

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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(1) Short Title

The House bill refers to this Act as the “Farm, Nutrition, and Bioenergy Act of 2007”. (Section 1)

The Senate amendment states that this Act may be cited as the “Food and Energy Security Act of 2007”. (Section 1)

The Conference substitute cites this Act as the “Food, Conservation, and Energy Act of 2008”. (Section 1)

TITLE I—COMMODITY PROGRAMS

(2) Definitions

The House bill defines various terms used in the bill; most terms are defined as they were in the 2002 farm bill. The definitions of “Far East price” and two definitions regarding the cotton quality and premiums, “United States Premium Factor” and “Comparable United States Quality” are added. (Section 1001)

The Senate amendment defines various terms used in the bill; most terms are defined as they were in the 2002 farm bill. The definitions of average crop revenue payment, medium grain rice, and pulse crop are added. (Section 1001) The definition of Secretary applies to the entire bill. (Section 2) The definitions that are relevant to the peanuts subtitle are found in that part. (Section 1301)

The Conference substitute defines terms necessary for implementation of this Act: Secretary, average crop revenue election payment, base acres, counter-cyclical payment, covered commodity, direct payment, effective price, extra long staple cotton, loan commodity, medium grain rice, other oilseed, payment acres, payment yield, producer, pulse crop, State, target price, United States, and United States premium factor. The Conference substitute adopts the Senate structure for the peanut program. (Sections 2, 1001, and 1301)

(3) Adjustments to Base Acres

The House bill provides that producers are generally not given a choice of updating base acres or payment yields under this bill. However, it requires the Secretary to provide base acre adjustments when a conservation reserve contract ends. Peanut base acres are no longer specified because peanuts are included as a covered commodity. (Section 1101)

The Senate amendment provides for an adjustment in base acres to include pulse crop, camelina, or newly designated oilseed acreage; applies the limit on acreage enrolled in a conservation program only to acreage enrolled in Federal conservation programs; references base acres for peanuts; and requires the Secretary to reduce base acres for land that is no longer used for farming, specifically land that has been developed for commercial or industrial use or has been subdivided and developed for multiple residential units or other nonfarming uses unless the producer demonstrates that the land remains devoted exclusively to agricultural production. Section 1302 applies the base acre provisions for covered commodities under Section 1101 to peanuts. (Sections 1101 and 1301)

The Conference substitute provides for the adjustment of base acres when a

conservation reserve contract expires or is terminated; the producer has eligible pulse crop acreage or eligible oilseed acreage as a result of the designation of additional oilseeds; provides for base acres for peanuts in the determination of excess base acres; provides for the reduction of base acres for land that has been subdivided and developed for multiple residential units; provides that direct payments, counter-cyclical payments, or average crop revenue election payments are prohibited if the sum of the base acres of the farm is 10 acres or less unless the farm is owned by a socially disadvantaged or limited resource farmer or rancher; and includes authority for data collection and evaluation. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1101 and 1302)

The Managers intend that the Department accommodate requests for adjustments in base acres for producers on different farms or tracts who have agreed on a voluntary basis to redistribute base acres between tracts, if base acreage was previously transferred to or from a tract because of participation in the Conservation Reserve Program.

The Managers expect Section 1101(b)(1) and Section 1302(b)(1) to be administered in the same manner as Section 1101(g)(1) and Section 1302(f)(1) of the Farm Security and Rural Investment Act of 2002 as implemented in 7 CFR 1412.204(a).

The Managers recognize the importance of assessing the impact of the suspension of payments for small base acres of covered commodities upon specialty crop producers. For greater efficiency, the Managers expect the Secretary to include the information and evaluations derived from Section 1101(d)(3) and Section 1302(d)(3) into the report required under Section 1107(d)(7)(C) prior to its submission to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

The Managers intend for the Department to allow for aggregation of farms for purposes of determining the suspension of payments on farms with 10 base acres or less. The Managers expect for the Department to review farms in this category on an annual basis rather than prohibiting payments to these farms for the life of the farm bill.

(3A) Payment Yields

The Senate amendment provides for the establishment of a payment yield for any designated oilseed, camelina, or eligible pulse crop for the purpose of making direct payments and counter-cyclical payments. It also provides a formula for calculating payment yields that is similar to the provisions used in 2002. (Section 1102)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, but deletes all references to camelina. (Section 1102)

(4) Availability of Direct Payments

The House bill reflects current law for the 2008-2012 crop years, except it includes peanuts; terminates advance direct payments starting with the 2012 crop year; and prohibits a direct payment if the payment for all covered commodities would be less than \$25. (Section 1102)

The Senate amendment reflects current law for the 2008-2012 crop years, except it terminates advance direct payments starting with the 2012 crop year; specifies separate rates for long grain rice and medium grain rice; and excludes participants in the average

crop revenue program. (Sections 1103 and 1303)

The Conference substitute provides direct payments at current rates with an exception for participants in the average crop revenue election program; specifies separate but identical rates for long grain rice and medium grain rice; and terminates advance direct payments starting with the 2012 crop year. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1103 and 1303)

(5) Availability of Counter-Cyclical Payments

The House bill extends current provisions to the 2008-2012 crop years with the following exceptions: includes peanuts as a covered commodity; clarifies that the Secretary shall establish national average loan rates for all rice and all barley for the purpose of calculating counter-cyclical payments; rebalances target prices for wheat, barley, oats, upland cotton, soybeans, and other oilseeds; eliminates partial counter-cyclical payments beginning with the 2011 crop year; and prohibits a counter-cyclical payment if the total counter-cyclical payments for all covered commodities on the farm would be less than \$25. (Section 1103)

The Senate amendment extends the counter-cyclical program for the 2008-2012 crop years, except for participants in average crop revenue program, and with the following modifications: for long grain rice and medium grain rice, the effective price is determined using the same calculation, but by the type or class of rice, as determined by the Secretary; rebalances target prices for wheat, grain sorghum, barley, oats, upland cotton, soybeans, and other oilseeds; establishes target prices for dry peas, lentils, small chickpeas, and large chickpeas; eliminates partial counter-cyclical payments beginning with the 2011 crop year; prohibits the Secretary from establishing a target price for a covered commodity that is different from the target price specified. (Sections 1104 and 1304)

