

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.

(ii) Options

The month selected may be any month during the period—

(I) beginning on December 1 of the calendar year before the calendar year in which the crop of the covered commodity is harvested; and

(II) ending during the month within which the direct payment would otherwise be made.

(iii) Change

The producers on a farm may change the selected month for a subsequent advance payment by providing advance notice to the Secretary.

(3) Repayment of advance payments

If a producer on a farm that receives an advance direct payment for a crop year ceases to be a producer on that farm, or the extent to which the producer shares in the risk of producing a crop changes, before the date the remainder of the direct payment is made, the producer shall be responsible for repaying the Secretary the applicable amount of the advance payment, as determined by the Secretary.

(Pub. L. 110-234, title I, §1103, May 22, 2008, 122 Stat. 941; Pub. L. 110-246, §4(a), title I, §1103, 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 L. 110-234 was repealed by section 4(a) of Pub.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.

§ 8714. Availability of counter-cyclical payments

(a) Payment required

Except as provided in section 8715 of this title, for each of the 2008 through 2012 crop years for

each covered commodity, the Secretary shall make counter-cyclical payments to producers on farms for which payment yields and base acres are established with respect to the covered commodity if the Secretary determines that the effective price for the covered commodity is less than the target price for the covered commodity.

(b) Effective price

(1) Covered commodities other than rice

Except as provided in paragraph (2), for purposes of subsection (a), the effective price for a covered commodity is equal to the sum of the following:

(A) The higher of the following:

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity, as determined by the Secretary.

(ii) The national average loan rate for a marketing assistance loan for the covered commodity in effect for the applicable period under subchapter II.

(B) The payment rate in effect for the covered commodity under section 8713 of this title for the purpose of making direct payments with respect to the covered commodity.

(2) Rice

In the case of long grain rice and medium grain rice, for purposes of subsection (a), the effective price for each type or class of rice is equal to the sum of the following:

(A) The higher of the following:

(i) The national average market price received by producers during the 12-month marketing year for the type or class of rice, as determined by the Secretary.

(ii) The national average loan rate for a marketing assistance loan for the type or class of rice in effect for the applicable period under subchapter II.

(B) The payment rate in effect for the type or class of rice under section 8713 of this title for the purpose of making direct payments with respect to the type or class of rice.

(c) Target price

(1) 2008 crop year

For purposes of the 2008 crop year, the target prices for covered commodities shall be as follows:

(A) Wheat, \$3.92 per bushel.

(B) Corn, \$2.63 per bushel.

(C) Grain sorghum, \$2.57 per bushel.

(D) Barley, \$2.24 per bushel.

(E) Oats, \$1.44 per bushel.

(F) Upland cotton, \$0.7125 per pound.

(G) Long grain rice, \$10.50 per hundred-weight.

(H) Medium grain rice, \$10.50 per hundred-weight.

(I) Soybeans, \$5.80 per bushel.

(J) Other oilseeds, \$10.10 per hundred-weight.

(2) 2009 crop year

For purposes of the 2009 crop year, the target prices for covered commodities shall be as follows:

- (A) Wheat, \$3.92 per bushel.
- (B) Corn, \$2.63 per bushel.
- (C) Grain sorghum, \$2.57 per bushel.
- (D) Barley, \$2.24 per bushel.
- (E) Oats, \$1.44 per bushel.
- (F) Upland cotton, \$0.7125 per pound.
- (G) Long grain rice, \$10.50 per hundredweight.
- (H) Medium grain rice, \$10.50 per hundredweight.
- (I) Soybeans, \$5.80 per bushel.
- (J) Other oilseeds, \$10.10 per hundredweight.
- (K) Dry peas, \$8.32 per hundredweight.
- (L) Lentils, \$12.81 per hundredweight.
- (M) Small chickpeas, \$10.36 per hundredweight.
- (N) Large chickpeas, \$12.81 per hundredweight.

(3) Subsequent crop years

For purposes of each of the 2010 through 2012 crop years, the target prices for covered commodities shall be as follows:

- (A) Wheat, \$4.17 per bushel.
- (B) Corn, \$2.63 per bushel.
- (C) Grain sorghum, \$2.63 per bushel.
- (D) Barley, \$2.63 per bushel.
- (E) Oats, \$1.79 per bushel.
- (F) Upland cotton, \$0.7125 per pound.
- (G) Long grain rice, \$10.50 per hundredweight.
- (H) Medium grain rice, \$10.50 per hundredweight.
- (I) Soybeans, \$6.00 per bushel.
- (J) Other oilseeds, \$12.68 per hundredweight.
- (K) Dry peas, \$8.32 per hundredweight.
- (L) Lentils, \$12.81 per hundredweight.
- (M) Small chickpeas, \$10.36 per hundredweight.
- (N) Large chickpeas, \$12.81 per hundredweight.

(d) Payment rate

The payment rate used to make counter-cyclical payments with respect to a covered commodity for a crop year shall be equal to the difference between—

- (1) the target price for the covered commodity; and
- (2) the effective price determined under subsection (b) for the covered commodity.

(e) Payment amount

If counter-cyclical payments are required to be paid under this section for any of the 2008 through 2012 crop years of a covered commodity, the amount of the counter-cyclical payment to be paid to the producers on a farm for that crop year shall be equal to the product of the following:

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

(f) Time for payments

(1) General rule

Except as provided in paragraph (2), if the Secretary determines under subsection (a)

that counter-cyclical payments are required to be made under this section for the crop of a covered commodity, beginning October 1, or as soon as practicable thereafter, after the end of the marketing year for the covered commodity, the Secretary shall make the counter-cyclical payments for the crop.

