

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 L. 110-234 was repealed by section 4(a) of Pub.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—

(A) the actual State yield for each planted acre for the crop year for the covered commodity or peanuts determined under paragraph (2); and

(B) the national average market price for the crop year for the covered commodity or peanuts determined under paragraph (3).

**(2) Actual State yield**

For purposes of paragraph (1)(A), the actual State yield for each planted acre for a crop year for a covered commodity or peanuts in a State shall equal (as determined by the Secretary)—

(A) the quantity of the covered commodity or peanuts that is produced in the State during the crop year; divided by

(B) the number of acres that are planted to the covered commodity or peanuts in the State during the crop year.

**(3) National average market price**

For purposes of paragraph (1)(B), the national average market price for a crop year for a covered commodity or peanuts in a State shall equal the greater of—

(A) the national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as determined by the Secretary; or

(B) the marketing assistance loan rate for the covered commodity or peanuts under section 8732 or 8757 of this title, as reduced under subsection (a)(1).

**(d) ACRE program guarantee**

**(1) Amount**

**(A) In general**

For purposes of subsection (b)(2)(A) and subject to subparagraph (B), the ACRE program guarantee for a crop year for a covered commodity or peanuts in a State shall equal 90 percent of the product obtained by multiplying—

(i) the benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in a State determined under paragraph (2); and

(ii) the ACRE program guarantee price for the crop year for the covered commodity or peanuts determined under paragraph (3).

**(B) Minimum and maximum guarantee**

In the case of each of the 2010 through 2012 crop years, the ACRE program guarantee for a crop year for a covered commodity or peanuts under subparagraph (A) shall not decrease or increase more than 10 percent from the guarantee for the preceding crop year.

**(2) Benchmark State yield**

**(A) In general**

For purposes of paragraph (1)(A)(i), subject to subparagraph (B), the benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State shall equal the average yield per planted acre for the covered commodity or peanuts in the State for the most recent 5 crop year yields, excluding each of the crop

years with the highest and lowest yields, using National Agricultural Statistics Service data.

**(B) Assigned yield**

If the Secretary cannot establish the benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State in accordance with subparagraph (A) or if the yield determined under subparagraph (A) is an unrepresentative average yield for the State (as determined by the Secretary), the Secretary shall assign a benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in the State on the basis of—

(i) previous average yields for a period of 5 crop years, excluding each of the crop years with the highest and lowest yields; or

(ii) benchmark State yields for planted acres for the crop year for the covered commodity or peanuts in similar States.

**(3) ACRE program guarantee price**

For purposes of paragraph (1)(A)(ii), the ACRE program guarantee price for a crop year for a covered commodity or peanuts in a State shall be the simple average of the national average market price received by producers of the covered commodity or peanuts for the most recent 2 crop years, as determined by the Secretary.

**(4) States with irrigated and nonirrigated land**

In the case of a State in which at least 25 percent of the acreage planted to a covered commodity or peanuts in the State is irrigated and at least 25 percent of the acreage planted to the covered commodity or peanuts in the State is not irrigated, the Secretary shall calculate a separate ACRE program guarantee for the irrigated and nonirrigated areas of the State for the covered commodity or peanuts.

**(e) Actual farm revenue**

For purposes of subsection (b)(2)(B)(i), the amount of the actual farm revenue for a crop year for a covered commodity or peanuts shall equal the amount determined by multiplying—

(1) the actual yield for the covered commodity or peanuts of the producers on the farm; and

(2) the national average market price for the crop year for the covered commodity or peanuts determined under subsection (c)(3).

**(f) Farm ACRE benchmark revenue**

For purposes of subsection (b)(2)(B)(ii), the farm ACRE benchmark revenue for the crop year for a covered commodity or peanuts shall equal the sum obtained by adding—

(1) the amount determined by multiplying—

(A) the average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields; and

(B) the ACRE program guarantee price for the applicable crop year for the covered commodity or peanuts in a State determined under subsection (d)(3); and

(2) the amount of the per acre crop insurance premium required to be paid by the producers on the farm for the applicable crop year for the covered commodity or peanuts on the farm.

**(g) Payment amount**

If ACRE payments are required to be paid for any of the 2009 through 2012 crop years of a covered commodity or peanuts under this section, the amount of the ACRE payment to be paid to the producers on the farm for the crop year under this section shall be equal to the product obtained by multiplying—

(1) the lesser of—

(A) the difference between—

(i) the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under subsection (d); and

(ii) the actual State revenue from the crop year for the covered commodity or peanuts in the State determined under subsection (c); and

(B) 25 percent of the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under subsection (d);

(2)(A) for each of the 2009 through 2011 crop years, 83.3 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year; and

(B) for the 2012 crop year, 85 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year; and

(3) the quotient obtained by dividing—

(A) the average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields; by

(B) the benchmark State yield for the crop year, as determined under subsection (d)(2).

(Pub. L. 110-234, title I, §1105, May 22, 2008, 122 Stat. 945; Pub. L. 110-246, §4(a), title I, §1105, June 18, 2008, 122 Stat. 1664, 1673.)

**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.

**§ 8716. Producer agreement required as condition of provision of payments**

**(a) Compliance with certain requirements**

**(1) Requirements**

Before the producers on a farm may receive direct payments, counter-cyclical payments, or average crop revenue election payments with respect to the farm, the producers shall agree, during the crop year for which the payments are made and in exchange for the payments—

(A) to comply with applicable conservation requirements under subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.);

(B) to comply with applicable wetland protection requirements under subtitle C of title XII of that Act (16 U.S.C. 3821 et seq.);

(C) to comply with the planting flexibility requirements of section 8717 of this title;

(D) to use the land on the farm, in a quantity equal to the attributable base acres for the farm and any base acres for peanuts for the farm under subchapter III, for an agricultural or conserving use, and not for a nonagricultural commercial, industrial, or residential use, as determined by the Secretary; and

(E) to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices, as determined by the Secretary, if the agricultural or conserving use involves the noncultivation of any portion of the land referred to in subparagraph (D).

**(2) Compliance**

The Secretary may issue such rules as the Secretary considers necessary to ensure producer compliance with the requirements of paragraph (1).

**(3) Modification**

At the request of the transferee or owner, the Secretary may modify the requirements of this subsection if the modifications are consistent with the objectives of this subsection, as determined by the Secretary.

**(b) Transfer or change of interest in farm**

**(1) Termination**

**(A) In general**

Except as provided in paragraph (2), a transfer of (or change in) the interest of the producers on a farm in base acres for which direct payments or counter-cyclical payments are made, or on which average crop revenue election payments are based, shall result in the termination of the direct payments, counter-cyclical payments, or average crop revenue election payments to the extent the payments are made or based on the base acres, unless the transferee or owner of the acreage agrees to assume all obligations under subsection (a).

**(B) Effective date**

The termination shall take effect on the date determined by the Secretary.

**(2) Exception**

If a producer entitled to a direct payment, counter-cyclical payment, or average crop revenue election payment dies, becomes incompetent, or is otherwise unable to receive the payment, the Secretary shall make the payment, in accordance with rules issued by the Secretary.

**(c) Reports**

**(1) Acreage reports**

As a condition on the receipt of any benefits under this subchapter or subchapter II, the Secretary shall require producers on a farm to submit to the Secretary annual acreage reports with respect to all cropland on the farm.

**(2) Production reports**

As a condition on the receipt of any benefits under this subchapter or subchapter II, the