

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 760

### Commodity Credit Corporation

#### 7 CFR Parts 1400, 1412, and 1421

RIN 0560-AH84

### Direct and Counter-Cyclical Program and Average Crop Revenue Election Program, Disaster Assistance Programs, Marketing Assistance Loans and Loan Deficiency Payments Program, Supplemental Revenue Assistance Payments Program, and Payment Limitation and Payment Eligibility; Clarifying Amendments

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

**ACTION:** Final rule.

**SUMMARY:** CCC is amending the regulations for the Direct and Counter-cyclical Payment Program (DCP) for the 2008 through 2012 crop years and Average Crop Revenue Election (ACRE) Program for the 2009 through 2012 crop years. The amendments clarify various provisions in the regulations and extend benefits to additional producers. This rule extends the eligibility for farms of less than 10 base acres from farms wholly owned by socially disadvantaged or limited resource producers to farms that are at least half owned by such producers. It removes a provision terminating base acres on Federally-owned land, which will effectively extend DCP and ACRE Program eligibility to producers who lease or purchase such land. Clarifying amendments specify the extended 2009 crop year enrollment and election period, simplify acreage and production reporting requirements, correct contract termination provisions, and add 2009 through 2012 loan rates. This rule also

makes several clarifying amendments to the regulations for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP), the Supplemental Revenue Assistance Payments Program (SURE) and the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) Programs. It clarifies eligibility requirements for foreign persons for CCC and FSA programs.

**DATES:** *Effective Date:* April 13, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### Background

This rule provides clarifying amendments to a number of regulations that were published to implement programs authorized by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, the "2008 Farm Bill"). The regulations that are amended with this rule specify provisions for the DCP, ACRE, ELAP, LFP, MAL, SURE, and LDP Programs.

Sections 1101 through 1109 of the 2008 Farm Bill specify the requirements for DCP and ACRE Program. CCC published regulations to implement the DCP and ACRE Program in the **Federal Register** on December 29, 2008 (73 FR 79284-79306). This rule amends the regulations for DCP for the 2008 through 2012 crop years and for the ACRE Program for the 2009 through 2012 crop years. CCC is amending the regulations to provide additional clarity and to increase flexibility in the regulatory requirements where the 2008 Farm Bill permits and where CCC has determined it is in the best interests of the programs and participants. The amendments include extending the enrollment period for the 2009 crop year, simplifying acreage and production reporting requirements, removing a provision

terminating base acres on Federally owned land, and setting less restrictive eligibility requirements for small farms owned by socially disadvantaged or limited resource producers. This rule also makes minor technical amendments and corrections, such as including loan rates that are specified in the 2008 Farm Bill, but were inadvertently not included in the regulations. The basic structure and scope of DCP and the ACRE Program are not changing with this rule.

#### Definitions; DCP and ACRE Program

This rule adds definitions to § 1412.3 that are needed to implement and clarify the ACRE Program. These definitions are already used in the forms and contracts for the program, as well as the instruction sheets and calculators on FSA's Web site. It is appropriate to put these definitions in the regulations so that producers have complete information about how their benefit is calculated. The definitions clarify how prices, production, revenue, acreage and expected yields will be determined for the ACRE Program.

This rule defines how the State ACRE guarantee is calculated for the purpose of determining ACRE Program benefits: It is 90 percent of the benchmark State yield per acre times the ACRE guarantee price. Although the term "ACRE guarantee price" is included in the contract appendix, prior to this amendment, it did not appear in the rule. Several other terms used in either the appendix to the contract or in the instructions for the ACRE calculator on the FSA Web site were not previously included in the rule. In order that the regulations may be more comprehensive, this rule adds the following definitions that are used in the forms, contracts, and online tools: "Actual farm yield and benchmark farm yield," "ACRE price," "ACRE plug yield," "average yield per planted acre," "actual farm production," and "actual farm revenue."

In other cases, a definition is needed to specify how a term used in other FSA or CCC programs is used differently for DCP and ACRE. For example, the definition of "double cropping" in this rule is slightly different from that used for other FSA programs. The definition in this rule clarifies what double crop production will be recognized for ACRE payment purposes. Other terms that

may be used in other FSA or CCC programs differently than for DCP and ACRE, and are therefore added in this rule, include "contract period," "initial crop," "planted and considered planted," and "replacement crop."

This rule removes a provision in § 1412.45 that terminates base acres on Federally owned land and prohibits the establishment of base acres on such land. It was determined that the termination of base acres on Federal land created an unintended adverse effect on farmers and ranchers who lease Federal farmland. This rule amends the regulations accordingly to reflect that determination. Not allowing base acres in these instances would for example, negatively impact family farms that were seized by the Army Corps of Engineers through eminent domain and then leased back to the family after flood control structures were installed. As required by the 2008 Farm Bill, it remains the case that the government agencies are not, however, eligible for farm payments.

This rule also amends provisions in §§ 1412.41 and 1412.72 concerning the enrollment period for the ACRE program. The changes reflect determinations made previously for the 2009 crop year that allowed additional time for the start-up of the program.

In addition, Section 1101 of the 2008 Farm Bill specifically prohibits DCP and ACRE program payments to producers on farms that have 10 or less total base acres of covered commodities or peanuts, beginning with the 2009 crop year, except for farms owned by socially disadvantaged or limited resource farmers. The current regulations specify in § 1412.51 that a producer on a farm with 10 or less base acres will not be eligible to receive DCP or ACRE program payments unless the farm is wholly owned by a socially disadvantaged farmer or rancher or a limited resource farmer or rancher. In other FSA programs, a 50 percent threshold has been used and FSA will use that same threshold in § 1412.51. The 2008 Farm Bill does not specify a threshold and the new standard should provide greater opportunities for socially disadvantaged or limited resource farmers to participate in DCP and ACRE.