(2) Availability of partial payments

(A) In general

If, before the end of the 12-month marketing year for a covered commodity, the Secretary estimates that counter-cyclical payments will be required for the crop of the covered commodity, the Secretary shall give producers on a farm the option to receive partial payments of the counter-cyclical payment projected to be made for that crop of the covered commodity.

(B) Election

(i) In general

The Secretary shall allow producers on a farm to make an election to receive partial payments for a covered commodity under subparagraph (A) at any time but not later than 60 days prior to the end of the marketing year for that covered commodity.

(ii) Date of issuance

The Secretary shall issue the partial payment after the date of an announcement by the Secretary but not later than 30 days prior to the end of the marketing year.

(3) Time for partial payments

When the Secretary makes partial payments for a covered commodity for any of the 2008 through 2010 crop years—

- (A) the first partial payment shall be made after completion of the first 180 days of the marketing year for the covered commodity; and
- (B) the final partial payment shall be made beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity.

(4) Amount of partial payment

(A) First partial payment

For each of the 2008 through 2010 crops of a covered commodity, the first partial payment under paragraph (3) to the producers on a farm may not exceed 40 percent of the projected counter-cyclical payment for the covered commodity for the crop year, as determined by the Secretary.

(B) Final payment

The final payment for a covered commodity for a crop year shall be equal to the difference between—

- (i) the actual counter-cyclical payment to be made to the producers for the covered commodity for that crop year; and
- (ii) the amount of the partial payment made to the producers under subparagraph (A).

(5) Repayment

The producers on a farm that receive a partial payment under this subsection for a crop

year shall repay to the Secretary the amount, if any, by which the total of the partial payments exceed the actual counter-cyclical payment to be made for the covered commodity for that crop year.

(Pub. L. 110-234, title I, §1104, May 22, 2008, 122 Stat. 942; Pub. L. 110-246, §4(a), title I, §1104, June 18, 2008, 122 Stat. 1664, 1671.)

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.

§ 8715. Average crop revenue election program

(a) Availability and election of alternative approach

(1) Availability of average crop revenue election payments

As an alternative to receiving counter-cyclical payments under section 8714 or 8754 of this title and in exchange for a 20-percent reduction in direct payments under section 8713 or 8753 of this title and a 30-percent reduction in marketing assistance loan rates under section 8732 or 8757 of this title, with respect to all covered commodities and peanuts on a farm, during each of the 2009, 2010, 2011, and 2012 crop years, the Secretary shall give the producers on the farm an opportunity to make an irrevocable election to instead receive average crop revenue election (referred to in this section as "ACRE") payments under this section for the initial crop year for which the election is made through the 2012 crop year.

(2) Limitation

(A) In general

The total number of planted acres for which the producers on a farm may receive ACRE payments under this section may not exceed the total base acreage for all covered commodities and peanuts on the farm.

(B) Election

If the total number of planted acres to all covered commodities and peanuts of the producers on a farm exceeds the total base acreage of the farm, the producers on the farm may choose which planted acres to enroll in the program under this section.

(3) Election; time for election

(A) In general

The Secretary shall provide notice to producers regarding the opportunity to make each of the elections described in paragraph (1).

(B) Notice requirements

The notice shall include—

- (i) notice of the opportunity of the producers on a farm to make the election; and
- (ii) information regarding the manner in which the election must be made and the time periods and manner in which notice of the election must be submitted to the Secretary.

(4) Election deadline

Within the time period and in the manner prescribed pursuant to paragraph (3), all of the

producers on a farm shall submit to the Secretary notice of an election made under paragraph (1).

(5) Effect of failure to make election

If all of the producers on a farm fail to make an election under paragraph (1), make different elections under paragraph (1), or fail to timely notify the Secretary of the election made, as required by paragraph (4), all of the producers on the farm shall be deemed to have made the election to receive counter-cyclical payments under section 8714 or 8754 of this title for all covered commodities and peanuts on the farm, and to otherwise not have made the election described in paragraph (1), for the applicable crop years.

(b) Payments required

(1) In general

In the case of producers on a farm who make an election under subsection (a) to receive ACRE payments for any of the 2009 through 2012 crop years for all covered commodities and peanuts, the Secretary shall make ACRE payments available to the producers on a farm in accordance with this subsection.

(2) ACRE payment

(A) In general

Subject to paragraph (3), in the case of producers on a farm described in paragraph (1), the Secretary shall make ACRE payments available to the producers on a farm for each crop year if—

- (i) the actual State revenue for the crop year for the covered commodity or peanuts in the State determined under subsection (c); is less than
- (ii) the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under subsection (d).

(B) Individual loss

The Secretary shall make ACRE payments available to the producers on a farm in a State for a crop year only if (as determined by the Secretary)—

- (i) the actual farm revenue for the crop year for the covered commodity or peanuts, as determined under subsection (e); is less than
- (ii) the farm ACRE benchmark revenue for the crop year for the covered commodity or peanuts, as determined under subsection (f).

(3) Time for payments

In the case of each of the 2009 through 2012 crop years, the Secretary shall make ACRE payments beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity or peanuts.

(c) Actual State revenue

(1) In general

For purposes of subsection (b)(2)(A), the amount of the actual State revenue for a crop year of a covered commodity or peanuts shall equal the product obtained by multiplying—