

**§ 7333. Administration and operation of non-insured crop assistance program**

**(a) Operation and administration of program**

**(1) In general**

**(A) Coverages**

In the case of an eligible crop described in paragraph (2), the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverages based on individual yields (other than for value-loss crops) equivalent to—

(i) catastrophic risk protection available under section 1508(b) of this title; or

(ii) except in the case of crops and grasses used for grazing, additional coverage available under subsections (c) and (h) of section 1508 of this title that does not exceed 65 percent, as described in subsection (1).

**(B) Administration**

The Secretary shall carry out this section through the Farm Service Agency (referred to in this section as the “Agency”).

**(2) Eligible crops**

**(A) In general**

In this section, the term “eligible crop” means each commercial crop or other agricultural commodity (except livestock)—

(i) for which catastrophic risk protection under section 1508(b) of this title is not available;

(ii) for which additional coverage under subsections (c) and (h) of section 1508 of this title is not available; and

(iii) that is produced for food or fiber.

**(B) Crops specifically included**

The term “eligible crop” shall include floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea grass and sea oats, camelina, sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products).

**(C) Combination of similar types or varieties**

At the option of the Secretary, all types or varieties of a crop or commodity, described in subparagraphs (A) and (B), may be considered to be a single eligible crop under this section.

**(3) Cause of loss**

To qualify for assistance under this section, the losses of the noninsured commodity shall be due to drought, flood, or other natural disaster, as determined by the Secretary.

**(4) Program reduction in benefits relating to crop production on native sod**

**(A) Definition of native sod**

In this paragraph, the term “native sod” means land—

(i) on which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and

(ii) that has never been tilled, or the producer cannot substantiate that the ground has ever been tilled, for the production of an annual crop as of the date of enactment of this paragraph.

**(B) Reduction in benefits**

**(i) In general**

During the first 4 crop years of planting, as determined by the Secretary, native sod acreage that has been tilled for the production of an annual crop after February 7, 2014, shall be subject to a reduction in benefits under this section as described in this subparagraph.

**(ii) De minimis acreage exemption**

The Secretary shall exempt areas of 5 acres or less from clause (i).

**(iii) Reduction**

For purposes of the reduction in benefits for the acreage described in clause (i)—

(I) the approved yield shall be determined by using a yield equal to 65 percent of the transitional yield of the producer; and

(II) the service fees or premiums for crops planted on native sod shall be equal to 200 percent of the amount determined in subsections<sup>1</sup> (l)(2) or (k), as applicable, but in no case shall exceed the amount determined in subsection (l)(2)(B)(ii).

**(C) Application**

This paragraph shall only apply to native sod acreage in the States of Minnesota, Iowa, North Dakota, South Dakota, Montana, and Nebraska.

**(b) Application for noninsured crop disaster assistance**

**(1) Timely application**

To be eligible for assistance under this section, a producer shall submit an application for noninsured crop disaster assistance at a local office of the Department. The application shall be in such form, contain such information, and be submitted not later than 30 days before the beginning of the coverage period, as determined by the Secretary.

**(2) Records**

To be eligible for assistance under this section, a producer shall provide annually to the Secretary records of crop acreage, acreage yields, and production for each crop, as required by the Secretary.

**(3) Acreage reports**

A producer shall provide annual reports on acreage planted or prevented from being planted, as required by the Secretary, by the designated acreage reporting date for the crop and location as established by the Secretary.

**(c) Loss requirements**

**(1) Cause**

To be eligible for assistance under this section, a producer of an eligible crop shall have

<sup>1</sup> So in original. Probably should be “subsection”.

suffered a loss of a noninsured commodity as the result of a cause described in subsection (a)(3).

**(2) Assistance**

**(A) In general**

On making a determination described in subsection (a)(3), the Secretary shall provide assistance under this section to producers of an eligible crop that have suffered a loss as a result of the cause described in subsection (a)(3).

**(B) Aquaculture producers**

On making a determination described in subsection (a)(3) for aquaculture producers, the Secretary shall provide assistance under this section to aquaculture producers from all losses related to drought.

**(3) Prevented planting**

Subject to paragraph (1), the Secretary shall make a prevented planting noninsured crop disaster assistance payment if the producer is prevented from planting more than 35 percent of the acreage intended for the eligible crop because of drought, flood, or other natural disaster, as determined by the Secretary.

**(4) Area trigger**

The Secretary shall provide assistance to individual producers without any requirement of an area loss.

