	\$0.008	\$0.098	\$0.101

Acreage and yield elections made now will be effective for DCP through the 2007 crop year.

Farm owners enrolling land in DCP have the opportunity to choose from five options for their base acreage.

The benefits of the various options depend in part on a farmer's own production history but also on unknowable future prices for the various commodities.

elections. Farm owners also have until April 1, 2003, to revise any DCP base election made before that date. At the time this report was written, there was some suggestion that FSA might extend the April 1 deadline for farmers who contacted FSA but could not get an appointment to meet with the local FSA office about the acreage and yield election until after that date. In any case, farmers should contact FSA in advance of April 1 to see about making arrangements for the election.

B. DCP Base Acreage Options

As required by the 2002 Farm Bill, farm owners enrolling land in DCP have the opportunity to choose from a number of options for their base acreage for commodities eligible for DCP payments.

1. Total Base Acreage and Base Acreage Options

The differences between the options for DCP base acreage are largely determined by whether the farm owner has "room" to add oilseed acres to his or her base under the 1996 Farm Bill programs without exceeding the limitations on DCP total base acreage.

Although the DCP rule itself sets forth a rather complicated series of steps for the election, FSA has distilled these steps down into five options and has encouraged agency employees and farmers to refer to them as such.

Option 1: Retain base acreage used to determine payment under a 2002 Production Flexibility Contract (the commodity payment program under the 1996 Farm Bill) without change.

Option 2: Retain base acreage used to determine payment under a 2002 Production Flexibility Contract and add all eligible oilseed acreage.

Option 3: Add all eligible oilseed acreage to the base acreage used to determine payment under a 2002 Production Flexibility Contract. Then reduce the 2002 PFC base acreage for non-oilseed crops on an acre-for-acre basis to the extent necessary to remain within the DCP total base acreage limits.

Option 4: Update DCP base acreage using the 1998-2001 average acreage for each covered commodity planted or prevented from being planted on the farm, including oilseeds.

Option 5: Add some oilseed acreage (less than all that could be added) to the base acreage used to determine payment under a 2002 Production Flexibility Contract. Then reduce

the 2002 PFC base acreage for non-oilseed crops on an acre-for-acre basis to the extent necessary to remain within the DCP total base acreage limits.

In order to choose among these options, farm owners must make some very complicated and individualized determinations. Is it better to update base acreage for DCP or retain base acreage from the prior commodity payment program? Is it better to substitute oilseed acreage for some portion of an earlier base, and if so, how much? The benefits of the various options depend in part on a farmer's own production history but also on unknowable future prices for the various commodities. A number of aids for this analysis have been posted on the Internet to assist farm owners when comparing the benefits of the different options.

Internet Tools to Assist With the DCP Program Base Election

See www.flaginc.org/flar for links to the following online resources:

- FSA has sanctioned a program created by Texas A & M University to help farmers make choices among the acreage and yield options for DCP. The tool is called the "Base and Yield Update Option Analyzer."
- The University of Missouri's Food and Agricultural Policy Research Institute offers an interactive Internet web site where farmers can compare the financial benefits of the DCP acreage and yield options.
- Many state Extension offices have posted resources on the Internet to assist farmers with making elections under DCP. See FLAG's web site for links to Minnesota's and North Dakota's.

2. Default Base Acreage if No Election Made

Failure to select a base acreage option by April 1, 2003, (or any later deadline set by FSA) or failure of all owners of a farm to reach agreement on the election, will result in FSA establishing a default DCP acreage base for the farm unit. The default base will be the acreage used to determine the farm's

payment under a 2002 Production Flexibility Contract plus the average of eligible oilseed acreage on the farm for the 1998 through 2001 crop years. FSA will only add oilseed acreage up to the DCP total base acreage limits. FSA will not subtract other crop acreage from the 2002 PFC base acreage to allow addition of more oilseed acres.

C. Establishing DCP Base Acreage

DCP base acres must be no greater than total eligible DCP cropland acreage on the farm, defined earlier, plus approved double-cropped acreage for the farm.

1. Base Acreage for Farms Without Established Commodity Program Acreage

As noted above, the starting point for all of the DCP base acreage options except Option 4 is the farm's acreage under a 2002 Production Flexibility Contract. As a result, farms with no established base under prior commodity payment programs may only be enrolled in DCP under Option 4. Acreage reports for such farms may be submitted for crop years 1998-2001 in order to establish acreage history, but only if the acreage reports are accompanied by acceptable evidence of the existence and disposition of the crops.

