



Agricultural Law Press
 Publisher/Editor
 Robert P. Achenbach, Jr.
 Contributing Editor
 Dr. Neil E. Harl, Esq.

* * * *

Issue Contents

2002 Farm Bill 81-88

Bankruptcy

Federal tax

Discharge 89

Corporations

Limitations on farm corporations 89

Federal Agricultural Programs

Cotton 89

Federal Estate and Gift Tax

Credit for tax on prior transfers 89

Disclaimers 89

Gross estate 90

Special use valuation 90

Federal Income Taxation

Accounting method 90

Court awards and settlements 91

Disaster payments 91

Employee benefits 91

Reporting 91

Returns 91

State Regulation of Agriculture

Livestock confinement facilities 91

* * * *

In the next Issue:

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

(Summary of Selected
Provisions) Part II

by Neil E. Harl

* * * *

Agricultural Law Digest

Volume 13, No. 11

May 24, 2002

ISSN 1051-2780

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002 PUB. L. NO. 107-171 (MAY 13, 2002) (SUMMARY OF SELECTED PROVISIONS) PART I

—by Neil E. Harl*

Title I—Commodity Programs

Effective date. The commodity provisions in the 2002 Act are effective with the 2002 crop year of each covered commodity through the 2007 crop year. **Act Sec. 1108.**

Conditions for receiving direct and counter-cyclical payments. The conference agreement rejected both the House and Senate provisions on sharing of payments between landlord and tenant and stipulated that “The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers” with the Secretary directed to provide “for the sharing of direct payments and counter-cyclical payments among the producers on a farm on a fair and equitable basis.” **Act Sec. 1105(d), (e).**

The 2002 Act also requires, as conditions for receipt of direct and counter-cyclical payments, that producers (1) comply with applicable conservation requirements; (2) comply with applicable wetland requirements; (3) comply with the planting flexibility requirements of Section 1106 of the Act (as to permitted crops on base acres on a farm); (4) use base acres and peanut acreage for agricultural and conserving uses, not for non-agricultural commercial or industrial use; and (5) effectively control various weeds and maintain the land in accordance with “sound agricultural practices.” **Act Sec. 1105(a)(1).**

The Act provides that a transfer or change in the interest of producers on a farm in base acres for which direct or counter-cyclical payments are made results in termination of the payments unless the transferee or owner agrees to assume the obligations of participation in the program. If a producer dies or becomes incompetent, the Secretary is to prescribe in regulations how the payments are to be made. **Act Sec. 1105(b).**

Establishing payment yield. The Secretary is required to establish payment yields for each farm for each covered commodity for the purpose of making direct payments and counter-cyclical payments. **Act Sec. 1102(a).** The yield for a farm, in general, is the payment yield established for the 1995 crop of the covered commodity as adjusted by the Secretary to account for any additional yield payments made with respect to the crop. **Act Sec. 1102(b).** If no yield is available, the Secretary is to establish an appropriate payment yield taking into account the payment yields applicable to the commodity for similar farms in the area but before the yields are updated to reflect the actual yield per planted acre for 1998 through 2001. **Act Sec. 1102(c).**

The payment yield for a farm for an oilseed is to equal the product of the following

- the average yield for the oilseed for the 1998 through 2001 crops and
- 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. **Act Sec. 1102(d)(2).**

In the event 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 is to assign a yield for that crop year equal to 75 percent of the county yield for purposes of determining the average yield for the 1998 through 2001 crop years. **Act Sec. 1102(d)(3).**

If the owner of a farm elects to update the crop acreage base for all covered commodities using the average of the planted and prevented from planting acreage for 1998 through 2001, the owner has a one-time opportunity to elect to partially update the payment yields that would be used in calculating any counter-cyclical payments for covered commodities on the farm. If yields are updated for counter-cyclical payments for one

* Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.

covered commodity, yields must be updated for all covered commodities on the farm. **Act Sec. 1102(e)(1).**

In the event the owner of a farm elects to update yields for payments, the counter-cyclical payment yield for a covered commodity is to equal the yield determined under either of the following

- The sum of the payment yield applicable for direct payments for the covered commodity on the farm and 70 percent of the difference between the average yield per planted acre for the crop of the covered commodity on the farm for 1998 through 2001 crop years and the payment yield applicable for direct payments for the covered commodity on the farm, or

- 93.5 percent of the average yield per planted acre for the crop of the covered commodity for the farm for the 1998 through 2001 crop years, excluding any crop year in which the acreage planted to the crop of the covered commodity was zero. **Act Sec. 1102(e)(3).** The owner of a farm may not elect one method for one covered commodity and the other method for other covered commodities on the farm. **Act Sec. 1102(e)(5).**

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 is to assign a yield for that crop year equal to 75 percent of the county for the purpose of determining the average yield. **Act Sec. 1102(e)(4).**

The Conference Report (but not the statute) states that the Secretary is to recognize that producers planting crops for grazing that will be included as base acreage may be unable to furnish production evidence similar to that furnished by producers who harvest crops for grain. For those owners intending to partially update a crop's counter-cyclical yield in that situation, the Secretary is to equitably determine the yield on the grazed acreage to be used for purposes of proven yields by either assigning a yield based on the actual production for that year on similar farms that harvested grain or other method determined appropriately by the Secretary. **Conf. Report on Act Sec. 1102.**

Establishment of base acres and payment acres for a farm. For the purpose of making direct and counter-cyclical payments to a farm, the Secretary is to give an owner of the farm an opportunity to elect the method by which the base acres of all covered commodities on the farm are to be determined. **Act Sec. 1101(a)(1).**

