

Legal News Alert is part of our ongoing commitment to providing up-to-the-minute information about pressing concerns or industry issues affecting our Food Industry clients and colleagues. If you have any questions about this newsletter or would like to discuss this topic further, please contact your Foley attorney or any of the following individuals:

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## House Passes Farm Bill

On July 27, 2007 the U.S. House of Representatives (the House) passed its version of the farm bill by a 231-191 vote after a brief consideration on the House floor. As Collin Peterson (D-MN), the Chairman of the House Agriculture Committee, stated, there is plenty in the bill to make some people happy and plenty to make some people unhappy — which he believes indicates it is a pretty good bill. In fact, as the bill was reported from the Agriculture Committee, it did enjoy strong support from committee members of both parties. However, after the committee reported the bill to the House floor, controversy flared over additional funding for the nutrition programs that will result from imposing a tax on certain foreign-owned companies with U.S. subsidiaries. The House leadership decided it needed to increase the funding for nutrition programs to gain the support of more liberal members to fend off an amendment by Representatives Ron Kind (D-WI) and Jeff Flake (R-AZ) that would have seriously cut farmers' income support payments. The controversy over the funding source imperiled passage of the bill when most Republicans decided to oppose the bill. Adding to this controversy is a veto threat issued by the White House because, in their view, the House bill did not go far enough in trimming subsidies. In the end, the bill passed with the support of 19 Republicans from agricultural areas.

The Senate will turn to its version of the farm bill after Labor Day and may not agree to use the same funding source used by the House for nutrition programs. This issue, along with other funding issues, most likely ensures a new farm bill will not be signed until late this Congressional session.

## Country of Origin Labeling (COOL)

The House made significant progress toward resolving a major issue that has plagued the livestock industry when a deal was worked out on COOL, implementation of which has been delayed by a provision in an appropriations bill. Under the compromise, a retailer of beef, lamb, pork, and goat may designate the product as having a United States (U.S.) country of origin if the commodity is derived from an animal that was

exclusively born, raised, and slaughtered in the United States, or was born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and then slaughtered in the United States. For multiple countries of origin, a retailer may designate the country of origin of the commodity as all of the countries in which the animal may have been born, raised, or slaughtered. If the commodity is from a foreign country, a retailer must designate a country other than the United States as the country of origin.

No changes were made to labeling for fish, which went into effect in 2005 and remains in effect today. For fish, in the case of farm-raised fish, it must be hatched, raised, harvested, and processed in the United States to be labeled as U.S. product. For wild fish, it must be harvested in the United States, a territory of the United States, in a state, or by a vessel that is registered in the United States or is documented under chapter 121 of title 46 of the U.S. Code, and must be processed in the United States, a territory, or a state, including the waters of a state.

The penalty and audit provisions were modified in a manner that, generally, shifts some of the burdens of recordkeeping and potential liability from retailers to suppliers. Also, the maximum penalty for violations was reduced from \$10,000 to \$1,000 per violation.

## **Major Provisions That May Affect Agribusiness and Food Companies**

The House Farm Bill contains 11 titles, however, the summary below highlights certain titles that may be of particular interest to food companies and retailers. The titles outlined below are: Commodity Programs, Trade, Nutrition, Horticulture and Organic Agriculture and Miscellaneous Provisions.

### **Title I. Commodity Programs**

Commodities that qualify for income support include corn, wheat, soybeans, other oilseeds (including sunflower seed, rapeseed, canola, sesame seed, and others), rice, cotton,

sugar, peanuts, grain sorghum, barley, oats, wool, mohair, honey, dry peas, lentils, small chickpeas, and dairy products.

