

(A) except as provided in subparagraph (B), 85 percent of the base acres of a covered commodity on a farm on which direct payments or counter-cyclical payments are made; and

(B) in the case of direct payments for each of the 2009 through 2011 crop years, 83.3 percent of the base acres for the covered commodity on a farm on which direct payments are made.

(12) Payment yield

The term “payment yield” means the yield established for direct payments and the yield established for counter-cyclical payments under section 7912 of this title as in effect on September 30, 2007, or under section 8712 of this title, for a farm for a covered commodity.

(13) Producer

(A) In general

The term “producer” means an owner, operator, landlord, tenant, or sharecropper that shares in the risk of producing a crop and is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced.

(B) Hybrid seed

In determining whether a grower of hybrid seed is a producer, the Secretary shall—

- (i) not take into consideration the existence of a hybrid seed contract; and
- (ii) ensure that program requirements do not adversely affect the ability of the grower to receive a payment under this chapter.

(14) Pulse crop

The term “pulse crop” means dry peas, lentils, small chickpeas, and large chickpeas.

(15) State

The term “State” means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(16) Target price

The term “target price” means the price per bushel, pound, or hundredweight (or other appropriate unit) of a covered commodity used to determine the payment rate for counter-cyclical payments.

(17) United States

The term “United States”, when used in a geographical sense, means all of the States.

(18) United States Premium Factor

The term “United States Premium Factor” means the percentage by which the difference in the United States loan schedule premiums for Strict Middling (SM) 1½-inch upland cotton and for Middling (M) 1¾-inch upland cotton exceeds the difference in the applicable premiums for comparable international qualities.

(Pub. L. 110-234, title I, §1001, May 22, 2008, 122 Stat. 936; Pub. L. 110-246, §4(a), title I, §1001, June 18, 2008, 122 Stat. 1664.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title I of Pub. L. 110-246, June 18, 2008, 122 Stat. 1664, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

SUBCHAPTER I—DIRECT PAYMENTS AND COUNTER-CYCLICAL PAYMENTS

§ 8711. Base acres

(a) Adjustment of base acres

(1) In general

The Secretary shall provide for an adjustment, as appropriate, in the base acres for covered commodities for a farm whenever any of the following circumstances occurs:

(A) A conservation reserve contract entered into under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) with respect to the farm expires or is voluntarily terminated, or was terminated or expired during the period beginning on October 1, 2007, and ending on the date of enactment of this Act.

(B) Cropland is released from coverage under a conservation reserve contract by the Secretary, or was released during the period beginning on October 1, 2007, and ending on the date of enactment of this Act.

(C) The producer has eligible pulse crop acreage, which shall be determined in the same manner as eligible oilseed acreage under section 7911(a)(2) of this title.

(D) The producer has eligible oilseed acreage as the result of the Secretary designating additional oilseeds, which shall be determined in the same manner as eligible oilseed acreage under section 7911(a)(2) of this title.

(2) Special conservation reserve acreage payment rules

For the crop year in which a base acres adjustment under subparagraph (A) or (B) of paragraph (1) is first made, the owner of the farm shall elect to receive either direct payments and counter-cyclical payments with respect to the acreage added to the farm under this subsection or a prorated payment under the conservation reserve contract, but not both.

(b) Prevention of excess base acres

(1) Required reduction

If the sum of the base acres for a farm, together with the acreage described in paragraph (2) exceeds the actual cropland acreage of the farm, the Secretary shall reduce the base acres for 1 or more covered commodities for the farm or the base acres for peanuts for the farm so that the sum of the base acres and acreage described in paragraph (2) does not exceed the actual cropland acreage of the farm.

(2) Other acreage

For purposes of paragraph (1), the Secretary shall include the following:

(A) Any base acres for peanuts for the farm.

(B) Any acreage on the farm enrolled in the conservation reserve program or wetlands reserve program under chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3830 et seq.).

