

# **FOOD, CONSERVATION AND ENERGY ACT OF 2008**

## **Title II—Conservation**

### **Summary of Major Provisions of the Conference Agreement**

#### **Subtitle A—Definitions of Highly Erodible Land and Wetland Conservation**

**Section 2001—Definitions Relating to Conservation** - - The Food Security Act of 1985 is amended to include or modify the definitions of several terms in Title II. The terms “beginning farmer or rancher”, “Indian tribe”, and “socially disadvantaged farmer or rancher” are moved to this section. In addition, the terms “farm,” “integrated pest management,” “person or legal entity,” “livestock,” “nonindustrial private forest land,” and “technical assistance” are defined.

**Section 2002—Review of Good Faith Determinations Related to Highly Erodible Land Conservation.** - - The Food Security Act of 1985’s good faith exemption for Highly Erodible Land Conservation Compliance is maintained, but it is amended to provide for a second-level review of Highly Erodible Land Conservation Compliance decisions by the Farm Service Agency State Executive Director with the technical concurrence of the Natural Resources Conservation Service State Conservationist, or the Farm Service Agency District Director with the technical concurrence of the Natural Resources Conservation Service Area Conservationist. The amendment allows for graduated penalties based on the severity of the compliance violation.

**Section 2003— Review of Good Faith Determinations Related to Wetland Conservation.** - - The Conference Report maintains the good faith exemption for wetland conservation compliance, but adds a second level review of Wetland Compliance by the Farm Service Agency State Executive Director with the technical concurrence of the Natural Resources Conservation Service State Conservationist or the Farm Service Agency District Director with the technical concurrence of the Natural Resources Conservation Service Area Conservationist. The amendment allows for graduated penalties based on the severity of the compliance violation.

#### **Subtitle B—Conservation Reserve Program**

##### **FSA - Section 2101 — Conservation Reserve Program (CRP) –**

#### **Subtitle C—Wetlands Reserve Program**

**Section 2201—Wetlands Reserve Program (WRP)** – – Reauthorizes WRP through 2012, increases overall program acreage cap to 3,041,200 acres and removes the annual acreage cap. Limits enrollment to private or Tribal lands. While maintaining the permanent and 30-year easements and restoration agreements, it establishes a 30-year contract option for Tribes. Prohibits enrollment of land where ownership has changed during the previous 7 years. Specifies cost-assistance for maintenance activities as a duty of the Secretary.

Changes easement compensation to the lowest of the following: fair market value of the land enrolled based on either a Uniform Standards of Professional Appraisal Practices appraisal or market survey, geographic cap established by the Secretary, or the landowner offer. These changes are effective on the date of enactment. Allows limits on the timing of easement payments in excess of \$500,000. Sets a payment limit on restoration cost-share agreement payments of \$50,000 annually. Establishes a Wetland Reserve Enhancement Program whereby the Secretary may enter into agreements with States, Tribes, or NGO's for special wetland programs, including a reserved rights pilot program for grazing which reserves those rights in the deed. Provides for enrollment of flooded cropland or grassland used for agricultural production prior to the natural overflow of a closed basin lake or prairie pothole. Requires the Secretary to report on the implications of long-term conservation easements on Department resources. Requires the Secretary to conduct an annual interest survey in the Prairie Pothole Region and make adjustments to the next year's funding allocations based on the survey.

