

direct payments and counter-cyclical payments with respect to the acreage added to the farm under this subsection or a prorated payment under the conservation reserve contract, but not both.

(f) Payment acres

The payment acres for a covered commodity on a farm shall be equal to 85 percent of the base acres for the covered commodity.

(g) Prevention of excess base acres

(1) Required reduction

If the sum of the base acres for a farm, together with the acreage described in paragraph (2), exceeds the actual cropland acreage of the farm, the Secretary shall reduce the base acres for 1 or more covered commodities for the farm or the base acres for peanuts for the farm under subchapter III so that the sum of the base acres and acreage described in paragraph (2) does not exceed the actual cropland acreage of the farm.

(2) Other acreage

For purposes of paragraph (1), the Secretary shall include the following:

(A) Any base acres for peanuts for the farm under subchapter III.

(B) Any acreage on the farm enrolled in the conservation reserve program or wetlands reserve program under chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3830 et seq.).

(C) Any other acreage on the farm enrolled in a conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(3) Selection of acres

The Secretary shall give the owner of the farm the opportunity to select the base acres or the base acres for peanuts for the farm under subchapter III against which the reduction required by paragraph (1) will be made.

(4) Exception for double-cropped acreage

In applying paragraph (1), the Secretary shall make an exception in the case of double cropping, as determined by the Secretary.

(5) Coordinated application of requirements

The Secretary shall take into account section 7952(f) of this title when applying the requirements of this subsection.

(h) Permanent reduction in base acres

The owner of a farm may reduce, at any time, the base acres for any covered commodity for the farm. The reduction shall be permanent and made in the manner prescribed by the Secretary.

(Pub. L. 107-171, title I, §1101, May 13, 2002, 116 Stat. 144.)

Editorial Notes

REFERENCES IN TEXT

Subchapter III, referred to in subsec. (g)(1), (2)(A), (3), was in the original "subtitle C", meaning subtitle C (§§1301-1310) of title I of Pub. L. 107-171, May 13, 2002, 116 Stat. 166, which is classified principally to sub-

chapter III of this chapter. For complete classification of subtitle C to the Code, see References in Text note set out under section 7951 of this title and Tables.

The Food Security Act of 1985, referred to in subsec. (g)(2)(B), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Chapter 1 of subtitle D of title XII of the Act is classified generally to part I (§3830 et seq.) of subchapter IV 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.

Statutory Notes and Related Subsidiaries

POPCORN ACREAGE

Pub. L. 108-7, div. A, title VII, §767, Feb. 20, 2003, 117 Stat. 48, formerly set out as a note under this section, was transferred and is set out as a note under section 9011 of this title.

§ 7912. Establishment of payment yield

(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 payment yield for each farm for each covered commodity in accordance with this section.

(b) Use of farm program payment yield

Except as otherwise provided in this section, the payment yield for each of the 2002 through 2007 crops of a covered commodity for a farm shall be the farm program payment yield established for the 1995 crop of the covered commodity under section 1465 of this title, as adjusted by the Secretary to account for any additional yield payments made with respect to that crop under section 1465(b)(2) of this title.

(c) Farms without farm program payment yield

In the case of a farm for which a farm program payment yield is unavailable for a covered commodity (other than soybeans or other oilseeds), the Secretary shall establish an appropriate payment yield for the covered commodity on the farm taking into consideration the farm program payment yields applicable to the commodity under subsection (b) for similar farms, but before the yields for the similar farms are updated as provided in subsection (e).

(d) Payment yields for oilseeds

(1) Determination of average yield

In the case of soybeans and each other oilseed, the Secretary shall determine the average yield per planted acre for the oilseed on a farm for the 1998 through 2001 crop years, excluding any crop year in which the acreage planted to the oilseed was zero.

(2) Adjustment for payment yield

The payment yield for a farm for an oilseed shall be equal to the product of the following:

(A) The average yield for the oilseed determined under paragraph (1).

(B) The ratio resulting from dividing the national average yield for the oilseed for the 1981 through 1985 crops by the national average yield for the oilseed for the 1998 through 2001 crops.