Subject to the provision requiring the base acreage to be determined based on a four-year average, including the years in which the crop was not planted, and the treatment of multiple plantings or prevented planting on the same acreage, owners are to use the four-year average of the following

- Using the acreage planted on the farm to covered commodities for harvest, grazing, haying, silage or other similar purposes for the 1998 through 2001 crop years including any acreage on the farm; any acreage that the producers were prevented from planting to covered commodities because of drought, flood or other natural disaster or other condition beyond the control of the producers, as determined by the Secretary, or

- Contract acreage that would be used to calculate the fiscal year 2002 production flexibility contract payments and the four-year acreage for each oilseed produced on the farm for the 1998 through 2001 crop years. **Act Sec. 1101(a)(1)(A).**

Note that the Conference Report states the above differently

"Subject to the provision requiring the base acreage to be determined based on a four-year average, including the years in which the crop was not planted, and the treatment of multiple

plantings or prevented planting on the same acreage, owners may choose the farm's acreage base by either: (1) using the acreage planted on the farm to covered commodities for harvest, grazing, haying, silage, or other similar purposes for the 1998 through 2001 crop years including any acreage on the farm that the producers were prevented from planting to covered commodities because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, as determined by the Secretary or (2) contract acreage that would be used to calculate the fiscal year 2002 production flexibility contract payments and the four-year average for each oilseed produced on the farm in the 1998 through 2001 crop years." **Conf. Report under Act Sec. 1101(a).**

The Secretary is not to exclude any crop year in which a covered commodity was not planted for purposes of determining a four-year average. **Act Sec. 1101(a)(2)(B).**

The owner of a farm may increase the eligible acreage for an oilseed on the farm by reducing the production flexibility contract acreage for one or more covered commodities on an acre-for-acre basis, except that the total base acreage for each oilseed on the farm may not exceed the four-year average of each oilseed. **Act Sec. 1101(a)(2)(C).**

For purposes of determining the four-year average of acreage planted or prevented from being planted during the 1998 through 2001 crop years to covered commodities, acreage that was planted or prevented from being planted that was devoted to another covered commodity in the same crop year may only be used in the base calculation after the owner determines whether the initial commodity or the subsequent commodity, but not both, will be used. **Act Sec. 1101(a)(4).**

As soon as practicable after enactment, the Secretary is to provide notice to owners of farms regarding their opportunity to make the applicable base election. The notice is to include

- Notice that the opportunity of an owner to make the election is being provided only once and

- Information regarding the manner in which the election must be made and the time periods and manner in which notice of the election must be submitted to the Secretary. **Act Sec. 1101(b)(1).**

The owner may make an election of base acres only once and must provide notice of the election to the Secretary within the time period and in the manner prescribed by the Secretary. **Act Sec. 1101(b)(2).** If an owner fails to make an election of base acreage, or fails to notify the Secretary, the owner is deemed to have chosen base acres reflecting the production flexibility contract acreage, plus oilseeds if applicable. **Act Sec. 1101(c).** The election made by the producer applies to all covered commodities on the farm. **Act Sec. 1101(d).** The Secretary is to provide for an appropriate adjustment in the base acres for covered commodities for a farm whenever land under a conservation reserve contract expires, is voluntarily terminated or is released by USDA. **Act Sec. 1101(e)(1).**

For the crop year in which a base acre adjustment is first made, the farm owner is to elect to receive either direct payments and counter-cyclic payments with respect to the acreage added to the farm or a prorated payment under the conservation reserve contract, but not both. **Act Sec. 1101(e)(2).** Payment acres for both the direct and counter-cyclical payments are to equal 85 percent of the base acres. **Act Sec. 1101(f).**

The sum of base acres, base acres for peanuts, and acreage enrolled in CRP, WRP and other conservation programs which restrict or prohibit the production of an agricultural commodity

cannot exceed the actual cropland acreage on the farm. If it does, the Secretary is to reduce the base acres so that the total does not exceed the actual cropland acreage. **Act Sec. 1101(g)(1).**

The owner of the farm is to be given the opportunity to select the base acres against which the reduction is to be made. **Act Sec. 1101(g)(3).** The owner of a farm may reduce, at any time, base acreage for any covered commodity for the farm provided the reduction of base acreage is permanent. **Act Sec. 1101(h).**

The Conference Report states that the Secretary is to allow owners of a farm who did not hold a production flexibility contract under the FAIR Act of 1996 to elect to calculate base acreage for planting history on the farm for crop years 1998-2001. The intent is to provide the opportunity to update base acreage to reflect a more recent planting history, to allow owners not holding production flexibility contracts to receive farm program benefits under the 2002 Act and to allow owners holding production flexibility contracts the opportunity to retain their base acreage and add oilseeds in a "limited manner."

The Conference Managers expect the Secretary to recognize that, although the owner of the farm will be allowed the opportunity to make the applicable base election under Section 1101, it is important that other producers on the farm be notified of the acreage options available to the owner. Therefore, in addition to providing notice to the owner of the farm, notice is to also be provided to operators or producers on the farm of the owner's opportunity to elect the method in which to calculate base acres.

The Conference Managers are aware that production flexibility contract acreage was not protected on acreage enrolled in the CRP during CRP signup 15 or later. The Conference Managers intend that the Secretary develop a method that provides for the restoration of base acreage on farms that permanently reduced contract acreage because of CRP enrollment. Since soybeans and other oilseeds did not have contract acreage prior to the 2002 Act, the Secretary is expected to treat soybeans and other oilseeds in a manner similar to and consistent with other covered commodities. **Conf. Report under Act Sec. 1101.**

Payments available under the Act. For easy reference, the commodity loan rates, direct payments and target price levels for selected crops are shown in Table 1.