The Conference substitute adopts the Senate provision regarding long grain rice and medium grain rice. The Conference substitute provides that the revised target price for upland cotton and counter-cyclical program payment by class of rice will be effective beginning with the 2008 crop year; establishes target prices for pulse crops beginning with the 2009 crop year; and rebalances target prices for wheat, grain sorghum, barley, oats, soybeans and other oilseeds effective for the 2010 crop year; and eliminates partial counter-cyclical payments beginning with the 2011 crop year. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1104 and 1304)

(6) Availability of Revenue-Based Counter-Cyclical Payments

The House bill requires the Secretary to offer producers the option to receive revenue-based counter-cyclical payments for the 2008-2012 crop years, as an alternative to receiving counter-cyclical payments under section 1103. Producers will have only one opportunity to elect to receive revenue-based counter cyclical payments as soon as practicable after enactment. If a producer fails to make such election in a timely manner, the producer will receive counter-cyclical payments pursuant to section 1103. The Secretary is required to make revenue-based counter-cyclical payments to such producers if the Secretary determines that the national actual revenue per acre for the covered commodity is less than the national target revenue per acre for the covered commodity. The Secretary shall establish a national actual revenue per acre by multiplying the

national average yield for the given year by the higher of: the national average market price received by producers during the 12-month marketing year; or the loan rate for the covered commodity under section 1202, except that for rice and barley, the Secretary shall establish national average all rice and all barley loan rates. The House bill establishes the national target revenue per acre as follows: wheat, \$149.92; corn, \$344.12; grain sorghum, \$131.28; barley, \$153.30; oats, \$92.10; upland cotton, \$496.93; rice, \$548.06; soybeans, \$231.87; other oilseeds, \$129.18; and peanuts, \$683.83. The House bill establishes the national payment yield for each covered commodity and the formula for the national payment rate. The House bill provides that if revenue-based counter-cyclical payments are required for any of the covered commodities, the amount of the payment shall be equal to the product of: the national payment rate; the payment acres; and the payment yield. (Section 1104)

The Senate amendment contains no comparable provision.

The Conference substitute 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 under section 1104, 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 and peanuts, producers on a farm can elect to participate in the average crop revenue election (ACRE) program for all covered commodities and peanuts on the farm. Once they elect to participate in ACRE, the producers on the farm will 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 years with the highest and lowest yields) times the 2-year national average price for the covered commodity. Once the ACRE guarantee is established, it cannot vary by more than 10 percent from the previous year's guarantee. If the actual State revenue (yield per planted acre times the national price) is less than the revenue guarantee, and if the producers suffer a loss on their farm, then 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 to the covered commodity or peanuts. For the 2009, 2010 and 2011 crop years, ACRE payment acres are reduced to 83.3 percent of planted or considered planted acres. (Section 1105)

(7) Producer Agreement Required as Condition of Provision of Direct Payments and Counter-Cyclical Payments

The House bill is similar to current law, except it includes peanuts and omits the reference to noncultivation with regard to the control of noxious weeds. (Section 1105)

The Senate amendment is similar to current law, except it includes an additional provision that land cannot be used for a residential use (including land subdivided and developed into residential units or other nonfarming uses, or that is otherwise no longer intended to be used in conjunction with a farming operation) and provides that no penalty with respect to benefits can be assessed against the producers on a farm for an inaccurate acreage report unless the producers on the farm knowingly and willfully falsified the acreage report. (Section 1105)

The Conference substitute adopts the Senate provision with an amendment that

provides that participants in ACRE provide both acreage and production reports and that no penalty with respect to benefits can be assessed against the producers on a farm for an inaccurate report unless the producers on the farm knowingly and willfully falsified the report. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1106 and 1305)

The Managers intend that if a transfer or change in interest of producers on a farm occurs, and the transferee or owner of the acres does not agree to assume all obligations under section 1106(a), then direct payments, counter-cyclical payments, and average crop revenue election payments will be terminated. However, the references to average crop revenue election payments in sections 1106(b)(1)(A) and 1305(b)(1)(A) refer only to the limitation described in section 1105(a)(2), not the actual payment acres for the average crop revenue election program.

(8) Planting Flexibility

The House bill is the same as current law, but it includes peanuts and establishes a pilot Farm Flex project in Indiana for the 2008-2012 crop years, under which tomatoes for processing may be planted on up to 10,000 base acres. (Section 1106)

The Senate amendment is the same as current law, except provides an exception for mung beans and pulse crops and provides a pilot flexibility project in Indiana for the 2008 and 2009 crop years. (Section 1106)

The Conference substitute provides that mung beans and pulse crops can be planted on base acres, and provides a pilot project to allow the production of specified fruits or vegetables for processing for the 2009-2012 crop years on up to 9,000 base acre in the State of Illinois; 9,000 base acres in the State of Indiana; 1,000 base acres in the State of Iowa; 9,000 base acres in the State of Michigan; 34,000 base acres in the State of Minnesota; 4,000 base acres in the State of Ohio; and 9,000 base acres in the State of Wisconsin; that base acres will be protected; and that the Secretary will evaluate the effects of the pilot project on the supply and demand of fresh fruits and vegetables and fruits and vegetables for processing. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1107 and 1306)

The Managers expect the Secretary to establish a process to ensure that the quantity of fruits or vegetables delivered for processing under the pilot project does not exceed the quantity reflected in the original contract between the producer and the processor. The Managers further expect the Secretary to seek evidence that the amount of fruits or vegetables planted for processing under this pilot project is delivered to the processing facility or in the case of crop loss is determined by the Secretary to have been destroyed.

In evaluating the effects of the program on the supply of and price of fresh fruits and vegetables and fruits and vegetables for processing, the Managers encourage the Secretary to examine the impact of the program on bonus buys under the authority of Section 46 of the Agricultural Act of 1949 and surplus removal under the authority of Section 32 of the Act of August 24, 1935.

The Managers recognize the importance of assessing the impact of the expansion of the planting flexibility pilot program upon specialty crop producers. For greater efficiency, the Managers expect the Secretary to include the information and evaluations derived from Section 1101(d)(3) and Section 1302(d)(3) into the report required under

this Section prior to its submission to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

(8A) Special Rule for Long Grain and Medium Grain Rice

The Senate amendment provides that for the purposes of making counter-cyclical payments for long grain and medium grain rice, base acres on the farm shall be apportioned based on acreage planted to long grain rice and medium grain rice during the 2003–2006 crop years. The Senate amendment requires that base acres, payment acres, and payment yields established with respect to rice are maintained. (Section 1107)

The House bill does not contain a comparable provision.