(C) Any other acreage on the farm enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(D) Any eligible pulse crop acreage, which shall be determined in the same manner as eligible oilseed acreage under section 7911(a)(2) of this title.

(E) If the Secretary designates additional oilseeds, any eligible oilseed acreage, which shall be determined in the same manner as eligible oilseed acreage under section 7911(a)(2) of this title.

(3) Selection of acres

The Secretary shall give the owner of the farm the opportunity to select the base acres for a covered commodity or the base acres for peanuts for the farm against which the reduction required by paragraph (1) will be made.

(4) Exception for double-cropped acreage

In applying paragraph (1), the Secretary shall make an exception in the case of double cropping, as determined by the Secretary.

(5) Coordinated application of requirements

The Secretary shall take into account section 8752(b) of this title when applying the requirements of this subsection.

(c) Reduction in base acres

(1) Reduction at option of owner

(A) In general

The owner of a farm may reduce, at any time, the base acres for any covered commodity for the farm.

(B) Effect of reduction

A reduction under subparagraph (A) shall be permanent and made in a manner prescribed by the Secretary.

(2) Required action by Secretary

(A) In general

The Secretary shall proportionately reduce base acres on a farm for covered commodities for land that has been subdivided and developed for multiple residential units or other nonfarming uses if the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless the producers on the farm demonstrate that the land—

(i) remains devoted to commercial agricultural production; or

(ii) is likely to be returned to the previous agricultural use.

(B) Requirement

The Secretary shall establish procedures to identify land described in subparagraph (A).

(3) Review and report

Each year, to ensure, to the maximum extent practicable, that payments are received only by producers, the Secretary shall submit to Congress a report that describes the results of the actions taken under paragraph (2).

(d) Treatment of farms with limited base acres

(1) Prohibition on payments

Except as provided in paragraph (2) and notwithstanding any other provision of this chapter, a producer on a farm may not receive direct payments, counter-cyclical payments, or average crop revenue election payments if the sum of the base acres of the farm is 10 acres or less, as determined by the Secretary.

(2) Exceptions

Paragraph (1) shall not apply to a farm owned by—

(A) a socially disadvantaged farmer or rancher (as defined in section 2003(e) of this title;¹ or

(B) a limited resource farmer or rancher, as defined by the Secretary.

(3) Data collection and publication

The Secretary shall—

(A) collect and publish segregated data and survey information about the farm profiles, utilization of land, and crop production; and

(B) perform an evaluation on the supply and price of fruits and vegetables based on the effects of suspension of base acres under this section.

(4) Suspension of prohibition

Paragraphs (1) through (3) shall not apply during the 2008 crop year.

(Pub. L. 110-234, title I, § 1101, May 22, 2008, 122 Stat. 938; Pub. L. 110-246, § 4(a), title I, § 1101, June 18, 2008, 122 Stat. 1664, 1666; Pub. L. 110-398, § 1(a)(1), Oct. 13, 2008, 122 Stat. 4213.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (a)(1)(A), (B), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Food Security Act of 1985, referred to in subsec. (b)(2)(B), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Chapter 1 of subtitle D of title XII of the Act is classified generally to part I (§ 3830 et seq.) of subchapter IV of chapter 58 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of this title and Tables.

This chapter, referred to in subsec. (d)(1), was in the original “this title”, meaning title I of Pub. L. 110-246, June 18, 2008, 122 Stat. 1664, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (d)(4). Pub. L. 110-398 added par. (4).

¹ So in original. A closing parenthesis probably should precede the semicolon.

§ 8712. Payment yields**(a) Establishment and purpose**

For the purpose of making direct payments and counter-cyclical payments under this subchapter, the Secretary shall provide for the establishment of a yield for each farm for any designated oilseed or eligible pulse crop for which a payment yield was not established under section 7912 of this title in accordance with this section.