Section 1412.53 includes the 2008 loan rates for covered commodities and peanuts and target prices for 2008 through 2012. That section is amended in this rule to remove the loan rate for extra long staple cotton, to incorporate the loan rates for 2008 dry peas, lentils, and large and small chick peas, and to incorporate loan rates for covered commodities and peanuts for the 2009

through 2012 crop years. These are technical corrections; extra long staple cotton is not a covered commodity, and the loan rates for 2009 to 2012 are specified in the 2008 Farm Bill but were inadvertently not included in the regulations in the December 29, 2008, final rule.

Section 1106 of the 2008 Farm Bill specifies that no penalty will be assessed against a producer unless it is determined that a producer knowingly and willingly falsified an acreage or production report. Accordingly, § 1412.61 is amended to add a paragraph that specifies if a violation was not a knowing and willing falsification, payments may still be made, based on determined acreage and production.

As a condition of payment eligibility, § 1412.66 requires the operator of a farm to accurately report acreage. Section 1412.66 also provides that farms enrolled in the Planting Transferability Pilot Project as specified in § 1412.48 and farms enrolled in the ACRE Program must submit an accurate report of production accompanied by documentation acceptable to CCC. Section 1412.66 is being amended to no longer require such extensive documentation in all cases, but only where CCC in its discretion requires such documentation of that kind. Producers will be able to certify production without accompanying documentation, unless CCC determines such documentation is necessary. This will lessen the burden on producers and only require additional documentation in cases where there is a particular need for documentation or where a spot check is being made. Producers are required by § 1412.67 to submit a notice of loss for both prevented planting and low yield losses, unless the loss has already been reported for the Noninsured Crop Disaster Assistance Program (NAP). Section 1412.67 is being amended to eliminate the notice of loss requirement for low yield losses and to require a notice of loss for prevented planting only if a notice of such a loss for NAP (also administered by FSA) has not already been filed. The regulations are also being amended to remove a requirement that crop acreage that will not be harvested must be left intact and appraised. The removal of this requirement will allow producers to provide zero production reports without an appraisal.

The amendments to §§ 1412.66 and 1412.67 will allow producers to certify production for both harvested and unharvested crop acreage without having to submit documentation, unless CCC, at its discretion, requests those

records. Prior to this change, acceptable production records (verifiable or reliable) were always required with the certification. These amendments are intended to lessen the burden on producers and on CCC. CCC has insufficient resources to appraise each case of lost or zero production. Reporting and verifying loss information that has already been reported for crop insurance or NAP does not contribute to program effectiveness or efficiency.

Section 1412.77, "Transfer of Land and Succession-in-Interest," specifies the requirements for transfers of land and successions-in-interest to ACRE Program contracts. This section is being amended to clarify that producers who obtain a share in a crop of covered commodities or peanuts through a transfer of land or a succession-in-interest are not automatically eligible for ACRE payment. To be eligible for the ACRE Program, either as initial share interests or as successors-in-interest, producers must sign an ACRE Program contract during the contract period. This rule also amends § 1412.73, "Sharing of ACRE Payments," to clarify that each producer on a farm must sign the ACRE Program contract for the farm to receive that producer's share of any potential payment. This rule does not change the requirement that once a farm has been enrolled in ACRE no one, even independent successors, can participate on that farm on a non-ACRE basis in DCP. Under ACRE, however, a portion of the direct DCP payments can be made as specified in the 2008 Farm Bill and in the regulations.

DCP and ACRE Program contracts are annual contracts. However, § 1412.78 specifies incorrectly that in the event that a contract is terminated for a violation, the terminated acreage remains ineligible for DCP and ACRE Program participation from the time of termination through the 2012 crop year. That is not correct. The period of ineligibility for violations of DCP or ACRE Program provisions cannot exceed the contract period. Accordingly, § 1412.78 is being corrected to specify that terminated acreage will be ineligible for DCP and ACRE Program participation from the time of termination until the end of the annual contract period in which the violation occurred. Once more, however, once a farm has a valid ACRE election the farm cannot participate on a non-ACRE basis in the DCP. Terminating an annual DCP or ACRE contract, for any reason, does not impact the ACRE election under § 1412.72.

### Disaster Assistance, Market Assistance Loans, and Loan Deficiency Payments Programs Clarifying Amendments

Sections 12033 and 15101 of the 2008 Farm Bill specify the requirements for LFP and ELAP. The final rules for LFP and ELAP as authorized by the 2008 Farm Bill were published in the **Federal Register** on September 11, 2009 (74 FR 46666–46683).

This rule also amends the regulations in 7 CFR part 760, subpart D, for LFP to clarify that eligible covered livestock are livestock that would normally be grazing in that county during the grazing period, rather than grazing on the exact day a drought began.

This rule makes clarifying amendments to the ELAP regulations in 7 CFR part 760, subpart C, to specify that producers are eligible for payments based on fair market value of lost fish or honeybees. These amendments are needed to clarify that producers who decide not to replace fish or honeybees are eligible for payment based on the fair market value of those losses, and do not need to provide documentation as to actual replacement cost. This change is consistent with other types of livestock loss payments as specified in other regulations in part 760, which provide payment based on fair market value, rather than documented actual replacement cost, and provide payment regardless of whether or not the lost livestock is replaced.

