

SUBCHAPTER II—SUPPLEMENTAL
AGRICULTURAL DISASTER ASSISTANCE

§ 1531. Supplemental agricultural disaster assistance

(a) Definitions

In this section:

(1) Actual production history yield

The term “actual production history yield” means the weighted average of the actual production history for each insurable commodity or noninsurable commodity, as calculated under subchapter I or the noninsured crop disaster assistance program, respectively.

(2) Actual production on the farm

The term “actual production on the farm” means the sum of the value of all crops produced on the farm, as determined under subsection (b)(6)(B).

(3) Adjusted actual production history yield

The term “adjusted actual production history yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of actual production history yields for an insurable commodity that are established other than pursuant to section 1508(g)(4)(B) of this title, the actual production history for the eligible producer without regard to any yields established under that section;

(B) in the case of an eligible producer on a farm that has less than 4 years of actual production history yields for an insurable commodity, of which 1 or more were established pursuant to section 1508(g)(4)(B) of this title, the actual production history for the eligible producer as calculated without including the lowest of the yields established pursuant to section 1508(g)(4)(B) of this title; and

(C) in all other cases, the actual production history of the eligible producer on a farm.

(4) Adjusted noninsured crop disaster assistance program yield

The term “adjusted noninsured crop disaster assistance program yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield without regard to any replacement yields;

(B) in the case of an eligible producer on a farm that has less than 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield as calculated without including the lowest of the replacement yields; and

(C) in all other cases, the production history of the eligible producer on the farm under the noninsured crop disaster assistance program.

(5) Counter-cyclical program payment yield

The term “counter-cyclical program payment yield” means the weighted average payment yield established under—

(A) section 7912 or 7952 of this title;

(B) section 1102 or 1301(6) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8712, 8751(6)); or

(C) a successor section.

(6) Crop of economic significance

The term “crop of economic significance” shall have the uniform meaning given the term by the Secretary for purposes of subsections (b)(1)(B) and (g)(6).

(7) Disaster county

(A) In general

The term “disaster county” means a county included in the geographic area covered by a qualifying natural disaster declaration.

(B) Inclusion

The term “disaster county” includes—

(i) a county contiguous to a county described in subparagraph (A); and

(ii) any farm in which, during a calendar year the actual production on the farm is less than 50 percent of the normal production on the farm.

(8) Eligible producer on a farm

(A) In general

The term “eligible producer on a farm” means an individual or entity described in subparagraph (B) that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock.

(B) Description

An individual or entity referred to in subparagraph (A) is—

(i) a citizen of the United States;

(ii) a resident alien;

(iii) a partnership of citizens of the United States; or

(iv) a corporation, limited liability corporation, or other farm organizational structure organized under State law.

(9) Farm

(A) In general

The term “farm” means, in relation to an eligible producer on a farm, the sum of all crop acreage in all counties that is planted or intended to be planted for harvest for sale or on-farm livestock feeding (including native grassland intended for haying) by the eligible producer.

(B) Aquaculture

In the case of aquaculture, the term “farm” means, in relation to an eligible producer on a farm, all fish being produced in all counties that are intended to be harvested for sale by the eligible producer.

(C) Honey

In the case of honey, the term “farm” means, in relation to an eligible producer on a farm, all bees and beehives in all counties that are intended to be harvested for a honey crop for sale by the eligible producer.

(10) Farm-raised fish

The term “farm-raised fish” means any aquatic species that is propagated and reared in a controlled environment.

(11) Insurable commodity

The term “insurable commodity” means an agricultural commodity (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under subchapter I.

(12) Livestock

The term “livestock” includes—

- (A) cattle (including dairy cattle);
- (B) bison;
- (C) poultry;
- (D) sheep;
- (E) swine;
- (F) horses; and
- (G) other livestock, as determined by the Secretary.

(13) Noninsurable commodity

The term “noninsurable commodity” means a crop for which the eligible producers on a farm are eligible to obtain assistance under the noninsured crop assistance program.

(14) Noninsured crop assistance program

The term “noninsured crop assistance program” means the program carried out under section 7333 of this title.

(15) Normal production on the farm

The term “normal production on the farm” means the sum of the expected revenue for all crops on the farm, as determined under subsection (b)(6)(A).

(16) Qualifying natural disaster declaration

The term “qualifying natural disaster declaration” means a natural disaster declared by the Secretary for production losses under section 1961(a) of this title.

(17) Secretary

The term “Secretary” means the Secretary of Agriculture.

(18) Socially disadvantaged farmer or rancher

The term “socially disadvantaged farmer or rancher” has the meaning given the term in section 2279(e)¹ of this title.

(19) State

The term “State” means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(20) Trust Fund

The term “Trust Fund” means the Agricultural Disaster Relief Trust Fund established under section 2497a of title 19.

(21) United States

The term “United States” when used in a geographical sense, means all of the States.

(b) Supplemental revenue assistance payments**(1) Payments****(A) In general**

The Secretary shall use such sums as are necessary from the Trust Fund to make crop

disaster assistance payments to eligible producers on farms in disaster counties that have incurred crop production losses or crop quality losses, or both, during the crop year.

