

For: State and County Offices

**Direct and Counter-Cyclical Program (DCP) Advance Payment Percentages**

Approved by: Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

On February 8, 2006, the President signed the Agricultural Reconciliation Act of 2005 (2005 Act) into law which provides for modifications to the DCP direct advance payment percentages for FY's 2006 and 2007.

**B Purpose**

This notice provides FSA State and County Offices with:

- information about the changes to the advance payment percentages for DCP direct payments for FY's 2006 and 2007
- a revised copy of CCC-509 Appendix:
  - dated "2-8-06"
  - applicable as of February 9, 2006

**Note:** CCC-509 Appendix is available on the FFAS Intranet at <http://dc.ffasintranet.usda.gov/>.

- information about software changes that are being implemented to meet the requirements of the 2005 Act.

<b>Disposal Date</b>	<b>Distribution</b>
October 1, 2006	State Offices; State Offices relay to County Offices

## Notice DCP-151

### 2 Provisions of the 2005 Act

#### A Introduction

The 2005 Act amends the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), Section 1103(d)(2) by providing that, “At the option of the producers on a farm, up to 50 percent of the direct payment for a covered commodity for any of the 2003 through 2005 crop years, up to 40 percent of the direct payment for a covered commodity for the 2006 crop year, and up to 22 percent of the direct payment for a covered commodity for the 2007 crop year, shall be paid to the producers in advance.”

The 2005 Act further amends the 2002 Farm Bill, Section 1303(e)(2) pertaining to DCP direct advance payments for peanuts by providing that, “At the option of the producers on a farm, up to 50 percent of the direct payment for any of the 2003 through 2005 crop years, up to 40 percent of the direct payment for the 2006 crop year, and up to 22 percent of the direct payment for the 2007 crop year, shall be paid to the producers in advance.”

#### B Effect on Farms Enrolled for FY 2006

The provisions of the 2005 Act are applicable for contracts enrolled after passage of the 2005 Act. As of February 7, 2006, approximately 736,000 contracts have been enrolled for FY 2006.

**Note:** A contract is considered “enrolled” once all required signatures have been obtained from all producers sharing in the base acres on the farm.

The 2005 Act does **not** in any way change the signature requirement provisions for participation in DCP. See 1-DCP, paragraph 390 for additional signature requirement provisions.

The following table provides the DCP direct advance payment percentages applicable for FY 2006.

<b>IF the contract was “enrolled”...</b>	<b>THEN the DCP direct advance payment percentage applicable for the contract is...</b>
on or before February 8, 2006	50 percent.
after February 8, 2006	40 percent.

#### C CCC-509 Appendix

See Exhibit 1 for the revised version of CCC-509 Appendix. County Offices:

- shall ensure that all signatories to CCC-509 enrolled after February 8, 2006, are provided with a copy of the revised CCC-509 Appendix
- are **not** required to provide a copy of the revised CCC-509 Appendix to signatories to contracts enrolled before February 8, 2006.

## Notice DCP-151

### 3 Modifications to DCP Application and Payment Software

#### A CCC-509 Application Software Modifications

The provisions of the 2005 Act do **not** affect the DCP web-based CCC-509 process except that a new version of CCC-509 Appendix **must** be provided. The revised CCC-509 Appendix is expected to be available through the web-based process on February 9, 2006.

#### B Direct Payment Software Modifications

2006 direct payments will be disabled once the President signs the bill and will continue to be disabled until software modifications are in place to implement the new program requirements. Forthcoming information bulletins will provide additional information about the disabling of 2006 direct payments and when software modifications have been completed and downloaded to enable 2006 direct advance payment processing to resume.

#### C 2006 Advance Payment Rates

The following table shows both advance payment rates of 50 percent and 40 percent of the final crop payment rate to be used when computing 2006 advance payments.