This rule also amends the ELAP regulations specifying acceptable documentation for the loss of honeybee colonies due to colony collapse disorder (CCD). The amendment allows documentation by an independent third party determined acceptable by FSA, or, for losses in 2008 and 2009, self-certification by the producer. The previous requirement for certification by a registered entomologist, Cooperative Extension Specialist, or Land Grant University is removed, because the exact cause of CCD cannot be identified and such experts may be unwilling or unable to certify when honeybee colony losses were specifically due to CCD. Also, changes in the regulations reflect that a payment may be made even if the lost bees are not replaced.

This rule also makes technical corrections to the regulations in 7 CFR part 1421 for Marketing Assistance Loans and Loan Deficiency Payments to correct language in several provisions to be consistent throughout the regulations. The MAL and LDP final rule as authorized by the 2008 Farm Bill were published in the **Federal Register** on April 7, 2009 (74 FR 15644–15657). This rule removes a reference to

“individual” and replaces it with a reference to “person,” to be consistent with the rest of the part. Flaxseed was referenced in two different paragraphs about determination of eligible commodity; the incorrect reference in § 1421.5 is removed with this rule. Other minor technical corrections include correcting typos and correcting a reference to authorized warehouses. Another technical change is an amendment to language in § 1421.104(a)(1) to remove language about mandatory lien searches. Such searches are for the purpose of protecting CCC’s interests only and need not be addressed in the regulations at all. Further, in the case of marketing loans for commodities stored in a commercial warehouse, CCC’s interest is usually protected by possession of the warehouse receipt. As amended the rule specifies simply that CCC may conduct lien searches and perfect a lien under State Law as it deems warranted to protect its own interests.

This rule also makes clarifying amendments and technical corrections to SURE. The final rule for SURE as authorized by the 2008 Farm Bill was published in the **Federal Register** on December 28, 2009 (74 FR 68480–68498) and implemented SURE in 7 CFR part 760, subpart G. Originally the implementation plans for SURE was to have a fully automated system; now the system will be manual. As a result, we have reconsidered the information available and how best to administer SURE. One of the key issues was weighting the counter-cyclical yield for comparison to the weighted adjusted APH yield and weighted adjusted NAP approved yield as applicable.

In § 760.638(c), we specify that the “counter-cyclical yield for a crop on a farm will be weighted based on total planted and prevented planted acres in the county for the current crop year.” In a fully automated system, we could have set it to automatically pull the information required for the calculation. However, in a manual system, it would be unnecessarily burdensome administratively. Therefore, to ease the administrative burden, we are revising the regulation to not specify how the counter-cyclical yield will be weighted and in the short run this may simply be based on the DCP base acres on the farms involved in the SURE farm. Under SURE, all of the producer’s normal (from an FSA administrative standpoint) “farms” (each of which may have a separate schedule of yields) are treated as one SURE “farm”—therefore requiring weighting. The 2008 Farm Bill does not specify precisely how these calculations will be made. The rule change improves

FSA’s ability to make timely payments to farmers in SURE, which is designed to counterbalance current market trends.

In the SURE final rule, a flowchart was published in the preamble showing the SURE calculations. We realize that in the rule portion we inadvertently left out a factor in the calculation. Therefore, we are correcting § 760.638(d)(2) to specify that in the case of crops that were waived in for NAP or RMA coverage the weighted counter-cyclical yield will be calculated as 65 percent of county expected yield or counter-cyclical yield.

### Eligibility of Foreign Persons Clarifying Amendment

This rule clarifies provisions that limit the eligibility of foreign persons for FSA and CCC program payments in 7 CFR part 1400. The regulations governing the eligibility of foreign persons for payments are being amended to conform with the specific statutory provisions providing for that limitation, as amended by the 2008 Farm Bill.

### Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

### Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC and FSA are not required to publish a notice of proposed rulemaking for this rule.

### 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). FSA has determined that participation in acreage set-aside, acreage allotment, and other similar programs to those in 7 CFR 1412 will not significantly affect the quality of the human environment (7 CFR part 799.9(d)). Therefore no environmental assessment or environmental impact statement will be prepared.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the Federal Register on June 24, 1983 (48 FR 29115).

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988. This rule relaxes some previous requirements and contains no provisions that are retroactively more restrictive. It does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 13132**

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. 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**

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

**Unfunded Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and Tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Programs**

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Direct and Counter-Cyclical Program, 10.055. ELAP, LFP, and SURE, 10.090. Commodity Loans and Loan Deficiency Payments, 10.051.

**Paperwork Reduction Act**

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

CCC is 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 760*

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

*7 CFR Part 1400*

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

*7 CFR Part 1412*

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

*7 CFR Part 1421*

Barley, Feed grains, Grains, Loan programs—agriculture, Oats, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses, Wheat.

■ For the reasons discussed above, this rule amends 7 CFR parts 760, 1400, 1412, and 1421 as follows:

**PART 760—INDEMNITY PAYMENT PROGRAMS**

■ 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211, and Sec. 748, Pub. L. 111–80, 123 Stat. 2131.

■ 2. Amend § 760.203 as follows:

- a. In paragraph (h), third sentence, add the word “acceptable” before the word “documentation” and
- b. In paragraph (h), remove the last sentence and add two sentences in its place to read as set forth below.

