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An Agricultural Law Research Note

Direct Payments and Counter-Cyclical Payments Under the 2002 Farm Bill: An Overview

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The Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (to be codified in scattered sections of titles 7, 15, 16, and 21 of the U.S.C.), commonly referred to as the 2002 Farm Bill, was enacted on May 13, 2002. It governs federal domestic commodity programs for the next six years and significantly alters previous legislation pertaining to domestic commodity programs. Under the 2002 Farm Bill, farm income support for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds is provided through three programs: (1) direct payments, (2) counter-cyclical payments, (3) and loan deficiency payments and marketing loan gains. The 2002 Farm Bill significantly modifies the peanut payment program by changing it from a two-tier price support program based on nonrecourse loans to a payment program comprised of direct, counter-cyclical, and marketing loan provisions. This article discusses the direct payment and counter-cyclical payment programs for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, other oilseeds, and peanuts.

Direct Payments

The direct payment program replaces the production flexibility contract ("PFC") payment program, although the two are similar and certain components of the PFC program are carried over into the direct payment program. The direct payment program provides fixed, annual payments for "covered commodities" for each of the 2002 through 2007 crop years for the covered commodities. "Covered commodities" are "wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds." Pub. L. No. 107-171, tit. I, § 1001, 116 Stat. 134, 143 (to be codified at 7 U.S.C. § 7901). "Other oilseeds" are "a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by the Secretary, another oilseed." *Id.* The payment amount received by producers under the direct payment program will remain the same each year.

Direct payments are not tied to the current production of specific crops, crop price, or the level of crop production. With some exceptions, producers are allowed to plant any crop or no crop on the base acres of a farm for which they are receiving direct payments. *See id.* § 1106, 116 Stat. 134, 153 (to be codified at 7 U.S.C. § 7916). For example, a producer can enter into an annual contract to receive direct payments for upland cotton but plant wheat, corn, or another commodity covered under the program on the acres for which the producer is receiving upland cotton payments. However, there are some restrictions on planting flexibility. Producers cannot plant fruits and vegetables, except for lentils, mung beans, and dry peas, on base acres unless the fruit or vegetable is destroyed prior to harvest. *See id.* Producers are also prohibited from planting wild rice on base acres. *See id.*

The amount paid to a producer of a covered commodity for a crop year equals the product of (1) the "payment rate" established for the particular commodity, (2) the "payment acres," which is derived from the "base acres" of the commodity on the farm, and (3) the "payment yield" for the commodity on the farm. *See id.* at § 1103(c), 116 Stat. 134, 149 (to be codified at 7 U.S.C. § 7913). The 2002 Farm Bill establishes provisions for determining payment acres, payment yields, and base acres and is discussed in a separate section below. The payment rates for commodities covered under the direct payment program 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

Id. at § 1103(b), 116 Stat. 134, 143 (to be codified at 7 U.S.C. § 7913).

Direct payments for the 2002 crop year were to have been made as soon as practicable. *See id.* at § 1103(d)(1)(A), 116 Stat. 134, 149 (to be codified at 7 U.S.C. § 7913). For the 2003 through 2007 crop years, payments will be made to producers no sooner than October 1 of the calendar year in which the crop is harvested. *See id.* at § 1103(d)(1)(B), 116 Stat. 134, 149 (to be codified at 7 U.S.C. § 7913). The signup period for receiving direct payments for the 2002 and 2003 crop years ends on June 2, 2003. *See* http://www.fsa.usda.gov/pas/farmbill/.

For the 2003 through 2007 crop years, producers can elect to receive advance payments beginning December 1 of the calendar year before the crop is harvested. *See* 107-171, tit. I, § 1103(d)(2), 116 Stat. 134, 149 (to be codified at 7 U.S.C. § 7913). Advance payments cannot exceed fifty percent of the direct payment amount owed to the producer. *See id.* Producers must select the month in which the advance payment will be tendered, which may be any month between “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.” *Id.* Producers can change the month they have selected for a subsequent advance payment by giving advance notice to the Secretary. *See id.*

Under certain circumstances producers must repay an advance payment. If a producer receives an advance payment for a crop year and ceases to be a producer on the farm the advance payment must be repaid. Also, if a producer’s share in the risk of producing a crop decreases prior to the date in which the remainder of the direct payment is tendered, the producer must repay the applicable amount of the advance payment. *Id.* at § 1103(d)(3), 116 Stat. 134, 149 (to be codified at 7 U.S.C. § 7913).

