

“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”

(U.S. House of Representatives Bill HR 6849 (PL 110-398) October 13, 2008)

LEGISLATION PASSED TO ALLOW THE AGGREGATION OF 10 ACRE BASES

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Base Acres and Benefits Under the 2008 Farm Bill

Language in the 2008 farm bill (Food, Conservation and Energy Act of 2008), seemingly eliminated farm program payment eligibility for those with program bases of 10 acres or less. Congress stated that it was their intent in passing HR 6849 on October 13, 2008 to allow farmers the ability to reconstitute, aggregate and otherwise roll these small acreages into bases that are larger than 10 acres.

What does this mean in terms of loss? The USDA reported approximately 255,000 farms in 2006 with total crop base of 10 acres or less and that these received about \$23 million in farm program payments. Nearly one-third of payments were made to farms owned or operated by socially disadvantaged or limited resource farmers or ranchers who would have been exempted from the elimination of payments under the new farm bill.¹

HR 6849 10 or Less Base Acres

Legislative language in the new farm bill did not directly address the ability of farm owners to reconstitute (combine) their smaller farms into base acreages larger than 10 acres. Accordingly the United States Department of Agriculture (USDA) published Notice (DCP-191) on July 11, 2008 effectively eliminating any DCP payments to farms with 10 acre or less of farm program eligible base for 2008.

Congress responded to USDA’s Notice by referring to language in House Report 110-627 (Conference Manager’s Report) paragraph (3) that stated:²

...The Managers intend for the Department to allow for aggregation of farms for purposes of determining the suspension of payments on farms with 10 base acres or less. The Managers expect for the Department to review farms in this category on an annual basis rather than prohibiting payments to these farms for the life of the farm bill.

USDA refused to retract the Notice and began notifying producers with less than 10 acres of base of their ineligibility for 2008 DCP payments. Congress then passed H. R. 6849 to amend the farm bill for a period of one year to allow for the opportunity of producers to aggregate small

¹ Congressional Budget Office Estimate, September 22, 2008. Jim Langley

² House Report 110 – 627, Government Printing Office: DOCID: f:hr627.110

acres. Section 1 of HR 6849 addresses the treatment of these farms.³ The DCP signup period for affected producers was extended for 45 days after the enactment of 6849.

A seeming intent of the FCEA provision prohibiting “direct” and “counter-cyclical” payments (DCP) on these base acres was to increase FSA efficiency and reduce the expenses related to small payments. However criticism related to small base acreage ownership in urban and other areas (some not actively being farmed) may have played a role in the inclusion of this prohibition.

Budgetary Issues

Given the current financial situation, 2009 budget reconciliation is at the top of the items being discussed. Reconciliation could force reductions in many agricultural programs and potentially effect provisions of the farm bill including the SURE program.

Early versions of the House bill prevented the prohibition of payments on the 10 acre or less small bases for a two year period. The Congressional Budget Office (CBO) scored the cost at \$20 million. The Senate reduced this prohibition to one year at a \$9 million cost including added technical changes to the Supplemental Revenue Assistance Program (SURE). The House subsequently agreed to the Senate version.

With the passage of HR 6849 a paygo reduction of \$9 million was necessitated for the 2008 farm bill to be budget compliant. This offset came at the expense of the Risk Management Agency’s (RMA) funding of additional infrastructure technology (new computer hardware and software). Under CBO’s scoring of the changes to the Supplemental Revenue Program (SURE) provisions included within this amendment; \$3 million is credited against the \$9 million shortfall producing a \$6 million net reduction in budget for RMA.

Changes to the Supplemental Agriculture Disaster Assistance (SURE) Program

Section 2 of HR 6849 specifically addresses provisions of the Supplemental Revenue Assistance Program (SURE).⁴ These include clarifications on how minor acreages and grazing land are to be treated under the program, and establishment of a new minimum loss threshold. In addition, the amended statute states that uninsured crops (ghost crops) planted behind failed crops will not reduce SURE benefits (as a part of the total farm income) and creates new definitions to address eligibility issues and crops of economic significance.

