

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 L. 110-234 was repealed by section 4(a) of Pub.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

## EFFECTIVE DATE

Enactment 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 a note under section 8701 of this title.

**§ 8713. Repealed. Pub. L. 113-79, title I, § 1101, Feb. 7, 2014, 128 Stat. 658**

Section, 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, related to availability of direct payments for 2008 through 2012 crop years.

**§ 8714. Repealed. Pub. L. 113-79, title I, § 1102(a), Feb. 7, 2014, 128 Stat. 658**

Section, 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, related to availability of counter-cyclical payments for 2008 through 2012 crop years.

## CONTINUED APPLICATION FOR 2013 CROP YEAR

Pub. L. 113-79, title I, §1102(b), Feb. 7, 2014, 128 Stat. 658, provided that: "Sections 1104 and 1304 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8714, 8754), as in effect on the day before the date of enactment of this Act [Feb. 7, 2014], shall continue to apply through the 2013 crop year with respect to all covered commodities (as defined in section 1001 of that Act (7 U.S.C. 8702)) and peanuts on a farm."

**§ 8715. Repealed. Pub. L. 113-79, title I, § 1103(a), Feb. 7, 2014, 128 Stat. 658**

Section, 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, related to the average crop revenue election program available during each of the 2009, 2010, 2011, and 2012 crop years.

## CONTINUED APPLICATION FOR 2013 CROP YEAR

Pub. L. 113-79, title I, §1103(b), Feb. 7, 2014, 128 Stat. 658, provided that: "Section 1105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8715), as in effect

on the day before the date of enactment of this Act [Feb. 7, 2014], shall continue to apply through the 2013 crop year with respect to all covered commodities (as defined in section 1001 of that Act (7 U.S.C. 8702)) and peanuts on a farm for which the irrevocable election under section 1105 of that Act was made before the date of enactment of this Act."

**§ 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 Secretary shall require producers on a farm that receive payments under section 8715<sup>1</sup> of this title to submit to the Secretary annual production reports with respect to all covered commodities and peanuts produced on the farm.

**(3) Penalties**

No penalty with respect to benefits under this subchapter or subchapter II shall be assessed against the producers on a farm for an inaccurate acreage or production report unless the producers on the farm knowingly and willfully falsified the acreage or production report.

**(d) Tenants and sharecroppers**

In carrying out this subchapter, the Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

**(e) Sharing of payments**

The Secretary shall provide for the sharing of direct payments, counter-cyclical payments, or average crop revenue election payments among the producers on a farm on a fair and equitable basis.

**(f) Extension of 2008 signup**

**(1) In general**

Notwithstanding any other provision of law, the Secretary shall extend the 2008 crop year deadline for the signup for benefits under this subchapter by producers on a farm with base acres of 10 acres or less until the later of—

- (A) November 14, 2008; or
- (B) the end of the 45-day period beginning on October 13, 2008.

**(2) Penalties**

The Secretary shall ensure that no penalty with respect to benefits under this subchapter or subchapter II is assessed against producers on a farm described in paragraph (1) for failure

to submit reports under this section or timely comply with other program requirements as a result of compliance with the extended signup deadline under that paragraph.

(Pub. L. 110-234, title I, §1106, May 22, 2008, 122 Stat. 949; Pub. L. 110-246, §4(a), title I, §1106, June 18, 2008, 122 Stat. 1664, 1677; Pub. L. 110-398, §1(b)(1), Oct. 13, 2008, 122 Stat. 4213.)

REFERENCES IN TEXT

The Food Security Act of 1985, referred to in subsec. (a)(1)(A), (B), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Subtitles B and C of title XII of the Act are classified generally to subchapters II (§3811 et seq.) and III (§3821 et seq.), respectively, 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.

Section 8715 of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 113-79, title I, §1103(a), Feb. 7, 2014, 128 Stat. 658.

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. (f). Pub. L. 110-398 added subsec. (f).

EFFECTIVE DATE

Enactment 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 a note under section 8701 of this title.

**§ 8717. Planting flexibility**

**(a) Permitted crops**

Subject to subsection (b), any commodity or crop may be planted on base acres on a farm.

**(b) Limitations regarding certain commodities**

**(1) General limitation**

The planting of an agricultural commodity specified in paragraph (3) shall be prohibited on base acres unless the commodity, if planted, is destroyed before harvest.

**(2) Treatment of trees and other perennials**

The planting of an agricultural commodity specified in paragraph (3) that is produced on a tree or other perennial plant shall be prohibited on base acres.

**(3) Covered agricultural commodities**

Paragraphs (1) and (2) apply to the following agricultural commodities:

- (A) Fruits.
- (B) Vegetables (other than mung beans and pulse crops).
- (C) Wild rice.

**(c) Exceptions**

Paragraphs (1) and (2) of subsection (b) shall not limit the planting of an agricultural commodity specified in paragraph (3) of that subsection—

- (1) in any region in which there is a history of double-cropping of covered commodities with agricultural commodities specified in subsection (b)(3), as determined by the Secretary, in which case the double-cropping shall be permitted;

<sup>1</sup> See References in Text note below.