Producers must agree that during the crop year in which direct payments are made they will (1) comply with the applicable conservation and wetland protection requirements; (2) comply with the planting flexibility requirements; (3) “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 . . . for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary”; and (4) control noxious weeds and maintain sound agricultural practices on the land. *Id.* at § 1105, 116 Stat. 134, 152 (to be codified at 7 U.S.C. § 7915). Producers must also submit annual acreage reports to the Secretary for all cropland on the farm. *See id.* at § 1105(c), 116 Stat. 134, 153 (to be codified at 7 U.S.C. § 7913).

Counter-Cyclical Payment Program

The counter-cyclical payment ("CCP") program is a new payment program introduced under the 2002 Farm Bill. *See id.* at § 1104, 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914). The CCP program is intended to provide a more effective safety net for producers by replacing the need for ad hoc market loss assistance payments such as those provided to producers during the 1998 through 2001 crop years. CCPs are not tied to current production but are based on historical production. CCPs are available for the same commodities that are covered under the direct payment program: wheat, corn, grain sorghum, barley, oats, rice, upland cotton, soybeans, and other oilseeds. *See id.*

CCPs are made for each of the 2002 through 2007 crop years for each of the covered commodities when the "effective price" for a covered commodity falls below established "target prices." *See id.* at § 1104(a), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914). The "effective price" is calculated by (1) adding the higher of either (a) "the national average market price received by producers during the twelve-month marketing year for the covered commodity, as determined by the Secretary," or (b) the "national average loan rate for a marketing assistance loan for the covered commodity in effect for the applicable period"; and (2) the direct payment amount for the commodity. *Id.* at § 1104(b), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914). The "target price" is "the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) of a covered commodity used to determine the payment rate for counter-cyclical payments." *Id.* at § 1001, 116 Stat. 134, 143 (to be codified at 7 U.S.C. § 7901).

The target prices for commodities covered under the CCP program for the 2002 and 2003 crop years are as follows:

(1) Wheat	$3.86 per bushel
(2) Corn	$2.60 per bushel
(3) Grain Sorghum	$2.54 per bushel
(4) Barley	$2.21 per bushel
(5) Oats	$1.40 per bushel
(6) Upland Cotton	$0.7240 per pound
(7) Rice	$10.50 per hundredweight
(8) Soybeans	$5.80 per bushel
(9) Other Oilseeds	$0.0980 per pound

Id. at § 1104(c)(1), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914).

The target prices for the 2004 through 2007 crop years are as follows:

(1) Wheat	$3.92 per bushel
(2) Corn	$2.63 per bushel
(3) Grain Sorghum	$2.57 per bushel
(4) Barley	$2.24 per bushel
(5) Oats	$1.44 per bushel
(6) Upland Cotton	$0.7240 per pound
(7) Rice	$10.50 per hundredweight
(8) Soybeans	$5.80 per bushel
(9) Other Oilseeds	$0.1010 per pound

Id. at § 1104(c)(2), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914).

The “payment amount” is the product of (1) the payment rate, (2) the payment acres, which is eighty-five percent of the base acres, and (3) the payment yield or updated payment yield for the farm, depending upon which payment yield formula the producer has chosen. *See id.* at § 1104(e), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914). The “payment rate” for CCPs is equal to the difference between the target price and the effective price. *See id.* at § 1104(d), 116 Stat. 134, 150 (to be codified at 7 U.S.C. § 7914). Payment acres, payment yields, and base acres are discussed in a separate section below.

If the Secretary determines that CCP payments for a particular commodity are required, the payments will be made as soon as practicable after the end of the twelve-month marketing year for the covered commodity. *See id.* at § 1104(f)(1), 116 Stat. 134, 151 (to be codified at 7 U.S.C. § 7914). In the event that the Secretary estimates that CCPs will be made with respect to a particular covered commodity before the end of the twelve-month marketing year, producers may elect to receive partial payments. *See id.* at § 1104(f)(2), 116 Stat. 134, 151 (to be codified at 7 U.S.C. § 7914).