2. Base Acreage for Oilseeds

DCP is the first commodity payment program to include oilseeds as a covered commodity. Because Production Flexibility Contracts under the 1996 Farm Bill did not include oilseeds in the acreage base, oilseeds do not have established commodity program acres. In general, a farm owner may establish an oilseed acreage base for DCP by calculating the average of the acreage planted or prevented from being planted to a particular oilseed during each of the crop years from 1998 through 2001. For farmers who

elect to add oilseed acreage under Option 2, however, the oilseed acreage included for any single crop year may not exceed the difference between the total acreage of covered commodities (planted and prevented from being planted) and the total PFC acreage for that year.

3. Updating Established Commodity Program Acreage and the Role of Non-Program Crops

Farmers with an established commodity program acreage may only increase that acreage for DCP purposes (through updating or adding oilseeds acreage) if eligible DCP cropland acreage on the farm is greater than the established commodity program acreage plus any acreage enrolled in conservation programs that prohibit the production of agricultural commodities. Only acres planted to covered commodities may be used to update base acres. As a result, farmers who planted non-program crops—such as alfalfa—on established commodity program acreage in one or more years between 1998 and 2001 will likely have less incentive to elect to update their acreage base for DCP.

Total Base Acreage for DCP

The DCP total base acreage available for a farm can be determined with the following formula.

- (1) Add the amount of approved double-cropping acreage on the farm to the farm's total eligible DCP cropland.
- (2) Subtract any cropland acreage on the farm enrolled in a Conservation Reserve Program contract.
- (3) Subtract any cropland acreage on the farm enrolled in a Wetlands Reserve Program contract.
- (4) Subtract any cropland acreage on the farm enrolled in any other conservation program under which payments are made in exchange for not producing an agricultural commodity on the acreage.
The result of Step 4 is the number of acres on the farm that can be used as DCP base acres for any commodity, including peanuts.
- (5) Subtract any cropland acreage used as base acres for peanuts under DCP.
The result of Step 5 is the number of acres on the farm that can be used as DCP base acres for any commodity other than peanuts.

4. Double-Cropping and DCP Base Acreage Under Option 4

More than one covered commodity may be counted as having acreage history on a tract in a given year between 1998 and 2001 when calculating base acreage for DCP if the commodities were produced under an established practice of double-cropping.

5. Prevented Planting and DCP Base Acreage Under Option 4

When calculating 1998-2001 planting history to determine base acreage for DCP, farmers are allowed to include acreage that was prevented

Farms with no established base under prior commodity payment programs may only be enrolled in DCP under Option 4.

DCP is the first commodity payment program to include oilseeds as a covered commodity.

Opportunities to update yields are not quite as far-reaching as some farmers might expect.

from being planted due to natural disaster. The farmer must prove that he or she intended to plant the crop and that such crop could not be planted due to a natural disaster occurring during the established planting period for the crop.

Farmers who were prevented from planting an intended crop in a given year but were able to plant the same acreage to another covered commodity in the same year (outside any sanctioned double-cropping practice) will have the choice of deciding whether to use the crop that was planted or the crop that could not be planted when determining 1998-2001 average acreage for each commodity.

6. DCP and Acreage Enrolled in Conservation Program

Acreage enrolled in conservation programs prohibiting the production of agricultural commodities, such as USDA's Conservation Reserve Program (CRP) and Wetlands Reserve Program, can also affect available DCP base acreage. At the beginning of each fiscal year (beginning October 1), farmers participating in DCP may modify their DCP program base acres if CRP contracts covering cropland on the farm expire or are voluntarily terminated. Any such modification must be completed by April 1 of the year after which the CRP contract expired or was terminated.

D. DCP Base Yields

The opportunity to update base yields under DCP has received a great deal of attention. This is because the 1996 Farm Bill commodity payment program relied upon yields from 1981-1985. Yields on many farms have increased substantially in the past two decades. However, the opportunities to update yields are not quite as far-reaching as some farmers might expect.

1. DCP Direct Payment Yields for Non-Oilseed Commodities

The yield that will be used to determine DCP direct payments for each covered commodity, except for soybeans and other oilseeds, will be the payment yield established for that commodity on the farm in accordance with the commodity program rules in effect on January 1, 1996.