**(d) Payment**

The Secretary shall make available to a producer eligible for noninsured assistance under this section a payment computed by multiplying—

(1) the quantity that is less than 50 percent of the established yield for the crop; by

(2)(A) in the case of each of the 1996 through 1998 crop years, 60 percent of the average market price for the crop (or any comparable coverage determined by the Secretary); or

(B) in the case of each of the 1999 and subsequent crop years, 55 percent of the average market price for the crop (or any comparable coverage determined by the Secretary); by

(3) a payment rate for the type of crop (as determined by the Secretary) that—

(A) in the case of a crop that is produced with a significant and variable harvesting expense, reflects the decreasing cost incurred in the production cycle for the crop that is—

(i) harvested;

(ii) planted but not harvested; and

(iii) prevented from being planted because of drought, flood, or other natural disaster (as determined by the Secretary); and

(B) in the case of a crop that is not produced with a significant and variable harvesting expense, as determined by the Secretary.

**(e) Yield determinations**

**(1) Establishment**

The Secretary shall establish farm yields for purposes of providing noninsured crop disaster assistance under this section.

**(2) Actual production history**

The Secretary shall determine yield coverage using the actual production history of the producer over a period of not less than the 4 previous consecutive crop years and not more than 10 consecutive crop years. Subject to paragraph (3), the yield for the year in which noninsured crop disaster assistance is sought shall be equal to the average of the actual production history of the producer during the period considered.

**(3) Assignment of yield**

If a producer does not submit adequate documentation of production history to determine a crop yield under paragraph (2), the Secretary shall assign to the producer a yield equal to not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual production reflected in the records acceptable to the Secretary for continuous years), as specified in regulations issued by the Secretary based on production history requirements.

**(4) Prohibition on assigned yields in certain counties**

**(A) In general**

**(i) Documentation**

If sufficient data are available to demonstrate that the acreage of a crop in a county for the crop year has increased by more than 100 percent over any year in the preceding 7 crop years or, if data are not available, if the acreage of the crop in the county has increased significantly from the previous crop years, a producer must provide such detailed documentation of production costs, acres planted, and yield for the crop year for which benefits are being claimed as is required by the Secretary. If the Secretary determines that the documentation provided is not sufficient, the Secretary may require documenting proof that the crop, had the crop been harvested, could have been marketed at a reasonable price.

**(ii) Prohibition**

Except as provided in subparagraph (B), a producer who produces a crop on a farm located in a county described in clause (i) may not obtain an assigned yield.

**(B) Exception**

A crop or a producer shall not be subject to this subsection if—

(i) the planted acreage of the producer for the crop has been inspected by a third party acceptable to the Secretary; or

(ii)(I) the County Executive Director and the State Executive Director recommend an exemption from the requirement to the Administrator of the Agency; and

(II) the Administrator approves the recommendation.

**(5) Limitation on receipt of subsequent assigned yield**

A producer who receives an assigned yield for the current year of a natural disaster because required production records were not

submitted to the local office of the Department shall not be eligible for an assigned yield for the year of the next natural disaster unless the required production records of the previous 1 or more years (as applicable) are provided to the local office.

**(6) Yield variations due to different farming practices**

The Secretary shall ensure that noninsured crop disaster assistance accurately reflects significant yield variations due to different farming practices, such as between irrigated and nonirrigated acreage.

**(f) Contract payments**

A producer who has received a guaranteed payment for production, as opposed to delivery, of a crop pursuant to a contract shall have the production of the producer adjusted upward by the amount of the production equal to the amount of the contract payment received.

**(g) Use of Commodity Credit Corporation**

The Secretary may use the funds of the Commodity Credit Corporation to carry out this section.

**(h) Exclusions**

Noninsured crop disaster assistance under this section shall not cover losses due to—

- (1) the neglect or malfeasance of the producer;
- (2) the failure of the producer to reseed to the same crop in those areas and under such circumstances where it is customary to reseed; or
- (3) the failure of the producer to follow good farming practices, as determined by the Secretary.

**(i) Payment and income limitations**

**(1) Definitions**

In this subsection, the terms “legal entity” and “person” have the meanings given those terms in section 1308(a) of this title.

**(2) Payment limitation**

The total amount of payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) for any crop year may not exceed \$125,000.