(B) Crop loss

To be eligible for crop loss assistance under this subsection, the actual production on the farm for at least 1 crop of economic significance shall be reduced by at least 10 percent due to disaster, adverse weather, or disaster-related conditions.

(2) Amount**(A) In general**

Subject to subparagraph (B), the Secretary shall provide crop disaster assistance payments under this section to an eligible producer on a farm in an amount equal to 60 percent of the difference between—

- (i) the disaster assistance program guarantee, as described in paragraph (3); and
- (ii) the total farm revenue for a farm, as described in paragraph (4).

(B) Limitation

The disaster assistance program guarantee for a crop used to calculate the payments for a farm under subparagraph (A)(i) may not be greater than 90 percent of the sum of the expected revenue, as described in paragraph (5) for each of the crops on a farm, as determined by the Secretary.

(C) Exclusion of subsequently planted crops

In calculating the disaster assistance program guarantee under paragraph (3) and the total farm revenue under paragraph (4), the Secretary shall not consider the value of any crop that—

- (i) is produced on land that is not eligible for a policy or plan of insurance under subchapter I or assistance under the noninsured crop assistance program; or
- (ii) is subsequently planted on the same land during the same crop year as the crop for which disaster assistance is provided under this subsection, except in areas in which double-cropping is a normal practice, as determined by the Secretary.

(3) Supplemental revenue assistance program guarantee**(A) In general**

Except as otherwise provided in this paragraph, the supplemental assistance program guarantee shall be the sum obtained by adding—

- (i) for each insurable commodity on the farm, 115 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to the price election for the commodity elected by the eligible producer;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity;

(III) the payment yield for the commodity that is equal to the percentage of the crop insurance yield elected by the producer of the higher of—

¹ See References in Text note below.

(aa) the adjusted actual production history yield; or

(bb) the counter-cyclical program payment yield for each crop; and

(ii) for each noninsurable commodity on a farm, 120 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to 100 percent of the non-insured crop assistance program established price for the commodity;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity; and

(III) the payment yield for the commodity that is equal to 50 percent of the higher of—

(aa) the adjusted noninsured crop assistance program yield; or

(bb) the counter-cyclical program payment yield for each crop.

(B) Adjustment insurance guarantee

Notwithstanding subparagraph (A), in the case of an insurable commodity for which a plan of insurance provides for an adjustment in the guarantee, such as in the case of prevented planting, the adjusted insurance guarantee shall be the basis for determining the disaster assistance program guarantee for the insurable commodity.

(C) Adjusted assistance level

Notwithstanding subparagraph (A), in the case of a noninsurable commodity for which the noninsured crop assistance program provides for an adjustment in the level of assistance, such as in the case of unharvested crops, the adjusted assistance level shall be the basis for determining the disaster assistance program guarantee for the noninsurable commodity.

(D) Equitable treatment for non-yield based policies

The Secretary shall establish equitable treatment for non-yield based policies and plans of insurance, such as the Adjusted Gross Revenue Lite insurance program.

(4) Farm revenue

(A) In general

For purposes of this subsection, the total farm revenue for a farm,² shall equal the sum obtained by adding—

(i) the estimated actual value for each crop produced on a farm by using the product obtained by multiplying—

(I) the actual production by crop on a farm for purposes of determining losses under subchapter I or the noninsured crop assistance program; and

(II) subject to subparagraphs (B) and (C), to the extent practicable, the national average market price received for the marketing year, as determined by the Secretary;

(ii) 15 percent of amount of any direct payments made to the producer under sec-

tions 1103 and 1303¹ of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8713, 8753] or successor sections;

(iii) the total amount of any counter-cyclical payments made to the producer under sections 1104 and 1304¹ of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8714, 8754] or successor sections or of any average crop revenue election payments made to the producer under section 1105¹ of that Act [7 U.S.C. 8715];

(iv) the total amount of any loan deficiency payments, marketing loan gains, and marketing certificate gains made to the producer under subtitles B and C¹ of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8731 et seq., 8751 et seq.] or successor subtitles;

(v) the amount of payments for prevented planting on a farm;

(vi) the amount of crop insurance indemnities received by an eligible producer on a farm for each crop on a farm;

(vii) the amount of payments an eligible producer on a farm received under the non-insured crop assistance program for each crop on a farm; and

(viii) the value of any other natural disaster assistance payments provided by the Federal Government to an eligible producer on a farm for each crop on a farm for the same loss for which the eligible producer is seeking assistance.

(B) Adjustment

The Secretary shall adjust the average market price received by the eligible producer on a farm—

(i) to reflect the average quality discounts applied to the local or regional market price of a crop or mechanically harvested forage due to a reduction in the intrinsic characteristics of the production resulting from adverse weather, as determined annually by the State office of the Farm Service Agency;

(ii) to account for a crop the value of which is reduced due to excess moisture resulting from a disaster-related condition; and

(iii) as the Secretary determines appropriate, to reflect regional variations in a manner consistent with the operation of the crop insurance program under subchapter I and the noninsured crop assistance program.