#### **Subtitle D—Conservation Stewardship Program**

**Section 2301—Conservation Stewardship Program (CSP)** – – Prohibits new contracts under the 2002 Conservation Security Program after September 30, 2008, and provides funding for current contracts. Establishes the new CSP for fiscal years 2009 through 2017 to assist producers in implementing conservation activities applicable to their operation and rewarding stewardship on working lands. Defines eligible lands as private and Tribal agricultural lands, and forested land that is incidental to an agricultural operation. Specifies that land enrolled in the Conservation Reserve Program, the Wetlands Reserve Program, the Grassland Reserve Program, and lands that have not been cropped for at least 4 out of the past 6 years cannot receive a CSP payment. Eligible producers must initially meet the stewardship threshold for one resource concern and be willing to achieve the threshold for at least one additional priority resource concern by the end of their five-year contract. Applicants must account for their stewardship activities covering their entire agricultural operation. Applications will be competitively ranked based on present and proposed conservation activities, the number and extent of resource concerns addressed, and the cost effectiveness of the expected environmental benefits. The Secretary may enroll up to 12,769,000 acres each year from fiscal years 2009 through 2017 and must manage the program to achieve a national average cost that does not exceed \$18 per acre. Acres will be allocated based on eligible acres in a state. CSP payments are to be made early each fiscal year for improvements and activities completed during the previous year. A person or legal entity cannot receive CSP payments exceeding \$200,000 during any five-year period.

#### **Subtitle E—Farmland Protection and Grassland Reserve**

**Section 2401—Farmland** – – Reauthorizes FPP through 2012. Changes program purposes from topsoil protection to protecting agricultural use and related

conservation values by limiting nonagricultural uses. Adds forest land to the list of eligible land. Changes the Secretary's role in the purchase of easements from acquisition of an interest to providing cost-share to eligible entities. Removes any present or future interest in easements from the Secretary. Changes the minimum entity contribution of 25 percent of the easement acquisition price rather than 25 percent of the appraised fair market value. Allows the entity to designate the terms and conditions of their deed and to choose the appraisal methodology, subject to approval by the Secretary. Requires the Secretary to certify eligible entities, and specifies a minimum agreement length of 5 years for certified entities. Noncertified entities shall have agreement lengths of 3-5 years.

**Section 2402—Farmland Viability Program** - - Reauthorizes the program through 2012.

**Section 2403—Grassland Reserve Program (GRP)** – – Reauthorizes GRP through 2012. Authorizes the Secretary to enroll an additional 1,220,000 acres in the period fiscal years 2009 through 2012. Limits rental agreement options to 10-, 15-, and 20-years. Allows entities to own, write, and enforce easements with a 50 percent match through a cooperative agreement with the Secretary. Uses an easement valuation requirement similar to Wetland Reserve Program. Establishes an annual \$50,000 payment limitation for rental agreement and restoration agreement payments. Requires a grazing management plan. Includes contingent right language that would limit Federal rights in entity secured easements.

**Subtitle F—Environmental Quality Incentives Program**

**Section 2501— Environmental Quality Incentives Program (EQIP)** – – Reauthorizes EQIP through 2012. EQIP purposes are expanded to include forest management and energy conservation benefits associated with conservation practices. Provides an overall payment limitation of \$300,000 per person or legal entity, unless a project has special environmental significance. For waters conservation or irrigation practices, places a priority on applications that result in a reduction in water use in the operation or where the producer will not use any associated water savings to irrigate new land. Payments are authorized for a broader scope of conservation activities. Allows payments to limited resource, socially disadvantaged, or beginning farmers or ranchers that reflect up to 90 percent of the cost or at least 25 percent above the otherwise applicable rate. These same groups of producers can also request an advance payment covering up to 30 percent of the cost of materials to install conservation improvements. Continues the designation that 60 percent of EQIP funding must be targeted to practices that benefit livestock producers. Payments are also authorized for conservation practices that help producers engaged in or transitioning to organic production. Payments for practices with organic production benefits are limited to not more than \$20,000 per year or \$80,000 during any six-year period. Authorizes payments for conservation practices that address air quality concerns from agricultural

operations using innovative technologies. Funds air quality practices at \$37.5 million per year from fiscal years 2009 through 2012.

