Olson Ag Law Update

Allen H. Olson, Attorney at Law

2014 No. 1
2014 Farm Bill

The 2014 Farm Bill Commodity Programs, by Allen H. Olson

Allen H. Olson, Attorney at Law
415 Pine Avenue, Suite 101,
P.O. Box 1745, Albany, Georgia 31702
229-436-8707
allen@olsonaglaw.com

After three years of rancorous debate, Congress is poised to enact a new Farm Bill today. Farmers' enthusiasm for this accomplishment, however, may be tempered by the complexity and mechanics of the new commodity programs. Different crops are covered by different programs, and for many crops, farmers must choose between alternative programs. Much of the law goes into effect this year, but most program payments will not be made until October 1 of next year, and unlike direct payments under the old law, there are no guaranteed payments. Eligibility for payments will be based on declining prices or revenues using complicated formulas.

It will take months, if not longer, before we can fully understand how these programs will actually work in practice. Some questions will not be answered until USDA publishes new regulations and handbooks. This could take a year or more. However, farmers will be required to make several program elections this year and will need to understand which programs are best for their farms.

Here is my first take on the most important parts of the Farm Bill commodities title (Title I). I will address the conservation and crop insurance titles in future issues of the Ag Law Update. Some of what I say here may change as we get additional information from USDA and as the commodity associations do their economic analyses of these programs.

Please read further on next page

The Basics

The 2014 Farm Bill will cover crop years 2014 through 2018 and will cost approximately one trillion dollars for the entire Farm Bill. Of that total, approximately 44.5 billion has been authorized for commodity programs, 89 billion for crop insurance and 57.6 billion for conservation programs.

Repeal of DCP and ACRE

The direct and countercyclical payments program and the ACRE program have been repealed.

Marketing loans and loan deficiency payments retained

The nine month marketing loan program and loan deficiency payments have been retained in the 2014 Farm Bill. New loan rates include: wheat - $2.94 bu; corn $1.95/bu; cotton - $0.45 to $ 0.52 lb; soybeans - $5.00 bu; peanuts - $355 ton.

Cotton

Cotton is eligible to participate in the Stacked Income Protection Plan, a new form of crop insurance authorized under Title XI of the Farm Bill. Cotton is not eligible to participate in the Agriculture Risk Coverage (ARC) or Price Loss Coverage (PLC) programs discussed below.

The Stacked Income Protection Plan will not be available until 2015 and in some counties until 2016. Those producers with land that had cotton base in 2013 will receive a cotton transition assistance payment in 2014 and a smaller transition assistance payment in 2015 if SIIP is not yet available. These payments will be similar to a direct payment.

Under the new Farm Bill, there will be no cotton base. Instead, cotton base will, acre for acre, change into "generic base." Generic base will not generate any ARC or PLC payments if cotton is grown on the land containing generic base. However, if used for other covered commodities, generic base will generate the ARC or PLC payments, if any, for the crops actually planted on the generic base acres. For example, if land with generic base is used to grow peanuts and declining revenues or prices result in payments for peanuts being made under ARC or PLC, the farmer growing peanuts on the land with the generic base will receive those payments in the same manner as if the farmer had peanut base on that land.

Base reallocation

Land owners will have a onetime opportunity to reallocate base on their land to make it correspond more closely to the crops being grown on that land. For example, a farm with corn base that grows mainly peanuts instead of corn can have some or all of its corn base reallocated to peanuts. However, generic base cannot be reallocated.

Election between Agriculture Risk Coverage and Price Loss Coverage

Producers of covered commodities other than cotton may elect to participate in either the Agriculture Risk Coverage program or the Price Loss Coverage program. That election will need to be made sometime in 2014, but USDA has not yet announced the signup deadline. The election is made once for all the years of the Farm Bill and is made on a commodity-by-commodity basis for each farm,

Please read further on next page

unless individual ARC coverage is elected, in which case all commodities on the farm must be selected for ARC individual coverage.

Price Loss Coverage

Price Loss Coverage (PLC) is a target price type program. Payments are made when the price for a crop drops below its "reference price" set forth in the Farm Bill. The reference price for wheat is $5.50 per bushel, for corn, $3.70 per bushel, for soybeans, $8.40 per bushel, and for peanuts, $535 per ton.

PLC payments are made on a commodity-by-commodity basis for any year in which the "effective price" for the commodity is less than the "reference price." The effective price is the higher of the national average market price received by producers for the commodity during the 12 month marketing year for the commodity or the national average loan rate for the covered commodity in effect for that crop year.

The PLC payment rate is the difference between the reference price and the effective price for the covered commodity.

Farmers enrolled in the PLC program will receive a payment amount for the covered commodity determined by multiplying the payment rate by payment acres by payment yield. Payment acres are 85% of base acres for that crop. Payment yield is the yield established for that crop for that farm under prior farm bills. However, farmers will have a onetime opportunity to update their yields used to determine PLC payments. Yields can be updated to 90% of the average of the yield per planted acre for the covered crop on the farm for the 2008 through 2012 crop years, excluding any crop years in which no acres were planted to that crop. PLC payments will be made on October 1 of the following year.

Producers enrolled in the PLC program may purchase a new form of crop insurance called "Supplemental Coverage Option" that is designed specifically to supplement PLC payments when losses exceed 14% of normal levels. This product is not available to producers enrolled in the ARC program or for cotton. This insurance option is part of Title XI of the Farm Bill.

Agriculture Risk Coverage

The ARC program is clearly the most complex part of the commodities title. Farmers electing to participate in ARC must also elect either "county coverage" or "individual coverage." This is also a onetime election, on a farm-by-farm basis, which must be made in 2014.