If an established commodity program yield is not available for one or more of a farm's DCP covered commodities, the FSA county or area committee will assign a payment yield for the commodity on the farm based upon

"the direct payment yield (prior to any updating under DCP) for such covered commodity on at least three similar farms physically located in the county with similar yield capability, including similar land and cultural practices." If there are not three similar farms located in the county, the FSA state committee will assign a DCP payment yield for the covered commodity based upon the base yield for the covered commodity on at least three similar farms in the surrounding area.

2. DCP Direct Payment Yields for Oilseeds

The DCP direct payment yield for oilseeds is obtained by adjusting current yields (from 1998 through 2001) to reflect historical yields (from 1981 through 1985). The calculations set forth in the DCP rule utilize national average yields, as determined by the Commodity Credit Corporation, for soybeans, sunflowers, flaxseed, and other oilseeds for the relevant years. For each oilseed, FSA has used these national average yields to determine a ratio between production for these two periods, or a "historical yield factor."

For example, for soybeans the national average yield from 1981-1985 was 30.0 bushels per acre and from 1998-2001 it was 38.3 bushels per acre. Dividing the 1981-1985 yield by the 1998-2001 yield results in a historical yield factor for soybeans of .78.

An individual farmer would begin determining oilseed yields by determining the average yield per planted acre of each oilseed crop on the farm from 1998 through 2001. This is done by dividing the total amount of production of the crop in the 1998-2001 crop years by the total acres planted to the crop in 1998-2001.

There may be one adjustment to this calculation. The minimum production for any year in which the crop was planted will be 75 percent of the harvested average county yield multiplied by the acres planted to the crop. FSA refers to this "75 percent of the harvested average county yield" figure as the "plug" because farmers may "plug" it into the DCP yield calculation in the event of a year with low yields. If the farm's actual yield from 1998-2001 was ever below this minimum yield, the plug will be used in the DCP yield calculation. After this adjustments, the "weighted average yield" is then multiplied by the historical yield factor for

The DCP direct payment yield for oilseeds is obtained by adjusting current yields to reflect historical yields.

the commodity to determine the DCP direct payment yield.

3. DCP Counter-Cyclical Payment Yields

For farm owners who choose Options 1, 2, 3, or 5, the DCP counter-cyclical payment yield for covered commodities on the farm will be equal to the direct payment yield. Farm owners who select Option 4 to update their base acreage for DCP purposes will have the opportunity to partially update their yields for all covered commodities for the purpose of determining DCP counter-cyclical payments. Farm owners who elect to update base acreage need not update yields. If a farm owner elects to update base yields, however, the farm owner must do so for every covered commodity on the farm.

There are two methods for updating yields for DCP counter-cyclical payment purposes. Both methods require a calculation to determine the average yield per planted acre of each covered commodity on the farm from

1998 through 2001. The calculation is similar to the calculation performed to determine the direct payment yield for oilseed acreage.

The average yield per planted acre of each covered commodity on the farm from 1998 through 2001 is found by dividing the total amount of production of the crop in the 1998-2001 crop years by the total acres planted to the crop in 1998-2001. The result is the yield per planted acre.

There may be one adjustment to this calculation. The minimum production for any year in which the crop was planted will be 75 percent of the harvested average county yield multiplied by the acres planted to the crop. As discussed earlier with respect to oilseeds, farmers can “plug” the “75 percent of the harvested average county yield” figure into the DCP yield calculation in the event of a year with low yields. If the farm’s actual yield from 1998-2001 was ever below this minimum yield, the plug will be used in the DCP yield calculation.

Farmers may substitute 75 percent of the harvested county average yield for their actual yields in any year between 1998-2001 that the crop was planted.

Farmers may choose from one of two methods for updating yields for DCP counter-cyclical program payment purposes.

Base Acreage and Yields for DCP Direct and Counter-Cyclical Payments		
	Base Acreage	Yields
Under the 1996 Farm Bill	Planted acres from 1991-1995	Commodity program yields from 1981-1985
Under the 2002 Farm Bill	<p>1. If using established base acreage from 1996 Farm Bill program plus some amount of oilseed acreage</p> <p>OR</p> <p>2. If using updated base acreage (acres planted or considered planted from 1998-2001)</p>	<p>Then DCP <i>direct</i> and <i>counter-cyclical</i> payments must use yields from the 1996 Farm Bill commodity program. Yields for oilseeds will be adjusted 1998-2001 yields for the farm.*</p> <p>Then DCP <i>direct</i> payments must use yields from the 1996 Farm Bill commodity program. Yields for oilseeds will be adjusted 1998-2001 yields for the farm.*</p> <p>DCP <i>counter-cyclical</i> payments:</p> <p>A. Use yields from the 1996 Farm Bill commodity program. Yields for oilseeds will be adjusted 1998-2001 yields for the farm.*</p> <p>OR</p> <p>B. Use 93.5 percent of the average 1998-2001 yields for the farm.*</p> <p>OR</p> <p>C. Use the direct payment yield plus 70 percent of the difference between average 1998-2001 yields for the farm and the direct payment yield.*</p>