**Section 2510— Agricultural Water Enhancement Program (AWEP) – –** Authorizes a new activity within EQIP to promote ground and surface water conservation and improve water quality on agricultural lands. The Secretary may enter into contracts directly with producers to carry out agricultural water enhancement activities or enter into partnership agreements with entities to indirectly enter into contracts with producers to carry out agricultural water enhancement activities. Partners are selected competitively, and if selected, dedicated USDA funds are used in their project area to enroll EQIP eligible producers. Projects may be considered in areas experiencing exceptional drought to impound water to capture surface water runoff on agricultural land for new irrigation projects or maintenance of ponds. Funding is provided at: FY 2009 - \$73 million, FY 2010 - \$73 million, FY 2011 - \$74 million, and FY 2012 - \$60 million and every year thereafter. The Secretary may waive AGI limitations.

**Subtitle G— Other Conservation Programs of the Food Security Act of 1985**  
**Section 2601—Conservation of Private Grazing Land – –** Reauthorizes the program through 2012.

**Section 2602—Wildlife Habitat Incentives Program (WHIP) – –** Reauthorizes WHIP through 2012. Limits contracts to private agricultural land, non-industrial private forestland, and tribal lands. Increases the percentage of long-term agreements from 15 to 25 percent. Allows a priority for projects that further national, state, or regional habitat goals. Establishes payment limits to a person or legal entity of not more than \$50,000 per year.

**Section 2603— Grassroots Source Water Protection Program - -** Reauthorizes the program through fiscal year 2012. Increases authorization of appropriations from \$5 million annually to \$20 million annually.

**Section 2604— Great Lakes Basin Program for Soil Erosion and Sediment Control - -** Reauthorizes the program through 2012. Modifies the language to reflect the goals of the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes. Maintains authorization for appropriations levels of \$5,000,000 annually.

**Section 2605— Chesapeake Bay Watershed Program - -** Creates a new program to provide assistance to producers to minimize the run-off of excess nutrients and sediment loading in order to restore, preserve, and protect the Chesapeake Bay. Directs the Secretary to provide special consideration and begin evaluating applications in the Susquehanna, Shenandoah, Potomac and Patuxent River Basins. Includes a “Sense of Congress” that the Department is authorized to

be a member of the Chesapeake Bay Executive Council. Funding is provided at: FY 2009 - \$23 million, FY 2010 - \$43 million, FY 2011 - \$72 million, and FY 2012 - \$50 million for the Secretary to enter into agreements with producers to help restore, preserve, and protect the Chesapeake Bay. The funds are utilized through existing Farm Bill conservation programs and are available until expended.

**Section 2606—Voluntary Public Access and Habitat Incentive Program - -** Establishes a voluntary public access program under which States and Tribes may apply for grants to encourage owners and operators of privately held farm, ranch, and forest land to make that land available for wildlife-dependent recreation. The program does not preempt State or tribal government laws, including liability laws. Provides \$50,000,000 in mandatory funds for this program, to be expended from 2009 through 2012. Includes a 25 percent reduction for the total grant amount to an entity if the opening dates for migratory bird hunting in the State are not consistent for residents and non-residents.

**Subtitle H—Funding and Administration of Conservation Programs**  
**Section 2701 — Funding of Conservation Programs under Food Security Act of 1985 - -** Funds from the Commodity Credit Corporation are made available for the following programs:

***Conservation Reserve Program, in addition***

- Cost sharing for tree thinning activities limited to \$100,000,000 over the period from 2009 through 2012.
- Funding to facilitate the transfer of CRP land from retired or retiring owners to beginning and socially disadvantaged farmers and ranchers is limited to \$25,000,000 from 2009 through 2012.

***Conservation Security Program, in addition***

- Existing Conservation Security Program Contracts: Such sums as necessary to administer contracts signed before September 30, 2008.

***Farmland Protection Program specified at***

- \$97,000,000 in fiscal year 2008;
- \$121,000,000 in fiscal year 2009;
- \$150,000,000 in fiscal year 2010;
- \$175,000,000 in fiscal year 2011;
- \$200,000,000 in fiscal year 2012.