Table 1. Commodities

Loan Rates, Direct Payments and Target Prices for Covered Commodities					
	Loan Rate		Direct Payment	Target Price	
	2002-2003	2004-2007	2002-2007	2002-2003	2004-2007
Corn (bu)	\$1.98	\$1.95	\$0.28	\$2.60	\$2.63
Sorghum (bu)	\$1.98	\$1.95	\$0.35	\$2.54	\$2.57
Barley (bu)	\$1.88	\$1.85	\$0.24	\$2.21	\$2.24
Oats (bu)	\$1.35	\$1.33	\$0.024	\$1.40	\$1.44
Wheat (bu)	\$2.80	\$2.75	\$0.52	\$3.86	\$3.92
Soybeans (bu)	\$5.00	\$5.00	\$0.44	\$5.80	\$5.80

Direct payments. Direct payments are to be made to eligible producers on farms for which payment yields and base acres are established for each of the 2002 through 2007 crop years at the payment rates shown in Table 1. **Act Sec. 1103(a), (b).** The amount of the direct payment is to equal the product of the payment rate of the applicable base crop, the payment acres and the payment yield. **Act Sec. 1103(c).**

For 2002, the Secretary is directed to make payments as soon as practicable after the date of enactment of the Act; for 2003 through 2007 the direct payments are not to be paid before

October 1 of the calendar year in which the crop of the covered commodity is harvested. **Act Sec. 1103(d)(1).**

A producer may elect to receive up to 50 percent of the direct payment in advance for any of the 2003 through 2007 crop years. The payments may be made in 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 the payment would otherwise be made. The producer may change the selected month for a subsequent crop year by providing advance notice to the Secretary. **Act Sec. 1103(c)(2).**

If a producer who receives an advance direct payment ceases to be a producer or changes shares before the date the remainder of the direct payments are to be made, the producer must repay the applicable amount of the advance payment. **Act Sec. 1103(c)(3).**

The Conference Managers state in the Conference Report that the Managers are aware that producers that elect to receive up to 50 percent of an advance direct payment might cease to be a producer on the farm before the date the remainder of the direct payment is made. The Managers assume the Secretary recognizes that different reasons exist for a producer ceasing to be a producer on a farm. Those reasons would include bankruptcy, foreclosure and similar situations that would preclude the producer from repaying the advance direct payment. Specifically, the Managers would not intend for this provision to apply in situations where a producer with winter wheat harvested a crop or failed to harvest the crop for weather-related reasons beyond their control and the acreage was subsequently under the control of another producer that intended to plant a subsequent crop, or other similar situations. Conversely, the Managers expect that there are a number of situations where the producer receiving the advance direct payment ceases to be a producer on the farm and should refund the advance direct payment. **Conf. Report under Act Sec. 1103.**

Note on constructive receipt. Whenever federal farm program payments are payable at the election of the owner or producer in an earlier taxable year, as is the case in the 2002 Act, the Internal Revenue Service has asserted the doctrine of constructive receipt to make the payments taxable in the earliest year the payments could have been received even though the election to receive the funds earlier was not made. E.g., Rev. Rul. 68-44, 1968-1 C.B. 191. A similar situation existed under the FAIR Act of 1996 and Congress enacted legislation in 1998 making payments under that legislation not subject to constructive receipt. Pub. L. No. 105-277, Sec. 2012, 105th Cong., 2d Sess. (1998). Similar legislation to Pub. L. No. 105-277 is recommended to the Congress.

Counter-cyclical payments. Counter-cyclical payments are to be made to producers on farms for which payment yields and base acres are established with respect to a covered commodity whenever the "effective" price is less than the "target" price. **Act Sec. 1104(a).**

The "effective" price for a covered commodity is equal to the sum of (1) the higher of the national average market price during the 12-month marketing year for the commodity or the national average loan rate for a marketing assistance loan for the commodity and (2) the payment rate for direct payments for the commodity. **Act Sec. 1104(b).** The loan rate and target price appear in Table 1 *supra*. **Act Sec. 1104(c).**

The payment rate for counter-cyclical payments is equal to the difference between the target price and the effective price for the commodity. **Act Sec. 1104(d).** The payment amount for counter-cyclical payments is the product of the payment rate, the payment

acres and the payment yield or updated payment yield, depending upon the election of the owner of the farm. **Act Sec. 1104(e).** The counter-cyclical payments are to be made “as soon as practicable” after the end of the 12-month marketing year for the covered commodity. **Act Sec. 1104(f)(1).**

If the Secretary estimates that counter-cyclical payments will be required, the Secretary is to give producers the option to receive partial payments. For partial payments for any of the 2002 through 2006 crop years, the first partial payment for the crop is to be made not earlier than October 1 and, to the maximum extent practicable, not later than October 31 of the calendar year in which the crop is harvested. The second partial payment is to be made not earlier than February 1 of the next calendar year. The third and final partial payment is to be made as soon as practicable after the end of the 12-month marketing year for the covered commodity. **Act Sec. 1104(f)(3)(A).**

For the 2002 through 2006 crop years, the first partial payment may not exceed 35 percent of the projected counter-cyclical payment for the covered commodity for the crop year. The second partial payment may not exceed the difference between 70 percent of the revised projection of the counter-cyclical payment for the crop of the covered commodity and the amount of the first partial payment. The final payment is to equal the difference between the actual counter-cyclical payment to be made to the producer and the amount of the first and second partial payments. **Act Sec. 1104(f)(4)(A).**

