

Public Law 110–398
110th Congress

An Act

To amend the commodity provisions of the Food, Conservation, and Energy Act of 2008 to permit producers to aggregate base acres and reconstitute farms to avoid the prohibition on receiving direct payments, counter-cyclical payments, or average crop revenue election payments when the sum of the base acres of a farm is 10 acres or less, and for other purposes.

Oct. 13, 2008
[H.R. 6849]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF FARMS WITH LIMITED BASE ACRES.

(a) **SUSPENSION OF PROHIBITION.**—

(1) **IN GENERAL.**—Section 1101(d) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8711(d)) is amended by adding at the end the following:

“(4) **SUSPENSION OF PROHIBITION.**—Paragraphs (1) through (3) shall not apply during the 2008 crop year.”.

(2) **PEANUTS.**—Section 1302(d) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8752(d)) is amended by adding at the end the following:

“(4) **SUSPENSION OF PROHIBITION.**—Paragraphs (1) through (3) shall not apply during the 2008 crop year.”.

(b) **EXTENSION OF 2008 SIGNUP FOR DIRECT PAYMENTS AND COUNTER-CYCLICAL PAYMENTS.**—

(1) **IN GENERAL.**—Section 1106 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8716) is amended by adding at the end the following:

“(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 subtitle 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 the date of the enactment of this subsection.

“(2) **PENALTIES.**—The Secretary shall ensure that no penalty with respect to benefits under this subtitle or subtitle B 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.”.

(2) **PEANUTS.**—Section 1305 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8755) is amended by adding at the end the following:

Deadline.

- Deadline. “(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 subtitle 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 the date of the enactment of this subsection.
- “(2) PENALTIES.—The Secretary shall ensure that no penalty with respect to benefits under this subtitle 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.”.
- (c) OFFSETTING REDUCTION.—Section 515(k)(1) of the Federal Crop Insurance Act (7 U.S.C. 1515(k)(1)) is amended by striking “2011” and inserting “2010, and not more than \$9,000,000 for fiscal year 2011”.

SEC. 2. SUPPLEMENTAL REVENUE ASSISTANCE PROGRAM.

- (a) FEDERAL CROP INSURANCE ACT.—
- (1) DEFINITIONS.—Section 531(a) of the Federal Crop Insurance Act (7 U.S.C. 1531(a)) is amended—
- (A) in paragraph (3)(B), by inserting “has” after “on a farm that”;
- (B) in paragraph (4), by striking “section 1102 of the Farm Security and Rural Investment Act of 2002” and all that follows through the end of the paragraph and inserting “under—
- “(i) section 1102 or 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7912, 7952);
- “(ii) section 1102 or 1301(6) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8712, 8751(6));
- or
- “(iii) a successor section.”;
- (C) in paragraph (5)(B)(ii), by striking “, the total loss” and all that follows through the end of the paragraph and adding “the actual production on the farm is less than 50 percent of the normal production on the farm.”;
- (D) in paragraph (7)—
- (i) in subparagraph (A), by inserting “for sale or on-farm livestock feeding (including native grassland intended for haying)” after “harvest”; and
- (ii) in subparagraph (C), by inserting “for sale” after “crop”;
- (E) by redesignating paragraphs (2) through (4), (5) through (12), and (13) through (18) as paragraphs (3) through (5), (7) through (14), and (16) through (21), respectively;
- (F) by inserting after paragraph (1) the following:
- “(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).”;

(G) by inserting after paragraph (5) (as redesignated by subparagraph (E)) the following:

“(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).”; and

(H) by inserting after paragraph (14) (as redesignated by subparagraph (E)) the following:

“(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).”.

(2) SUPPLEMENTAL REVENUE ASSISTANCE PAYMENTS.—Section 531(b) of the Federal Crop Insurance Act (7 U.S.C. 1531(b)) is amended—

(A) in paragraph (1)—

(i) by striking “(1) IN GENERAL.—The Secretary” and inserting the following:

“(1) PAYMENTS.—

“(A) IN GENERAL.—The Secretary”; and

(ii) by adding at the end the following:

“(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.”;

(B) in paragraph (2), by adding at the end the following:

“(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 subtitle A 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.”;

(C) in paragraph (3)(A)(ii)(III)—

(i) in the matter before item (aa), by inserting “50 percent of” before “the higher of”; and

(ii) in item (aa), by striking “guarantee”;

(D) in paragraph (4)—

(i) in subparagraph (A)(i)—

(I) by striking subclauses (I) and (II) and inserting the following:

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

and

(II) by redesignating subclause (III) as subclause (II);

(ii) in subparagraph (B)—

(I) in clause (i), by striking “and” at the end;

- (II) in clause (ii), by striking the period at the end and inserting “; and”; and
- (iii) by adding at the end the following:
 “(iii) as the Secretary determines appropriate, to reflect regional variations in a manner consistent with the operation of the crop insurance program under subtitle A and the noninsured crop assistance program.”;
- (E) in paragraph (5)—
- (i) in the matter preceding subparagraph (A), by striking “the sum obtained by adding”;
- (ii) in subparagraph (A)—
- (I) in the matter preceding clause (i), by striking “the product” and inserting “for each insurable commodity, the product”;
- (II) in clause (i), by striking “greatest” and inserting “greater”;
- (III) in clause (iii), by striking “of the insurance price guarantee; and” and inserting “of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and”;
- (iii) in subparagraph (B)—
- (I) in the matter preceding clause (i), by striking “the product” and inserting “for each noninsurable crop, the product”;
- (II) in clause (i), by striking “and” at the end;
- (III) by redesignating clause (ii) as clause (iii);
- and
- (IV) by inserting after clause (i) the following:
 “(ii) the acreage planted or prevented from being planted for each crop; and”;
- (F) by adding at the end the following:
- “(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.”.

(3) WAIVER FOR SOCIALLY DISADVANTAGED, LIMITED RESOURCE, OR BEGINNING FARMER OR RANCHER.—Section 531(d)(5)(B)(ii) of the Federal Crop Insurance Act (7 U.S.C. 1531(d)(5)(B)(ii)) is amended by striking “section” and inserting “subsection”.

(4) TREE ASSISTANCE PROGRAM.—Section 531(f)(2)(A) of the Federal Crop Insurance Act (7 U.S.C. 1531(f)(2)(A)) is amended by striking “the Secretary shall provide” and inserting “the Secretary shall use such sums as are necessary from the Trust Fund to provide”.

(5) DE MINIMIS EXCEPTION TO RISK MANAGEMENT PURCHASE REQUIREMENT.—Section 531(g) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)) is amended by adding at the end the following:

“(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)—

Waiver authority.

“(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).”.

(6) RISK MANAGEMENT PURCHASE REQUIREMENT WAIVER FOR 2009 CROP YEAR.—Section 531(g) of the Federal Crop Insurance Act (7 U.S.C. 1531(g)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “(other than subsection (c))” and inserting “(other than subsections (c) and (d))”; and

(ii) in subparagraph (A), by inserting “, excluding grazing land” after “producers on the farm”;

(B) in paragraph (2), by striking “grazed, planted,” and inserting “planted”;

(C) in paragraph (4), by striking “(4)” and all that follows through “In the case” and inserting the following:

“(4) WAIVERS FOR CERTAIN CROP YEARS.—

“(A) 2008 CROP YEAR.—In the case”; and

(D) by adding at the end the following:

“(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

Deadline.

required under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subparagraph.”

(7) PAYMENT LIMITATIONS.—Section 531(h) of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended by adding at the end the following:

Applicability.

“(5) TRANSITION RULE.—Sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 (7 U.S.C. 1308 et seq.) as in effect on September 30, 2007, shall continue to apply with respect to 2008 crops.”

(b) TRADE ACT OF 1974.—

(1) DEFINITIONS.—Section 901(a) of the Trade Act of 1974 (19 U.S.C. 2497(a)) is amended—

(A) in paragraph (3)(B), by inserting “has” after “on a farm that”;

(B) in paragraph (4), by striking “section 1102 of the Farm Security and Rural Investment Act of 2002” and all that follows through the end of the paragraph and inserting “under—

“(i) section 1102 or 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7912, 7952);

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

“(iii) a successor section.”;

(C) in paragraph (5)(B)(ii), by striking “, the total loss” and all that follows through the end of the paragraph and adding “the actual production on the farm is less than 50 percent of the normal production on the farm.”;

(D) in paragraph (7)—

(i) in subparagraph (A), by inserting “for sale or on-farm livestock feeding (including native grassland intended for haying)” after “harvest”; and

(ii) in subparagraph (C), by inserting “for sale” after “crop”;

(E) by redesignating paragraphs (2) through (4), (5) through (12), and (13) through (18) as paragraphs (3) through (5), (7) through (14), and (16) through (21), respectively;

(F) by inserting after paragraph (1) the following:

“(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).”;

(G) by inserting after paragraph (5) (as redesignated by subparagraph (E)) the following:

“(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).”; and

(H) by inserting after paragraph (14) (as redesignated by subparagraph (E)) the following:

“(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).”.

