

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.

§ 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Statutory Notes and Related Subsidiaries

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.

Statutory Notes and Related Subsidiaries

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 8715¹ 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.)

Editorial Notes

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.

¹ See References in Text note below.

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).

Statutory Notes and Related Subsidiaries

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;
- (2) on a farm that the Secretary determines has a history of planting agricultural commodities specified in subsection (b)(3) on base acres, except that direct payments and counter-cyclical payments shall be reduced by an acre for each acre planted to such an agricultural commodity; or
- (3) by the producers on a farm that the Secretary determines has an established planting history of a specific agricultural commodity specified in subsection (b)(3), except that—
 - (A) the quantity planted may not exceed the average annual planting history of such agricultural commodity by the producers on the farm in the 1991 through 1995 or 1998

through 2001 crop years (excluding any crop year in which no plantings were made), as determined by the Secretary; and

(B) direct payments and counter-cyclical payments shall be reduced by an acre for each acre planted to such agricultural commodity.

(d) Planting transferability pilot project

(1) Pilot project authorized

Notwithstanding paragraphs (1) and (2) of subsection (b) and in addition to the exceptions provided in subsection (c), the Secretary shall carry out a pilot project to permit the planting of cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes grown for processing on base acres during each of the 2009 through 2012 crop years.

(2) Pilot project States and acres

The number of base acres eligible during each crop year for the pilot project under paragraph (1) shall be—

- (A) 9,000 acres in the State of Illinois;
- (B) 9,000 acres in the State of Indiana;
- (C) 1,000 acres in the State of Iowa;
- (D) 9,000 acres in the State of Michigan;
- (E) 34,000 acres in the State of Minnesota;
- (F) 4,000 acres in the State of Ohio; and
- (G) 9,000 acres in the State of Wisconsin.

(3) Contract and management requirements

To be eligible for selection to participate in the pilot project, the producers on a farm shall—

- (A) demonstrate to the Secretary that the producers on the farm have entered into a contract to produce a crop of a commodity specified in paragraph (1) for processing;
- (B) agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits; and
- (C) provide evidence of the disposition of the crop.

(4) Temporary reduction in base acres

The base acres on a farm for a crop year shall be reduced by an acre for each acre planted under the pilot program.

(5) Duration of reductions

The reduction in the base acres of a farm for a crop year under paragraph (4) shall expire at the end of the crop year.

(6) Recalculation of base acres

(A) In general

If the Secretary recalculates base acres for a farm while the farm is included in the pilot project, the planting and production of a crop of a commodity specified in paragraph (1) on base acres for which a temporary reduction was made under this section shall be considered to be the same as the planting and production of a covered commodity.

(B) Prohibition

Nothing in this paragraph provides authority for the Secretary to recalculate base acres for a farm.

(7) Pilot impact evaluation

(A) In general

The Secretary shall periodically evaluate the pilot project conducted under this sub-