(b) Payment yields for designated oilseeds and eligible pulse crops**(1) Determination of average yield**

In the case of designated oilseeds and eligible pulse crops, the Secretary shall determine the average yield per planted acre for the designated oilseed or pulse crop on a farm for the 1998 through 2001 crop years, excluding any crop year in which the acreage planted to the designated oilseed or pulse crop was zero.

(2) Adjustment for payment yield**(A) In general**

The payment yield for a farm for a designated oilseed or eligible pulse crop shall be equal to the product of the following:

- (i) The average yield for the designated oilseed or pulse crop determined under paragraph (1).
- (ii) The ratio resulting from dividing the national average yield for the designated oilseed or pulse crop for the 1981 through 1985 crops by the national average yield for the designated oilseed or pulse crop for the 1998 through 2001 crops.

(B) No national average yield information available

To the extent that national average yield information for a designated oilseed or pulse crop is not available, the Secretary shall use such information as the Secretary determines to be fair and equitable to establish a national average yield under this section.

(3) Use of partial county average yield

If the yield per planted acre for a crop of a designated oilseed or pulse crop for a farm for any of the 1998 through 2001 crop years was less than 75 percent of the county yield for that designated oilseed or pulse crop, the Secretary shall assign a yield for that crop year equal to 75 percent of the county yield for the purpose of determining the average under paragraph (1).

(4) No historic yield data available

In the case of establishing yields for designated oilseeds and eligible pulse crops, if historic yield data is not available, the Secretary shall use the ratio for dry peas calculated under paragraph (2)(A)(ii) in determining the yields for designated oilseeds and eligible pulse crops, as determined to be fair and equitable by the Secretary.

(Pub. L. 110-234, title I, § 1102, May 22, 2008, 122 Stat. 940; Pub. L. 110-246, § 4(a), title I, § 1102, June 18, 2008, 122 Stat. 1664, 1669.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

§ 8713. Availability of direct payments**(a) Payment required**

For each of the 2008 through 2012 crop years of each covered commodity (other than pulse crops), the Secretary shall make direct payments to producers on farms for which base acres and payment yields are established.

(b) Payment rate

Except as provided in section 8715 of this title, the payment rates used to make direct payments with respect to covered commodities for a crop year shall be as follows:

- (1) Wheat, \$0.52 per bushel.
- (2) Corn, \$0.28 per bushel.
- (3) Grain sorghum, \$0.35 per bushel.
- (4) Barley, \$0.24 per bushel.
- (5) Oats, \$0.024 per bushel.
- (6) Upland cotton, \$0.0667 per pound.
- (7) Long grain rice, \$2.35 per hundredweight.
- (8) Medium grain rice, \$2.35 per hundredweight.
- (9) Soybeans, \$0.44 per bushel.
- (10) Other oilseeds, \$0.80 per hundredweight.

(c) Payment amount

The amount of the direct payment to be paid to the producers on a farm for a covered commodity for a crop year shall be equal to the product of the following:

- (1) The payment rate specified in subsection (b).
- (2) The payment acres of the covered commodity on the farm.
- (3) The payment yield for the covered commodity for the farm.

(d) Time for payment**(1) In general**

Except as provided in paragraph (2), in the case of each of the 2008 through 2012 crop years, the Secretary may not make direct payments before October 1 of the calendar year in which the crop of the covered commodity is harvested.

(2) Advance payments**(A) Option****(i) In general**

At the option of the producers on a farm, the Secretary shall pay in advance up to 22 percent of the direct payment for a covered commodity for any of the 2008 through 2011 crop years to the producers on a farm.

(ii) 2008 crop year

If the producers on a farm elect to receive advance direct payments under clause (i) for a covered commodity for the 2008 crop year, as soon as practicable after the election, the Secretary shall make the advance direct payment to the producers on the farm.

(B) Month**(i) Selection**

Subject to clauses (ii) and (iii), the producers on a farm shall select the month during which the advance payment for a crop year will be made.