For the 2002 through 2006 crop years, the first partial payment must not be made before October 1 and, “to the maximum extent practicable, not later than October 31, of the calendar year” in which the commodity is harvested. *Id.* at § 1104(d)(4), 116 Stat. 134, 151 (to be codified at 7 U.S.C. § 7914). The second partial payment for the 2002 through 2006 crop years must not be made before February 1 of the following calendar year. *See id.* The final partial payment for the 2002 through 2006 crop years must be made “as soon as practicable after the end of the 12-month marketing year for the covered commodity.” *Id.* For the 2007 crop year, the first partial payment must be made after the first six-month period of the marketing year for the commodity has been completed. *See id.* The final partial payment must be made “as soon as practicable after the end of the 12-month marketing year for the covered commodity.” *Id.*

The first partial payment made for the 2002 through 2006 crop years cannot be more that thirty-five percent of the expected CCP payment for the commodity for a crop year. *See id.* at § 1104(d)(4), 116 Stat. 134, 151-52 (to be codified at 7 U.S.C. § 7914). The second partial payment for the same crop years cannot exceed the difference between seventy percent of the expected CCP payment and the amount paid in the first partial payment. *See id.* For the 2002 through 2006 crop years, the final payments will be equal to the difference between the actual CCP payment to be made and the amount paid in the first and second partial payments. *See id.*

For the 2007 crop year, the first partial payment cannot exceed forty percent of the expected CCP payment for the commodity for the crop year. *See id.* The final payment will be the difference between the actual CCP to be made for the commodity for the crop year and the amount received in the first partial payment. *See id.* Producers that receive partial payments exceeding the actual CCP payment amount must refund the excess amount. *See id.* at § 1104(d)(5), 116 Stat. 134, 152 (to be codified at 7 U.S.C. § 7914).

Just as with direct payments, producers must agree that during the crop year in which payments are made they will (1) comply with the applicable conservation and wetland protection requirements; (2) comply with the planting flexibility requirements set forth in the 2002 Farm Bill, (3) “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 . . . for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary”; and (4) control noxious weeds and maintain sound agricultural practices on the land. *Id.* at § 1105(a), 116 Stat. 134, 152 (to be codified at 7 U.S.C. § 7915). Producers must submit an annual acreage report to the Secretary for all cropland on the farm. *See id.* at § 1105(c), 116 Stat. 134, 152 (to be codified at 7 U.S.C. § 7915).

The same planting flexibility requirements and restrictions that apply to direct payments also apply to the CCPs. *See id.* at § 1106, 116 Stat. 134, 153 (to be codified at 7 U.S.C. § 7916).

Base Acres and Payment Acres for Direct and CCPs

Producers must establish base acres and payment acres for a farm to receive direct payments and CCPs. *See id.* at § 1101, 116 Stat. 134, 144 (to be codified at 7 U.S.C. § 7911). Farmers and landowners must choose one of the options discussed below to establish the base acres for a farm. Payment acres are calculated by multiplying the base acre amount by eighty-five percent. *See id.* at § 1001, 116 Stat. 134, 143 (to be codified at 7 U.S.C. § 7901).

There are two basic options available to farmers and landowners to establish base acres. One option allows farmers to update the base acres for a farm to reflect the four-year average of acres on the farm planted to "covered commodities for harvest, grazing, haying, silage, or other similar purposes for the 1998 through 2001 crop years," as well as acres on the farm that were prevented from being planted. *Id.* at § 1101(a), 116 Stat. 134, 144-45 (to be codified at 7 U.S.C. § 7911). In making this determination, however, if the acres planted or prevented from being planted in the 1998 through 2001 crop years were devoted to more than one covered commodity in the same crop year, "the owner may elect the commodity to be used for that crop year in determining the 4-year average, but may not include both the initial commodity and the subsequent commodity." *Id.* In addition, the Secretary cannot exclude any crop year in which a covered commodity was not planted. *See id.*