<b>Crop</b>	<b>50 Percent of Final Payment Rate</b>	<b>40 Percent of Final Payment Rate</b>
Wheat (bu.)	\$0.26	\$0.208
Oats (bu.)	\$0.012	\$0.0096
Rice (lb.)	\$0.01175	\$0.0094
Upland Cotton (lb.)	\$0.03335	\$0.02668
Soybeans (bu.)	\$0.22	\$0.176
Flax (bu.)	\$0.224	\$0.1792
Other Oilseeds (lb.)	\$0.0040	\$0.0032
Corn (bu.)	\$0.14	\$0.112
Grain Sorghum (bu.)	\$0.175	\$0.14
Peanuts (lb.)	\$0.009	\$0.0072
Barley (bu.)	\$0.12	\$0.096

CCC-509 Appendix

The following is an example of the revised CCC-509 Appendix.

<p>This form is available electronically.</p>	<p>See Page 7 for Privacy Act Statement.</p>
<p>CCC-509 Appendix (02-08-06)</p>	
<p>U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation</p>	
<p>APPENDIX TO FORM CCC-509, DIRECT and COUNTER-CYCLICAL PROGRAM CONTRACT</p>	
<p><b>NOTE:</b> The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.</p>	
<p><b>1 PURPOSE</b></p>	
<p>This Appendix sets forth additional terms and conditions of the Direct and Counter-Cyclical Program Contract (CCC-509). A producer who signs the Direct and Counter-Cyclical Program Contract agrees to follow the terms and conditions contained in this CCC-509 Appendix, and acknowledges the applicability of any provisions of the federal regulations applicable to the contract including those found at 7 CFR Parts 12, 718, 1400, 1405, and 1412.</p>	
<p><b>2 DEFINITIONS</b></p>	
<p><b>A Producer</b> means an owner, operator, landlord, tenant, or sharecropper who <i>shares in the risk of producing a crop</i> and is <i>entitled to share in crop available for marketing</i> from the farm, or would have shared had the crop been produced. In determining whether a grower using hybrid seed, under contract, to produce a covered commodity or peanuts is eligible for a program payment to which contract applies, the CCC shall ignore the contract with the seed producer and allow the payment to the grower of the crop produced from the seed. The preceding sentence shall only apply, however, if the grower of the crop produced from the seed would, but for the contract, be eligible to be considered a producer of the crop.</p>	
<p><b>B Base Acres</b> means the number of acres for the covered commodity on the farm specified on the contract (CCC-509). Base acres may be increased if a Conservation Reserve Program contract applicable to the farm expires or is voluntarily terminated. The adjustment in the base acres of a crop, if any, will be determined by the Secretary of Agriculture.</p>	
<p><b>C Covered Commodity</b> means wheat; corn; grain sorghum; barley; oats; upland cotton; sesame; soybeans; canola; crambe; flax; mustard; rapeseed; safflower; sunflowers; or other oilseeds, if any, as determined by the Secretary of Agriculture; and rice. In addition, for purposes of this Appendix for the Contract (CCC-509), peanuts shall be considered to be a "covered commodity."</p>	
<p><b>D Dry Peas</b> means Austrian, wrinkled seed, yellow, Umatilla, and green, excluding peas grown for the fresh, canning, or frozen markets.</p>	
<p><b>E All words and phrases</b> have the meanings assigned to them in the regulations found at 7 CFR Parts 718, 1400, and 1412.</p>	
<p><b>3 CONTRACT</b></p>	
<p>By signing CCC-509 the owners and producers on a farm understand and agree that:</p>	
<p><b>A</b> Only a "producer", as defined in item 2A of this appendix, is entitled to earn direct or counter-cyclical payments. The payment shares for each commodity, as identified on CCC-509, must be representative of each producer's interest in base acres based on farming practices in the area to the satisfaction of the County FSA Committee.</p>	