*Some substitutions are possible for years with low yields. See pages 6 through 8 for details.

Participants who elect to partially update yields for all covered crops under Option 4 and owners who elect to establish a direct payment yield for oilseeds under Options 2, 3, or 5 must submit production evidence to support the election.

Farmers should be sure to have and maintain copies of all relevant production evidence in their records.

After the yield per planted acre has been determined, one of the following two methods may be chosen to partially update the yield for each covered crop for counter-cyclical payment purposes. The farm owner must use the same method of updating yields for every covered commodity on the farm.

- *Method 1.* Subtract the farm's direct payment yield for the commodity from the farm's 1998-2001 average yield per planted acre for the commodity. Multiply this result by 70 percent. Add this amount to the farm's direct payment yield for the commodity. This is the updated counter-cyclical payment yield.
- *Method 2.* The updated counter-cyclical payment yield is 93.5 percent of the farm's 1998-2001 average yield per planted acre for the commodity.

E. DCP Production Evidence

Participants who elect to partially update yields for all covered crops under Option 4 and participants who elect to establish a direct payment yield for oilseeds under Options 2, 3, or 5 must submit production evidence to support the election. The production evidence must be submitted to the FSA county or area committee on an approved FSA form. Though the form only requires that the source documents be identified, DCP participants should be aware that production evidence may be subject to spot-check at any time through 2007. Thus, before relying upon a summary of evidence for yields on rented or owned land for purposes of DCP, a farmer should be sure to obtain a copy for his or her records of all documents referred to or relied upon in filling out the form.

1. Acceptable Production Evidence

Examples of production evidence acceptable to FSA include:

- Production approved by the FSA county or area committee for Loan Deficiency Payments.
- Commercial sales receipts.
- Settlement sheets.
- Warehouse ledger sheets.
- Elevator receipts or load summaries supported by other evidence showing disposition, such as sales documents.
- Evidence from harvested or appraised acreage approved for crop insurance loss purposes.
- Gin records.

- Any other production evidence determined acceptable by FSA's Deputy Administrator.

Production evidence must show: (1) the producer's name, (2) the commodity, (3) the buyer or name of the storage facility, (4) the date of the transaction or delivery, and (5) the quantity of production.

2. Production Evidence for Crops Disposed of Through Non-Commercial Channels

If covered commodities were disposed of through non-commercial channels—such as grazing, livestock feed, or silage—production will be established by the FSA county or area committee if there are crop insurance records or other FSA records indicating that the crop was put to such uses. In such cases, the committee will assign annual production based on the actual grain yield of three similar farms for the same year. If these requirements cannot be met or if the crop suffered a low yield, FSA will determine production based on 75 percent of the county average yield for the crop.

3. False, Incorrect, or Unacceptable Production Evidence

If the FSA county or area committee determines it has been provided with false, incorrect, or unacceptable production evidence, it will inquire into the state of mind of the owner or producer who submitted the production evidence. If the committee determines that the participant acted in good faith, the committee will correct the incorrect DCP yield(s) and require a refund of the excess amount paid for each commodity and year for which an incorrect DCP yield was used.

If the county or area committee determines that the participant acted in bad faith, the committee will (1) require a refund of all DCP direct and counter-cyclical payments earned for the farm in the first year DCP payments were made, (2) reduce the DCP direct and counter-cyclical payment yields for all crops on the farm, and (3) require a refund of all excess amounts paid for each commodity for which an incorrect DCP yield was used in each year after the first that DCP payments were made for the farm. In cases of bad faith, the FSA Deputy Administrator may also take further action against the participant, including making further

DCP yield reductions, imposing further DCP payment reductions or refunds, determining that the participant is ineligible for future DCP contracts, and other legal action.