The other option allows farmers and landowners to add (1) the amount of the contract acreage used to calculate the 2002 production flexibility contract payment for wheat, feed grains, cotton, and rice and (2) "the 4-year average of eligible oilseed acreage on the farm for the 1998 through 2001 crop years, as determined by the Secretary . . . ." *Id.* When making the eligible oilseed acreage determination, the Secretary must use the four-year average of the planted acres and acres prevented from planting for the 1998 through 2001 crop years. *See id.* However, the total average for all oilseeds on the farm in a crop year cannot be larger than the difference between (1) the four-year average for the 1998 through 2001 crop years for planted acres and land prevented from planting and (2) the total production flexibility contract acreage for fiscal year 2002. *See id.* If this difference is less than zero, then the eligible oilseed acreage for the farm in that crop year will be zero for purposes of determining the four-year average. *See id.*

Producers have a one-time opportunity to select one of these options. *See id.* at § 1101(b), 116 Stat. 134, 145 (to be codified at 7 U.S.C. § 7911). A producer who fails to select one of these options will be considered to have selected the 2002 production flexibility contract acreage with respect to wheat, feed grains, cotton, and rice. With respect to oilseeds, the farmer or landowner will be considered to have selected the four-year average of oilseed plantings. *See id.* at § 1101(c), 116 Stat. 134, 147 (to be codified at 7 U.S.C. § 7911).

The Secretary must allow an adjustment in base acres when a conservation reserve contract expires or is voluntarily terminated. *See id.* at § 1101(e), 116 Stat. 134, 146 (to be codified at 7 U.S.C. § 7911). The amount of the base acre calculation cannot exceed the actual cropland acreage of the farm. *See id.* at § 1101(g), 116 Stat. 134, 146 (to be codified at 7 U.S.C. § 7911). An owner of a farm may reduce the base acres for any covered commodity for the farm at any time. *See id.* at § 1101(h), 116 Stat. 134, 147 (to be codified at 7 U.S.C. § 7911). Such a reduction is permanent and must be done in a manner prescribed by the Secretary. *See id.*

Payment Yield

The Secretary is required to establish a payment yield for each commodity produced on a farm for the purpose of making direct payments and CCPs. *See id.* at § 1102, 116 Stat. 134, 147 (to be codified at 7 U.S.C. § 7911). With respect to direct payments, the payment yield for each of the 2002 through 2007 crop years remains unchanged for those crops previously covered under the production flexibility contract payment program. *See id.* at § 1102(b), 116 Stat. 134, 147 (to be codified at 7 U.S.C. § 7911).

Because soybeans and other oilseeds were not eligible under the production flexibility contract payment program in the 1996 Farm Bill, a new calculation method is provided for these crops under the 2002 Farm Bill. *See id.* at § 1102(d), 116 Stat. 134, 147-48 (to be codified at 7 U.S.C. § 7911) For soybeans and oilseeds, the payment yield is calculated by (1) multiplying the farm's 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, by the national average yield for the 1981 through 1985 crop years, and (2) dividing that product by the national average yield for the 1998 through 2001 crop years. *See id.* If the yield for an oilseed for any of the 1998 through 2001 crop years is less than seventy-five percent of the county yield for that oilseed, the Secretary must assign a yield for that crop year that is equal to seventy-five percent of the county yield. *See id.*

Producers have a one-time opportunity to select one of three methods "to partially update the payment yields that would otherwise be used in calculating any counter-cyclical payments for covered commodities." *Id.* at § 1102(e), 116 Stat. 134, 148 (to be codified at 7 U.S.C. § 7911). First, producers may choose to establish payment yields for CCPs that are the same as the payment yields for direct payments. *See id.* at § 1102(e), 116 Stat. 134, 148 (to be codified at 7 U.S.C. § 7911). The payment yield for CCPs may also be seventy percent of the difference between the average yield for planted acre of the covered commodity for the 1998 through 2001 crop years and the payment yield for direct payments of the covered commodity on the farm. *See id.* Finally, producers may determine payment yields for CCPs by calculating 93.5 percent of average yields per planted acre for the covered commodity for the 1998 through 2001 crop years. *See id.* If the yield for a farm for any of the 1998 through 2001 crop years is less than seventy-five percent of the county yield for the commodity, the Secretary must assign a yield for that crop year equal to seventy-five percent of the county yield. *See id.*

The method chosen by the farmer must apply uniformly to all covered commodities on the farm. *See id.* However, a producer with more than one farm may choose different methods for each farm.