For the 2007 crop year, the first partial payment is to be made after completion of the first six months of the marketing year and the second and final partial payments are to be made as soon as practicable after the end of the 12-month marketing year for the covered commodity. **Act Sec. 1104(f)(3)(B).**

The first partial payment, for the 2007 crop year, may not exceed 40 percent of the projected counter-cyclical payment. The final payment is to equal the difference between the actual counter-cyclical payment to be made to the producer and the amount of the partial payment. **Act Sec. 1104(f)(4)(B).** The producer must repay the amount, if any, by which the partial payments exceed the counter-cyclical payment to be made in that crop year. **Act Sec. 1104(f)(5).**

Required producer agreement. Before producers may receive direct payments or counter-cyclical payments, the producers must agree, in exchange for the payments, to comply with applicable conservation requirements, applicable wetland protection requirements, planting flexibility requirements, use the base acres for an agricultural or conserving use and not for a non-agricultural commercial or industrial use and, on non-cultivated land attributable to the base acres, control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices. **Act Sec. 1105(a)(1).**

The Secretary, at the request of the transferee or owners, may modify these requirements if the modifications are consistent with the objectives of this provision. **Act Sec. 1105(a)(3).**

A transfer of or change in the interest of a producer in base acres for which direct or counter-cyclical payments are made is to result in the termination of the payments with respect to base acres unless the transferee or owner agrees to assume all obligations under conservation, wetlands, planting flexibility, agriculture land use provisions and noxious weed control provisions. The termination date is determined by the Secretary. **Act Sec. 1105(b)(1).**

The Conference Report states that when there is a transfer (or change in) the interest of a producer in base acres for which direct

or counter-cyclical payments are made, the intent is that the time frame for the succession to occur is to be “farmer-friendly.” **Conf. Report Under Act Sec. 1105(a).** If a producer entitled to a direct or counter-cyclical payment dies, becomes incompetent or is otherwise unable to receive payment, the payments are to be made as provided in regulations. **Act Sec. 1105(b)(2).**

A producer who receives direct payments, counter-cyclical payments or marketing loan benefits is required to submit annual acreage reports with respect to all land on the farm. **Act Sec. 1105(c).**

The Conference Report states that acreage reports provide important information for assisting in determining the eligibility of land to be accepted into the CRP. The Managers are aware that, in prior years, penalties have been imposed on producers submitting acreage reports found later to be inaccurate. The Managers understand that, under prior acreage limiting and acreage reduction programs, there was a need for very accurate reporting. However, under the 2002 Act, with the exception of determining the amount of fruits, vegetables and wild rice planted on base acreage, there is no need or requirement for that level of accuracy. Therefore, the Managers do not intend for any penalty to be applicable to inaccurate acreage reports on covered commodities or peanuts provided the producer has made a good faith effort accurately to report acreage. **Conf. Report Under Act Sec. 1105(c).**

The Secretary is to provide “adequate safeguards” to protect the interests of tenants and sharecroppers. **Act Sec. 1105(d).** Direct and counter-cyclical payments are to be shared among producers on a farm on a fair and equitable basis.” **Act Sec. 1105(e).**

Planting flexibility. In general, any commodity or crop may be planted on base acres on a farm. **Act Sec. 1106(a).**

However, the planting of fruits and vegetables produced on trees or other perennials is prohibited on base acres and the planting of fruits, vegetables (other than lentils, mung beans and dry peas) and wild rice is prohibited on base acres unless the commodity, if planted, is destroyed before harvest. **Act Sec. 1106(b).**

Those restrictions do not apply

- In any region where there is a history of double-cropping of covered commodities with the commodities specified in the Act Sec. 1106(b);

- On a farm with a history of planting the commodities specified in the Act Sec. 1106(b) except that direct payments and counter-cyclical payments are to be reduced by an acre for acre planted to such an agricultural commodity; or

- On a farm with a planting history of a commodity specified in the Act Sec. 1106(b) except that the quantity planted may not exceed the average annual planting history of the commodity on the farm in the 1991-1995 period or 1998-2001 crop years (excluding crop years in which no plantings were made) and direct payments and counter-cyclical payments are reduced by an acre for each acre planted to such agricultural commodity. **Act Sec. 1106(c).**

For the 2002 crop year, if the calculation of base acres results in total base acres for a farm in excess of the contract acreage for the farm that was used to calculate the fiscal year 2002 payment, the planting of fruits, vegetables and wild rice on new base acres is allowed, provided the direct and counter-cyclical payments for the 2002 crop year are reduced on an acre-for-acre basis. **Act Sec. 1106(d).**

Payment authority under the FAIR Act of 1996. The authority to make production flexibility contract payments under the FAIR Act of 1996 is terminated as of the date of enactment of

the 2002 Act unless requested by a producer who is a party to the contract. **Act Sec. 1107(a).** In that event, the amount of the producer's direct payment for fiscal year 2002 is reduced by the amount of the production flexibility contract payment. **Act Sec. 1107(b).**

Marketing Assistance Loans.