The Conference substitute adopts the Senate provision. (Section 1108)

(9) Period of Effectiveness

The House bill authorizes Subtitle A of Title I for the 2008-2012 crop years. (Section 1107)

The Senate amendment authorizes Part I of Subtitle A of Title I for each covered commodity for the 2008-2012 crop years. (Section 1108)

The Conference substitute adopts the Senate provision with an amendment. (Section 1109)

(10) Availability of Nonrecourse Marketing Assistance Loans for Loan Commodities

The House bill is similar to current law; but authorizes that, for peanuts, a marketing assistance loan or loan deficiency payments may be obtained through a marketing association or marketing cooperative of producers that is approved by the Secretary, or through the Farm Service Agency; stipulates that as a condition for an individual or entity to provide storage for peanuts for which a marketing assistance loan is made, the individual or entity shall agree to provide storage on a non-discriminatory basis and to comply with additional requirements as the Secretary deems appropriate in order to promote fairness in the administration of this section; and authorizes a marketing association or cooperative to market peanuts for which a loan is made under this section, including by separating peanuts by type and quality. (Section 1201)

The Senate amendment is the same as current law; except for participants in average crop revenue program. (Sections 1201 and 1307)

The Conference substitute adopts the Senate provision. (Sections 1201 and 1307)

(10A) Peanuts Storage and Handling Costs

The Senate amendment replaces the payment of storage, handling and associated costs under the 2002 farm bill with a mechanism that ensures handling and associated costs are not deducted from a producer's marketing loan. USDA would advance the payment for handling and associate costs for peanuts placed under loan and the advanced costs would be repaid when the peanuts are redeemed. (Section 1307(a)(7))

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to begin coverage for handling, and associated costs with the 2008 crop of peanuts. (Section 1307)

In order to provide adequate storage and handling for peanuts in the marketing

loan program, FSRIA used funds of the Commodity Credit Corporation (CCC) to provide payments for storage, handling, and associated costs for peanuts in the loan. However, these payments expired before the 2007 crop year for peanuts. The budgetary constraints made it impossible to continue the storage and handling payments established under FSRIA in this bill. In order to continue to ensure the adequate storage and handling for peanuts in the loan program, this bill instructs the Secretary to pay any handling and associated costs incurred at the time the peanuts are placed under loan for the 2008 through 2012 peanut crop years. These payments would be repaid when the loan peanuts are redeemed. The Secretary would pay the storage, handling, and associated costs for peanuts under the loan that are forfeited. The purpose of this provision is to not only ensure proper and adequate storage and handling of peanuts in the loan but also to guarantee that these costs are not taken out of a producer's loan proceeds at the time the peanuts are placed in the loan.

(11) Loan Rates for Nonrecourse Marketing Assistance Loans

The House bill establishes loan rates for marketing assistance loans, including two loan rates for rice (one for long grain rice; one for medium and short grain rice) and two for barley (one for feed barley; one for malt barley), as follows: wheat, \$2.94 per bushel; corn, \$1.95 per bushel; grain sorghum, \$1.95 per bushel; malt barley, \$2.50 per bushel; feed barley, \$1.90 per bushel; oats, \$1.46 per bushel; base quality upland cotton, \$0.52 per pound; extra long staple cotton, \$0.7977 per pound; long grain rice, \$6.50 per hundredweight; medium grain rice and short grain rice, \$6.50 per hundredweight; soybeans, \$5.00 per bushel; other oilseeds, \$0.1070 per pound for each of the following—sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds designated by the Secretary; dry peas, \$5.40 per hundredweight; lentils, \$11.28 per hundredweight; small chickpeas, \$8.54 per hundredweight; peanuts, \$355.00 per ton; graded wool, \$1.10 per pound; nongraded wool, \$0.40 per pound; honey, \$0.60 per pound; and mohair, \$4.20 per pound. The House bill requires the Secretary to establish a single county loan rate for corn and grain sorghum in each county; and to administer the applicable loan, marketing loan, counter-cyclical and related programs using an identical loan rate for corn and grain sorghum in each county. (Section 1202)

The Senate amendment establishes loan rates for the 2008-2012 crop years; includes similar provisions to the House bill for corn and grain sorghum; and establishes grading basis for marketing loans for pulse crops using a grade not less than grade number 2 or other grade factors, including the fair and average quality of the crop in any year; and may be adjusted by the Secretary to reflect the normal market discounts for grades less than number 2 quality. (Sections 1202, 1210, and 1307)

The Conference substitute establishes loan rates for the 2008-2012 crop years. The Conference substitute adopts the Senate structure for the peanut program. (Sections 1202 and 1307)

The Managers have included in Section 1202 revisions to the marketing loan rates for dry peas, lentils, and small chickpeas and established a marketing loan program for large chickpeas, herein after referred to collectively as pulse crops. The Managers intend that the Secretary establish grade factors for pulse crop loan eligibility that reflects the established U.S. grades for #2 or better used in commercial domestic and export sales

transactions and that the Secretary establish a commodity marketing loan grade discount schedule that is comparable to, and reflects the prevailing average grade discounts that apply to commercial pulse crop sales transactions.

(12) Terms of Loans

The House bill provides the same loan term as current law. (Section 1203)

The Senate amendment provides the same loan term as current law, and it establishes the same loan term for peanuts as current law. (Sections 1203 and 1307)

The Conference substitute adopts the House provision and the Senate structure for the peanut program. (Sections 1203 and 1307)

(13) Repayment of Loans

The House bill provides the same as current law, except it specifies long grain rice, medium grain rice, and short grain rice; includes peanuts; and for upland cotton, it specifies that USDA use price quotes from Far East market to determine the prevailing world market price for upland cotton; provides for adjustments to the prevailing world market price; and requires the prevailing world market price be adjusted to U.S. quality and location; and authorizes further adjustment in the prevailing world market price. The House bill requires repayment rates for dry peas, lentils and small chickpeas to be based on quality grades for those commodities. (Section 1204)

The Senate amendment is similar to current law, except it specifies long grain rice and medium grain rice, provides similar provisions for upland cotton, and requires the loan repayment rate for pulse crops to be based on the specified quality grades for the applicable commodity. (Sections 1204 and 1307)