Technical corrections were required in the farm bill language clarifying what was intended as “normal” and “actual” production. Legislative language also requires that the value of production be calculated on insurance prices rather than actual market year average prices. Eligibility will not be based primarily on reductions in either commodity prices or yield. Losses

³ P. L 110-246 Food, Conservation, and Energy Act of 2008. Sections: 1101 (d) and 1302 (d)

⁴P. L 110-246 Food, Conservation, and Energy Act of 2008. Sections: 12033 and 15101

are now tied to both. Production is defined in dollars rather than yield per acre. Insurance prices provide a common multiplier in the definition of actual and normal production.⁵

Farms within a designated disaster county or contiguous county are eligible for SURE. The new language states that for farms not within a declared disaster county there must be a greater than 50% loss of normal production for the farm and a minimum of a 10% loss in a crop of economic significance (“due to a disaster, adverse weather or disaster-related conditions”) for farms to be eligible for SURE payments.

An additional note: By 6849, for purposes of SURE, a farm is now defined as 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). The inclusion of ‘for sale or on-farm livestock feeding’ implies commercial production systems.

Ghost Crops

Crops that are planted behind failed crops or crops planted after the crop insurance deadlines (ghost crops) were not provided for in the 2008 farm bill language. HR 6849 addresses this oversight with a provision that excludes “subsequently planted crops.” It states: “in calculating the disaster assistance program guarantee and the total farm revenue, USDA will not consider the value of any crop that is produced ineligible for crop insurance or NAP insurance or is planted on land which disaster assistance is provided except where double cropping is a normal approved practice.” This amendment clarifies and heads off a potential problem in accounting for uninsured ghost crops. .

SURE and LFP

Grazing lands, under the original FCEA provisions, were eligible for payments under both SURE and Livestock Forage Program (LFP) assistance. The farm bill language clearly intended to prevent a producer from receiving duplicate payments for the same loss under any of the programs within the Supplemental Agricultural Disaster Assistance package. In that regard, 6849 recognized that grazing lands should not be included in the SURE program by inserting an exclusionary clause in the risk management purchase requirement sub-section relating to grazing land. Removing grazing from SURE avoids the possibility of producers having to repay the government for an LFP payment should they qualify for a SURE payment a year later. However, note that this does not affect the risk management (insurance) purchase requirement for grazing lands under the LFP.

⁵ Actual production on the farm is defined by 6849 as the sum obtained by adding for each individual crop 100% of the price election for the commodity (used to calculate an indemnity for an applicable policy of insurance if the indemnity is triggered) times the quantity of the commodity produced on the farm adjusted for quality losses. For “normal production” the language in the farm bill is amended to read that it is to be determined by dividing the production of each crop by the crops planted or prevented from being planted acreage. “Normal production” for each crop is multiplied by its respective crop insurance price election (or noninsured crop assistance program (NAP) established price) used to calculate an indemnity “for an applicable policy of insurance if an indemnity is triggered.

Extension of Crop Insurance Waiver Dates

For SURE eligibility, FCEA 2008 waivers addressed risk management purchase requirements for those crops for which the fee payment date had already passed. Under this “buy in” a producer could pay an administrative fee equal to catastrophic coverage for insurable crops and the NAP crop fee per county and become eligible for the program. Congress failed to address those crops for 2009 that had deadlines prior to August 14. Therefore, producers of those crops that elected not to take coverage (primarily NAP) would not be eligible for SURE benefits for 2009. The amendment extends the waiver for those crops to the middle of January to allow a buy-in opportunity.

De Minimis Exemption from Crop Insurance Purchase

The last major modification to the SURE program by H.R. 6849 is a “de minimis” exception that directs USDA to exclude crops not of economic significance from the risk management purchase requirement under either of two conditions. Language in 6849 specifies that in cases where the “portion of total acreage of a farm” is not of economic significance or where the administrative fee for NAP coverage exceeds 10 percent of the value of that coverage a waiver is granted from the insurance/NAP purchase requirement. The Secretary is given discretion on the determination of whether the acreage is of significance or not. The amendment stipulates that USDA will not consider the value of any of these waived crops in calculating the SURE program guarantee or the total farm revenue.

Final Statement

Title XV of the farm bill was purportedly written and is under the jurisdiction of the Senate Finance Committee and not the Agricultural Committee. This may explain the need to tighten language generated by those who do not ordinarily work in agriculture.

HR 6849 allowed Congress to make clear to the USDA their intent that producers to be allowed to reconstitute 10 acre (or less) bases and to tighten the language related to SURE. Congress found it necessary to pass additional bi-partisan legislation rather than working with USDA to clarify rules related to implementation of a farm bill provision, which has been a more traditional approach. Budget reconciliation remains an opportunity to either clarify procedural issues or further confound the political dynamics.

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