The Farm Bill:

- Extends the subsidy programs authorized in the 2002 Farm Bill with minor changes.
- Increases target prices for wheat, barley, oats, oilseeds, and soybeans, which increases producers' opportunity to receive counter-cyclical payments when prices are low.
- Continues support for farmers through direct payments.
- Increases loan rates for several crops that reflect changes in the market for these products.
- Rebalances loan rates on wheat, barley, oats, oilseed, small chickpeas and graded wool.
- Establishes separate loan rates for long-grain and medium/short-grain rice and for feed and malt barley.
- Achieves greater equity among commodities by ending government storage payments for commodities.
- Extends the Milk Income Loss Contract Program until 2012.
- Supports the price of cheddar cheese, butter, and nonfat dry milk by government purchase of such products.
- Authorizes the Dairy Forward Pricing Program to allow milk producers and cooperatives to voluntarily enter into forward contracts with milk handlers.
- Extends the Dairy Export Incentive Program

### **Title III. Trade**

- Increases funding for the Market Access Program by \$125 million over 5 years.
- Extends the Foreign Market Development Program, which works to expand U.S. export opportunities.
- Provides \$38 million for the Technical Assistance for Specialty Crops Program, which helps U.S. organizations address sanitary, phytosanitary and other technical barriers that inhibit exports to certain countries.

- Continues the Food for Peace, Food for Progress, and McGovern-Dole Programs that provide food assistance around the world.
- Increases ability of the Agency for International Development to pre-position food around the world to get food aid delivered faster during catastrophes and refugee situations.
- Ensures that not less than \$450 million from food aid programs be used in each fiscal year for developmental programs that address chronic hunger.

#### **Title IV. Nutrition**

- Extends and funds The Emergency Food Assistance Program (TEFAP), which provides commodities and other assistance to states and helps stock food banks and homeless shelters.
  - Expands funding for the program each year from \$140 million in 2008 to \$250 million in 2012.
  - Extends the Commodity Supplemental Food Program (CSFP) that helps many low-income elderly individuals who need additional assistance or are reluctant to apply for food stamps.
  - Expands the authority of the Senior Farmer's Market Nutrition Program, which provides senior citizens with vouchers to buy fresh produce at markets and roadside stands.
  - Increases funding to \$406 million for the Department of Defense Fresh Fruit and Vegetable Program (DOD Fresh), which provides a greater variety of fresh produce to schools.
  - Continues and expands the United State Department of Agriculture (USDA) Snack Program, which helps schools provide healthy snacks to students during after-school activities and expands the program to all 50 states, providing \$350 million over 5 years for the program.
  - Authorizes \$5 million per year for a fund to purchase native and locally grown food.
- provided to states to support projects in research, marketing, education, pest and disease management, production, and food safety.
- Provides new funding to support organic farmers.
  - Provides \$3 million in mandatory funds for organic marketing data collection and publication.
  - Continues the National Organic Certification Cost-Share Program, which defrays the costs that producers and handlers incur when seeking organic certification.
  - Doubles the amount of USDA purchases of fruits and vegetables for schools, using Section 32 funds.
  - Helps Fruit and Vegetable Producers address food safety, pest, and disease management issues by providing \$200 million in mandatory funding for pest and disease detection and control.
  - Directs USDA to develop assessments of pest and disease threats and to establish priorities for defeating them.
  - Provides money and outlines a plan for new programs of joint action between federal and state governments to provide for early detection and surveillance of plant pests and diseases.
  - Establishes proactive, cooperative, audit-based certification systems between USDA, states, and growers to address plant pest infestations.

#### **Title X. Horticulture and Organic Agriculture**

- Funds the Specialty Crop Block Grant Program, providing \$365 million in mandatory funding. The block grants are

#### **Title XI. Miscellaneous Provisions**

- Directs the Secretary to Agriculture to develop rules and regulations related to arbitration between producers and processors and to require the Grain Inspection, Packers, and Stockyards Administration (GIPSA) to enforce them.
- Increases market access for small, state-inspected meat and poultry processing plants.
- Allows states with meat inspections programs that are identical to the federal regulations to ship meat and poultry products to other states.

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## COOL Provisions

The House Farm Bill implements mandatory COOL for beef, lamb, pork, and goat, and establishes three labeling options for these commodities:

- 1) U.S. Country of Origin: The animal must be born, raised, and slaughtered in the United States.
- 2) A Mixed Origin meat label is required for animals that were not exclusively born, raised, and slaughtered in the United States.
- 3) The Imported Meat label is required for animals from foreign countries.

Ground meat products are required to be labeled with a narrative list of countries from which the products could be derived, but does not require the label to specify the percentage of product from the respective countries. Verification of country of origin may be established through existing documentation, e.g., normal business records, animal health papers, import or customs documents, or producer affidavits.