(C) Maximum amount for certain crops

With respect to a crop for which an eligible producer on a farm receives assistance under the noninsured crop assistance program, the national average market price received during the marketing year shall be an amount not more than 100 percent of the price of the crop established under the non-insured crop assistance program.

(5) Expected revenue

The expected revenue for each crop on a farm shall equal—

(A) for each insurable commodity, the product obtained by multiplying—

² So in original. The comma probably should not appear.

(i) the greater of—

(I) the adjusted actual production history yield of the eligible producer on a farm; and

(II) the counter-cyclical program payment yield;

(ii) the acreage planted or prevented from being planted for each crop; and

(iii) 100 percent of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and

(B) for each noninsurable crop, the product obtained by multiplying—

(i) 100 percent of the adjusted noninsured crop assistance program yield;

(ii) the acreage planted or prevented from being planted for each crop; and

(iii) 100 percent of the noninsured crop assistance program price for each of the crops on a farm.

(6) Production on the farm

(A) Normal production on the farm

The normal production on the farm shall equal the sum of the expected revenue for each crop on a farm as determined under paragraph (5).

(B) Actual production on the farm

The actual production on the farm shall equal the sum obtained by adding—

(i) for each insurable commodity on the farm, the product obtained by multiplying—

(I) 100 percent of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and

(II) the quantity of the commodity produced on the farm, adjusted for quality losses; and

(ii) for each noninsurable commodity on a farm, the product obtained by multiplying—

(I) 100 percent of the noninsured crop assistance program established price for the commodity; and

(II) the quantity of the commodity produced on the farm, adjusted for quality losses.

(c) Livestock indemnity payments

(1) Payments

The Secretary shall make livestock indemnity payments to eligible producers on farms that have incurred livestock death losses in excess of the normal mortality due to adverse weather, as determined by the Secretary, during the calendar year, including losses due to hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

(2) Payment rates

Indemnity payments to an eligible producer on a farm under paragraph (1) shall be made at a rate of 75 percent of the market value of the applicable livestock on the day before the date of death of the livestock, as determined by the Secretary.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$80,000,000 for each of fiscal years 2012 and 2013.

(d) Livestock forage disaster program

(1) Definitions

In this subsection:

(A) Covered livestock

(i) In general

Except as provided in clause (ii), the term “covered livestock” means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire condition, as determined by the Secretary, the eligible livestock producer—

(I) owned;

(II) leased;

(III) purchased;

(IV) entered into a contract to purchase;

(V) is a contract grower; or

(VI) sold or otherwise disposed of due to qualifying drought conditions during—

(aa) the current production year; or

(bb) subject to paragraph (3)(B)(ii), 1 or both of the 2 production years immediately preceding the current production year.

(ii) Exclusion

The term “covered livestock” does not include livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire condition, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(B) Drought monitor

The term “drought monitor” means a system for classifying drought severity according to a range of abnormally dry to exceptional drought, as defined by the Secretary.

(C) Eligible livestock producer

(i) In general

The term “eligible livestock producer” means an eligible producer on a farm that—

(I) is an owner, cash or share lessee, or contract grower of covered livestock that provides the pastureland or grazing land, including cash-leased pastureland or grazing land, for the livestock;

(II) provides the pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land that is physically located in a county affected by drought;

(III) certifies grazing loss; and

(IV) meets all other eligibility requirements established under this subsection.

(ii) Exclusion

The term “eligible livestock producer” does not include an owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land

owned by another person on a rate-of-gain basis.

(D) Normal carrying capacity

The term “normal carrying capacity”, with respect to each type of grazing land or pastureland in a county, means the normal carrying capacity, as determined under paragraph (3)(D)(i), that would be expected from the grazing land or pastureland for livestock during the normal grazing period, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

(E) Normal grazing period

The term “normal grazing period”, with respect to a county, means the normal grazing period during the calendar year for the county, as determined under paragraph (3)(D)(i).

(2) Program

The Secretary shall provide compensation for losses to eligible livestock producers due to grazing losses for covered livestock due to—

(A) a drought condition, as described in paragraph (3); or

(B) fire, as described in paragraph (4).

(3) Assistance for losses due to drought conditions

(A) Eligible losses

An eligible livestock producer may receive assistance under this subsection only for grazing losses for covered livestock that occur on land that—

(i) is native or improved pastureland with permanent vegetative cover; or

(ii) is planted to a crop planted specifically for the purpose of providing grazing for covered livestock.

(B) Monthly payment rate

(i) In general

Except as provided in clause (ii), the payment rate for assistance under this paragraph for 1 month shall, in the case of drought, be equal to 60 percent of the lesser of—

(I) the monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined under subparagraph (C); or

(II) the monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer.

(ii) Partial compensation

In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to drought conditions in 1 or both of the 2 production years immediately preceding the current production year, as determined by the Secretary, the payment rate shall be 80 percent of the payment rate otherwise calculated in accordance with clause (i).

(C) Monthly feed cost

(i) In general

The monthly feed cost shall equal the product obtained by multiplying—

(I) 30 days;

(II) a payment quantity that is equal to the feed grain equivalent, as determined under clause (ii); and

(III) a payment rate that is equal to the corn price per pound, as determined under clause (iii).

