

Legal News Alert is part of our ongoing commitment to providing up-to-the minute information about pressing concerns to our food industry clients and colleagues.

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## Update on the 2008 Farm Bill

This summary highlights and compares major provisions in the U.S. House of Representatives (House) and Senate versions of the Farm Bill that may be of particular interest to food companies and retailers. As they left town for the President's Day recess, the Senate offered the House an outline of spending that is reportedly \$12.3 billion over the current baseline. In a meeting today, February 19, 2008, with Agricultural groups, House Agriculture Committee Chairman Collin Peterson said he believes a compromise will be reached with the Senate during the current recess so that House and Senate conferees can carve up the pie when they return to Washington, D.C. early next week. Currently, House and Senate staff are conducting meetings to iron out the differences between the two versions in advance of the return of the conferees. Hanging over the conference committee is a sustained veto threat by the White House, based on unhappiness with funding increases, how those increases will be paid for, and Congress's refusal to adopt reforms supported by the White House. Time is running out for a compromise, with the current Farm Bill extended only until March 15, 2008. If a new bill has not been passed or the current bill not extended, farm programs would revert to permanent law under the Agricultural Adjustment Act of 1949 ('49 Act). Operating under the '49 Act would increase payments for some commodities while excluding payments for many other commodities that have farm program benefits granted subsequent to the passage of the '49 Act.

The major Farm Bill provisions outlined in this alert are:

- Country of origin labeling (COOL)
- Commodity programs
- Trade
- Nutrition
- Horticulture, specialty crops, and organic agriculture
- Miscellaneous provisions

## Country of Origin Labeling (COOL)

Before House passage of its version of the Farm Bill, stakeholders reached a compromise on COOL. The compromise held during consideration of the Senate version of the bill, with only one modification: the Senate added chicken and macadamia nuts to the list of covered commodities. Implementation of the original COOL provision for meat, which was contained in the 2002 Farm Bill, has been delayed by a provision in an appropriations bill, but it is now due to go into effect by September 30, 2008.

Under the compromise that would replace the original COOL, 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 would be required to designate a country other than the United States as the country of origin.

No changes were made to the labeling requirements for fish, which went into effect in 2005 and remain in effect today. 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 both the House and Senate versions in a manner that would shift some of the burdens of recordkeeping and potential liability from retailers to suppliers. Also, the maximum penalty for violations would be reduced from \$10,000 to \$1,000 per violation.

### House

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.

### Senate

The Senate language is similar to the House but adds chicken and macadamia nuts as covered commodities

## Commodities

### House

- Maintains direct payment program
- 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
- 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
- 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

### Senate

- Maintains direct payment program
- Replaces traditional payment rates, recourse loans, with a state-level revenue program (Average Crop Revenue) for covered commodities and peanuts with a \$15/acre direct payment regardless of crop
- Expanded planting flexibility provisions for fruits and vegetables for processing with temporary reduction in payment acres
- No change in the marketing loan program through 2012 except for Average Crop Revenue participants, who would have recourse loans that would be repaid in full
- Extends the Milk Income Loss Contract program through 2012, but raises the payment rate to 45 percent of the difference between \$16.94 and the monthly market price (when lower); also increases per farm payment cap to 4.15 million pounds of annual production
- Continues peanut provisions
- Authorizes the Dairy Forward Pricing Program to allow milk producers and cooperatives to voluntarily enter into forward contracts with milk handlers

## Trade

### House

- Reauthorizes the Food for Peace, Food for Progress, and McGovern-Dole programs that provide food assistance around the world
- Increases funding for the Market Access Program by \$125 million over five 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
- 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
- Reauthorizes the Dairy Export Incentive Program

### Senate

- Reauthorizes the Food for Peace, Food for Progress, and McGovern-Dole programs that provide food assistance around the world
- Reauthorizes Market Access Program
- Reauthorizes Foreign Market Development Program that cost shares federal funding of export market development of mainly generic commodities
- Reauthorizes Emerging Markets Program
- Authorizes new pilot program for local purchase of emergency food aid at a level of \$25 million per year
- Reauthorizes Dairy Export Incentive Program

## Nutrition

### House

- 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 U.S. 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 States 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 five years for the program.
- Authorizes \$5 million per year for a fund to purchase native and locally grown food.