The Conference substitute provides that the Secretary calculate a loan repayment rate for loan commodities (other than upland cotton, long grain rice, medium grain rice, extra long staple cotton, and confectionery and each other kind of sunflower seed (other than oil sunflower seed)) based on the average market prices for the loan commodity during the preceding 30-day period. The Conference substitute adopts the Senate provisions with respect to upland cotton with an amendment to provide an adjustment for average transportation costs and adjustments related to U.S. premium factor. (Section 1204)

The Managers have included section 1204(h) which grants authority to the Secretary to modify repayment rates under the marketing loan program in the event of a severe disruption to marketing, transportation, or related infrastructure. The purpose of this provision is to grant the Secretary the authority to manage the marketing loan program in a manner that protects the taxpayer in the event of a major market disruption similar to the disruption that followed Hurricane Katrina. The Managers intend for the actions taken under this provision to be used on a short-term and temporary basis that should not extend beyond the duration of the disruption that gives rise to the exercise of this authority. Further, the Secretary should not exercise this authority if the disruption can be foreseen, such as, routine or announced maintenance on infrastructure, but rather should reserve this authority for extraordinary circumstances.

The Managers authorize the Department of Agriculture to make significant adjustments in the marketing loan program for upland cotton in sections 1204 and 1210. The Managers recognize that the upland cotton marketing loan program will undergo

another significant change in the next marketing year when the Department is expected to modify its determination of the adjusted world price (AWP) in the absence of a North European A index. The Managers understand from the Department that it has the authority to make appropriate adjustments for determining and calculating the AWP for upland cotton. The Managers request that the Department ensure that an accurate world price is discovered in the absence of a North European index and appreciate communication from the Department about any changes that may be made. The Managers encourage the Department to make any changes in a manner that ensures a seamless transition for the program, for the Department, and for the entire cotton industry. The Managers also encourage the Department to ensure that such AWP calculation achieves the statutory goal of allowing upland cotton produced in the United States to be competitive both domestically and internationally.

(14) Loan Deficiency Payments.

The House bill provides the same as current law for 2008-2012 crop years and includes peanuts. (Section 1205)

The Senate amendment provides the same as current law for 2009-2012 crop years. For the 2008 crop year, the Senate amendment establishes the effective date for payment rate determination as the date on which the producers on the farm lost beneficial interest and requires the Secretary to establish procedures for consumption on the farm. (Sections 1205 and 1307)

The Conference substitute adopts the House provision and the Senate structure for the peanut program. (Sections 1205 and 1307)

(15) Payments in Lieu of Loan Deficiency Payments for Grazed Acreage.

The House bill provides the same as current law. (Section 1206)

The Senate bill provides the same as current law. (Section 1206)

The Conference substitute adopts the House provision. (Section 1206)

(16) Special Marketing Loan Provisions for Upland Cotton

The House bill requires the President to carry out a special import quota program for upland cotton whenever the Secretary determines that for a consecutive 4-week period, the price of American cotton exceeds the price of cotton delivered in the Far East markets. The term “special import quota” is defined as a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The House bill provides that the amount of cotton that can come into the U.S. under the special import quota during any marketing year is limited to the equivalent of 10 week’s consumption of upland cotton by domestic mills. (Section 1207(a))

Subsection (b) of the House bill provides the same as current law. (Section 1207(b))

Subsection (c) of the House bill requires the Secretary, beginning on the date of enactment through July 31, 2013, to issue marketing certificates or cash payments to domestic users of upland cotton for uses of all cotton regardless of origin. The payments or certificates will equal 4-cents per pound. Assistance can only be used for acquisition, construction, installation, modernization, development, conversion, or expansion of land,

plant, buildings, equipment, facilities, or machinery. No end date is specified. (Section 1207(c))

The Senate amendment provides the same as the House measure except it specifies the price of American cotton delivered to a definable and significant international market. (Section 1207(a))

Subsection (b) of the Senate amendment is the same as current law, except it provides additional discretion on the quantity of quota. (Section 1207(b))

Subsection (c) of the Senate amendment requires the Secretary, beginning August 1, 2008 through June 30, 2013, to provide economic adjustment assistance equal to 4 cents per pound to domestic users of upland cotton for all documented use of cotton during the previous month regardless of the origin of the cotton. The payment rate is reduced to 0 cents per pound on July 1, 2013, terminating the funding for the program. It specifies the same uses for the assistance as in the House bill. (Section 1207(c))

The Conference substitute adopts the Senate provision with an amendment in subsection (c) to provide assistance equal to 4 cents per pound during the period August 1, 2008, through July 31, 2012 and reduced to 3 cents per pound beginning on August 1, 2012. (Section 1207)

(17) Special Competitive Provisions for Extra Long Staple Cotton

The House bill provides the same as current law. (Section 1208)

The Senate amendment provides the same as current law, except that it does not specify the form of payments (cash or certificates). (Section 1208)

The Conference substitute adopts the Senate provision. (Section 1208)

(18) Availability of Recourse Loans for High Moisture Feed Grains and Seed Cotton

The House bill provides the same as current law. (Section 1209)

The Senate amendment provides the same as current law. (Section 1209)

The Conference substitute adopts the Senate provision. (Section 1209)

(19) Deadline for Repayment of Marketing Assistance Loan for Peanuts

The House bill requires that marketing assistance loans for peanuts be redeemed no later than June 30 of the year subsequent to the year in which the peanuts were harvested. Such loans not redeemed by the deadline shall be deemed forfeited to the Commodity Credit Corporation. (Section 1210)

The Senate amendment contains no comparable provision.

The Conference substitute drops this provision.

(19A) Reimbursable Agreements and Payments of Administrative Expenses

The Senate amendment provides that the Secretary may implement any reimbursable agreements or provide for the payment of administrative expenses for peanuts only in a manner that is consistent with such activities in regard to other commodities. (Section 1307)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 1307(g))

(19B) Adjustments of Loans for Peanuts

The Senate amendment provides authority to the Secretary to adjust loan rates for peanuts based on differences in grade, type, quality, location, and other factors. (Section 1308)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 1308)

(20) Commodity Quality Incentive Payments for Healthy Oilseeds

The House bill, subject to the availability of funds, requires the Secretary to provide commodity quality incentive payments during the 2009-2013 crop years for the production of oilseeds with specialized traits that enhance human health. Requires the Secretary to issue a request for proposals for payments under this section. (Section 1211)

The Senate amendment is similar to House provision, except it has fewer requirements for proposals; does not specify multi-year contracts; provides protection for proprietary information; and authorizes \$400 million for the period of fiscal years 2008-2012 subject to appropriations. (Section 1705)