Payment Limitations for Direct Payments and CCPs

The 2002 Farm Bill provides that individuals and entities cannot be eligible to receive direct payments or CCPs during a crop year if the three-year average "of the adjusted gross income or comparable measure of the individual or entity" for the three preceding tax years exceeds $2,500,000.00, unless seventy-five percent or more "of the average adjusted gross income of the individual or entity is derived from farming, ranching, or forestry operations, as determined by the Secretary." *Id.* at § 1604, 116 Stat. 134, 215-16 (to be codified at 7 U.S.C. § 1308-3a). An entity or individual must provide certification to the Secretary that the adjusted gross income of the entity or individual does not exceed $2,500,000.00. *See id.* at § 1604, 116 Stat. 134, 216 (to be codified at 7 U.S.C. § 1308-3a). This certification may be provided by either a certified public accountant or other acceptable third party, or by "information and documentation regarding the adjusted gross income of the individual or entity through other procedures established by the Secretary." *Id.*

The payment limit for CCPs is $65,000.00 per person per crop year. *See id.* at § 1603, 116 Stat. 134, 213-14 (to be codified at 7 U.S.C. § 7992). The payment limit for direct payments is $40,000.00 per person per year. *See id.*

Direct Payment Program For Peanuts

For the 2002 crop year, producers may receive direct payments if they produced peanuts or were prevented from planting peanuts during the 1998 through 2001 crop years. *See id.* at § 1303(a), 116 Stat. 134, 170 (to be codified at 7 U.S.C. § 7953). For the 2003 through 2007 crop years, direct payments will be made to producers on a farm for which base acres and payment yields have been established. *See id.* Direct payments for peanuts, just as with direct payments for "covered commodities," are fixed and are made regardless of current price levels.

For the 2002 crop year, the direct payment amount is calculated by adding (1) the payment rate, which is thirty-six dollars per ton; (2) the payment acres of the historic peanut producer; and (3) the average payment yield for the historic peanut producer. *See id.* at § 1303(c), 116 Stat. 134, 170 (to be codified at 7 U.S.C. § 7953). For the 2003 through 2007 crop years, the payment amount is the product of (1) the payment rate, which remains at thirty-six dollars per ton; (2) the payment acres on the farm, and (3) the payment yield for the farm. *See id.* at § 1303(c), 116 Stat. 134, 170 (to be codified at 7 U.S.C. § 7953). The standards for calculating payment acres and payment yields with respect to peanut production are discussed below.

Direct payments for peanuts for the 2002 crop year must be made "as soon as practicable." *Id.* at § 1303(e), 116 Stat. 134, 170 (to be codified at 7 U.S.C. § 7953). For the 2003 through 2007 crop years, payments must be made "not later than September 30 of the calendar year in which the crop is harvested." *Id.*

Peanut producers may choose to receive advance payments of up to one-half of the total direct payment to be made in any of the 2003 through 2007 crop years. *See id.* The producers must select the month in which the advance payment will be received. *See id.* The month selected by the producer may be "any month during the period beginning on December 1 of the calendar year before the calendar year in which the crop is harvested through the month within which the direct payment would otherwise be made." *Id.* If a producer on a farm receiving an advance payment either ceases to be a producer on that farm or decreases the extent to which it shares in the risk of producing a crop on the farm before the remainder of the direct payment is made, then the producer must repay the applicable amount of the advance payment. *See id.*

Counter-Cyclical Payment Program for Peanuts

CCPs will be made for peanuts for the 2002 through 2007 crop years if the Secretary determines that the effective price for peanuts has fallen below the target price for peanuts. *See id.* at § 1304(a), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954). For the 2002 crop year, CCPs are available for producers who produced or were prevented from planting peanuts during any or all of the 1998 through 2001 crop years. *See id. See also id.* at § 1301, 116 Stat. 134, 166 (to be codified at 7 U.S.C. § 7951) (defining "historic peanut producer"). For the 2003 through 2007 crop years, CCPs will be made to producers on a farm to which payment yield and bases acres for peanuts have been established. *See* Pub. L. No. 107-171, § 1304(a), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954). The standards for calculating the payment yield and base acres for peanuts are addressed in a separate section below.