**§ 760.203 Eligible losses, adverse weather, and other loss conditions.**

\* \* \* \* \*

(h)\* \* \* Except for 2008 and 2009 honeybee losses, acceptable documentation must include an acceptable colony collapse disorder certification by an independent third party as determined by the Deputy Administrator, plus any other documentation requested by FSA. For 2008 and 2009 honeybee losses such an independent certification is not required in all cases, but rather a self-certification by the honeybee producer as determined acceptable by the Deputy Administrator may be allowed in addition to whatever other documentation might be requested.

\* \* \* \* \*

■ 3. Revise § 760.206, paragraph (d), to read as follows:

**§ 760.206 Notice of loss and application process.**

\* \* \* \* \*

(d) For the loss of honeybee colonies due to colony collapse disorder, the participant must also provide acceptable documentation or certification that the loss of the honeybee colony was due to colony collapse disorder. Except for 2008 and 2009 honeybee colony losses, acceptable documentation must include an independent third party certification determined acceptable by the Deputy Administrator, plus such additional information and documentation as may be requested. For 2008 and 2009 honeybee colony losses a self-certification may be accepted by FSA together with any additional information demanded by FSA as determined appropriate by the Deputy Administrator.

\* \* \* \* \*

■ 4. Revise § 760.210, paragraphs (b) and (c), to read as follows:

**§ 760.210 Honeybee payment calculations.**

\* \* \* \* \*

(b) An eligible honeybee producer may receive payments for honeybee colony losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the average fair market value for the number of honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other

price data is approved for use by the Deputy Administrator, for losses in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for honeybee hive losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the average fair market value for the number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

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■ 5. Revise § 760.211, paragraph (b), to read as follows:

**§ 760.211 Farm-raised fish payment calculations.**

\* \* \* \* \*

(b) An eligible producer of farm-raised game or sport fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(i), based on 60 percent of the average fair market value of the game fish or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

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**§ 760.304 [Amended]**

■ 6. Amend § 760.304 as follows:

■ a. In paragraph (a)(2), remove the words “on the beginning date” and add, in their place, the words “in the county”.

■ b. In paragraph (a)(2)(i), remove the words “Of the qualifying drought during” and add, in their place, the word “During”.

■ 7. Revise § 760.638, paragraphs (c) and (d)(2), to read as follows:

**§ 760.638 Determination of SURE yield.**

\* \* \* \* \*

(c) The counter-cyclical yield for a crop on a SURE farm will be weighted in such manner as FSA deems fit taking into account a desire for a consistent system and FSA’s ability to make timely yield determinations.

(d) \* \* \*

(2) The SURE yield will be the higher of the yield calculated using the method in paragraph (d)(1) of this section or 65 percent of the weighted counter-cyclical yield as determined in paragraph (c) of this section.

\* \* \* \* \*

**PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS**

■ 8. The authority citation for part 1400 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

■ 9. Amend § 1400.401 by revising paragraph (a) to read as follows:

**§ 1400.401 Eligibility**

(a) Subject to the conditions set out in paragraphs (b) and (c) of this section, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101–1778) will be ineligible to receive any type of loans or payments made available under Title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714–714o), or subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836), or under any contract entered into under Title XII of that Act (16 U.S.C. 3801–3845), with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm. Likewise, and subject to the same conditions, such persons may be ineligible for payments under any other program which by its own regulations specifically provides for such an ineligibility and adopts these regulations.

\* \* \* \* \*

**PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND AVERAGE CROP REVENUE ELECTION PROGRAM FOR THE 2008 AND SUBSEQUENT CROP YEARS**

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

**Authority:** 7 U.S.C. 7911–7918, 7951–7956, 8711–8719, 8751–8756, and 8781; and 15 U.S.C. 714b and 714c.

■ 11. Amend § 1412.3 by adding definitions, in alphabetical order, for “ACRE guarantee price,” “ACRE plug yield,” “ACRE price,” “Actual farm production,” “Actual farm revenue,” “Actual farm yield,” “Actual State yield,” “Actual State revenue,” “Actual yield per planted acre,” “Benchmark farm yield,” “Benchmark State yield,”

“Contract period,” “Double-cropping,” “Farm ACRE guarantee,” “Initial crop,” “Limited resource farmer,” “Medium grain rice,” “Minimum and maximum guarantee,” “National loan rate,” “Per acre producer-paid crop insurance premium,” “Planted acres for a State,” “Planted and considered planted (P&CP),” “Replacement crop,” “Reseeded or replanted crop,” “Socially disadvantaged farmer or rancher,” and “State ACRE guarantee,” to read as follows:

**§ 1412.3 Definitions.**

\* \* \* \* \*

*ACRE guarantee price* means the simple average, as determined by CCC, of the national average market prices of the covered commodity or peanuts for the most recent two crop years preceding the relevant current crop year. For example, for the 2009 program the relevant crop year is the 2009 crop year. Therefore, for the 2009 program, the ACRE guarantee price for the covered commodity or peanuts is equal to the simple average of the national average market prices of the covered commodity or peanuts for the 2007 and 2008 crops.