**(3) Limitation on multiple benefits for same loss**

**(A) In general**

Except as provided in subparagraph (B), if a producer who is eligible to receive benefits under this section is also eligible to receive assistance for the same loss under any other program administered by the Secretary, the producer shall be required to elect whether to receive benefits under this section or under the other program, but not both.

**(B) Exception**

Subparagraph (A) shall not apply to emergency loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.).

**(4) Adjusted gross income limitation**

A person or legal entity that has an average adjusted gross income in excess of the average

adjusted gross income limitation applicable under section 1308-3a(b)(1)(A)<sup>2</sup> of this title, or a successor provision, shall not be eligible to receive noninsured crop disaster assistance under this section.

**(5) Regulations**

The Secretary shall issue regulations prescribing such rules as the Secretary determines necessary—

(A) to ensure a fair and equitable application of section 1308 of this title, the general payment limitation regulations of the Secretary, and the limitations established under this subsection; and

(B) to ensure that payments under this section are attributed to a person or legal entity (excluding a joint venture or general partnership) in accordance with the terms and conditions of sections 1308 through 1308-3a of this title, as determined by the Secretary.

**(j) Omitted**

**(k) Service fee**

**(1) In general**

To be eligible to receive assistance for an eligible crop for a crop year under this section, a producer shall pay to the Secretary (at the time at which the producer submits the application under subsection (b)(1)) a service fee for the eligible crop in an amount that is equal to the lesser of—

- (A) \$250 per crop per county; or
- (B) \$750 per producer per county, but not to exceed a total of \$1,875 per producer.

**(2) Waiver**

The Secretary shall waive the service fee required under paragraph (1) in the case of a limited resource, beginning, or socially disadvantaged farmer, as defined by the Secretary.

**(3) Use**

The Secretary shall deposit service fees collected under this subsection in the Commodity Credit Corporation Fund.

**(l) Payment equivalent to additional coverage**

**(1) In general**

The Secretary shall make available noninsured assistance under this subsection (other than for crops and grasses used for grazing) at a payment amount that is equivalent to an indemnity for additional coverage under subsections (c) and (h) of section 1508 of this title and equal to the product obtained by multiplying—

- (A) the amount that—
  - (i) the additional coverage yield, which shall be equal to the product obtained by multiplying—
    - (I) an amount not less than 50 percent nor more than 65 percent, as elected by the producer and specified in 5-percent increments; and
    - (II) the approved yield for the crop, as determined by the Secretary; exceeds
  - (ii) the actual yield;

<sup>2</sup> See References in Text note below.

(B) 100 percent of the average market price for the crop, as determined by the Secretary; and

(C) a payment rate for the type of crop, as determined by the Secretary, that reflects—

(i) in the case of a crop that is produced with a significant and variable harvesting expense, the decreasing cost incurred in the production cycle for the crop that is, as applicable—

(I) harvested;

(II) planted but not harvested; or

(III) prevented from being planted because of drought, flood, or other natural disaster, as determined by the Secretary; or

(ii) in the case of a crop that is produced without a significant and variable harvesting expense, such rate as shall be determined by the Secretary.

## (2) Service fee and premium

To be eligible to receive a payment under this subsection, a producer shall pay—

(A) the service fee required by subsection (k); and

(B) the lesser of—

(i) the sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying—

(I) the number of acres devoted to the eligible crop;

(II) the yield, as determined by the Secretary under subsection (e);

(III) the coverage level elected by the producer;

(IV) the average market price, as determined by the Secretary; and

(V) a 5.25-percent premium fee; or

(ii) the product obtained by multiplying—

(I) a 5.25-percent premium fee; and

(II) the applicable payment limit.

## (3) Additional availability

### (A) In general

As soon as practicable after October 1, 2013, the Secretary shall make assistance available to producers of an otherwise eligible crop described in subsection (a)(2) that suffered losses—

(i) to a 2012 annual fruit crop grown on a bush or tree; and

(ii) in a county covered by a declaration by the Secretary of a natural disaster for production losses due to a freeze or frost.

### (B) Assistance

The Secretary shall make assistance available under subparagraph (A) in an amount equivalent to assistance available under paragraph (1), less any fees not previously paid under paragraph (2).

## (4) Limited resource, beginning, and socially disadvantaged farmers

The coverage made available under this subsection shall be available to limited resource, beginning, and socially disadvantaged farmers, as determined by the Secretary, in exchange for a premium that is 50 percent of the premium determined under paragraph (2).