(ii) Feed grain equivalent

For purposes of clause (i)(I), the feed grain equivalent shall equal—

(I) in the case of an adult beef cow, 15.7 pounds of corn per day; or

(II) in the case of any other type of weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed the livestock.

(iii) Corn price per pound

For purposes of clause (i)(II), the corn price per pound shall equal the quotient obtained by dividing—

(I) the higher of—

(aa) the national average corn price per bushel for the 12-month period immediately preceding March 1 of the year for which the disaster assistance is calculated; or

(bb) the national average corn price per bushel for the 24-month period immediately preceding that March 1; by

(II) 56.

(D) Normal grazing period and drought monitor intensity

(i) FSA county committee determinations

(I) In general

The Secretary shall determine the normal carrying capacity and normal grazing period for each type of grazing land or pastureland in the county served by the applicable committee.

(II) Changes

No change to the normal carrying capacity or normal grazing period established for a county under subclause (I) shall be made unless the change is requested by the appropriate State and county Farm Service Agency committees.

(ii) Drought intensity

(I) D2

An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph in an amount equal to 1 monthly payment using the monthly payment rate determined under subparagraph (B).

(II) D3

An eligible livestock producer that owns or leases grazing land or

pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph—

(aa) in an amount equal to 2 monthly payments using the monthly payment rate determined under subparagraph (B); or

(bb) if the county is rated as having a D3 (extreme drought) intensity in any area of the county for at least 4 weeks during the normal grazing period for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period, in an amount equal to 3 monthly payments using the monthly payment rate determined under subparagraph (B).

(4) Assistance for losses due to fire on public managed land

(A) In general

An eligible livestock producer may receive assistance under this paragraph only if—

(i) the grazing losses occur on rangeland that is managed by a Federal agency; and

(ii) the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(B) Payment rate

The payment rate for assistance under this paragraph shall be equal to 50 percent of the monthly feed cost for the total number of livestock covered by the Federal lease of the eligible livestock producer, as determined under paragraph (3)(C).

(C) Payment duration

(i) In general

Subject to clause (ii), an eligible livestock producer shall be eligible to receive assistance under this paragraph for the period—

(I) beginning on the date on which the Federal agency excludes the eligible livestock producer from using the managed rangeland for grazing; and

(II) ending on the last day of the Federal lease of the eligible livestock producer.

(ii) Limitation

An eligible livestock producer may only receive assistance under this paragraph for losses that occur on not more than 180 days per year.

(5) Minimum risk management purchase requirements

(A) In general

Except as otherwise provided in this paragraph, a livestock producer shall only be eligible for assistance under this subsection if the livestock producer—

(i) obtained a policy or plan of insurance under subchapter I for the grazing land incurring the losses for which assistance is being requested; or

(ii) filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the non-insured crop assistance program for the grazing land incurring the losses for which assistance is being requested.

(B) Waiver for socially disadvantaged, limited resource, or beginning farmer or rancher

In the case of an eligible livestock producer that is a socially disadvantaged farmer or rancher or limited resource or beginning farmer or rancher, as determined by the Secretary, the Secretary may—

(i) waive subparagraph (A); and

(ii) provide disaster assistance under this subsection at a level that the Secretary determines to be equitable and appropriate.

(C) Waiver for 2008 calendar year

In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year but does not meet the requirements of subparagraph (A), the Secretary shall waive subparagraph (A) if the eligible livestock producer pays a fee in an amount equal to the applicable non-insured crop assistance program fee or catastrophic risk protection plan fee required under subparagraph (A) to the Secretary not later than 90 days after the date of enactment of this subchapter.

(D) Equitable relief

(i) In general

The Secretary may provide equitable relief to an eligible livestock producer that is otherwise ineligible or unintentionally fails to meet the requirements of subparagraph (A) for the grazing land incurring the loss on a case-by-case basis, as determined by the Secretary.

(ii) 2008 calendar year

In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year, the Secretary shall take special consideration to provide equitable relief in cases in which the eligible livestock producer failed to meet the requirements of subparagraph (A) due to the enactment of this subchapter after the closing date of sales periods for crop insurance under subchapter I and the noninsured crop assistance program.

(6) No duplicative payments

(A) In general

An eligible livestock producer may elect to receive assistance for grazing or pasture feed losses due to drought conditions under paragraph (3) or fire under paragraph (4), but not both for the same loss, as determined by the Secretary.

(B) Relationship to supplemental revenue assistance

An eligible livestock producer that receives assistance under this subsection may

not also receive assistance for losses to crops on the same land with the same intended use under subsection (b).

(7) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$400,000,000 for each of fiscal years 2012 and 2013.

(e) Emergency assistance for livestock, honey bees, and farm-raised fish

(1) In general

The Secretary shall provide emergency relief to eligible producers of livestock, honey bees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered under subsection (b), (c), or (d).

(2) Use of funds

Funds made available under this subsection shall be used to reduce losses caused by feed or water shortages, disease, or other factors as determined by the Secretary.