IV. Enrolling and Participating in DCP

Participation in DCP begins with entering a standard DCP contract with USDA. As of the time this report was written, the DCP contract was FSA's Form CCC-509. All base acres on a farm must be included in a single DCP contract.

A. Annual Enrollment

Farm owners may enroll in DCP by signing a contract between October 1 and June 1 of each federal fiscal year. That is, enrollment for 2004 DCP will run from October 1, 2003, to June 1, 2004. (In 2003, June 1 falls on a Sunday, so the deadline is June 2.) Late enrollment is possible from June 2 through September 30 for a fee of \$100. Enrollment in DCP for a given crop year will not be allowed after September 30 of that year.

1. Designating Payment Shares

In § 1105 of the 2002 Farm Bill, Congress specifically directed USDA to provide for sharing of DCP payments among the producers on a farm on a "fair and equitable basis." USDA was also directed to "provide adequate safeguards to protect the interests of tenants and sharecroppers." DCP participants are required to designate payment shares in the DCP contract. The FSA county or area committee must approve the payment shares as being "fair and equitable."

When designating DCP payment shares between farm owners and tenants, participants must provide the FSA county or area committee with a copy of any written lease. In the absence of a written lease, participants must provide a complete written description of the terms and conditions of any oral agreement or lease. If cropland is rented on a share basis, neither the landowner nor the tenant

may receive 100 percent of the DCP payments for the farm.

FSA will approve the division of DCP payments when: (1) all landlords, tenants, and sharecroppers sign the contract and agree to the payment shares shown on the contract; (2) FSA determines that the interests of tenants and sharecroppers are being protected; and (3) FSA determines that the payment shares shown on the contract do not circumvent general payment limitation and eligibility provisions.

2. Annual Acreage Reporting Obligations

Producers must submit annual cropland acreage reports as a condition of DCP eligibility. The report must include all cropland acreage on the farm. Failure to submit an annual acreage report will generally result in termination of the farm's DCP contract.

3. Other DCP Contract Requirements

Participants in DCP must comply with USDA's highly erodible land and wetland conservation provisions, commonly referred to as "Sodbuster" and "Swampbuster." Participants must also agree to devote at least the number of acres equaling DCP base acreage on the farm to an agricultural or conserving purpose. Participants must protect land enrolled in DCP from weeds, including noxious weeds. Participants must not knowingly adopt any scheme or device that tends to defeat the purpose of the program, make any fraudulent representation, or misrepresent any fact affecting a program determination.

B. Withdrawing or Terminating a DCP Contract

Annual DCP contracts expire no later than September 30. That is, a DCP contract for the 2003 crop year will expire on September 30, 2003. Contracts may be withdrawn or terminated earlier with the consent of all parties, including FSA. Violations of

the contract may also result in its termination.

C. Transferring a Participant's Rights and Responsibilities Under a DCP Contract

Changes in farm business structure and ownership raised many difficult issues for participants in commodity programs under the 1996 Farm Bill. Some challenges are likely to continue under DCP. Farm owners and farmers who plan a change in their farm's business structure or who find themselves faced with a change in farm ownership or operation, would be well advised to seek legal advice tailored to their specific situation before completing the change.

The regulations that govern when there is a transfer or change in interest in a farm or acreage on a farm subject to a DCP contract are somewhat confusing. In general, a DCP contract will be terminated upon a transfer or change in the interest of an owner or producer in the farm.

In the case of a farm reconstitution during the term of an annual DCP contract, following receipt of written notification by the FSA county or area committee indicating the reconstitution is completed, all producers and farm owners with an interest in the base acres on the farm must sign a new DCP contract and provide required documentation not later than September 30 of the year for which DCP payments are requested. All DCP payments previously made for the farm for that year must be refunded before the producers and farm owners may enter into a new contract for that year. If all producers and farm owners have not signed the new contract by September 30, no producers on the contract will be eligible for a DCP direct or counter-cyclical payment for that farm for the year the contract was terminated.

If a producer or farm owner who is entitled to receive DCP payments dies, is determined to be mentally incompetent, or is otherwise unable to receive payment, the producer's or farm owner's "successor" will be

Fruits, vegetables, and wild rice generally may not be planted and harvested on DCP base acres during a year in which the farm owner or producer has entered into a DCP contract.

identified according to established FSA rules. The successor apparently may receive the remaining payments under the existing contract, or enroll in a new DCP contract after all DCP direct and counter-cyclical payments previously paid under that year's contract have been repaid to FSA. The guiding principle in the regulations is that FSA will only make the payments due under an annual DCP contract once.