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- B** The payment shares for a producer may not exceed the producer's applicable interest in base acres;
- C** The CCC-509 becomes effective when signed by an authorized representative of CCC; however, the contract period is from October 1 through September 30 of the applicable fiscal year represented by the CCC-509. Accordingly, producers signing CCC-509 are representing compliance with the terms and conditions of the CCC-509 Appendix and federal regulations for the entire contract period;
- D** At any time prior to September 30 of the crop year covered by this contract, the contract may be terminated upon written agreement of all producers receiving payment under the contract and, if applicable, each producer shall repay advance direct payments received for the crop year, plus interest;
- E** The payments, with respect to the base acres shall be terminated for a producer or owner whose interest in the crops or land on the farm is transferred, in which case each applicable producer shall repay payments received for the crop year and shall not be entitled to earn direct payments or counter-cyclical payments with respect to the farm. The transferee may assume the obligation of the contract if the transferee is otherwise eligible to participate in the program by entering into a revised contract during the period of time prescribed by CCC. In the event a succession-in-interest occurs and the contract obligation is not assumed timely for the crop year, all producers on the contract shall refund to CCC payments received for the crop year in which the succession occurred, plus interest;
- F** Changes in the farming operation that may affect any determination after the Direct and Counter-Cyclical Program contract is signed, including, but not limited to, ownership changes, producer changes, or changes in the crop share arrangements on the farm, shall be reported to CCC by all applicable producers signing a revised CCC-509 to reflect the change no later than September 30 of the contract period. The failure of producers to timely report changes and file a revised CCC-509 may result in the loss of payments for all producers on the farm for the crop year covered by the contract. In such event, all producers on the contract shall refund to CCC payments received for the crop year, plus interest;
- G** A completed farm reconstitution to divide or combine farms shall result in the termination of the contract and, with respect to the base acreage assigned by the Secretary to the resulting farms of a reconstitution, the farm producers may enroll the base acres for a crop year by signing a new Direct and Counter-Cyclical Program Contract (CCC-509) for the resulting farm, by the later of June 1 or 30 days after notification of the bases and yields of the resulting farm. Producers and owners may sign CCC-509 between June 2 and September 30 of the contract period, provided that a user fee of \$100.00 for the farm is paid to CCC; however, the user fee is waived if the reconstitution is requested by June 1 and all signatures are obtained within 30 days following the written notification that the farm reconstitution has been completed. The failure of producers and owners to timely enroll the base acres may result in the loss of payments for all producers on the original or new farm for the crop year;
- H** Producers will timely file in the manner prescribed by CCC with the County Committee the following, and agree to meet any other certification or filing requirements, as may be required by CCC:
- (1) A certification of the acreage of all cropland on the farm in accordance with 7 CFR Part 718;
  - (2) A farm operating plan in accordance with 7 CFR Part 1400; and
  - (3) A certification of compliance with the highly erodible land and wetland conservation provisions set forth in 7 CFR Part 12;

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- I** Violations of the highly erodible land and wetland conservation provisions of 7 CFR Part 12 may result, at CCC's discretion, in termination of the payments with respect to each producer in violation or a reduction in the contract payment. Upon termination, each producer shall forfeit all rights to receive contract payments on each farm in which the producer has an interest and shall refund to CCC all contract payments received by such producer during the period of violation, plus interest;
- J** The provisions of 7 CFR Part 1400 relating to "per person" payment limits and payment eligibility requirements are applicable to this contract. Each producer determined by CCC to have adopted a scheme or device designed to evade, or which has the effect of evading such regulations, must refund any contract payment, marketing loan gain, or loan deficiency payment and any other applicable payment received on all farms in which such producer has an interest and shall be ineligible for such payments for the following fiscal year;
- K** The regulations at 7 CFR Parts 12, 718, 1400, 1405, and 1412 are incorporated by reference as part of this contract;
- L** Representatives of CCC may enter the farm to determine if the producers are in compliance with this contract; and
- M** The base acres must be devoted to an agricultural or related use
- N** Payments are subject to the availability of funds and to limits on payments as may be provided for in the program regulations.
- O** Calculations provided for in this Appendix shall be made by farm, as provided for in the program contract (Form CCC-509) and each farm must have a separate CCC-509 on file for any farm from which a producer wants to generate payments. All payments are subject to the availability of funds and compliance with all applicable laws and regulations. A separate CCC-509 is required for each program year for each farm, from which a producer seeks to generate payment and calculations for each program year will be made separately. There may only be one CCC-509 from any farm from any program year – that is, all producers on the farm must for each program year, file a CCC-509.