(3) Availability of funds

Any funds made available under this subsection shall remain available until expended.

(4) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2012 and 2013.

(f) Tree assistance program

(1) Definitions

In this subsection:

(A) Eligible orchardist

The term “eligible orchardist” means a person that produces annual crops from trees for commercial purposes.

(B) Natural disaster

The term “natural disaster” means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary.

(C) Nursery tree grower

The term “nursery tree grower” means a person who produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale, as determined by the Secretary.

(D) Tree

The term “tree” includes a tree, bush, and vine.

(2) Eligibility

(A) Loss

Subject to subparagraph (B), the Secretary shall provide assistance—

(i) under paragraph (3) to eligible orchardists and nursery tree growers that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary; and

(ii) under paragraph (3)(B) to eligible orchardists and nursery tree growers that have a production history for commercial purposes on planted or existing trees but

lost the trees as a result of a natural disaster, as determined by the Secretary.

(B) Limitation

An eligible orchardist or nursery tree grower shall qualify for assistance under subparagraph (A) only if the tree mortality of the eligible orchardist or nursery tree grower, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality).

(3) Assistance

Subject to paragraph (4), the assistance provided by the Secretary to eligible orchardists and nursery tree growers for losses described in paragraph (2) shall consist of—

(A)(i) reimbursement of 70 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or

(ii) at the option of the Secretary, sufficient seedlings to reestablish a stand; and

(B) reimbursement of 50 percent of the cost of pruning, removal, and other costs incurred by an eligible orchardist or nursery tree grower to salvage existing trees or, in the case of tree mortality, to prepare the land to replant trees as a result of damage or tree mortality due to a natural disaster, as determined by the Secretary, in excess of 15 percent damage or mortality (adjusted for normal tree damage and mortality).

(4) Limitations on assistance

(A) Definitions of legal entity and person

In this paragraph, the terms “legal entity” and “person” have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)³ (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008).

(B) Amount

The total amount of payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this subsection may not exceed \$100,000 for any crop year, or an equivalent value in tree seedlings.

(C) Acres

The total quantity of acres planted to trees or tree seedlings for which a person or legal entity shall be entitled to receive payments under this subsection may not exceed 500 acres.

(5) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$20,000,000 for each of fiscal years 2012 and 2013.

(g) Risk management purchase requirement

(1) In general

Except as otherwise provided in this section, the eligible producers on a farm shall not be eligible for assistance under this section (other than subsections (c) and (d)) if the eligible producers on the farm—

³So in original. Probably should be followed by a second closing parenthesis.

(A) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, did not obtain a policy or plan of insurance under subchapter I (excluding a crop insurance pilot program under that subchapter); or

(B) in the case of each noninsurable commodity of the eligible producers on the farm, did not file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program.

(2) Minimum

To be considered to have obtained insurance under paragraph (1)(A), an eligible producer on a farm shall have obtained a policy or plan of insurance with not less than 50 percent yield coverage at 55 percent of the insurable price for each crop planted or intended to be planted for harvest on a whole farm.

(3) Waiver for socially disadvantaged, limited resource, or beginning farmer or rancher

With respect to eligible producers that are socially disadvantaged farmers or ranchers or limited resource or beginning farmers or ranchers, as determined by the Secretary, the Secretary may—

(A) waive paragraph (1); and

(B) provide disaster assistance under this section at a level that the Secretary determines to be equitable and appropriate.

(4) Waivers for certain crop years

(A) 2008 crop year

In the case of an eligible producer that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year but does not meet the requirements of paragraph (1), the Secretary shall waive paragraph (1) if the eligible producer pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subchapter.

(B) 2009 crop year

In the case of an insurable commodity or noninsurable commodity for the 2009 crop year that does not meet the requirements of paragraph (1) and the relevant crop insurance program sales closing date or noninsured crop assistance program fee payment date was prior to August 14, 2008, the Secretary shall waive paragraph (1) if the eligible producer of the insurable commodity or noninsurable commodity pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after October 13, 2008.

(5) Equitable relief

(A) In general

The Secretary may provide equitable relief to eligible producers on a farm that are otherwise ineligible or unintentionally fail to meet the requirements of paragraph (1) for 1

or more crops on a farm on a case-by-case basis, as determined by the Secretary.

(B) 2008 crop year

In the case of eligible producers on a farm that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year, the Secretary shall take special consideration to provide equitable relief in cases in which the eligible producers failed to meet the requirements of paragraph (1) due to the enactment of this subchapter after the closing date of sales periods for crop insurance under subchapter I and the noninsured crop assistance program.

(6) De minimis exception

(A) In general

For purposes of assistance under subsection (b), at the option of an eligible producer on a farm, the Secretary shall waive paragraph (1)—

(i) in the case of a portion of the total acreage of a farm of the eligible producer that is not of economic significance on the farm, as established by the Secretary; or

(ii) in the case of a crop for which the administrative fee required for the purchase of noninsured crop disaster assistance coverage exceeds 10 percent of the value of that coverage.