(2) SUPPLEMENTAL REVENUE ASSISTANCE PAYMENTS.—Section 901(b) of the Trade Act of 1974 (19 U.S.C. 2497(b)) is amended—

(A) in paragraph (1)—

(i) by striking “(1) IN GENERAL.—The Secretary” and inserting the following:

“(1) PAYMENTS.—

“(A) IN GENERAL.—The Secretary”; and

(ii) by adding at the end the following:

“(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.”;

(B) in paragraph (2), by adding at the end the following:

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

(C) in paragraph (3)(A)(ii)(III)—

(i) in the matter before item (aa), by inserting “50 percent of” before “the higher of”;

(ii) in item (aa), by striking “guarantee”;

(D) in paragraph (4)—

(i) in subparagraph (A)(i)—

(I) by striking subclauses (I) and (II) and inserting the following:

“(I) the actual production by crop on a farm for purposes of determining losses under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or the noninsured crop assistance program; and”;

and

(II) by redesignating subclause (III) as subclause (II);

(ii) in subparagraph (B)—

(I) in clause (i), by striking “and” at the end;

(II) in clause (ii), by striking the period at the end and inserting “; and”;

(iii) by adding at the end the following:

“(iii) as the Secretary determines appropriate, to reflect regional variations in a manner consistent with the operation of the Federal crop insurance program under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and the noninsured crop assistance program.”;

(E) in paragraph (5)—

(i) in the matter preceding subparagraph (A), by striking “the sum obtained by adding”;

(ii) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking “the product” and inserting “for each insurable commodity, the product”;

(II) in clause (i), by striking “greatest” and inserting “greater”;

(III) in clause (iii), by striking “of the insurance price guarantee; and” and inserting “of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and”;

(iii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “the product” and inserting “for each non-insurable crop, the product”;

(II) in clause (i), by striking “and” at the end;

(III) by redesignating clause (ii) as clause (iii); and

(IV) by inserting after clause (i) the following:

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

(F) by adding at the end the following:

“(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.”.

(3) WAIVER FOR SOCIALLY DISADVANTAGED, LIMITED RESOURCE, OR BEGINNING FARMER OR RANCHER.—Section 901(d)(5)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2497(d)(5)(B)(ii)) is amended by striking “section” and inserting “subsection”.

(4) TREE ASSISTANCE PROGRAM.—Section 901(f)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2497(f)(2)(A)) is amended by striking “the Secretary shall provide” and inserting “the Secretary shall use such sums as are necessary from the Trust Fund to provide”.

(5) DE MINIMIS EXCEPTION TO RISK MANAGEMENT PURCHASE REQUIREMENT.—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at the end the following:

“(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)—

Waiver authority.

“(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).”.

(6) RISK MANAGEMENT PURCHASE REQUIREMENT WAIVER FOR 2009 CROP YEAR.—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “(other than subsection (c))” and inserting “(other than subsections (c) and (d))”; and

(ii) in subparagraph (A), by inserting “, excluding grazing land” after “producers on the farm”;

(B) in paragraph (2), by striking “grazed, planted,” and inserting “planted”;

(C) in paragraph (4), by striking “(4)” and all that follows through “In the case” and inserting the following:

“(4) WAIVERS FOR CERTAIN CROP YEARS.—

“(A) 2008 CROP YEAR.—In the case”; and

(D) by adding at the end the following:

“(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 the date of enactment of this subparagraph.”.

Deadline.

(7) PAYMENT LIMITATIONS.—Section 901(h) of the Trade Act of 1974 (19 U.S.C. 2497(h)) is amended by adding at the end the following:

“(5) TRANSITION RULE.—Sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 (7 U.S.C. 1308 et

Applicability.

122 STAT. 4222

PUBLIC LAW 110-398—OCT. 13, 2008

seq.) as in effect on September 30, 2007, shall continue to apply with respect to 2008 crops.”.

Approved October 13, 2008.

LEGISLATIVE HISTORY—H.R. 6849:

HOUSE REPORTS: No. 110-881 (Comm. on Agriculture).

CONGRESSIONAL RECORD, Vol. 154 (2008):

Sept. 24, considered and passed House.

Sept. 29, considered and passed Senate, amended. House concurred in Senate amendment.