

**H.R. 2419, the Food, Conservation and Energy Act of 2008
(The Farm Bill)
Summary**

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Title I Commodity Programs

Overall, the rice program safety net constructed in the 2002 Farm Bill remains virtually intact with some payment limitation changes. Authorization of this Farm Bill will expire September 30, 2012.

- Direct Payments

The conference report provides for the adjustment of base acres only for purposes of the termination or expiration of a conservation reserve program (CRP) contract. Further, it provides direct payments at current rates (\$2.35 per cwt.) with an exception for participants in the new average crop revenue program (ACRE) which will be discussed later. The report also terminates advance direct payments starting with the 2012 crop year. Payment acres will be reduced from 85% to 83.3% in crop years 2009-2011.

- Counter Cyclical Program

The conference report clarifies that the Secretary shall establish national average loan rates for all rice. It will eliminate partial counter cyclical payments beginning with the 2011 crop year and prohibits any counter cyclical payment if total counter cyclical payments, for all covered commodities on a farm, is less than \$25. For long grain and medium grain rice the effective price shall be determined using the same calculation but by the type or class of rice as determined by the Secretary. Further, for purposes of making counter cyclical payments for medium and long grain, base acres on the farm shall be apportioned based on acreage planted to long grain and medium grain during the 2003-2006 crop years.

- Optional revenue-based counter-cyclical program

The conference report provides an optional revenue-based counter-cyclical program that will be available beginning with the 2009 crop year. As an alternative to receiving counter cyclical payments, AND with an agreement to forgo 20 percent of the direct payment rate and 30 percent of the marketing assistance loan rates for covered commodities including rice, a producer can elect to participate in the average crop revenue election (ACRE) program. Once they elect to participate in the program, producers must remain in the program for the duration of the farm bill. Participants in ACRE will be eligible for state-based coverage with a revenue guarantee equal to 90 percent of the 5-year state average yield per planted acre, excluding the highest and lowest years, multiplied by the 2-year national average. Once the ACRE guarantee is established, it cannot vary by more than 10 percent from the prior year guarantee. If the actual State revenue (yield per planted acre times the national price) is less than the revenue guarantee, and if producers suffer an on-farm loss, they will receive an ACRE payment equal to the difference between the State revenue guarantee and the actual revenue for the crop year up to 25 percent of the revenue guarantee. ACRE revenue payments are made on 85 percent of the acreage planted or considered planted. For the 2009

through the 2011 crop year ACRE payment acres are reduced to 83.3 percent of planted or considered planted acres.

- Loan rates

The conference report establishes loan rates for nonrecourse marketing assistance loans at \$6.50 per cwt for long, medium and short grain rice. The structure of loan deficiency payments remains unchanged from current law.

- Payment Limits

The conference report establishes payment limits under the new law at \$40,000 for traditional direct payments, \$65,000 for counter cyclical payments, a reduced direct payment limit for participants in the ACRE program to reflect the amount the direct payment is cut as a condition for participation in ACRE, and a limit in the amount of counter cyclical and ACRE payments that reflects the \$65,000 limit plus the amount that the direct payment limit is reduced. The counter cyclical limits and ACRE limits are combined for those producers who participate in ACRE because producers would be eligible to participate in the counter cyclical program on one farm and the average crop revenue election on a separate farm.

Direct Attribution

So-called direct attribution is included by requiring the Secretary to promulgate regulations to ensure that the total amount of payments are attributed to a person, by taking into account the direct and indirect ownership interests of the person in a legal entity. Payments made to a legal entity shall be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity that has otherwise exceeded the applicable payment limitation.

Three entity rule

The final report repeals the three-entity rule. Each entity or person receiving payments is to provide the Secretary the name and social security number or each individual, or the name and tax ID number of each entity, that holds or acquires an ownership interest; and for each person, provide such information for each entity in which the person holds an ownership interest.

Actively Engaged

The conference report also continues current provisions that recipients be “actively engaged” in farming. Further Congress intends for the Secretary to end discrimination against spouses by assigning a “significant” level of contribution of labor or active management, the Conference Substitute requires the spouse only to make a significant contribution of capital, equipment, or land in order to be considered actively engaged.

AGI

The conference report provides an averaged adjusted gross nonfarm income (AGI) cap of \$500,000. If the average nonfarm AGI of a person or legal entity exceeds \$500,000 they become ineligible for virtually all farm program benefits including the new disaster program. It also provides for an average farm AGI cap of \$750,000. If a person or legal entity exceeds the \$750,000 AGI then they become ineligible for direct payments.

A new section of the final bill provides that married couples filing jointly may allocate appropriately their income among themselves for the purposes of applying both the new \$750,000 adjusted gross farm income test and the new \$500,000 nonfarm income test to each individual spouse.

For conservation program participation the conference report provides an average nonfarm AGI cap of \$1,000,000 unless two-thirds (previously three-fourths) or more of the income of the person or legal entity is average adjusted gross farm income with a broadened definition of farm income. Importantly, the Secretary is authorized to waive the limitation on a case-by-case basis if the Secretary determines that environmentally sensitive land of special significance would be protected.

Farm Income Definition

The definition of farm income is broadened to include the production of crops, livestock (including the feeding, rearing or finishing of livestock), or unfinished raw forestry products, the sale of easements and development rights or water rights, the sale of farm equipment, the rental of land used for farming, the provision of production inputs and services to farmers, the processing, storing and transporting of farm commodities and the sale of land used for agriculture.