## (5) Effective date

Except as provided in paragraph (3)(A), additional coverage under this subsection shall be available for each of the 2015 through 2018 crop years.

(Pub. L. 104-127, title I, §196, Apr. 4, 1996, 110 Stat. 947; Pub. L. 105-277, div. A, §101(a) [title VIII, §803(b)], Oct. 21, 1998, 112 Stat. 2681, 2681-38; Pub. L. 106-224, title I, §109, June 20, 2000, 114 Stat. 371; Pub. L. 107-171, title X, §10101, May 13, 2002, 116 Stat. 488; Pub. L. 110-234, title I, §1603(f)(1), title XII, §§12020(b), 12025(b), 12027, 12028, May 22, 2008, 122 Stat. 1010, 1381, 1390; Pub. L. 110-246, §4(a), title I, §1603(f)(1), title XII, §§12020(b), 12025(b), 12027, 12028, June 18, 2008, 122 Stat. 1664, 1739, 2143, 2152; Pub. L. 113-79, title XI, §11014(b), title XII, §12305(a), Feb. 7, 2014, 128 Stat. 962, 986.)

### REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (a)(4)(A)(ii), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Consolidated Farm and Rural Development Act, referred to in subsec. (i)(3)(B), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended. Subtitle C of the Act is classified generally to subchapter III (§1961 et seq.) of chapter 50 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of this title and Tables.

Section 1308-3a of this title, referred to in subsec. (i)(4), was amended by Pub. L. 113-79, title I, §1605(a)-(e), Feb. 7, 2014, 128 Stat. 707, 708, and, as so amended, provisions which formerly appeared in subsec. (b)(1)(A) of section 1308-3a were struck out. See subsec. (b)(1) of section 1308-3a of this title.

### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Section is comprised of section 196 of Pub. L. 104-127. Subsec. (j) of section 196 of Pub. L. 104-127 repealed section 1519 of this title.

### AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-79, §12305(a)(1)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “In the case of an eligible crop described in paragraph (2), the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under section 1508(b) of this title. The Secretary shall carry out this section through the Consolidated Farm Service Agency (in this section referred to as the ‘Agency’).”

Subsec. (a)(2)(A)(ii), (iii). Pub. L. 113-79, §12305(a)(1)(B)(i), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(2)(B). Pub. L. 113-79, §12305(a)(1)(B)(ii), substituted “sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products)” for “and industrial crops”.

Subsec. (a)(4). Pub. L. 113-79, §11014(b)(1), substituted “reduction in benefits” for “ineligibility” in heading.

Subsec. (a)(4)(A)(ii). Pub. L. 113-79, §11014(b)(2), inserted “, or the producer cannot substantiate that the ground has ever been tilled,” after “never been tilled”.

Subsec. (a)(4)(B). Pub. L. 113-79, §11014(b)(3)(A), substituted “Reduction in” for “Ineligibility for” in heading.

Subsec. (a)(4)(B)(i). Pub. L. 113-79, §11014(b)(3)(B), added cl. (i) and struck out former cl. (i). Prior to

amendment, text read as follows: “Subject to clause (ii) and subparagraph (C), native sod acreage that has been tilled for the production of an annual crop after the date of enactment of this paragraph shall be ineligible during the first 5 crop years of planting, as determined by the Secretary, for benefits under—

“(I) this section; and

“(II) the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).”

Subsec. (a)(4)(B)(iii). Pub. L. 113-79, §11014(b)(3)(C), added cl. (iii).

Subsec. (a)(4)(C). Pub. L. 113-79, §11014(b)(4), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: “Subparagraph (B) may apply to native sod acreage in the Prairie Pothole National Priority Area at the election of the Governor of the respective State.”

Subsec. (i)(2). Pub. L. 113-79, §12305(a)(2), substituted “\$125,000” for “\$100,000”.

Subsec. (k)(2). Pub. L. 113-79, §12305(a)(3), substituted “limited resource, beginning, or socially disadvantaged farmer” for “limited resource farmer”.

Subsec. (l). Pub. L. 113-79, §12305(a)(4), added subsec. (l).

2008—Subsec. (a)(2)(B). Pub. L. 110-246, §12025(b), inserted “camelina,” after “sea oats.”

Subsec. (a)(4). Pub. L. 110-246, §12020(b), added par. (4).