*ACRE plug yield* means the resulting yield determined by taking the applicable NASS county average yield for the covered commodity or peanuts, by practice if applicable, and multiplying it by 95 percent. The ACRE plug yield may be used by a farm in establishing an initial benchmark farm yield or reporting actual production in accordance with instructions issued by the Deputy Administrator. The ACRE plug yield is also used on a farm for a covered commodity or peanuts in a year where there are no acres of the covered commodity or peanuts planted. The ACRE plug yield may be found on the FSA Web site at: <http://www.fsa.usda.gov/dcp/> by clicking “ACRE County Yields.” ACRE plug yields are used in benchmark farm yields. If the National Agricultural Statistical Service (NASS) data is not available for a particular practice of a covered commodity or peanuts from which an ACRE plug yield can be established, the Deputy Administrator may establish an ACRE plug yield for the practice of the covered commodity or peanuts based a computation of multiplying 95 percent times the yield determined based on production data available from FSA farm records in the county, or in the event sufficient records do not exist, another data source determined appropriate by the Deputy Administrator.

*ACRE price* means the higher of the following, as determined by CCC, for the covered commodity or peanuts:

(1) The national average price received by producers during the 12-month marketing year (as defined in this part) for the relevant current crop of the covered commodity or peanuts (the relevant current crop for a program year is the corresponding crop for commodity for that year—for example, the current crop for the 2009 program is the 2009 crop), or

(2) 70 percent of the marketing assistance loan rate for the relevant current crop of the commodity under 7 U.S.C. 8731–8757.

*Actual farm production* means all of a farm's harvested and appraised production, including grazed acres, of a covered commodity or peanuts. Appraisals must be performed by appraisers acceptable to FSA. Appraisals performed according to the Non-Insured Crop Disaster Assistance Program (NAP) or crop insurance guidelines are generally deemed acceptable to FSA for DCP and ACRE Program purposes.

*Actual farm revenue* means the per acre amount computed by multiplying the actual farm yield, which is a per acre amount, of a covered commodity or peanuts times the ACRE price for the relevant current crop year. The relevant current crop year for these and other purposes is the crop year that corresponds to the calendar year in which the relevant program year ends. Therefore, for the 2009 contract or 2009 program, the relevant crop year would be the 2009 crop (that is, the crop considered to be the crop for the 2009 crop year).

*Actual farm yield* means for the relevant current crop year, the per acre amount determined by dividing the actual farm production of a covered commodity or peanuts by the farm's total planted and considered planted acres of the covered commodity or peanuts.

*Actual State yield* means the State's per acre amount for the relevant current crop year for a commodity determined by dividing the actual production in the State of the covered commodity or peanuts by the total planted acres of the covered commodity or peanuts in the State.

*Actual State revenue* means the per acre amount for a covered commodity or peanuts determined for the relevant current crop year by multiplying the actual State yield by the covered commodity or peanuts times the ACRE price.

*Average yield per planted acre* means the actual farm production of a covered

commodity or peanuts for a year divided by the farm's planted acres.

\* \* \* \* \*

*Benchmark farm yield* means, except as otherwise provided, a per acre yield for a covered commodity or peanuts computed using the Olympic average of the average yield per planted acre for the farm for the commodity for the 5 most recent crop years. The term "Olympic average" means that the highest and lowest per acre yields for the 5 years will be eliminated and the remaining annual entries will be averaged. CCC may make such adjustments as it deems necessary to create a fair yield for the farm so as to ensure the integrity of the ACRE Program. For purposes of determining a benchmark farm yield, yields on planted acres only will be considered except to the extent that the farm does not have a sufficient history to make a fair yield determination in which case a yield may be assigned by CCC.

*Benchmark State yield* means for a covered commodity or peanuts a per acre yield computed using the Olympic average of the average yield per planted acre for the State for the commodity for the 5 most recent crop years. To the extent practicable, it will be calculated using data from NASS. The benchmark State yield is used in determining the State ACRE guarantee. CCC may make such adjustments in these yields as it deems necessary to provide for a fair yield and to ensure the integrity of the program.

\* \* \* \* \*

*Contract period* means the compliance period set out for the contract for the particular program year. The program year is designated in item 1 of the contract. Contracts for different program years will be referenced by their program year. Thus, for example, a reference to the "2009 contract" means the contract for the 2009 program year and the relevant current crop for a program year is the corresponding crop for that commodity. Therefore, the relevant current crop for the 2009 program is, with respect to a particular commodity, the 2009 crop. References to the "contract" period refer to the compliance period for the particular program year. The compliance periods for the various program years are as follows:

(1) For the 2009 contract (and therefore for the 2009 program), the period that begins on October 1, 2008 and ends on September 30, 2009;

(2) For the 2010 contract, the period that begins on October 1, 2009 and ends on September 30, 2010;

(3) For the 2011 contract, the period that begins on October 1, 2010 and ends on September 30, 2011;

(4) For the 2012 contract, the period that begins on October 1, 2011 and ends on September 30, 2012.

\* \* \* \* \*

*Double-cropping* means for covered commodities and peanuts, notwithstanding the meaning in § 1412.47(e) for fruits and vegetables, the planting of a covered commodity or peanuts for harvest in a crop year, in cycle with another covered commodity or peanuts on the same acres for harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by CCC (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping the covered commodities or peanuts, as determined by CCC, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of Subpart G of this part. Notwithstanding any of the provisions of § 718.103, in those instances where the subsequently planted or approved prevented planted covered commodity or peanuts cannot be recognized as double-cropped acreage under this definition, the subsequently planted covered commodity or peanuts will not be considered planted or prevented planted for any purpose.