Eligibility. Non recourse marketing assistance loans are to be made available for producers for commodities produced on the farm including extra long staple cotton, wool, mohair, honey, dry peas, lentils and small chick peas for each of the 2002 through 2007 crop years. **Act Sec. 1201(a).** Producers on a farm are eligible for a marketing assistance loan for any quantity of a loan commodity produced on the farm. **Act Sec. 1201(b).**

The Conference Report states that loan commodities harvested for hay and silage and unshorn pelts are eligible only for a loan deficiency payment. **Conf. Report Under Act Sec. 1201.**

Producers that would otherwise be eligible but for the fact that the covered commodity is commingled with covered commodities of other producers in facilities unlicensed for the storage of commodities are eligible if the producer obtaining the loan agrees to redeem the loan collateral immediately. **Act Sec. 1201(c).** Producers are required to comply with applicable conservation requirements and applicable wetland protection requirements as a condition to receiving marketing loan assistance. **Act Sec. 1201(d).**

Authority for marketing assistance loans under the FAIR Act of 1996 cannot be used for the 2002 crop of loan commodities. **Act Sec. 1201(e).**

The Conference Report states that, beginning with the 2002 crop, the Managers intend for marketing loan and loan deficiency program benefits to be made available for all farms producing loan commodities regardless of whether the farm does or does not have base acreage. **Conf. Report Under Act Sec. 1201.**

Loan rates. The loan rates are as shown in Table 1 *supra*. **Act Sec. 1202.**

The Conference Report states that the Managers anticipate that the Secretary will take advantage of the change in national average loan rates to review and adjust, as appropriate, the county loan rates. To the extent practicable, for purposes of making loans and loan deficiency payments, the Secretary should designate loan rates "in those units that are consistent with the units in common usage in the industry." The Conference Report also states that the provision for non-graded wool be made available for wool that has not been objectively measured for fiber diameter (micron) and yield. Documentation of objective measurement is commonly known as a core test, which is available through laboratory analysis. It is the intent of the Managers that the Secretary provide the graded wool rate to wool that meets the terminology used by the wool industry to define graded wool, such as core tested. **Conf. Report Under Act Sec. 1202.**

Term of loans. The term for marketing assistance loans is nine months beginning on the first day of the first month after the month in which the loan is made. **Act Sec. 1203(a).** The Secretary may not extend the term of a marketing assistance loan. **Act Sec. 1203(b).**

Repayment of loans. Producers of loan rate commodities (other than upland cotton, rice and extra long staple cotton), including wheat, corn, grain sorghum, barley, oats, soybeans, other oilseeds, dry peas, lentils, small chickpeas, wool, mohair and honey, are to repay a marketing assistance loan at a rate that is the lesser of the loan rate for the commodity plus interest or a rate that the Secretary determines will minimize forfeitures, accumulations of

stocks, and storage costs; will allow the commodity to be marketed freely and competitively; and will minimize discrepancies in marketing loan benefits across state boundaries and county boundaries. **Act Sec. 1204(a).**

Producers of upland cotton and rice are to repay a marketing assistance loan at a rate that is the lesser of the loan rate for the commodity plus interest or the prevailing "world market price" (adjusted to U.S. quality and location), as determined in accordance with Section 163 of the FAIR Act of 1996. **Act Sec. 1204(b).**

Producers of extra long staple cotton can repay a marketing assistance loan at the loan rate plus interest as determined in accordance with Section 163 of the FAIR Act of 1996. **Act Sec. 1204(c).**

The Secretary is to prescribe by regulation the formula to determine the prevailing world market price for upland cotton and rice and a mechanism to announce the price periodically. **Act Sec. 1204(d).**

Beneficial interest. For the 2001 crop only, in the case of a producer who marketed or lost beneficial interest before repaying the loan, the Secretary is to permit the producer to repay the loan at the appropriate repayment rate that was in effect for the loan commodity as of the date the producer lost beneficial interest if the Secretary determines the producer acted in good faith. **Act Sec. 1204(f).**

Conference Report on minor crop loan and repayment rates.

The Conference Report states that, in determining loan repayment rates for loan commodities other than upland cotton and rice, the Secretary is to consider alternative methodologies, including establishing the Posted County Prices for grains and oilseeds at levels that reflect market prices at both terminal markets for counties with two terminal markets. The Secretary is expected to determine whether assigning equal weight to two terminal markets will better reflect local market prices than the current system of using the higher of the two terminal markets to establish the Posted County Price.

In implementing the marketing assistance loan for minor oilseeds, the Secretary is expected to establish a single sunflower loan rate in each county for oil-type, confection and other-type sunflowers combined. The Secretary is also expected to continue to announce weekly loan repayment rates for sunflowers reflecting local market prices that minimize potential loan forfeitures. Accordingly, sunflower seed loan repayment rates should reflect oil-type sunflower seed local market prices.

The Conference Report notes that a marketing assistance loan program has been established for pulse crops—dry peas, lentils and small chickpeas. The loan rate for dry peas is based on U.S. feed pea prices; the loan rate for lentils is based on the price of U.S. No. 3 lentils; and the loan rate for small chickpeas is based on the prices of chickpeas that drop below a 20/64 screen. Accordingly, the Secretary is expected to calculate regional pulse loan rates and repayment rates based on the prices of feed peas, No. 3 lentils and chickpeas that drop below a 20/64 screen. **Conf. Report Under Act Sec. 1204.**

Loan deficiency payments. The 2002 Act provides for the continuation of loan deficiency payments to producers who, although eligible for a marketing assistance loan, agree to forego a loan in favor of receiving an LDP. **Act Sec. 1205(a)(1).**

Non-graded wool in the form of unshorn pelts, hay and silage derived from a loan commodity are not eligible for a marketing assistance loan. However, the commodities are eligible for loan

deficiency payments when unshorn pelts, hay or silage are derived from a loan commodity. **Act Sec. 1205(a)(2).**