**4 PLANTING FLEXIBILITY PROVISION**

- A** Producers may plant that part of their cropland in excess of the total base acres on the farm to any commodity for that part of the cropland equal to the eligible base, the producer shall be subject to the restrictions set out below. Base acres eligibility cannot exceed the amount provided for in the program regulations. That is, for the farm, the producer's total base acres on the farm for all covered commodities can never exceed the amount equal to the currently available cropland on the farm minus that amount of that cropland which is (1) in the Department's Conservation Reserve Program; or (2) enrolled in a conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.
- B** The planting of fruits (including nuts), vegetables (other than lentils, mung beans, and dry peas) and wild rice on base acres on the farm is prohibited and shall result in a violation of the terms of this contract unless one of the following exceptions are met:
  - (1) The fruit (including nuts), vegetable or wild rice is planted in a double-cropping practice with a covered commodity or peanuts, as determined by the county committee, in any region designated by CCC at 7 CFR Part 1412 as having a history of double-cropping covered commodities or peanuts with fruits, vegetables or wild rice, in which case there is no contract violation or reduction in DCP payments;

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- (2) The fruit (including nuts), vegetable or wild rice is planted on a farm that has an established history of planting fruits, vegetables or wild rice, as determined by the county committee, in which case there is no contract violation; however, DCP payment acres shall be reduced by an acre for each acre of base acres planted to a fruit (including nuts), vegetable (other than lentils, mung beans, and dry peas) or wild rice; or
- (3) The producer(s) with an interest in the specific fruit (including nuts), vegetable or wild rice planted has an established history of planting the specific fruit, vegetable or wild rice, and the plantings on base acres do not exceed the producer's average annual planting history for the specific fruit, vegetable or wild rice for either the 1991 through 1995 crop years or the 1998 through 2001 crop years, but not both, as selected by the producer, in which case there is no contract violation; however, DCP payment acres shall be reduced by an acre for each acre of base acreage planted to a fruit (including nuts), vegetable (other than lentils, mung beans, and dry peas) or wild rice. When calculating a producer's average annual planting history, all years in which the producer did not plant the specific fruit, vegetable or wild rice, as applicable, shall be excluded.

- C Failure to comply with the fruit, vegetable and wild rice provisions of this section may result in the termination of the contract or a reduction in the DCP payments, at CCC's discretion.
- D Producers shall protect base acreage from erosion and shall control weeds, including noxious weeds, on base acres.

**5 DIRECT PAYMENTS**

- A The direct payment for each crop will be computed by multiplying: (1) 85 percent of the base acres, as identified in column 8 of Form CCC-509, by (2) the program payment yield in column 9 A of Form CCC-509, by (3) the payment rate for the applicable crop year as indicated on page 7 of this appendix, by (4) the producer's share of the crop as indicated in column 12 of Form CCC-509.
- B CCC will make advance payments available to producers who request such an advance by multiplying the payment amount determined in paragraph A of this section by: (1) 50 percent for contracts enrolled prior to enactment of the Agricultural Reconciliation Act of 2005 enacted on February 8, 2006, for the 2006 program year, (2) 40 percent for contracts enrolled after February 8, 2006, for the 2006 program year, and (3) 22 percent for contracts enrolled for the 2007 program year. Such payments may be made in any month from December through September of the contract period.
- C A producer must refund to CCC any payment which exceeds the amount actually earned under this contract, including the refund of unearned payments for a crop year resulting from another owner or producer assuming an interest in the base acres for the crop year. Interest on such refunds shall be assessed in accordance with 7 CFR Part 1403 and will accrue from the date of disbursement. In the event a succession-in-interest is timely reported on a revised CCC-509, interest on refunds from predecessors is not charged if such refund is made by September 30 of the contract period.
- D A final payment for the crop year will be made to producers as soon as practicable after October 1 of the crop year in which the crop is normally harvested.