\* \* \* \* \*

*Farm ACRE guarantee* means, for a crop year of a covered commodity or peanuts, the per acre producer-paid crop insurance premium (if any) added to the result of multiplying the benchmark farm yield, which is a per acre amount, times the ACRE guarantee price. The farm ACRE guarantee is used in determining whether a farm is eligible for ACRE payments for a covered commodity or peanuts.

\* \* \* \* \*

*Initial crop* means acreage of a covered commodity or peanuts planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

*Limited resource farmer* means, as determined in accordance with § 1412.51, a farmer or rancher who meets both of the following criteria:

(1) The person did not have, counting both direct and indirect interests, total gross farm sales for all farms in which that person has an interest of not more than the triggering level in both of the two calendar years that precede the calendar year in which the contract year begins. The triggering level is an indexed number that was originally set at \$100,000. Beginning in October 2004, that number has been adjusted for inflation using the Prices Paid by the Farmer Index compiled by NASS. The triggering level for the DCP or ACRE contract will be the indexed number (see <http://www.lrfstool.sc.egov.usda.gov/tool.asp>) as adjusted for the fiscal year that begins on the first day of the contract period.

(2) The person's total household income is at or below the national poverty level for a family of 4 or less than 50 percent of county median household income in each of the two most recent calendar years ending before the end of the program year, as CCC determines using U.S. Commerce Department Data.

\* \* \* \* \*

*Medium grain rice* means medium and short grain rice.

*Minimum and maximum guarantee* means, with respect to the State ACRE guarantee for each of the 2010 through 2012 crop years, the adjusted amounts that assure that the State ACRE guarantee for a program year for a covered commodity or peanuts will not decrease or increase more than 10 percent from the announced State ACRE guarantee for the preceding program year.

*National loan rate* means the loan rate established as specified in § 1421.9 of this chapter.

\* \* \* \* \*

*Per acre producer-paid crop insurance premium* means the insurance premiums paid by all producers of a farm for insurance on a covered commodity or peanuts, provided that at least some of the insured crop acreage is subject to a DCP contract and ACRE contract, divided by the total acres of the covered commodity or peanuts covered by the insurance; regardless of whether or not all of the acres insured are included on the farm's reported acreage for other programs, or are subject to a DCP contract and ACRE contract. Fees for catastrophic risk protection plan of insurance coverage or noninsured crop disaster assistance program coverage are not per acre producer-paid crop insurance premiums. Example: Producers A, B, and C have an interest in barley on a farm and the farm is enrolled in ACRE.

Producers A and B paid crop insurance premiums totaling \$800 on 100 insured barley acres. Regardless of how many acres of barley are planted, the per acre producer-paid crop insurance premium for barley is equal to \$8.

*Planted acres for a State* means for:

(1) Corn, sorghum, barley, oats, and wheat, the sum of harvested acres in a State, as reported by NASS and the sum of failed acres in a State, as reported by producers to FSA.

(2) All other crops, the sum of planted acres in a State, as reported by NASS.

(3) Crops where NASS data is not available, the planted acres as determined by CCC using other sources.

*Planted and considered planted (P&CP)* means, with respect to an acreage amount, the sum of the planted and prevented planted acres approved by the FSA county committee on the farm for a crop. For the purposes of this part, P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an approved double-cropping sequence. Replacement crop acreage is not included as P&CP.

\* \* \* \* \*

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planted acreage of a covered commodity or peanuts not in a recognized double-cropping sequence (as specified in this section). Replacement crops that are covered commodities or peanuts are not eligible for planted and considered planted credit under this part and cannot generate payments under this part.

*Reseeded or replanted crop* means the second planting of a covered commodity or peanut crop on the same acreage after the first planting of that same crop has failed.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives,
- (2) Asians or Asian-Americans,
- (3) Blacks or African-Americans,
- (4) Hispanics or Hispanic-Americans, and
- (5) Native Hawaiians or other Pacific Islanders.

*State ACRE guarantee* means the per acre amount for the crop which is 90

percent of the benchmark State yield times the ACRE guarantee price, subject to the minimum and maximum guarantee specified in these regulations.

\* \* \* \* \*

■ 12. Amend § 1412.41 as follows:

■ a. Revise paragraph (a)(1) and (a)(2)(i) to read as set forth below,

■ b. Amend paragraph (a)(3) by removing the words "on or before June 1" and adding, in their place, the words "by the date specified in paragraph (a)(2)(i) of this section", and

■ c. Amend paragraph (b), in the first sentence, by removing the words "on or before June 1 of the year of the contract" and adding, in their place, the words "by the enrollment date specified in paragraph (a)(2)(i) of this section".

**§ 1412.41 Direct and counter-cyclical program contract or ACRE program contract.**

(a) \* \* \*

(1) With respect to fiscal year 2008 payments, CCC will, through the date announced by CCC, entertain offers for DCP contracts by eligible producers of covered commodities and peanuts. With respect to fiscal year 2009 payments, CCC will entertain offers by eligible producers for an annual DCP or ACRE program contract through August 14, 2009. With respect to fiscal years 2010 through 2012 payments, CCC will annually allow offers for a DCP or ACRE program contract by eligible producers on a farm having base acres with respect to a covered commodity or peanuts, through June 1 of each such fiscal year.

(2)(i) Eligible producers must execute and submit a DCP or ACRE program contract and furnish supportive and necessary contractual documents to the county FSA office where the records for the program farm are administratively maintained not later than August 14, 2009, for 2009 fiscal year contracts and not later than June 1 of the applicable year for 2010 through 2012 fiscal year contracts.