***Grasslands Reserve Program, and***

- ***Amends existing law to remove the dollar limit.***

***Environmental Quality Incentives Program specified at***

- \$1,200,000,000 in fiscal year 2008;

- \$1,337,000,000 in fiscal year 2009;
- \$1,450,000,000 in fiscal year 2010;
- \$1,588,000,000 in fiscal year 2011;
- \$1,750,000,000 in fiscal year 2012.

***Wildlife Habitat Incentives Program specified at***

- \$85,000,000 per year from 2008 through 2012.

**Section 2702—Authority to Accept Contributions to Support Conservation Programs** - - Provides the Secretary authority to accept non-federal funds to administer conservation programs under this Title.

**Section 2703—Regional Equity and Flexibility** - - Amends Regional Equity to increase the funding floor from \$12 million to \$15 million, considering respective demand in each program in each state. Requires a review and update of program allocation formulas by January 1, 2012.

**Section 2704—Assistance to Certain Farmers and Ranchers to Improve Their Access to Conservation Programs** - - Provides for a funding set-aside in EQIP and an acreage set-aside in CSP for beginning and socially disadvantaged farmers or ranchers. The Secretary is directed to set-aside 5 percent of the funds or acres in the designated programs for beginning farmers or ranchers and 5 percent of the funds or acres in the designated programs for socially disadvantaged farmers or ranchers. The Secretary is authorized to set a date at which time those funds or acres not obligated during a fiscal year would be returned to the general EQIP and CSP programs.

**Section 2705—Report Regarding Enrollment and Assistance Under Conservation Programs** - - Requires a report detailing payments made under WRP, FRPP, and GRP that exceed \$250,000 and payments made under EQIP utilizing the Secretary's waiver authority to exceed the \$300,000 contract cap.

**Section 2706—Delivery of Conservation Technical Assistance** - - This section authorizes the Secretary to provide technical assistance under this title to an eligible participant directly; through an agreement with a third-party provider; or at the option of the eligible participant, through a payment to the eligible participant for an approved third party provider. The section adds guidance on the purpose of technical assistance, provides authority for contracting with third party providers for technical assistance, and defines entities eligible to receive technical assistance under this title. Where financial assistance is not required, the Secretary may enter into technical services contracts with program participants. The Secretary is authorized to use mandatory funds and multi-year contracts with third party providers, to establish fair and reasonable payment rates, and to ensure a nationally consistent certification process. Funding for technical assistance shall

be made available through each of the conservation programs in Section 1241. In addition, this provision requires that the Secretary review conservation practice standards to ensure that the conservation practices are consistent with local needs. Finally, the Secretary is directed to ensure that adequate technical assistance is made available to producers involved with organic, specialty crop, or precision agriculture production.

**Section 2707— Cooperative Conservation Partnership Initiative** -- Creates a Cooperative Conservation Partnership Initiative program and directs 6 percent of funds and acres from all Conservation Title programs, except CRP, WRP, FRPP, and GRP, be used for targeted conservation activities and areas. Projects will be selected by the Secretary through a competitive process of applications submitted by partners. Projects will be implemented through existing program authorities and procedures. Funds and acres are directed at the State level (90 percent) and nationally (10 percent).

**Section 2708— Administrative Requirements for Conservation Programs** - - Maintains existing language on authorities to provide additional incentives. Maintains limitations on enrollment of cropland in WRP and CRP, but provides additional waiver authority to exclude continuous CRP and CREP from the limit with the concurrence of county government. Requires the Secretary to develop procedures to monitor compliance and measure performance. Provides that the Secretary may encourage pollinator habitat development and practices.

**Section 2709—Environmental Services Markets** - - Facilitates the participation of farmers, ranchers, and forest landowners in environmental service markets by directing the Secretary to establish science-based technical guidelines to measure environmental services benefits; a registry to collect, record, and maintain the benefits measured; and, a verification process that considers the role of third parties. The Secretary is instructed to consult with Federal and State agencies and nongovernmental interests, such as producers, academia, and financial institutions. The Secretary is directed to focus initially on carbon markets and is expected to fulfill the intent of this section with resources available to the Department.