The Conference substitute adopts the Senate provision with an amendment that provides, subject to the availability of funds, for a quality incentive program for oilseeds demonstrated to improve the health profile of the oilseed for use in human consumption for the period of fiscal years 2009-2012. The provision sets forth the requirements for proposals, protects proprietary information, and provides for program compliance and penalties. (Section 1605)

(20A) Availability of Average Crop Revenue Payments

The Senate amendment requires the Secretary to give producers the opportunity to make a one-time election to receive average crop revenue payments for the 2010, 2011, and 2012 crop years; the 2011 and 2012 crop years; or the 2012 crop year in lieu of participating in the direct and counter-cyclical program and the marketing assistance loan program. Producers who elect to participate in the average crop revenue program are eligible to receive fixed payments equal to not less than the product of \$15 per acre and the quantity of base acres on the farm for all covered commodities and peanuts. The Secretary is required to make revenue payments available if the actual state revenue for a covered commodity or peanuts is less than the average crop revenue guarantee for that commodity. Average crop revenue payments are made beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year (compared to direct payments, this provision delays fixed ACR payments by one year with no provision for advance payments). The Senate amendment establishes actual state revenue as the product of the actual state yield (the quantity of the covered commodity or peanuts produced in the State during the crop year divided by the number of planted acres) and the average crop revenue harvest price (the harvest price used to calculate revenue under revenue plans offered by the Federal Crop Insurance program). The average crop revenue program guarantee equals 90 percent of the product of the expected state yield per planted acre and the pre-planting price (the price used to calculate revenue under revenue coverage plans offered by the Federal Crop Insurance program) for the crop year and the preceding 2 crop years. The pre-planting price cannot decrease or increase more than 15 percent from the pre-planting price for the preceding year. The payment amount, in addition to the amount under section 1401(b)(2) is equal to the product of: the

difference between the average crop revenue program guarantee and the actual state revenue; 85 percent of the base acres on the farm for the covered commodity; the ratio of APH on the farm to the expected state yield; and 90 percent. The Secretary is required to make recourse loans available to producers who participate in this program. (Section 1401)

The House bill contains no comparable provision.

The Conference substitute deletes this provision.

(21) Sugar Program

The House bill maintains many provisions of current law as it relates to the sugar program. However, the loan rate for raw cane sugar is increased to 18.5 cents per pound and the loan rate for refined beet sugar is increased to 23.5 cents per pound. The House bill eliminates the authorization of the Secretary to reduce loan rates if there were negotiated reductions in export and domestic subsidies of other major sugar producing countries. (Section 1301)

The House bill extends current law with regard to the term of the loan and the nonrecourse nature of the loan. Processors are to make adequate assurances that payments to growers will be proportional to the loan values, and the Secretary is authorized to set minimums for such payments.

The Secretary is required to operate the sugar program, to the maximum extent practicable, at no cost to the Federal government. If the producer agrees to reduce production under an inventory disposition program, and such reduced production involves sugar beets or sugarcane already planted, the sugar beets or sugarcane produced on diverted acres may not be used for any commercial purpose other than as a bioenergy feedstock.

The House bill requires the Secretary to collect information on the production, consumption, stocks and trade of sugar in Mexico, including United States exports of sugar to Mexico; and publicly available information on Mexican production, consumption, and trade of high fructose corn syrups, including United States exports of high fructose corn syrups to Mexico.

The sugar program is extended through the 2012 crop year, and the program for the 2007 crop will be operated as under current law.

The Senate amendment also maintains many provisions of current law as it relates to the sugar program. However, the loan rate for raw cane sugar is increased to 18.25 cents per pound for 2009, 18.50 cents per pound for 2010, 18.75 cents per pound for 2011, and 19.00 cents per pound for 2012; and the loan rate for refined beet sugar is set at 128.5 percent of the loan rate for raw cane sugar. (Section 1501)

The Senate amendment requires that the Secretary collect information on the production, consumption, stocks and trade of sugar in Mexico, including United States exports of sugar to Mexico; and publicly available information on Mexican production, consumption, and trade of high fructose corn syrups.

All other provisions of the Senate amendment are the same as the House bill.

The Conference substitute adopts the Senate provision with a modification to the loan rate. The loan rate for raw cane sugar will increase to 18.25 cents per pound for 2009, 18.50 cents per pound for 2010, 18.75 cents per pound for 2011, and 18.75 cents

per pound for 2012. The marketing loan rate for refined beet sugar is set equal to 128.5 percent of the loan rate for raw cane sugar beginning with the 2009 crop year.

The Conference amendment retains a requirement that the Secretary collect information on the production, consumption, stocks and trade of sugar in Mexico, including United States exports of sugar to Mexico; and publicly available information on Mexican production, consumption, and trade of high fructose corn syrups. The Managers expect such information on Mexican trade of high fructose corn syrups to include both imports and exports. (Section 1401)

(22) United States Membership in the International Sugar Organization

The House bill requires the Secretary of Agriculture to work with the Secretary of State to restore U.S. membership within the International Sugar Organization within one year from date of enactment of this bill. (Section 1302)

The Senate amendment requires the Secretary of Agriculture to work with the Secretary of State to restore, to the maximum extent practicable, U.S. membership within the International Sugar Organization within one year from date of enactment of this bill. (Section 1504(1))

The Conference substitute adopts the House provision. (Section 1402)

(23) Flexible Marketing Allotments for Sugar

The House bill extends and amends the provisions of the Agricultural Adjustment Act of 1938 requiring the Secretary to establish marketing allotments for the 2008 through 2012 crops of domestically produced sugar to balance supply and demand and avoid loan forfeitures. (Section 1303)

The House bill adds a definition of “human consumption” in the context of sugar for human consumption, as meaning sugar in human food, beverages, or similar products. The House bill defines the term “market” as meaning to sell or otherwise dispose of including the forfeiture of sugar under the loan program, the movement of raw cane sugar into the refining process, and the sale of sugar for the production of ethanol or other bioenergy product, if the disposition of the sugar is administered by the Secretary.

The Secretary is required to establish at the beginning of each crop year marketing allotments at a level to maintain raw and refined sugar prices above forfeiture levels. The overall allotment quantity is to be not less than 85 percent of the estimated quantity of sugar for domestic human consumption. The marketing allotments are to apply to the marketing by processors of sugar intended for domestic human consumption, with exceptions to facilitate the export of sugar, to enable another processor to fulfill an allocation established for that processor, or for uses other than domestic human consumption. Processors are prohibited from marketing for domestic human consumption a quantity in excess of the allocation, with the same exceptions as current law.