\* \* \* \* \*

**§ 1412.45 [Amended]**

■ 13. Amend § 1412.45 by removing paragraph (d).

**§ 1412.51 [Amended]**

■ 14. Amend § 1412.51 as follows:

■ a. In paragraph (c), in the second sentence, remove the words "wholly-owned" and add, in their place, the words "at least 50 percent owned" and

■ b. In paragraph (c), in the third sentence, remove the words "each individual or entity with an interest in the entity must be a socially disadvantaged or limited resource farmer or rancher" and add, in their

place, the words “at least 50 percent of the ownership interest in the entity must be socially disadvantaged or limited resource farmers or ranchers”.

■ 15. Amend § 1412.53 as follows:

- a. In paragraph (b)(1)(ii), remove the words “2008 crop year” and add, in their place, the words “2008 and 2009 crop years.”
- b. Remove paragraph (b)(1)(ii)(G) and redesignate paragraphs (b)(1)(ii)(H) through (b)(1)(ii)(K) as paragraphs (b)(1)(ii)(G) through (b)(1)(ii)(J).
- c. Redesignate paragraph (b)(1)(ii)(L) as paragraph (b)(1)(ii)(O).
- d. Add paragraphs (b)(1)(ii)(K) through (b)(1)(ii)(N) to read as set forth below.
- e. Add paragraph (b)(1)(iii) to read as set forth below.

**§ 1412.53 Counter-cyclical payment provisions.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (K) Dry Peas—\$5.40/cwt. (2009 crop only).
- (L) Lentils—\$11.28/cwt. (2009 crop only).
- (M) Small Chickpeas—\$7.43/cwt. (2009 crop only).
- (N) Large Chickpeas—\$11.28/cwt. (2009 crop only).
- \* \* \* \* \*
- (iii) For the 2010 through 2012 crop years the following rates:
- (A) Wheat—\$2.94/bu.
- (B) Corn—\$1.95/bu.
- (C) Grain sorghum—\$1.95/bu.
- (D) Barley—\$1.95/bu.
- (E) Oats—\$1.39/bu.
- (F) Upland cotton—\$0.52/lb.
- (G) Long grain rice—\$6.50/cwt.
- (H) Medium grain rice—\$6.50/cwt.
- (I) Soybeans—\$5.00/bu.
- (J) Other oilseeds—\$10.09/cwt.
- (K) Dry Peas—\$5.40/cwt.
- (L) Lentils—\$11.28/cwt.
- (M) Small Chickpeas—\$7.43/cwt.
- (N) Large Chickpeas—\$11.28/cwt.
- (O) Peanuts—\$355.00/ton.
- \* \* \* \* \*

- 16. Amend § 1412.61 as follows:
- a. In paragraph (a), in the first sentence, remove the words “paragraph (b)” and add, in their place, the words “paragraphs (b) and (c)” and
- b. Add paragraph (c) to read as set forth below.

**§ 1412.61 Contract violations.**

(c) If there is a violation of § 1412.66 due to an inaccurate report of either acreage or production and CCC determines that the violation was not a

knowing and willing falsification or misrepresentation by producers on the contract under paragraph (a) of this section, payments may be made to the producers specified on the contract based on determined acreage and production.

**§ 1412.66 [Amended]**

- 17. Amend § 1412.66 as follows:
- a. In paragraph (b), first sentence, remove the word “Producers” at the beginning of the sentence and add, in its place, the words “As a condition of eligibility for payments under this part, producers”
- b. In paragraph (b), second sentence, remove the word “The” at the beginning of the sentence and add, in its place, the words “At the discretion of CCC, the”.
- 18. Amend § 1412.67 as follows:
- a. Revise paragraphs (a) and (b) to read as set forth below.
- b. In paragraph (c)(2), remove the words “damage or loss” and add, in their place, the words “prevented planting,” and
- c. Remove paragraph (d).

**§ 1412.67 Notices of loss.**

- (a) If a notice of loss for prevented planting under a policy or plan of insurance or pursuant to part 1437 of this chapter has not already been filed, at least one producer having a share of a crop intended to be planted pursuant to § 1412.48 or a having a share of a crop of a covered commodity or peanuts on a farm enrolled in the ACRE program must provide a notice of loss for prevented planting to CCC in the administrative FSA office for the farm, within 15 calendar days after the final planting date.
- (b) For a prevented planting notice filed in accordance with this section, the notice of loss must include:
  - (1) Total acreage intended to be planted to the crop in the administrative county;
  - (2) Total acreage planted by the producer to the crop in the administrative county;
  - (3) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, *etc.*; and
  - (4) When land preparation measures, for example, cultivation, were completed, and what has been done or will be done with the acreage, for example, abandoned, replanted, *etc.*

**§ 1412.72 [Amended]**

- 19. Amend § 1412.72 as follows:
- a. In paragraph (a), first sentence, remove the date “June 1 of 2009” and add, in its place, the date “August 14, 2009,”

- b. In paragraph (d) introductory text, remove the words “June 1 of” at the end.
- c. In paragraph (d)(1), add the words “August 14,” at the beginning.
- d. Redesignate paragraphs (d)(2) through (d)(4) as paragraphs (d)(2)(i) through (d)(2)(iii).
- e. Add new introductory text to paragraph (d)(2) to read as set forth below, and
- f. In paragraph (h), remove the words “June 1” both times they appear and add, in their place, the words “August 14, 2009, for the 2009 election period and June 1 in each of the 2010, 2011, and 2012 fiscal years.”