(B) Treatment of acreage

The Secretary shall not consider the value of any crop exempted under subparagraph (A) in calculating the supplemental revenue assistance program guarantee under subsection (b)(3) and the total farm revenue under subsection (b)(4).

(7) 2008 transition assistance

(A) In general

Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after February 17, 2009; and

(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under subchapter I (excluding a crop insurance pilot program under that subchapter) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the next year for which a policy is available.

(B) Amount of assistance

Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the non-insured crop assistance program for the 2008 crop year, except that in determining the level of coverage, the Secretary shall use 70 percent of the applicable yield.

(C) Equitable relief

Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an amount equal to the greater of—

(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

(I) in clause (i) of that subparagraph, “120 percent” is substituted for “115 percent”; and

(II) in clause (ii) of that subparagraph, “125” is substituted for “120 percent”.

(D) Limitation

For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to February 17, 2009.

(E) Authority of the Secretary

The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

(F) Lack of access

Notwithstanding any other provision of this section, the Secretary may provide assistance (including multiyear assistance)

under this section to eligible producers on a farm that—

(i) suffered a production loss or multiyear production losses due to a natural cause during the 2008 crop year; and

(ii) as determined by the Secretary—

(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subchapter I; or

(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

(II) are not eligible for the noninsured crop disaster assistance program established by section 7333 of this title.

(h) Payment limitations**(1) Definitions of legal entity and person**

In this subsection, the terms “legal entity” and “person” have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)³ (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008).

(2) Amount

The total amount of disaster assistance payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this section (excluding payments received under subsection (f)) may not exceed \$100,000 for any crop year.

(3) AGI limitation

Section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308–3a) or any successor provision shall apply with respect to assistance provided under this section.

(4) Direct attribution

Subsections (e) and (f) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) or any successor provisions relating to direct attribution shall apply with respect to assistance provided under this section.

(5) Transition rule

Sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 [7 U.S.C. 1308, 1308–1, 1308–2, and 1308–3a] as in effect on September 30, 2007, shall continue to apply with respect to 2008 crops.

(i) Period of effectiveness

This section shall be effective only for losses that are incurred as the result of a disaster, adverse weather, or other environmental condition that occurs on or before September 30, 2011, or, in the case of subsections (c) through (f), September 30, 2013⁴ as determined by the Secretary.

(j) No duplicative payments

In implementing any other program which makes disaster assistance payments (except for indemnities made under subchapter I and sec-

⁴So in original. Probably should be followed by a comma.

tion 7333 of this title), the Secretary shall prevent duplicative payments with respect to the same loss for which a person receives a payment under subsections (b), (c), (d), (e), or (f).

(k) Application

(1) In general

Subject to paragraph (2) and notwithstanding any provision of subchapter I, subchapter I shall not apply to this subchapter.

(2) Cross references

Paragraph (1) shall not apply to a specific reference in this subchapter to a provision of subchapter I.

(Feb. 16, 1938, ch. 30, title V, § 531, as added Pub. L. 110-234, title XII, § 12033(a), May 22, 2008, 122 Stat. 1392, and Pub. L. 110-246, § 4(a), title XII, § 12033(a), June 18, 2008, 122 Stat. 1664, 2154; amended Pub. L. 110-398, § 2(a), Oct. 13, 2008, 122 Stat. 4214; Pub. L. 111-5, div. A, title I, § 102(a), Feb. 17, 2009, 123 Stat. 121; Pub. L. 111-80, title VII, § 745(a), Oct. 21, 2009, 123 Stat. 2129; Pub. L. 112-240, title VII, § 702(a), Jan. 2, 2013, 126 Stat. 2368; Pub. L. 113-79, title XI, § 11028(c), Feb. 7, 2014, 128 Stat. 978.)

Editorial Notes

REFERENCES IN TEXT

Section 2279(e) of this title, referred to in subsec. (a)(18), was redesignated section 2279(a) of this title by section 12301(b)(3) of Pub. L. 115-334.

Sections 1103 and 1303 of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(4)(A)(ii), were repealed by Pub. L. 113-79, title I, § 1101, Feb. 7, 2014, 128 Stat. 658.

Sections 1104 and 1304 of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(4)(A)(iii), were repealed by Pub. L. 113-79, title I, § 1102(a), Feb. 7, 2014, 128 Stat. 658.

Section 1105 of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(4)(A)(iii), was repealed by Pub. L. 113-79, title I, § 1103(a), Feb. 7, 2014, 128 Stat. 658.

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(4)(A)(iv), is Pub. L. 110-246, June 18, 2008, 122 Stat. 1651. Subtitles B and C of the Act probably mean subtitles B and C of title I of the Act, which are classified generally to subchapters II (§ 8731 et seq.) and III (§ 8751 et seq.) of chapter 113 of this title. Section 1603 of the Act amended section 1308 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of this title and Tables.

The date of enactment of this subchapter, referred to in subsecs. (d)(5)(C), (D)(ii) and (g)(4)(A), (5)(B), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

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.