The House bill strikes the provision requiring the Secretary to suspend allotments when the level of imports will exceed 1.532 million short tons and retains the procedures for the Secretary to reassign allotments if processors cannot fulfill the allocations, and specifies that any resulting imports must be in the form of raw cane sugar.

The House bill includes the definition of “seed” for purposes of allotments in proportionate share States. The House bill authorizes the Secretary to transfer the acreage

base history of a sugarcane farm to any other parcels of land of the applicant, in order to establish proportionate shares. Sugarcane base acreage that has been, or is, converted to non-agricultural use may be transferred to other land suitable for the production of sugarcane that can be delivered to a processor in a proportionate share State.

The House bill includes transfers of mill allocations under the procedures for appeals to the Secretary regarding allotments, and eliminates an obsolete special appeal procedure regarding beet sugar allocations.

The House bill extends the sugar allotments through the 2012 crop year. Current law shall apply to flexible marketing allotments for the 2007 crop year for sugar.

The Senate amendment is similar to the House bill, with technical changes with regard to definitions and a modification to indicate that the exception for uses other than domestic human consumption does not include the sale of sugar for the production of ethanol or other bioenergy under the Feedstock Flexibility Program. (Section 1504)

The Conference substitute adopts the Senate provision with a modification to clarify that should there be a sale of a factory possessing an allocation of beet sugar, then the Secretary is to transfer to the buyer the allocation that has been agreed upon by the buyer and seller, assuming such an agreement has been reached. Additionally, it clarifies that following a conversion of sugarcane base acreage to a nonagricultural use in a proportionate share state, the Secretary is to notify the affected landowners of the transferability of the applicable base not later than 90 days after the agency becomes aware of the conversion. (Section 1403)

(23A) Administration of Tariff Rate Quotas

The House bill provides that the Secretary is to establish at the beginning of the quota year, the tariff-rate quotas for raw cane sugar and refined sugars at the minimum level necessary to comply with obligations under international trade agreements approved by Congress. The Secretary may take action to increase the supply of sugar on or after April 1 of each fiscal year, with certain constraints on that action. Before April 1, the Secretary is to take action to increase the supply of sugar only if there is an emergency shortage of sugar in the United States market that is caused by war, flood, hurricane, or other natural disaster or other similar event. The House bill would also require the Secretary to establish orderly shipping patterns for sugar imports. (Section 1303)

The Senate amendment is similar to the House bill except the Senate amendment does not contain the provision requiring the Secretary to establish shipping patterns. (Section 1504)

The Conference substitute adopts the Senate provision. (Section 1403)

(23B) Storage Facility Loans

The Senate amendment prohibits penalties for prepayment of sugar storage facility loans. (Section 1502)

The House contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 1404)

(23C) Commodity Credit Corporation Storage Payments

The Senate amendment establishes rates for the storage of forfeited sugar for each of the 2008 through 2011 crop years in an amount that is not less than 15 cents per

hundredweight of refined sugar per month or 10 cents per hundredweight of raw cane sugar per month. For each of the 2012 and subsequent crop years, establishes storage payments at rates in effect at the time of enactment. (Section 1503)

The House contains no comparable provision.

The Conference substitute [adopts the Senate provision]. (Section 1405)

(23D) Sense of the Senate regarding NAFTA sugar coordination

The Senate amendment provides a sense of the Senate that the United States and Mexico should coordinate their respective sugar policies and that the United States should consult with Mexico on policies to maximize benefits for growers, processors and consumers. (Section 1505)

The House contains no comparable provision.

The Conference substitute deletes the Senate provision.

(24) Dairy Product Price Support Program

The House bill requires the Secretary to support the price of cheddar cheese, butter, and nonfat dry milk by purchasing such products at specified prices: cheddar cheese in blocks at not less than \$1.13 per pound; cheddar cheese in barrels at not less than \$1.10 per pound; butter at not less than \$1.05 per pound; and nonfat dry milk at not less than \$0.80 per pound. If net removals of cheese, butter or nonfat dry milk exceed specific limits for 12 consecutive months, the Secretary may reduce the purchase prices of that commodity during the month that immediately follows. The prices that the Secretary pays under this section for the commodities must be uniform across the country. The Secretary may sell cheese, butter, or nonfat dry milk for unrestricted use from inventories of the Commodity Credit Corporation at prevailing market prices, but not less than 110 percent of the prices specified in the Purchase Price subsection. (Section 1401)

The Senate amendment requires the Secretary to support the price of cheddar cheese, butter, and nonfat dry milk by purchasing such products at specified prices: cheddar cheese in blocks at not less than \$1.13 per pound; cheddar cheese in barrels at not less than \$1.10 per pound; butter at not less than \$1.05 per pound; and nonfat dry milk at not less than \$0.80 per pound. The prices that the Secretary pays under this section for the commodities must be uniform across the country. The Secretary may sell cheese, butter, or nonfat dry milk for unrestricted use from inventories of the Commodity Credit Corporation at prevailing market prices, but not less than 110 percent of the prices specified in the Purchase Price subsection. (Section 1601)

The Conference substitute adopts the House provision with an amendment to delete an unnecessary reference to Commodity Credit Corporation funding. (Section 1501)

(25) Dairy Forward Pricing Program

The House bill requires the Secretary to establish the dairy forward pricing program, which authorizes milk producers to voluntarily enter into forward price contracts with milk handlers for milk that is not Class I. Under such forward price contracts, prices received by milk producers and cooperatives will be deemed to satisfy all regulated minimum milk price requirements. Milk handlers will be prohibited from

requiring participation in a forward price contract, and the Secretary is required to investigate complaints and to take appropriate action if evidence of coercion is found. No forward price contract can be entered into after September 30, 2012, or extend beyond September 30, 2015. (Section 1402)

The Senate amendment amends the former dairy forward pricing pilot program to establish a program that allows milk producers and cooperative associations to voluntarily enter into forward price contracts with milk handlers with protections for producers that are similar to the protections provided in the House bill. (Section 1606)

The Conference substitute adopts the House provision. (Section 1502)

(26) Dairy Export Incentive Program

The House bill reauthorizes the dairy export incentive program until December 31, 2012, and authorizes the Secretary to issue rules to ensure that each year the maximum volume of dairy product exports allowable within the United States' obligations under the Uruguay Round Agreements is exported. (Section 1403)

The Senate amendment reauthorizes the dairy export incentive program until December 31, 2012. (Section 1603)

The Conference amendment adopts the House provision.