(3) Use of partial county average yield

If the yield per planted acre for a crop of an oilseed for a farm for any of the 1998 through

2001 crop years was less than 75 percent of the county yield for that oilseed, 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).

(e) Opportunity to partially update yields used to determine counter-cyclical payments

(1) Election to update

If the owner of a farm elects to use the base acres calculation method described in section 7911(a)(1)(A) of this title, the owner shall also have a 1-time opportunity to elect to use 1 of the methods described in paragraph (3) to partially update the payment yields that would otherwise be used in calculating any counter-cyclical payments for covered commodities on the farm.

(2) Time for election

The election under paragraph (1) shall be made at the same time and in the same manner as the Secretary prescribes for the election required under section 7911 of this title.

(3) Methods of updating yields

If the owner of a farm elects to update yields under this subsection, the payment yield for a covered commodity on the farm, for the purpose of calculating counter-cyclical payments only, shall be equal to the yield determined using either of the following:

(A) The sum of the following:

(i) The payment yield applicable for direct payments for the covered commodity on the farm.

(ii) 70 percent of the difference between—

(I) the average yield per planted acre for the crop of the covered commodity on the farm for the 1998 through 2001 crop years, as determined by the Secretary, excluding any crop year in which the acreage planted to the crop of the covered commodity was zero; and

(II) the payment yield applicable for direct payments for the covered commodity on the farm.

(B) 93.5 percent of the average of the yield per planted acre for the crop of the covered commodity on the farm for the 1998 through 2001 crop years, as determined by the Secretary, excluding any crop year in which the acreage planted to the crop of the covered commodity was zero.

(4) Use of partial county average yield

If the yield per planted acre for a crop of the covered commodity for a farm for any of the 1998 through 2001 crop years was less than 75 percent of the county yield for that commodity, 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 yield under paragraph (3).

(5) Application of election and method to all covered commodities

The owner of a farm may not elect the method described in paragraph (3)(A) for 1 covered commodity on the farm and the method described in paragraph (3)(B) for other covered commodities on the farm.

(Pub. L. 107-171, title I, §1102, May 13, 2002, 116 Stat. 147.)

Editorial Notes

REFERENCES IN TEXT

Section 1465 of this title, referred to in subsec. (b), was omitted from the Code.

§ 7913. Availability of direct payments

(a) Payment required

For each of the 2002 through 2007 crop years of each covered commodity, the Secretary shall make direct payments to producers on farms for which payment yields and base acres are established.

(b) Payment rate

The payment rates used to make direct payments with respect to covered commodities for a crop year are as follows:

- (1) Wheat, \$0.52 per bushel.
- (2) Corn, \$0.28 per bushel.
- (3) Grain sorghum, \$0.35 per bushel.
- (4) Barley, \$0.24 per bushel.
- (5) Oats, \$0.024 per bushel.
- (6) Upland cotton, \$0.0667 per pound.
- (7) Rice, \$2.35 per hundredweight.
- (8) Soybeans, \$0.44 per bushel.
- (9) Other oilseeds, \$0.0080 per pound.

(c) Payment amount

The amount of the direct payment to be paid to the producers on a farm for a covered commodity for a crop year shall be equal to the product of the following:

- (1) The payment rate specified in subsection (b).
- (2) The payment acres of the covered commodity on the farm.
- (3) The payment yield for the covered commodity for the farm.

(d) Time for payment

(1) In general

The Secretary shall make direct payments—

(A) in the case of the 2002 crop year, as soon as practicable after May 13, 2002; and

(B) in the case of each of the 2003 through 2007 crop years, not before October 1 of the calendar year in which the crop of the covered commodity is harvested.

(2) Advance payments

At the option of the producers on a farm, up to 50 percent of the direct payment for a covered commodity for any of the 2003 through 2005 crop years, up to 40 percent of the direct payment for a covered commodity for the 2006 crop year, and up to 22 percent of the direct payment for a covered commodity for the 2007 crop year, shall be paid to the producers in advance. The producers shall select the month within which the advance payment for a crop year will be made. The month selected may be any month during the period beginning on December 1 of the calendar year before the calendar year in which the crop of the covered commodity is harvested through the month within which the direct payment would otherwise be made. The producers may change the selected month for a subsequent advance pay-