Subsec. (c)(2). Pub. L. 110-246, §12027, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (i)(1), (2). Pub. L. 110-246, §1603(f)(1)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which defined “person” and “qualifying gross revenues” and provided that the total amount of payments that a person would be entitled to receive annually could not exceed \$100,000.

Subsec. (i)(4). Pub. L. 110-246, §1603(f)(1)(B), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “A person who has qualifying gross revenues in excess of the amount specified in section 2266(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) (as in effect on November 28, 1990) during the taxable year (as determined by the Secretary) shall not be eligible to receive any noninsured assistance payment under this section.”

Subsec. (i)(5). Pub. L. 110-246, §1603(f)(1)(C), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(1). Pub. L. 110-246, §12028, in subpar. (A) substituted “\$250” for “\$100” and in subpar. (B) substituted “\$750” for “\$300” and “\$1,875” for “\$900”.

2002—Subsec. (a)(2)(B). Pub. L. 107-171 inserted “sea grass and sea oats,” after “fish.”

2000—Subsec. (a)(2)(C). Pub. L. 106-224, §109(a), added subpar. (C).

Subsec. (b)(1). Pub. L. 106-224, §109(b), substituted “not later than 30 days before the beginning of the coverage period, as determined by the Secretary” for “at such time as the Secretary may require” in second sentence.

Subsec. (b)(2). Pub. L. 106-224, §109(c)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A producer shall provide records, as required by the Secretary, of crop acreage, acreage yields, and production.”

Subsec. (b)(3). Pub. L. 106-224, §109(c)(2), inserted “annual” after “shall provide”.

Subsec. (c). Pub. L. 106-224, §109(d), added subsec. (c) and struck out heading and text of former subsec. (c), which authorized noninsured crop disaster assistance if average yield fell below 65 percent of expected yield, if producer was prevented from planting more than 35 percent of intended acreage, or if total quantity of harvest was less than 50 percent of expected yield.

Subsec. (k). Pub. L. 106-224, §109(e), added subsec. (k). 1998—Subsec. (i)(3). Pub. L. 105-277 designated existing provisions as subpar. (A), inserted heading, substituted “Except as provided in subparagraph (B), if a producer” for “If a producer”, and added subpar. (B).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the

date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-224 applicable beginning with the 2001 crop of an agricultural commodity, see section 171(b)(2)(G) of Pub. L. 106-224, set out as a note under section 1501 of this title.

#### CONSIDERATION OF LOSSES IN FISCAL YEAR 2014 AND SUBSEQUENT FISCAL YEARS

For losses under section 1501 of Public Law 113-79 [enacting section 9081 of this title] for the 2014 fiscal year and each fiscal year thereafter as not considered same loss for purposes of subsec. (i)(3) of this section, see section 733 of Pub. L. 113-235, set out as a note under section 1508 of this title.

#### TRANSITION PROVISIONS

Pub. L. 110-234, title I, §1603(f)(2), May 22, 2008, 122 Stat. 1011, and Pub. L. 110-246, §4(a), title I, §1603(f)(2), June 18, 2008, 122 Stat. 1664, 1739, provided that: “Section 196(i) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333(i)), as in effect on September 30, 2007, shall apply with respect to the 2007 and 2008 crops of any eligible crop.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

Section as in effect on day before June 20, 2000, to continue to apply with respect to 1999 crop year, and to apply with respect to 2000 crop year, to extent application of an amendment by Pub. L. 106-224 is delayed under section 171(b) or by terms of the amendment, see section 173 of Pub. L. 106-224, set out as a note under section 1501 of this title.

### § 7334. Flood risk reduction

#### (a) In general

During fiscal years 1996 through 2002, the Secretary of Agriculture (referred to in this section as the “Secretary”) may enter into a contract with a producer on a farm who has contract acreage under the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.] that is frequently flooded.

#### (b) Duties of producers

Under the terms of the contract, with respect to acres that are subject to the contract, the producer must agree to—

(1) the termination of any contract acreage and production flexibility contract under the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.];

(2) forgo loans for contract commodities, oilseeds, and extra long staple cotton;

(3) not apply for crop insurance issued or re-insured by the Secretary;

(4) comply with applicable highly erodible land and wetlands conservation compliance requirements established under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.);

(5) not apply for any conservation program payments from the Secretary;

(6) not apply for disaster program benefits provided by the Secretary; and

(7) refund the payments, with interest, issued under the flood risk reduction contract to the Secretary, if the producer violates the terms of the contract or if the producer trans-