Section 2(a) of Pub. L. 110-398, which directed amendment of section 531 of the Federal Crop Insurance Act, was executed to this section, which is section 531 of subtitle B of title V of act Feb. 16, 1938, ch. 30, to reflect the probable intent of Congress. The Federal Crop Insurance Act is subtitle A of title V of act of Feb. 16, 1938, ch. 30.

AMENDMENTS

2014—Subsec. (d)(3)(A). Pub. L. 113-79 struck out cl. (i) designation and heading, redesignated subcls. (I) and

(II) as cls. (i) and (ii), respectively, and struck out former cl. (ii). Text read as follows: “An eligible livestock producer may not receive assistance under this subsection for grazing losses that occur on land used for haying or grazing under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.).”

2013—Subsec. (a)(5). Pub. L. 112-240, § 702(a)(1), struck out “under” first time appearing after “established” in introductory provisions, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and realigned margins.

Subsec. (c)(1). Pub. L. 112-240, § 702(a)(2)(A), struck out “use such sums as are necessary from the Trust Fund to” after “Secretary shall”.

Subsec. (c)(3). Pub. L. 112-240, § 702(a)(2)(B), added par. (3).

Subsec. (d)(2). Pub. L. 112-240, § 702(a)(3)(A), struck out “use such sums as are necessary from the Trust Fund to” after “Secretary shall” in introductory provisions.

Subsec. (d)(7). Pub. L. 112-240, § 702(a)(3)(B), added par. (7).

Subsec. (e)(1). Pub. L. 112-240, § 701(a)(4)(A), struck out “use up to \$50,000,000 per year from the Trust Fund to” after “Secretary shall”.

Subsec. (e)(4). Pub. L. 112-240, § 702(a)(4)(B), added par. (4).

Subsec. (f)(2)(A). Pub. L. 112-240, § 702(a)(5)(A), struck out “use such sums as are necessary from the Trust Fund to” after “Secretary shall” in introductory provisions.

Subsec. (f)(5). Pub. L. 112-240, § 702(a)(5)(B), added par. (5).

Subsec. (i). Pub. L. 112-240, § 702(a)(6), inserted “or, in the case of subsections (c) through (f), September 30, 2013” after “2011,”.

2009—Subsec. (g)(7). Pub. L. 111-5, which directed amendment of section 531(g) of the Federal Crop Insurance Act by adding par. (7), was executed to this section, which is section 531 of subtitle B of title V of act of Feb. 16, 1938, ch. 30, to reflect the probable intent of Congress. The Federal Crop Insurance Act is subtitle A of title V of act of Feb. 16, 1938, ch. 30.

Subsec. (g)(7)(F). Pub. L. 111-80, § 745(a)(1), which directed amendment of section 531(g)(7)(F) of the Federal Crop Insurance Act by inserting “(including multiyear assistance)” after “assistance”, was executed to introductory provisions of subsec. (g)(7)(F) of this section, which is section 531 of subtitle B of title V of act of Feb. 16, 1938, ch. 30, to reflect the probable intent of Congress. The Federal Crop Insurance Act is subtitle A of title V of act of Feb. 16, 1938, ch. 30.

Subsec. (g)(7)(F)(i). Pub. L. 111-80, § 745(a)(2), which directed amendment of cl. (i) of section 531(g)(7)(F) of the Federal Crop Insurance Act by inserting “or multiyear production losses” after “a production loss”, was executed to subsec. (g)(7)(F)(i) of this section, which is section 531 of subtitle B of title V of act of Feb. 16, 1938, ch. 30, to reflect the probable intent of Congress. The Federal Crop Insurance Act is subtitle A of title V of act of Feb. 16, 1938, ch. 30.

2008—Subsec. (a)(2). Pub. L. 110-398, § 2(a)(1)(F), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 110-398, § 2(a)(1)(E), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(3)(B). Pub. L. 110-398, § 2(a)(1)(A), inserted “has” after “on a farm that”.

Subsec. (a)(4). Pub. L. 110-398, § 2(a)(1)(E), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 110-398, § 2(a)(1)(B), substituted “under—” for “section 7912 of this title, section 1102 of the Food, Conservation, and Energy Act of 2008, or a successor section.” and added cls. (i) to (iii).

Subsec. (a)(5). Pub. L. 110-398, § 2(a)(1)(E), redesignated par. (4) as (5). Former par. (5) redesignated (7).

Subsec. (a)(5)(B)(ii). Pub. L. 110-398, § 2(a)(1)(C), substituted “the actual production on the farm is less than 50 percent of the normal production on the farm.” for “, the total loss of production of the farm relating to

weather is greater than 50 percent of the normal production of the farm, as determined by the Secretary.”

Subsec. (a)(6). Pub. L. 110-398, §2(a)(1)(G), added par. (6). Former par. (6) redesignated (8).

Subsec. (a)(7). Pub. L. 110-398, §2(a)(1)(E), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Subsec. (a)(7)(A). Pub. L. 110-398, §2(a)(1)(D)(i), inserted “for sale or on-farm livestock feeding (including native grassland intended for haying)” after “harvest”.

Subsec. (a)(7)(C). Pub. L. 110-398, §2(a)(1)(D)(ii), inserted “for sale” after “crop”.