(27) Revision of Federal Marketing Order Amendment Procedures

The House bill requires the Secretary, upon receiving a written request for a hearing to amend a milk marketing order, issue a denial of the request or issue a notice of the hearing, and stipulates the timeframe for a hearing. Notice for a hearing on a proposed amendment to a marketing order must be provided not less than three days before the date of the hearing. The Secretary is required to issue a recommended decision on a proposed amendment to a milk marketing order no more than 90 days after the date set for the submission of post-hearing findings, conclusions and written arguments. Further, the House provision requires the final decision to be issued no more than 60 days after the recommended decision was issued. If the Secretary receives a request for a hearing on a proposed amendment to a milk marketing order within 90 days after announcing a decision on a previously proposed amendment to the same order, and the two proposed amendments are essentially the same, the Secretary is not required to call a hearing. (Section 1404)

The Senate amendment requires the Secretary to issue supplemental rules of practice within 60 days of enactment and establishes 5 provisions to be included in the rules of practice. The Secretary, upon receiving a proposal for a hearing regarding a milk marketing order, is required to issue an action plan and expected timeframes for completion of the hearing not more than 180 days after the date of the notice; issue a request for additional information regarding the proposal; or issue a denial of the request. The Senate amendment establishes a time limit of 90 days after the deadline for submitting post-hearing briefs for USDA to issue a recommended decision on proposed amendments to milk marketing orders and to issue a final decision within 60 days after the deadline for submission of comments and exceptions to the recommended decision. The Senate amendment authorizes industry assessments to supplement appropriated funds if necessary to improve or expedite rulemaking; and authorizes the use of informal rulemaking to amend orders, other than provisions of orders that directly affect milk

prices. The Secretary is required, as part of any hearing to adjust make allowances, to determine the average monthly prices of feed and fuel incurred by dairy producers in the relevant marketing area and to consider those prices in determining whether or not to adjust make allowances. (Section 1605)

The Conference substitute adopts the Senate provision with amendments to reduce the amount of time allowed for completion of a hearing to 120 days, provide a limit of up to 60 days for submission of post-hearing briefs, delete specific requirements related to the content of the hearing action plan; and adopt the House language designed to avoid duplicative hearings for similar petitions received within 90 days of the announcement of a decision on a previously proposed amendment. The conference substitute also sunsets the applicability of the Senate provision related to hearings involving adjustments to make-allowances coincident with the Food, Conservation, and Energy Act of 2008.

(28) Dairy Indemnity Program

The House bill reauthorizes the dairy indemnity program through September 30, 2012. (Section 1405)

The Senate amendment reauthorizes the dairy indemnity program through September 30, 2012. (Section 1603)

The Conference substitute adopts the House provision.

(29) Extension of Milk Income Loss Contract Program

The House bill reauthorizes the MILC program through 2012, under the same terms as current law. (Section 1406)

The Senate amendment amends the MILC program for the period October 1, 2008 through August 31, 2012 by increasing the payment factor from 34 percent to 45 percent and by increasing the annual eligible payment quantity from 2.4 million pounds to 4.15 million pounds. (Section 1602)

The Conference substitute provides for the continuation of the program. For the period from October 1, 2008 through August 31, 2012, the payment factor is increased to 45 percent, the annual eligible payment quantity is increased to 2,985,000 pounds, and the \$16.94 per hundredweight price is adjusted whenever the National Average Dairy Feed Ration Cost for a month is greater than \$7.35 per hundredweight by 45 percent of the percentage increase in the feed ration cost. Beginning September 1, 2012, the trigger for the adjustment in the price used to determine the payment rate is set at \$9.50 per hundredweight. (Section 1506)

[insert, page 33 of Agricultural Prices, March 2008]

Feed Price Ratios: United States, March 2008 with Comparisons

Feed Price Ratio ¹	2007	2008	
	Mar	Feb	Mar
Broiler-Feed: Pounds of Broiler Grower Feed equal in value to 1 pound of broiler, live weight ²	5.9	*3.9	3.8
Market Egg Feed: Pounds of Laying Feed equal in value to 1 dozen eggs ³	9.1	*11.1	11.4
Hog-Corn: Bushels of Corn equal in value to 100 pounds of hog, live weight	13.1	*9.3	8.5
Milk-Feed: Pounds of 16% Mixed Dairy Feed equal in value to 1 pound of Whole Milk ⁴	2.39	*2.24	2.05
Steer & Heifer-Corn: Bushels of Corn equal in value to 100 pounds of Steer & Heifers, live weight	28.5	*20.8	19.4
Turkey-Feed: Pounds of Turkey Grower equal in value to 1 pound of Turkey, live weight ⁵	5.5	*3.6	3.8

* Revised.

¹ Effective January 1995, prices of commercial prepared feeds are based on current U.S. prices received for corn, soybeans, alfalfa hay, and all wheat.

² The price of commercial prepared broiler feed is based on current U.S. prices received for corn and soybeans. The modeled feed uses 58 percent corn and 42 percent soybeans.

³ The price of commercial prepared layer feed is based on current U.S. prices received for corn and soybeans. The modeled feed uses 75 percent corn and 25 percent soybeans.

⁴ The price of commercial prepared dairy feed is based on current U.S. prices received for corn, soybeans, and alfalfa. The modeled feed uses 51 percent corn, 8 percent soybeans, and 41 percent alfalfa.

⁵ The price of commercial prepared turkey feed is based on current U.S. prices received for corn, soybeans, and wheat. The modeled feed used 51 percent corn, 28 percent soybeans, and 21 percent wheat.