Under either option, USDA makes an ARC payment for a covered crop any year that "actual crop revenue" for the crop is less than the "agriculture risk guarantee" for the crop.

ARC County Coverage

Under the county coverage option, actual crop revenue is determined by multiplying the average county yield per planted acre for the crop by the national average market price received by producers during the 12 month marketing year for the crop or the national average loan rate for a marketing assistance loan for that crop for such crop year, whichever is higher. This gives you a dollar per acre number for "actual crop revenue" for the covered crop.

Please read further on next page

The agriculture risk coverage guarantee for a covered crop is 86% percent of the "benchmark revenue" for the crop. Benchmark revenue is determined by multiplying the average historical county yield for the crop for the most recent five years, excluding the years with the highest and lowest yields, by the national average market price received by producers during the 12 month marketing year for the most recent five crop years, excluding the years with the highest and lowest prices. Again, benchmark revenue is given as a dollar per acre figure.

In calculating these averages, however, USDA will substitute 70% of T-yield for any year in which the yield is less than 70% of T-yield and will substitute the reference price for any year in which the crop price is less than the reference price for the crop.

The payment rate for a crop is the lesser of 1) the amount by which the agriculture risk coverage guarantee for the crop year exceeds the actual crop revenue for the year or 2) 10% of the benchmark revenue.

A farmer electing county coverage will receive a payment amount determined by multiplying the payment rate times the payment acres. The payment acres for county coverage are 85% of the farmer's base acres for the crop. The payment will be made October 1 of the following year.

ARC Individual Coverage

Individual coverage uses an even more complex formula but in general substitutes a farm's own yields for the county averages and then calculates "actual crop revenue" and "benchmark revenue" on a farm basis for all covered commodities on all of a producer's farms selected for ARC coverage. The prices used in calculating these revenue figures are the same national averages used under the county coverage option. Actual crop revenue and benchmark revenue are given as a single dollar per acre number for the whole farm after adding together the revenue for each crop on the farm and then dividing that number by the total number of acres on the farm planted to all covered crops.

As with the county coverage, the "agricultural risk coverage guarantee" is 86% of benchmark revenue, and the payment rate is the amount by which the agricultural risk coverage guarantee exceeds the actual crop revenue or 10% of the benchmark revenue, whichever is less. However, payment acres under the individual coverage option are only 65% of base acres. The other details of individual coverage are largely the same as for county coverage.

The four big differences between ARC county coverage and ARC individual coverage would seem to be:

1. **County coverage uses county average yields while individual coverage uses the producer's actual production.**

2. **County coverage pays on a per crop basis while individual coverage pays on a farm basis.**

3. **County coverage pays on 85% of base acres while individual coverage pays on 65% of base acres.**

4. **All crops on a farm must be selected for individual coverage whereas the election is made crop by crop for county coverage.**

Please read further on next page

Which program will be best?

Depending on a farm's crop mix and production history and county averages, PLC, ARC county coverage, and ARC individual coverage could produce significantly different payment amounts under different price and revenue scenarios. Each farm in each county should be analyzed to see which works best for crops on those farms.

Please note that the ARC county coverage and PLC programs do not require any crops be grown in order to receive a payment, except as to generic base where payments are made when covered crops are actually grown on the generic base acres. The ARC individual coverage program and the SIPP and SCO insurance policies will obviously require crops to be grown as a condition of payment eligibility.

Payment Limitations, AGI, and Actively Engaged

The 2014 Farm Bill contains a single, combined payment limit of $125,000 per person for ARC and PLC program payments, marketing loan gains, and loan deficiency payments for all crops except peanuts. Peanuts have a separate limit of $125,000 per person for payments under these programs.

The Farm Bill also replaces the old Adjusted Gross Income rules with a new single AGI limit of $900,000 per year on a three year average. This is a true AGI limit based on the IRS definition for tax purposes. The separate rules based on farm and nonfarm income have been eliminated. The new AGI amount, if exceeded, eliminates eligibility for all the programs described in the preceding paragraph.

The Stacked Income Protection Plan and other crop insurance policies are not subject to payment limitations or the AGI rules.

The Farm Bill directs USDA to promulgate regulations defining the term "significant contribution of active personal management" but further states that such regulations shall not apply to "individuals or entities comprised solely of family members . . . ."

Conservation Compliance

The 2014 Farm Bill retains the conservation compliance requirements from prior farm bills and requires producers, as a prerequisite to receiving program payments, to enter into a "producer agreement" setting forth their agreement to comply with these requirements, to control noxious weeds on their land and not to use their land for non-agricultural purposes. The transferee of any interest in a farm must agree to assume all obligations under such agreement signed by the prior producer.

OLSON AG LAW PRACTICE AREAS

Most of you know that I do a lot of work on farm program matters including payment limitations planning, USDA administrative appeals and federal litigation. You may not know that my practice also includes the following:

- **Water Law**
- **Crop insurance arbitration and litigation.**
- **Conservation easement planning and drafting.**

Please read further on next page

- **Perishable Agricultural Commodities Act litigation.**
- **Farm finance planning and litigation.**
- **Chapter 12 farm bankruptcies.**
- **Farm transition (estate) planning.**
- **Representation of farmers in commercial disputes including landlord tenant matters.**
- **Advice and representation on other specialized areas of agricultural law.**

Please give me a call if you think I may be able to help you with any of these matters.

Disclaimer: All of the information provided in this Update is of a general nature and may not be applicable to your farming operation, transaction or dispute. This information should not be substituted for advice from a competent attorney who is familiar with the specific facts of your case, transaction or situation.