The loan deficiency payment is determined by multiplying the payment rate by the quantity of the loan commodity produced, excluding any commodity for which the producer obtained a loan. **Act Sec. 1205(b).** The payment rate is the amount by which the loan rate exceeds the rate at which the loan may be repaid. **Act Sec. 1205(c)(1).**

The loan deficiency payment for unshorn pelts is based on the rate in effect for ungraded wool and the LDP for hay and silage is based on the loan commodity from which the hay and are derived. **Act Sec. 1205(c)(2), (3).** Loan deficiency payments do not apply to long staple cotton. **Act Sec. 1205(d).** A loan deficiency payment rate is to be based on the date the producer requests the payment. **Act Sec. 1205(e).**

For the 2002 crop of wool, mohair, honey, dry peas, lentils and small chickpeas (the "first-time" loan commodities) that would be eligible for a LDP except for the fact that the producer lost beneficial interest in the crop prior to the date of publication of the regulations implementing this provision, the producers are eligible for a LDP payment as of the date the producer marketed or otherwise lost beneficial interest in the crop. **Act Sec. 1205(f)(1).**

The legislation provides for loan deficiency payments on crop year 2001 commodities on farms that do not have an AMTA contract. The Secretary is to make payment on the date the producer marketed or lost beneficial interest in the loan commodity or the date the producer requested payment. **Act Sec. 1205(f)(2).**

Payments in lieu of LDPs for grazed acreage. For the 2002 through 2007 crop years, for a producer who would be eligible for a LDP for wheat, barley or oats, but who elects to use acreage planted to wheat, barley or oats for the grazing of livestock, a LDP payment may be made if the producer enters into an agreement to forego any other harvesting of the wheat, barley or oats on that acreage. **Act Sec. 1206(a)(1).**

Likewise, for the 2002 through the 2007 crop years, a producer on a farm who uses acreage planted to triticale for the grazing of livestock may receive a LDP if the producer enters into an agreement to forego any other harvesting of triticale on that acreage. **Act Sec. 1206(a)(2).**

The amount of payment is equal to the amount determined by multiplying the LDP payment rate in effect, as of the date of the agreement, for the county in which the farm is located, by the payment quantity (determined by multiplying the quantity of the grazed acreage on the farm with respect to which the producer elects to forego harvesting of wheat, barley or oats and the payment yield in effect for the calculation of direct payments with respect to that loan commodity on the farm or, in the case of a farm without a payment yield for that loan commodity, an appropriate yield established by the Secretary). **Act Sec. 1206(b)(1).** A similar formula is prescribed for the triticale LDP. **Act Sec. 1206(b)(2).**

The Conference Report states that, for purposes of determining the LDP on triticale acreage, the Secretary is to take into account the predominant class of wheat grown in the county in which the farm is located. **Conf. Report Under Act Sec. 1206(b)(2).**

The legislation makes it clear that, for the 2002 through the 2007 crops of wheat, barley, oats or triticale planted on acreage that the producer elects to use for the grazing of livestock, the producer is not eligible for a Federal Crop Insurance Act indemnity. **Act Sec. 1206(d).**

Special marketing loan for upland cotton. Through July 31, 2008, the special marketing loan provisions for upland cotton remain unchanged including provisions relating to cotton user marketing certificates, special impact quota and the limited global import quota for upland cotton. **Act Sec. 1207.**

Special competitive provisions for extra long staple cotton. Through July 31, 2008, the special competitive provisions for extra long staple cotton remain unchanged including provisions relating to the competitiveness program, payments under the program, eligibility and the amount and form of payment. **Act Sec. 1208.**

Recourse loans for high moisture feed grains and seed cotton and other fibers The availability of recourse loans for high moisture feed grains and seed cotton remains unchanged for the 2002 through 2007 crops. Loans are determined by multiplying the acreage in a high moisture state on the farm by the lower of the farm program payment yield used for counter-cyclical payments or the actual yield. **Act Sec. 1209.**

Dairy

Milk Price Support Program. The Milk Price Support Program is authorized from June 1, 2002, through December 31, 2007, at a rate of \$9.90/cwt on a 3.67 percent milk fat basis. **Act Sec. 1501(a), (b).**

The purchase prices for butter and nonfat dry milk powder may be allocated so as to minimize expenditures from the Commodity Credit Corporation. The Secretary may modify purchase prices for butter and nonfat dry milk not more than twice per year. **Act Sec. 1501(d).**

National dairy market loss payments. The legislation establishes a national payment program using a payment formula under which participating dairy producers will receive monthly payments equal to 45 percent of the difference between \$16.94 and the price per hundredweight of Class I fluid milk in Boston under the applicable federal milk marketing order. No payments will be made for months during which the fluid milk price in Boston is \$16.94 or higher. **Act Sec. 1502(b), (c).**

Producers on a "single dairy operation" may receive payments on no more than 2.4 million pounds of milk marketed per year. **Act Sec. 1502(d)(2).** The Secretary is to issue regulations to insure that a producer does not "reconstitute" a dairy operation for the sole purpose of receiving additional payments. **Act Sec. 1502(d)(3).**

On that point, the Conference Report states that previous Dairy Market Loss Assistance Programs provided discretion to the Secretary to limit payments to individual dairy operations. It is the intent of the Managers that this program be administered in the same manner, thereby limiting payments on an operation-by-operation basis. Accordingly, a producer might qualify for separate limits on separate operations. The Managers intend that, in carrying out this section, the Secretary utilize information available through the Agricultural Marketing Service monthly milk marketings by producers. **Conf. Report Under Act Sec. 1502(d).**