The target price for peanuts is $495.00 per ton. *See id.* at § 1304(c), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954). The effective price for peanuts is the higher of (1) the "national market price for peanuts received by producers during the 12-month marketing year for peanuts, as determined by the Secretary," plus the payment rate used to make direct payments for peanuts, which is $36.00 per ton, or (2) the national average loan rate for a marketing assistance loan, which is $355.00 per ton, plus the $36.00 per ton direct payment rate for peanuts. *See id.* at § 1304(b), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954). The payment rate used to make CCP payments in any of the 2002 through 2007 crop years is equal to the difference between the target price and the effective price. *See id.* at § 1304(d), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954).

For the 2002 crop year, the CCP payment amount is the product of (1) the payment rate used to make CCP payments, (2) the payment acres for the historic peanut producer; and (3) "the average yield for peanuts on each farm on which the . . . producer planted peanuts for harvest for the 1998 through 2001 crop years, excluding any crop year in which the produce did not plant or was prevented from planting peanuts." *Id.* at § 1304(d), 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954). *See also id.* § 1302(a)(1), 116 Stat. 134, 167 (to be codified at 7 U.S.C. § 7952). For the 2003 through 2007 crop years, the CCP payment amount is the product of (1) the payment rate, (2) the payment acres on the farm, and (3) the payment yield for the farm. *See id.* at § 1304, 116 Stat. 134, 171 (to be codified at 7 U.S.C. § 7954).

CCPs are to be made "as soon as practicable after the end of the 12-month marketing year for the [peanut] crop." *Id.* at § 1304(g), 116 Stat. 134, 172 (to be codified at 7 U.S.C. § 7954). If the Secretary determines before the end of the twelve-month marketing year that CCPs will be made for peanuts, producers may choose to receive a partial payments for that crop. *See id.*

For the 2002 through 2007 crop years, the first partial payment must not be made before October 1, "and, to the maximum extent practicable, not later than October 31, of the calendar year in which the crop is harvested." *Id.* The second partial payment must not be made before February 1 of the following calendar year. *See id.* The final partial payment must be made "as soon as practicable after the end of the 12-month marketing year for that crop." *Id.* For the 2007 crop year, the first partial payment must be made after the first six months of the marketing year for that crop. *See id.* The final partial payment for the 2007 crop year must be made "as soon as practicable after the end of the 12-month marketing year for that crop." *Id.*

The first partial payment in the 2002 through 2006 crop years cannot be greater than thirty-five percent of the projected CCP for that year. *See id.* The second partial payment cannot be greater than the difference between seventy percent of the projected CCP for that crop year and the amount of the first partial payment. *See id.* The final partial payment equals the difference between the total CCP to be made and the amount already received. *See id*.

For the 2007 crop year, the first partial payment cannot exceed forty percent of the projected CCP for the crop year. *See id.* The final partial payment equals the difference between the CCP amount to be received and the amount received in the first partial payment. *See id.* Producers on a farm who receive CCPs in excess of the actual CCP for that crop year must repay the applicable amount to the Secretary. *See id.*

Peanut producers are subject to the same planting flexibility requirements as producers of "covered commodities." *See id.* at § 1306, 116 Stat. 134, 174-75 (to be codified at 7 U.S.C. § 7956). Peanut producers must also agree that during the crop year in which direct payments and counter-cyclical payments are made they will (1) comply with the applicable conservation and wetland protection requirements; (2) comply with the planting flexibility requirements; (3) "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 . . . for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary"; and (4) control noxious weeds and maintain sound agricultural practices on the land. *Id.* at § 1305, 116 Stat. 134, 173-74 (to be codified at 7 U.S.C. § 7955).