Subsec. (a)(8) to (14). Pub. L. 110-398, §2(a)(1)(E), redesignated pars. (6) to (12) as (8) to (14), respectively. Former pars. (13) and (14) redesignated (16) and (17), respectively.

Subsec. (a)(15). Pub. L. 110-398, §2(a)(1)(H), added par. (15). Former par. (15) redesignated (18).

Subsec. (a)(16) to (21). Pub. L. 110-398, §2(a)(1)(E), redesignated pars. (13) to (18) as (16) to (21), respectively.

Subsec. (b)(1). Pub. L. 110-398, §2(a)(2)(A), substituted “Payments” for “In general” in par. heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 110-398, §2(a)(2)(B), added subpar. (C).

Subsec. (b)(3)(A)(ii)(III). Pub. L. 110-398, §2(a)(2)(C)(i), inserted “50 percent of” before “the higher of” in introductory provisions.

Subsec. (b)(3)(A)(ii)(III)(aa). Pub. L. 110-398, §2(a)(2)(C)(ii), struck out “guarantee” after “yield”.

Subsec. (b)(4)(A)(i). Pub. L. 110-398, §2(a)(2)(D)(i), added subcl. (I), redesignated subcl. (III) as (II), and struck out former subcls. (I) and (II) which read as follows:

“(I) the actual crop acreage harvested by an eligible producer on a farm;

“(II) the estimated actual yield of the crop production; and”

Subsec. (b)(4)(B)(iii). Pub. L. 110-398, §2(a)(2)(D)(ii), (iii), added cl. (iii).

Subsec. (b)(5). Pub. L. 110-398, §2(a)(2)(E)(i), struck out “the sum obtained by adding” after “equal” in introductory provisions.

Subsec. (b)(5)(A). Pub. L. 110-398, §2(a)(2)(E)(ii)(I), substituted “for each insurable commodity, the product” for “the product” in introductory provisions.

Subsec. (b)(5)(A)(i). Pub. L. 110-398, §2(a)(2)(E)(ii)(II), substituted “greater” for “greatest”.

Subsec. (b)(5)(A)(iii). Pub. L. 110-398, §2(a)(2)(E)(ii)(III), substituted “of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and” for “of the insurance price guarantee; and”.

Subsec. (b)(5)(B). Pub. L. 110-398, §2(a)(2)(E)(iii)(I), substituted “for each noninsurable crop, the product” for “the product” in introductory provisions.

Subsec. (b)(5)(B)(ii), (iii). Pub. L. 110-398, §2(a)(2)(E)(iii)(II)-(IV), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (b)(6). Pub. L. 110-398, §2(a)(2)(F), added par. (6).

Subsec. (d)(5)(B)(ii). Pub. L. 110-398, §2(a)(3), substituted “subsection” for “section”.

Subsec. (f)(2)(A). Pub. L. 110-398, §2(a)(4), substituted “the Secretary shall use such sums as are necessary from the Trust Fund to provide” for “the Secretary shall provide”.

Subsec. (g)(1). Pub. L. 110-398, §2(a)(6)(A)(i), substituted “(other than subsections (c) and (d))” for “(other than subsection (c))” in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 110-398, §2(a)(6)(A)(ii), inserted “, excluding grazing land” after “producers on the farm”.

Subsec. (g)(2). Pub. L. 110-398, §2(a)(6)(B), substituted “each crop planted” for “each crop grazed, planted.”

Subsec. (g)(4). Pub. L. 110-398, §2(a)(6)(C), (D), substituted “Waivers for certain crop years” for “Waiver for 2008 crop year” in par. heading, designated existing

provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (g)(6). Pub. L. 110-398, §2(a)(5), added par. (6).

Subsec. (h)(5). Pub. L. 110-398, §2(a)(7), added par. (5).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title VII, §702(b), Jan. 2, 2013, 126 Stat. 2369, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2012.”

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, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

RULEMAKING PROCEDURES

Pub. L. 110-329, div. B, title I, §10102, Sept. 30, 2008, 122 Stat. 3588, provided that: “Section 1601(c)(2) of the Food, Conservation and Energy Act of 2008 (Public Law 110-246) [7 U.S.C. 8781(c)(2)] shall apply in implementing section 12033 of such Act [enacting this subchapter and amending sections 1501 to 1503, 1505 to 1510, 1514, 1515, 1517, 1518, and 1520 to 1523 of this title].”

TRANSITION

Pub. L. 110-234, title XII, §12033(b), May 22, 2008, 122 Stat. 1405, and Pub. L. 110-246, §4(a), title XII, §12033(b), June 18, 2008, 122 Stat. 1664, 2167, provided that: “For purposes of the 2008 crop year, the Secretary [of Agriculture] shall carry out subsections (f)(4) and (h) of section 531 of the Federal Crop Insurance Act [7 U.S.C. 1531(f)(4), (h)] (as added by subsection (a)) in accordance with the terms and conditions of sections 1001 through 1001D of the Food Security Act of 1985 (16 U.S.C. 1308 et seq.), as in effect on September 30, 2007.”

[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.]

CHAPTER 37—SEEDS

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