Payments will be made not later than 60 days after the end of each month for which a payment is made. Retroactive payments will be made covering market losses due to low prices since December 1, 2001. **Act Sec. 1502(e), (f).** Producers are to enter into contracts covering eligible production marketed by the producers on the dairy farm during the period starting with the first day of the month the contract is entered into and ending on September 30, 2005. **Act Sec. 1502(g)(1).**

Violations may result in contract termination or repayment of a portion of the payments received. **Act Sec. 1502(g)(2).**

The Secretary is charged with conducting a study of the effects of terminating all federal programs relating to price support and supply management for milk and granting the consent of Congress to cooperative efforts by states to manage milk prices and supply. **Act Sec. 1508(a).**

Administration of programs (selected provisions)

Effect of 1938 and 1949 legislation. The legislation suspends the relevant provisions of the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949 applicable otherwise to the 2002 through 2007 crops of covered commodities. **Act Sec. 1602.**

Payment limitations. Under the 2002 Act, the total direct and counter-cyclical payments to a “person” for corn, grain sorghum, barley, oats, wheat, soybeans, minor oilseeds, cotton and rice per crop year may not exceed \$40,000 and \$65,000, respectively. **Act. Sec. 1603(a), amending 7 U.S.C. § 1308.** The payment limitation for peanuts for direct and counter-cyclical payments is also \$40,000 and \$65,000, respectively. **Act. Sec. 1603(a), amending 7 U.S.C. § 1308.** The limit on marketing loan gains and loan deficiency payments for corn, grain sorghum, barley, oats, wheat, soybeans, minor oilseeds, cotton, rice, lentils, dry peas and small chickpeas that a “person” is entitled to receive is \$75,000. **Act. Sec. 1603(a), amending 7 U.S.C. § 1308.**

The legislation provides for a separate marketing loan gain and loan deficiency payment limitation for peanuts, wool, mohair, and honey of \$75,000 per person. **Act. Sec. 1603(a), amending 7 U.S.C. § 1308.**

The 2002 Act contains a limitation based on “adjusted gross income” which specifies that an individual or entity is not eligible for any program benefit during a crop year if the average adjusted gross income of the individual or entity exceeds \$2,500,000 unless not less than 75 percent of the average adjusted gross income of the individual or entity is derived from farming, ranching or forestry operations. **Act. Sec. 1604, adding 7 U.S.C. § 1308-4.**

The benefits limited by the adjusted gross income limit are direct payments, counter-cyclical payments, marketing loan gains, LDPs and conservation (Title II of the 2002 Act and Title XII of the Food Security Act of 1985 (conservation)). **Act. Sec. 1604, adding 7 U.S.C. § 1308-4.** Note that the reference in the Act to Sec. 1001(d) of the Food Security Act of 1985 appears to be in error. It is believed to be Sec. 1001(1)(D) of the Food Security Act of 1985.

For benefits made in a crop year to an entity, general partnership or joint venture, the amount of the benefit is to be reduced by an amount which is commensurate with the direct and indirect ownership interest in the entity, general partnership or joint venture of each individual who has an average adjusted gross income in excess of the \$2,500,000 limitation for the average of the three preceding crop years. **Act. Sec. 1604, adding 7 U.S.C. § 1308-4.**

To comply with the limitation, an individual or entity must provide to the Secretary a certification by a certified public accountant “or another third party that is acceptable to the Secretary” that the average adjusted gross income of the individual or entity does not exceed the limitation. **Act. Sec. 1604, adding 7 U.S.C. § 1308-4.**

Note, however, that this limitation applies only during the 2003 through 2007 crop years. **Act. Sec. 1604, adding 7 U.S.C. § 1308-4.**

Commission on Payment Limits. The legislation provides for a “Commission on the Application of Payment Limitations for Agriculture.” The Commission is to report not later than one year after enactment of the 2002 Act. **Act Sec. 1605.**

Assignment of payments. Under the 2002 Act, producers may assign any payments received under the Act by providing notice in the manner prescribed by the Secretary. **Act Sec. 1612.**

Hard white wheat incentive payments. The legislation provides for the 2003 through 2005 crop years a total of \$20 million in incentive payments to growers who demonstrate that buyers and end-users are available for the wheat to be covered by the incentive payment. **Act Sec. 1616.**

Market loss assistance for apple and onion producers. The legislation provides \$94 million to apple producers for the loss of markets during the 2000 crop year and \$10 million as a grant to onion producers in Orange County, New York, who suffered losses to onion crops during one or more of the 1996 through 2000 crop years. **Act Secs. 10105, 10106.**

Assistance for livestock producers. Authorization is included (but funds are not appropriated) for assistance to livestock producers in the form of indemnity payments for mortality losses, livestock feed assistance for feed shortages, compensation for sudden increases in production costs and such other assistance as the Secretary considers appropriate. **Act Sec. 10104.**

Availability of market loss assistance and emergency assistance to persons who failed to receive assistance. The legislation provides authority to use CCC funds for paying market loss assistance and emergency assistance to persons who failed to receive assistance before October 1, 2001. **Act Sec. 1617.**

Title II—Conservation

Conservation Security Program. The legislation establishes the Conservation Security Program (CSP) for fiscal years 2003 through 2007 to assist producers in implementing various conservation practices as applicable for each individual operation. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(a).**

Eligible lands. Eligible lands include private cropland, grassland, prairie land, pasture land, private forest land that is an incidental part of a farming operation and land under the jurisdiction of an Indian tribe. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(b)(2).** Lands enrolled in the CRP, WRP or the Grasslands Reserve Program (GRP) are not eligible for enrollment nor are lands that have not been cropped for more than four out of the past six years. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(b)(3).**