D. Penalties for DCP Contract Violations

In general, violations of DCP contract requirements will result in termination of the contract. Upon termination, all producers subject to the contract will forfeit all rights to receive DCP payments on the farm for the contract year and will be required to refund DCP payments received, plus interest.

The penalty for a first violation of the duty to protect against weeds and erosion on DCP acreage is a reduction in DCP direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed 50 percent of the total DCP direct payments for the farm. The penalty for a second violation of this duty will be a reduction in the DCP direct payment for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the total DCP direct payments for the farm.

V. DCP Planting Restrictions (Fruits and Vegetables) and Penalties for Violations

The general rule under DCP is that any commodity or crop may be planted on base acres on a farm. Complicated exceptions make that general rule confusing at best and risky to rely upon.

A. General Prohibition on Growing Fruits, Vegetables, or Wild Rice

Despite the general intent of planting "flexibility" under the 2002 Farm Bill, certain agricultural commodities generally may not be planted and harvested on DCP base acres during a year in which the farm owner or producer has entered into a DCP contract. These commodities include fruits, vegetables, and wild rice. Planting fruits and vegetables on base acreage was prohibited under the 1996 Farm Bill commodity program. In the later years of the 1996 Farm Bill commodity programs, farmers were allowed to plant wild rice on contract acres covered by a Production

Flexibility Contract, but acres planted to wild rice were not included in determining the farmer's contract payment.

A lengthy discussion of planting restriction issues, including examples, may be found in FSA's DCP Handbook and amendments.

1. Identifying Restricted Crops

FSA's DCP rule provides a list of crops that are considered fruits and vegetables, but the rule indicates that the list is not exhaustive. Thus, a producer cannot necessarily rely upon the fact that a crop is not on the list of restricted fruits and vegetables as an absolute assurance that it may be planted and/or harvested on DCP base acreage without penalty. Producers who are in doubt about a crop that could be considered a fruit or vegetable but does not appear on the list, may want to seek a written decision from FSA prior to planting the crop. Seemingly similar crops may or may not have the same status in FSA's view.

Specifically restricted crops include everything one might think of as a fresh, frozen, or canned fruit or vegetable along with fruit- and nut-bearing trees, mushrooms, olives, coffee and chicory, taro root, carob, and the already-mentioned wild rice. Peanuts and sugar beets are not restricted.

Pulse crops—beans, dry edible beans, peas, and dry peas—are a more complicated story. Some are specifically restricted under the DCP Fruit and Vegetable (FAV) planting restriction. These include chickpeas (also called garbanzo beans), dry edible beans, blackeye peas, and cowpeas. Others are specifically excluded from the FAV planting restriction and can be planted freely on DCP base acreage without penalty. These include lentils, dry peas, soybeans, mung beans, adzuki beans, faba beans, and lupin beans. Other types of beans, peas, and other pulse crops not specifically mentioned in the rule are presumably covered by the broadly worded restriction.

The prohibition on planting chickpeas is perhaps most likely to lead to unintentional violations of the FAV restriction. The 2002 Farm Bill made chickpeas, dry peas, and lentils eligible for marketing assistance loans for the first time. Dry peas and lentils are therefore "loan eligible" crops and are also permissible on DCP base acreage. Chickpeas,

Seemingly similar crops may not be subject to the same planting restrictions.

however, are a loan eligible crop that is not permissible on DCP base acreage.

2. Harvest Restrictions Versus Planting Restrictions

The DCP rule provides that *harvesting* non-perennial fruits, vegetables, or wild rice is prohibited. The rule also provides that *planting* perennial fruits, vegetables, and wild rice is prohibited. The 2002 Farm Bill makes it somewhat plainer that a producer who unintentionally violates a DCP contract by planting non-perennial fruits, vegetables, and wild rice on DCP base acres may avoid an FAV violation by destroying the crop.

Under the DCP rule, restricted crops planted on a farm's DCP base acreage are considered harvested at the time of planting, unless the producer pays a fee to cover FSA's cost of a farm visit to verify that the fruit, vegetable, or wild rice has been destroyed or used as green manure or forage.