**Section 2710—Agriculture Conservation Experienced Services Program** - - Provides authority for the Secretary to enter agreements with organizations to hire individuals 55 or over to provide assistance in administering conservation related programs for non-clerical activities.

**Section 2711—Establishment of State Technical Committees** - - Eliminates the U.S. Fish and Wildlife Service as a specifically named member and changes the name of Cooperative State Research, Education, and Extension Service to the National Institute of Food and Agriculture to reflect its new name. Exempts Local Working Groups from the Federal Advisory Committee Act.

## **Subtitle I Conservation Programs Under Other Laws**

**Section 2801—Agricultural Management Assistance (AMA)** – – Adds Hawaii to the list of AMA states. Provides \$15 million in mandatory funding for each of the fiscal years 2008 through 2012. Requires a percentage breakout of funding between NRCS (50 percent), AMS (10 percent), and RMA (40 percent) rather than a dollar amount.

**Section 2802—Technical Assistance Under the Soil Conservation and Domestic Allotment Act** - - The Soil Conservation and Domestic Allotment Act is amended to include as purposes preserving soil, water, and related resources as well as promoting soil and water quality. The terms agricultural commodity and technical assistance are defined. Technical assistance includes technical services and technical infrastructure. Technical services are services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices. Technical infrastructure are activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

**Section 2803—Small Watershed Rehabilitation** – – Reauthorizes the program through 2012. Provides \$100 million in mandatory funding to be available until expended.

**Section 2804—Amendments to Soil and Water Resources Conservation Act of 1977** - - Reauthorizes the Soil and Water Resources Conservation Act of 1977 through 2018 and expands existing appraisal requirements to include data on conservation plans, conservation practices planned or implemented, environmental outcomes, economic costs, and related matters. The national conservation program's evaluation of existing conservation programs is amended to emphasize monitoring of specific program components in order to encourage further development and adoption of practices and performance-based standards. The Secretary is directed to complete comprehensive appraisals by December 31, 2010 and December 31, 2015. In addition, the amendments require that the President transmit to Congress, in 2012 and in 2017, a national program of conservation—based on the appraisal—and a statement of policy.

**Section 2805—Resource Conservation and Development Program (RC&D)** – – Directs the Secretary to designate a coordinator that will provide direct technical assistance to each council. Places an emphasis on the "locally led" process by adding the term in several places in the section. It repeals the program evaluation.



**Section 2806—Use of Funds for Salinity Control Activities Upstream of Imperial Dam** -- Allows the Secretary of Interior to create a Basin States Program to allow the Bureau of Reclamation to carry out salinity control activities in the Colorado River Basin.

**Section 2807—Desert Terminal Lakes** -- Transfers \$175 million to the Department of Interior for Desert Terminal Lakes and continues the program. Strikes the water rights purchase or lease prohibition in current law. Permits use of funds to lease water; to purchase land, water appurtenant to the land, and related interests in the Walker River Basin.

**Subtitle J—Miscellaneous Conservation Provisions**

**Section 2901— High Plains Water Study** -- Requires that program benefits under this Act will not be denied to eligible individuals solely on the basis of participation in a one-time study of Ogallala aquifer recharge potential in the high plains of Texas.

**Section 2902—Naming of National Plant Materials Center at Beltsville, Maryland in honor of Norman A. Berg** -- Names the NRCS National Plant Materials Center at Beltsville, Maryland in honor of Norman A. Berg, former Chief of NRCS.

**Section 2903—Transition** -- Except as provided by amendments in the Title, the Secretary shall continue to carry out any current program or activity, including the Ground and Surface Water Conservation Program, using laws applicable to the program as they existed in the program one day prior to enactment.

**Section 2904—Regulations** - - Requires rules to be completed in 90 days and provides for same regulatory relief as the 2002 Farm Bill.