**§ 1412.72 Availability and election of alternative approach.**

\* \* \* \* \*

(d) \* \* \*

(2) June 1 of:

\* \* \* \* \*

- 20. Amend § 1412.73 by adding paragraphs (c) and (d) to read as follows:

**§ 1412.73 Sharing of ACRE payments.**

- \* \* \* \* \*
- (c) Shares of ACRE payments will be determined based on shares recorded on the report of acreage filed in accordance with § 1412.66. Each eligible producer having a share of covered commodities or peanuts planted or considered planted on a farm enrolled under an ACRE program contract must do both of the following to be eligible for their share of an ACRE payment:
  - (1) Unless otherwise already enrolled on the ACRE program contract with a share of base acres on the farm, sign the ACRE program contract during the contract period.
  - (2) Have the producer’s share recorded on report of acreage filed in accordance with part 718 of this title and § 1412.66 of this part.
- (d) In a case where a producer has failed to sign an ACRE program contract for the producer’s reported share of covered commodities or peanuts planted or considered planted on a farm enrolled in accordance with this subpart, that producer’s share will not receive any consideration for payment and will not generate any payment to the producer or to any other producer on the farm.
- 21. Amend § 1412.77 as follows:
- a. In paragraph (a), second sentence, add the word “program” between the words “ACRE” and “contract”, and
- b. Add paragraph (f) to read as set forth below.

**§ 1412.77 Transfer of land and succession-in-interest.**

\* \* \* \* \*

(f) Producers who have reported a share interest on an acreage report of

covered commodities and peanuts planted or prevented from being planted on a farm are not automatically considered successors. In accordance with § 1412.73, such producers who have not already signed the ACRE program contract have until the end of the contract period to sign the ACRE program contract or that share will not receive payment consideration.

#### § 1412.78 [Amended]

■ 22. In § 1412.78, paragraph (a)(2)(iii), remove the date “2012” and add, in its place, the words “the end of the contract period”.

### PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR 2008 THROUGH 2012

■ 23. The authority citation for part 1421 continues to read as follows:

**Authority:** 7 U.S.C. 7231–7237 and 7931–7936; 15 U.S.C. 714b and 714c, and 7 U.S.C. 8731–8736.

#### § 1421.4 [Amended]

■ 24. Amend § 1421.4 as follows:

■ a. In paragraph (a)(1), first sentence, remove the words “an individual” and add, in their place, the words “a person” and

■ b. In paragraph (e)(1)(ii), remove the word “corporate” and add, in its place, the word “cooperate”.

#### § 1421.5 [Amended]

■ 25. Amend § 1421.5 as follows:

■ a. In paragraph (c)(4), first sentence, remove the word “respect” and add, in its place, the word “regard”, and

■ b. In paragraph (c)(5), first sentence, remove the word “flaxseed,”.

■ 26. Amend 1421.104 as follows:

■ a. Revise paragraph (a)(1) to read as set forth below and

■ b. In paragraph (a)(2) remove the words “paragraph (a)(1) of this section” and add, in their place, the words “this part”.

#### § 1421.104 Marketing assistance loan making.

(a)(1) CCC may conduct such lien searches, and may perfect its interest in loan commodities under State law, as it deems to be in its interest.

\* \* \* \* \*

#### § 1421.107 [Amended]

■ 27. Amend § 1421.107 as follows:

■ a. In paragraph (g)(1), remove the words “under the U.S. Warehouse Act”, and add, in their place, the words “by an authorized warehouse as specified in § 1421.103(c)(1)”, and

■ b. In paragraph (g)(2), remove the reference to “paragraph (f)(1) of this section” and add, in its place, a reference to “paragraph (g)(1) of this section.”

Signed in Washington, DC, on April 7, 2010.

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2010–8308 Filed 4–13–10; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2007–28377; Directorate Identifier 2007–NM–063–AD; Amendment 39–16257; AD 2010–08–02]

**RIN 2120–AA64**

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Periodic operational check of the firewall hydraulic shutoff valves [FWSOV], made during routine maintenance, has revealed that the failure rate of that component is significantly higher than expected. Such a dormant failure, when combined with further possible failures, such as engine fire, may lead to an unacceptable reduction of safety margins.

The unsafe condition is failure of the firewall hydraulic shutoff valve, which, in combination with an engine fire, could result in the spread of an engine fire beyond the firewall. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 19, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on June 26, 2008 (73 FR 36290). That supplemental NPRM proposed to correct an unsafe condition for the specified products.

Since that NPRM was issued, Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2007–02–01R2, and 2007–02–02R2, both effective July 17, 2009. The revised MCAI references suitable hydraulic shutoff valves for replacement valves. (This change is explained further in a comment from EMBRAER, which is discussed below.) The MCAI states:

Periodic operational check of the firewall hydraulic shutoff valves [FWSOV], made during routine maintenance, has revealed that the failure rate of that component is significantly higher than expected. Such a dormant failure, when combined with further possible failures, such as engine fire, may lead to an unacceptable reduction of safety margins.

The unsafe condition is failure of the firewall hydraulic shutoff valve, which, in combination with an engine fire, could result in the spread of an engine fire beyond the firewall. The MCAI requires repetitive operational checks of the firewall hydraulic shutoff valve, and if necessary, replacement of the valve. You may obtain further information by examining the MCAI in the AD docket.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

#### Request To Revise Unsafe Condition Statement

EMBRAER requests that we revise the description of the unsafe condition.