B. Penalties for Violating DCP Planting Restrictions

As discussed earlier, violation of any requirement of a DCP contract, including the FAV planting restrictions, will generally result in termination of the contract and a demand that the contract participants refund any DCP payments received. With regard to the FAV planting restrictions, however, FSA has the discretion to determine that an FAV violation is not serious enough to warrant termination of the contract. If FSA makes this determination in a particular case, DCP payments may be made to producers under the contract, but in a reduced amount. The DCP payment will be reduced by (1) the market value of the restricted crop(s) grown on the DCP acreage, based on a per-acre value determined by the FSA state committee and the number of acres in violation; and (2) the DCP payments for each of the acres in violation.

Errors in DCP acreage reports related to FAV plantings can also have serious consequences for producers. If an error is found to be in good faith and within a certain tolerance—generally 5 percent of reported FAV acreage, up to 50 acres—FSA will limit the penalty to a reduction in DCP direct and counter-cyclical payments for each acre of error. If the error is found to be in good faith but not within the tolerance, the penalty will be higher but the contract will not be canceled. Errors found not to be in good faith will

result in contract termination and a demand for refund of all DCP payments made for the farm, plus interest.

C. Exceptions to the DCP Planting Restrictions

There are specific exceptions to the DCP planting restrictions that allow certain producers under certain circumstances to plant and harvest fruit, vegetable, and wild rice crops without jeopardizing their eligibility for DCP payments.

1. Double-Cropping Permitted in Some Counties

Planting and harvesting fruits, vegetables, or wild rice is not prohibited in regions that FSA determines have a history of double-cropping eligible commodities with fruits, vegetables, or wild rice. In such cases, FAV planting will not result in reduced DCP payments. The DCP rule includes a list of counties in each state that FSA has determined have a history of double-cropping covered commodities with fruits, vegetables, or wild rice.

2. Farms With a History of Planting Restricted Crops

Planting and harvesting fruits, vegetables, or wild rice is permitted on farms that FSA determines have a history of planting fruits, vegetables, or wild rice on base acres. However, if restricted crops are planted on DCP base acres, DCP-eligible acreage will be reduced on an acre-for-acre basis.

3. Producers With a History of Planting Restricted Crops

A producer who FSA determines has an established history of planting a specific fruit, vegetable, or wild rice crop on DCP base acres may plant and harvest that specific fruit, vegetable, or wild rice crop without jeopardizing eligibility for DCP. However, the restricted crop acreage harvested may not exceed the average of total acreage planted to that crop for harvest by the producer during the 1991-1995 or 1998-2001 crop years, as determined by the producer, excluding any crop year in which the specific crop was not planted. In addition, DCP-eligible acreage will be reduced on an acre-for-acre basis for any acreage planted to the restricted crop(s).

A producer who unintentionally violates a DCP contract by planting non-perennial fruits, vegetables, and wild rice on DCP base acres may avoid an FAV violation by taking certain steps.

DCP participants may obtain reconsideration and review of any adverse decision made under the DCP program.

4. DCP Cropland in Excess of Base Acreage

Any crop, including any restricted crop, may be planted and harvested on the farm's DCP cropland that is in excess of the DCP base acreage.

5. Home Gardens

A "home garden" does not violate DCP planting restrictions, if it is declared as such when the acreage report is filed. A "home garden" is defined in FSA's DCP Handbook as "an area of fruits or vegetables on a farm of 2.0 acres or less...planted for the consumption and home use of a producer."

VI. Equitable Relief, Finality, and Appeal Rights for Adverse Decisions Under DCP

The 2002 Farm Bill authorizes USDA to provide equitable relief to participants who are out of compliance with the DCP program requirements in two circumstances. First, equitable relief is authorized if the DCP participant's noncompliance results from

reliance "in good faith" on the action or advice of an authorized USDA representative. Second, equitable relief is authorized if the participant failed to fully satisfy the DCP requirements despite a good faith effort to comply.

Under the 2002 Farm Bill, any decision by an FSA state, county, or area committee related to DCP will become final after 90 days, unless there has been fraud or misconduct or the decision is appealed by the participant. The FSA Administrator may modify committee decisions related to DCP, but only within that 90-day period.

A participant may obtain reconsideration and review of any adverse determination made under DCP, including the denial of equitable relief. In general, a participant must first seek informal review of the decision by FSA at the local level. This informal review may take the form of a reconsideration of the adverse decision by the local FSA decision maker and/or review by the FSA county or area committee. After receiving a

decision upon review by a county or area committee, a DCP participant may seek further informal review by the FSA state committee or may appeal directly to USDA's National Appeals Division.

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