**6 COUNTER-CYCLICAL PAYMENTS**

- A Counter-cyclical payments are authorized for a covered commodity when the effective price for the commodity is less than the target price of the commodity. The effective price for a covered commodity is equal to the sum of (1) the higher of the national average market price received by producers during the 12-month marketing year for the covered commodity, as determined by the Secretary, or the national average loan rate for the commodity, as found in 7 CFR Part 1412.503(b)(1)(ii) or (iii), as applicable, and (2) the direct payment rate for the covered commodity, as provided in 7 CFR Part 1412.502(d).
- B By farm by producers the counter-cyclical payment, if any, for each crop will be computed by multiplying: (1) 85 percent of the base acres, as identified in column 8 of Form CCC-509, by (2) the program payment

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yield in column 9 B of Form CCC-509, by (3) the payment rate determined in item 6 C of this appendix, by (4) the producer's share of the crop as indicated on Form CCC-509.

- C** The counter-cyclical payment rate for a commodity, when authorized for a crop year, is determined by subtracting the effective price for the commodity from the target price of the commodity.

The direct payment rates, national loan rates, and maximum counter-cyclical payment rates for each of the 2004 through 2007 crop years are identified on page 7 of this appendix. Counter-cyclical payments are not calculated for base acres of canola, crambe, flax, mustard, rapeseed, safflower, sesame, or sunflowers, because the sum of the national loan rate and the direct payment rate for those covered commodities is equal to or greater than the target price. Payments for other eligible oilseeds, if any, shall be as determined by the Secretary.

- D** For any of the 2006 and preceding crop years to which this agreement applies, CCC may authorize partial counter-cyclical payments for a covered commodity, if before the end of the applicable 12-month marketing year for the commodity the Secretary estimates that counter-cyclical payments will be required. In this event, producers may request a first partial payment of no more than 35 percent, as determined by the Secretary, of the projected payment amount, to be made in October of the calendar year in which the crop is normally harvested. Producers may request a second partial payment of no more than 70 percent, as determined by the Secretary, of the projected payment amount (including any revision of earlier projections) less the amount of any first partial payment, if applicable, to be made after February 1 of the calendar year after the year in which the crop is normally harvested. With respect to the 2007 crop year, one partial payment of 40 percent of the projected payment amount may be authorized, to be made in October of 2007.
- E** A final counter-cyclical payment for the crop year, if applicable, will be made to producers as soon as practicable after the end of the 12-month marketing year for the applicable commodity.
- F** A producer must refund to CCC any payment which exceeds the amount actually earned under this contract, including the refund of any unearned partial counter-cyclical payment when actual market prices exceed the projected market prices used in determining the partial payment rates. CCC may, in its discretion, automatically reduce any partial, advance, or final direct payments or counter-cyclical payments earned by, or which would otherwise be received by, the producer (or affiliated person or entity as provided in 7 CFR Part 1403) in any current or future year to help satisfy any obligation to repay any unearned partial, advance, or final direct or counter-cyclical payment for the current year or any other year under this contract. Likewise, such other payments may be withheld in the case of partial or advance payments pending a determination of whether those payments would themselves be subject to a refund because of a recalculation made when final payments are due.