Allowed economic use. Producers are allowed to make economic uses of the land that—(1) maintain the agricultural nature of the land and (2) are consistent with the natural resource and conservation objectives of the program. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(b)(4).**

Tiers of conservation security contracts. The Secretary is to establish and offer to producers three tiers of conservation contracts under which payments may be received. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(d)(1)(A).**

The tiers are specified in the 2002 Act as follows

- A tier I CSP contract is to be for a period of five years and includes conservation practices appropriate for the agricultural operation that, at a minimum, address at least one “significant resource of concern for the enrolled portion of the agricultural operation at a level that meets the appropriate non degradation standard” and covers “active management of the conservation

practices that are implemented or maintained under the conservation security contract.”

- A tier II CSP contract is to be for a period of not less than five nor more than 10 years and is to include conservation practices appropriate for the agricultural operation that, at a minimum, address at least one significant resource of concern for the entire agricultural operation at a level that meets the appropriate non degradation standard and covers active management of conservation practices that are implemented or maintained under the conservation security contract.

- A tier III CSP contract is to be for a period of not less than five nor more than 10 years and includes conservation practices appropriate for the agricultural operation that, at a minimum, apply a resource management system that meets the appropriate non degradation standard for all resources of concern of the entire agricultural operation and covers active management of conservation practices that are implemented or maintained under the conservation security contract. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(d)(5).**

Permissible practices. Conservation practices that may be implemented by a producer under a conservation security contract include (a) nutrient management; (b) integrated pest management; (c) water conservation and water quality management; (d) grazing, pasture and rangeland management; (e) soil conservation, quality and residue management; (f) invasive species management; (g) fish and wildlife habitat conservation, restoration and management; (h) air quality management; (i) energy conservation measures; (j) biological resource conservation and regeneration; (k) contour farming; (l) strip cropping; (m) cover cropping; (n) controlled rotational grazing; (o) resource-conserving crop rotation; (p) conversion of portions of cropland from a soil-depleting use, including production of cover crops; (q) partial field conservation practices; (r) native grassland and prairie protection and restoration; and (s) any other conservation practices determined by the Secretary to be appropriate and comparable to other conservation practices listed. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(d)(4).**

Contract renewals. A conservation security contract may be renewed for an additional term of not less than five nor more than 10 years except that, in the case of Tier I renewals, the producer may renew the contract only if the producer agrees—

- To apply additional conservation practices that meet the non degradation standard on land already enrolled in the conservation security program, or

- To adopt new conservation practices with respect to another portion of the agricultural operation that address resource concerns and meet the non degradation standard under the terms of the Tier I conservation security contract. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(e)(4).**

Violations. A producer will not be considered in violation of a conservation security contract for failure to comply due to circumstances beyond the control of the producer including a disaster or related condition. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238A(f).**

Producer responsibilities. A producer, under the terms of a conservation security contract, must agree

- To implement the conservation security plan as approved by the Secretary;
- Maintain and make available appropriate records showing the effective and timely implementation of the conservation security contract;

- Not engage in any activity that would interfere with the purposes of the program; and

- On violation of a term or condition of the contract, forfeit all rights to payments and refund payments as determined by the Secretary. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238B.**

Payment guidelines. The guidelines for payment include the following

- For tier I contracts, an amount equal to five percent of the “applicable base payment for land covered by the contract,” an amount not exceeding 75 percent (90 percent for a beginning farmer) of the average county costs of practices and an “enhanced payment” for additional enumerated practices;

- For tier II practices, an amount equal to 10 percent of the “applicable base payment for land covered by the conservation security contract,” an amount not exceeding 75 percent (90 percent for a beginning farmer) of the average county cost of adopting or maintaining practices and an enhanced payment for additional enumerated practices; and

- For tier III contracts, an amount equal to 15 percent of the “base payment for land covered by the conservation security contract,” an amount that does not exceed 75 percent (90 percent for a beginning farmer) of the average county cost of adopting or maintaining practices and an enhanced payment for additional enumerated practices. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238C(b)(1)).**

The annual payments to an individual or entity cannot exceed \$20,000 under a tier I contract, \$35,000 under a tier II contract or \$45,000 under a tier III contract. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238C(b)(2).**

Prohibited payments. A payment to a producer is not to be provided for construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations or the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238C(b)(3).**

Safeguards for tenants and sharecroppers. Regulations are to be promulgated to provide adequate safeguards to protect the interests of tenants and sharecroppers on a fair and equitable basis. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238C(d).**

Transfer of interests in land. Unless duties and rights are transferred to and assumed by the transferee, a transfer or change in interest of a producer in land results in the termination of a conservation security contract. **Act Sec. 2001, adding Food Security Act of 1985, Sec. 1238C(e).**

Beginning farmers and ranchers. Incentives may be provided to beginning farmers and ranchers, Indian tribes and limited resource agricultural producers to participate in conservation programs to (a) foster new farming and ranching opportunities and (b) enhance environmental stewardship over the long-term. **Act Sec. 2004, adding Food Security Act of 1985, Sec. 1244(a).**

Privacy of personal information relating to natural resources conservation programs. The 2002 Act specifies that information received for technical and financial assistance with respect to any natural resources conservation program that is considered proprietary to the agricultural operation or land is not considered to be public information except for the availability of payment information under 5 U.S.C. § 552. **Act Sec. 2004, adding Food Security Act of 1985, Sec. 1244(b).**