### Senate

- Increases mandatory funding level for The Emergency Food Assistance Program to \$250 million a year
- Makes most nutrition program authorities (including authorizations for appropriations) permanent
- Increases standard deduction of food stamp benefits to \$140 and indexes it annually for overall inflation; removes limits on dependent-care expense deductions; adds an income disregard for combat-related military pay; and increases the minimum benefit as in the House bill
- Food stamp asset eligibility standards increases the dollar limits on liquid assts to \$3500/\$4500 and indexes them annually, for overall inflation; disregards all tax-recognized retirement plans/savings and postsecondary education savings as in the House bill
- Replaces the current DOD Fresh with a new free fresh fruit and vegetable program funded at \$225 million, indexed annually for inflation
- New fresh fruit and vegetable programs would be available in state-selected elementary schools in all states (and at least 100 schools on Indian reservations)
- Lengthens the eligibility period for Able-bodied Adults Without Dependents to six months out of every 36 months
- Provides \$10 million a year in additional mandatory funding for the Senior Farmers' Market Nutrition Program; provides \$5 million in mandatory funding for projects to expand the use of food stamp electronic benefit transfer cards in farmers' markets
- Provides \$50 million in mandatory funding for pilot projects to evaluate methods of promoting health and nutrition through the Food Stamp program

## Horticulture, Specialty Crops, and Organic Agriculture

### House

- Funds the Specialty Crop Block Grant Program, providing \$365 million in mandatory funding. The block grants are 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 combating them.
- Provides funding for new programs for cooperation between federal and state governments to provide for early detection and surveillance of plant pests and diseases.
- Establishes audit-based certification systems for USDA, states, and growers to address plant pest infestations.

### Senate

- Provides \$270 million in mandatory funding over five years to expand the program of block grants to states for specialty crop projects
- \$5 million for organic data collection to help provide better price and yield information for organically-grown crops
- \$24 million in new money for technical assistance to address export barriers for specialty crops
- Authorizes USDA to carry out a food safety education program about practices and methods that reduce microbial pathogens and cross contamination of fresh produce
- Specifies that in addition to specialty crop purchases required in the 2002 Farm Bill, the Secretary shall purchase fruits, vegetables, and nuts using Section 32 funds
- \$30 million in mandatory funds to support the Farmer Marketing Assistance Program and creates a new grant program (\$7 million) to improve access of foods to underserved communities and to improve farmer access to competitive processing and distribution systems, called the Healthy Food Enterprise Development Center

## Miscellaneous Provisions

### House

- Directs the Secretary of Agriculture to develop rules and regulations related to arbitration between producers and processors, with enforcement by the Grain Inspection, Packers, and Stockyards Administration
- Allows states with meat inspections programs that are identical to the federal regulations to ship meat and poultry products across state lines

### Senate

- Requires that any contract arbitration clause be voluntary; gives producers new rights to terminate a contract early; and allows a producer to discuss contract provisions with additional parties
- Alters some provisions for swine and pork in the Mandatory Livestock Price Reporting Program
- Prohibits FDA from issuing a final risk assessment and lifting the voluntary moratorium on foods from cloned animals until completion of newly mandated studies on the safety and on the market impacts of introducing products from cloned animals
- Establishes a Congressional Bipartisan Food Safety Commission required to study and make recommendations for modernizing food safety programs, including organizational and resource requirements that emphasize prevention and are based on risk assessment and best-available science
- Supplements the current federal-state cooperative inspection program with a new provision whereby state-inspected plants with 25 or fewer employees could opt into a new program that subjects them to federally directed inspection using state employees, and thus interstate shipping
- Requires USDA to establish "reportable food registries" where establishments must report events involving meat and poultry and products that pose probable health risks

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Much information for this report is from the Congressional Research Service Comparison of the House and Senate 2007 Farm Bills, updated December 21, 2007.