## 7 OTHER PAYMENT PROVISIONS

- A** Payment yields on CCC-509 that were established based on average production yields from 1998 through 2001 remain subject to adjustment until such time as the County FSA Committee has reviewed production records and determined the established yields are accurate. Subject to program regulations, the payment yields may be reduced for direct and counter-cyclical payments, for the current and future crop years, if the production records cannot be substantiated, and producers on the farm must refund any overpayments based on incorrect payment yields.
- B** A producer who refuses to receive direct and counter-cyclical payments by indicating such on CCC-509 may subsequently decide to receive payments, provided that the producer signs a revised CCC-509 or otherwise notifies the County FSA Committee in writing on or before September 30 of the contract period.
- C** Payments shall not be earned by any producer on a contract for a crop year, unless payment shares are properly designated and all producers sign the contract in accordance with 7 CFR Part 1412. In cases where a valid payment share dispute exists, direct and counter-cyclical payments shall not be earned by producers involved in the dispute on the farm unless the payment share to dispute is resolved by agreement of the parties and documented in writing to the satisfaction of the County FSA Committee on or before September 30 of the contract period, and the agreed upon payment shares are within program regulations and provisions.

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- D Any payment or portion thereof due any producer will be made by CCC without regard to any question of title under state law, and without regard to any claim or lien against the crop, or proceeds therefrom, which may be asserted by a creditor, except agencies of the U.S. Government. Offsets for debts owed to agencies of the U.S. Government shall be made prior to making any payments to producers or their assignees.
- E Payments can be denied by any signatory who CCC determines has violated State law provisions that affect a tenant's right to lease agricultural land, or any person (including a subsequent tenant) who would profit by such a violation.

8 LOSS OF BENEFITS

- A If CCC determines a producer erroneously represented any fact affecting a determination to be made by CCC under this contract, direct and counter-cyclical payments shall not be allowed on the farm with respect to the payment shares of that producer. If CCC determines that the misrepresentation was intentional or fraudulent, or if the producer knowingly adopted any scheme or device which tends to defeat the purposes of this contract, the producer shall forfeit all rights to contract payments on each farm in which the producer has an interest and shall refund to CCC all contract payments received by the producer during the period of the violation, plus interest.
- B All producers sharing in the contract payments are jointly and severally liable for any refunds determined pursuant to paragraph A of this section and CCC will establish claims for the full amount of the refund against each producer in accordance with 7 CFR Part 1403. A signatory to the contract who does not receive any share of the contract payments shall not be liable for the repayment of such refund.
- C The provisions of this section are in addition to any liability which may be incurred under various criminal and civil fraud statutes, including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

9 MODIFICATIONS

CCC reserves the right to correct all errors in entering data on Form CCC-509 and the results of computations made pursuant thereto. CCC also reserves the right to require refunds of payments as the result of determinations made in accordance with the maximum payment limitations of 7 CFR Part 1400.

10 PAYMENT RATE INFORMATION

Direct Payments and Maximum Counter-Cyclical Rates for Covered Commodities and Peanuts, Crop Years 2004-2007						
Commodity	Units	Target Price	Direct Payment Rate	Loan Rate	Minimum Effective Price	Maximum Counter-Cyclical Payment Rate
Wheat	\$/bu.	3.92	0.52	2.75	3.27	0.65
Corn	\$/bu.	2.63	0.28	1.95	2.23	0.40
Grain Sorghum	\$/bu.	2.57	0.35	1.95	2.30	0.27
Barley	\$/bu.	2.24	0.24	1.85	2.09	0.15
Oats	\$/bu.	1.440	0.024	1.330	1.354	0.086
Upland Cotton	\$/lb.	0.7240	0.0667	0.5200	0.5867	0.1373
Rice	\$/cwt.	10.50	2.35	6.50	8.85	1.65
Soybeans	\$/bu.	5.80	0.44	5.00	5.44	0.36
Other Oilseeds	\$/lb.	0.1010	0.0080	0.0930	0.1010	0.00
Peanuts	\$/ton	495.00	36.00	355.00	391.00	104.00

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**NOTE:** *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.*

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