Establishing Payment Yields for Peanuts

The Secretary must determine, "for each historic peanut producer, the average yield for peanuts on each farm on which the historic peanut producer planted peanuts for harvest for the 1998 through 2001 crop years, excluding any crop year in which the producer did not plant or was prevented from planting peanuts." *Id.* at § 1302, 116 Stat. 134, 167 (to be codified at 7 U.S.C. § 7952). In calculating this four-year average, the historic peanut producer may choose "to substitute for a farm, for not more than 3 of the 1998 through 2001 crop years in which the producer planted peanuts on the farm, the average yield for peanuts produced in the county in which the farm is located or for the 1990 through 1997 crop years." *Id.* The Secretary is required to give each peanut producer an opportunity to assign the average peanut yield "for each farm of the historic peanut producer to cropland on that farm or another farm in the same State or a contiguous State." *Id.* at § 1302(b), 116 Stat. 134, 168 (to be codified at 7 U.S.C. § 7952). The average of the yields assigned by peanut producers to a farm "shall be considered to be the payment yield for that farm for the purpose of making direct payments and counter-cyclical payments . . . ." *Id.* at § 1302(c), 116 Stat. 134, 169 (to be codified at 7 U.S.C. § 7952).

The Secretary must give notice to peanut producers regarding their opportunity to assign average peanut yields to their farms. *See id.* § 1302(b), 116 Stat. 134, 168 (to be codified at 7 U.S.C. § 7952). The notice must state that there will only be one opportunity to make the assignment and must provide information regarding how the assignments must be made "and the time periods and manner in which notice of the assignments must be submitted to the Secretary." *Id.* Historic peanut producers must have submitted their payment yield assignments to the Secretary no later than March 31, 2003. *See id.*

Establishing Base Acres for Peanuts

The Secretary must determine for each historic peanut producer the four-year average of (1) the "acreage planted to peanuts on each farm on which the . . . producer planted peanuts for harvest for the 1998 through 2001 crop years" and (2) any acreage on each farm that the "historic peanut producer was prevented from planting to peanuts during the 1998 through 2001 crop years because of drought, flood, or other natural disaster, or other condition beyond the control of the historic peanut producer, as determined by the Secretary." *Id.* at § 1302(a), 116 Stat. 134, 167 (to be codified at 7 U.S.C. § 7952). In making this determination, the Secretary must not exclude any crop year in which the producer did not plant peanuts. *See id.*

The Secretary must give each historic peanut producer an opportunity to assign the average acreage "for each farm of the historic peanut producer to cropland on that farm or another farm in the same State or a contiguous State." *Id.* § 1302(b), 116 Stat. 134, 168 (to be codified at 7 U.S.C. § 7952). However, the average acreage for a farm cannot be assigned to a farm in a contiguous state unless "the historic peanut producer making the assignment produced peanuts in that State at least 1 of the 1998 through 2001 crop years" or "as of March 31, 2003, the historic peanut producer is a producer on a farm in that State." *Id.*

Historic peanut producers must receive notice from the Secretary regarding their opportunity to assign average acreage to its farms. *See id.* The notice must state that there is only one opportunity to take the average acreage assignment, describe the limitations on acreage assignments, and provide information pertaining to the manner in which assignments must be made "and the time periods and manner in which notice of the assignments must be submitted to the Secretary." *Id.* The total number of acres assigned by producers in making the average acreage determination "shall be considered to be the farm's base acres for peanuts for the purpose of making direct and counter-cyclical payments . . . ." *Id.* at § 1302(d), 116 Stat. 134, 169 (to be codified at 7 U.S.C. § 7952). The Secretary must, however, allow adjustments in the average acreage assignment for base acres of peanuts for a farm when either (1) a conservation reserve contract with respect to the farm expires or is voluntarily terminated, or (2) cropland is released from conservation reserve program coverage by the Secretary. *See id.* at § 1302(e), 116 Stat. 134, 169 (to be codified at 7 U.S.C. § 7952).

Payment Limitations for Peanuts

The limitation for direct payments for peanuts is $40,000.00 per person, per crop year. The payment limits for CCP for peanuts is $65,000.00 per person, per year. *See id.*

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