**Prices Used to Calculate Feed Price Ratios:
United States, March 2008 with Comparisons**

Commodity	Unit	Entire Month		Preliminary
		Mar 2007	Feb 2008	Mar 2008
Broilers, Live	Lb	0.500	0.500	0.510
Eggs, Market	Doz	0.681	1.220	1.300
Hogs, All	Cwt	44.90	42.20	41.20
Milk, All	Cwt	15.60	19.10	18.30
Steers and Heifers	Cwt	97.70	94.20	93.80
Turkeys, Live	Lb	0.443	0.475	0.529
Corn	Bu	3.43	4.53	4.83
Hay, Alfalfa, Baled	Ton	121.00	138.00	143.00
Soybeans	Bu	6.95	11.70	11.90
Wheat, All	Bu	4.75	9.98	11.70

**Feeder Livestock: Prices Paid, United States
March 2008 with Comparisons**

Commodity	Unit	2007	2008	
		Mar	Feb	Mar
		<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Feeders and Stockers				
Cattle and Calves	Cwt	105.40	*103.90	101.60
Feeder Pigs	Cwt	157.00	113.00	115.00

* Revised.

(30) Dairy Promotion and Research Program

The House bill extends the authority to expend funds to develop foreign markets through fiscal year 2012; amends the definition of “United States” to include Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico for both promotion and research programs; and provides for a refund of assessments for importers on contracts in effect prior to July 26, 2007, for a period of one year after the date of enactment. (Section 1407)

The Senate amendment extends the authority to expend funds to develop foreign markets through fiscal year 2012. (Section 1604)

The Conference substitute adopts the House provision with an amendment to reduce the rate of assessment on imported dairy products to 7.5 cents per hundredweight. The substitute also amends the Dairy Promotion Stabilization Act of 1983 to authorize the Secretary to establish by regulation the time and method of importer payments under the Act. (Section 1507)

The Farm Security and Rural Investment Act of 2002 amended Section 112 of the Dairy Promotion Stabilization Act of 1983 (7 U.S.C. 4503(d)) to require that, “The Secretary, in consultation with the United States Trade Representative, shall ensure that the order is implemented in a manner consistent with the international trade obligations of the Federal Government.” The Managers expect the Secretary to consult with the United States Trade Representative to ensure that any action taken pursuant to this section is consistent with the bilateral, regional and multilateral trade obligations of the Federal Government.

(31) Report on Department of Agriculture Reporting Procedures for Nonfat Dry Milk

The House bill requires the Secretary to submit a report to Congress within 90 days of enactment of this Act regarding USDA’s reporting procedures for nonfat dry milk and the impact of those procedures on Federal milk marketing order minimum prices during the period July 1, 2006, through the date of enactment of this Act. (Section 1408)

The Senate amendment is the same as the House provision except it requires the Secretary to submit the report to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. (Section 1607)

The Conference substitute adopts the Senate provision. (Section 1508)

The Managers are encouraged by the corrective action agreed to by the Department in connection with a prior misreporting of nonfat dry milk prices and encourage the Secretary to submit periodic implementation progress reports to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. While the Senate provision to require USDA to formally designate an official to be in charge of coordinating dairy oversight was not included in the conference report, the Managers intend that USDA continue with the steps to improve coordination of dairy oversight within the Department and with other relevant agencies as necessary to ensure accurate price determinations.

(32) Federal Milk Marketing Order Review Commission

The House bill, subject to the availability of funds, establishes the Federal Milk Marketing Order Review Commission to conduct a comprehensive review and evaluation of the current Federal milk marketing order system and non-Federal milk marketing order

systems. The House bill provides for the appointment of 18 Commission members; requires the commission to issue a report to Congress and the Secretary of Agriculture with the results of the review and evaluation conducted under this section; and stipulates that the commission is wholly advisory in nature, and the recommendations it issues are non-binding. (Section 1608)

The Senate amendment is similar to the House provision except it provides additional areas for the Commission to evaluate and modifies the appointment of Commission members. (Section 1608)

The Conference substitute adopts the House provision except the objectives of the Commission are modified, the number of commission members is reduced to 14 and all Commission members will be appointed by the Secretary.

The Managers are aware of a number of dairy reform proposals being advocated at the State, regional and National level to simplify and improve the Federal milk marketing order system. The Managers intend that the Commission should evaluate as many of these proposals as practicable. Specifically, the Commission should analyze and report on the potential economic benefits of establishing a 2-class system of classified milk consisting of a fluid milk class and a manufacturing grade milk class with the price of both classes determined using similar component prices of butterfat, protein, and other solids. The Commission should also evaluate the economic impacts of proposals to eliminate advance pricing that is currently used to calculate the prices of Class I and Class II skim milk and instead use 4-week component prices that are used to calculate prices for Class III and Class IV milk.

(32A) Mandatory Reporting of Dairy Commodities

The Senate amendment amends current law to require corporate officers or officially-designated representatives of each dairy processor (other than those that process less than 1 million pounds of dairy products a year) to report to the Secretary on each daily reporting day such price, quantity, and product characteristics as the Secretary determines appropriate with respect to those package sizes used to establish minimum prices for Class III or Class IV milk under Federal milk marketing orders. The Senate amendment requires the Secretary to make the information reported available to the public on the same day as the information is reported, and requires dairy manufacturers to report, at periodic intervals, the quantities of dairy products in storage. (Section 1609)

The House bill has no comparable provision.

The Conference substitute provides authority for the Secretary to establish an electronic reporting system, subject to the availability of funds; and requires the Secretary to increase the frequency of mandatory reporting of sales of dairy products once the electronic reporting system is in place. (Section 1510)

(32B) Additional Mandatory Dairy Reporting

The Senate amendment amends current law as amended by section 1609 to require regular audits and comparisons with other related dairy market statistics on at least a quarterly basis. (Section 1610)

The House bill has no comparable provision.

The Conference substitute provides for quarterly audits of information submitted or reported and comparison of such information with related dairy market statistics, and

incorporates this requirement in the previous section. (Section 1510)

(33) Administration Generally

The House bill authorizes the use of the Commodity Credit Corporation in carrying out the provisions of title I, and, generally, continues other administrative provisions of the 2002 farm bill. (Section 1501)

The Senate amendment includes the same provisions as the House measure, and includes an additional provision to exempt producers who have an option to receive advance direct and partial counter-cyclical payments from constructive receipt of those payments. (Section 1701)

The Conference substitute adopts the Senate provision with an amendment to provide for interim regulations to implement the payment limitations and adjusted gross income provisions. (Section 1601)

Beginning with the 2009 crop, the Conference substitute includes significant reforms to payment limitation and adjusted gross income provisions. This is a complex and long-standing area of the law and regulations, many of which have been in effect for decades. The continuity and predictability of these regulations is important to the economic stability of farm operators, the lenders that finance them, the input suppliers who provide their seed, feed, fertilizer and other inputs, and indeed for the agricultural economy as a whole. In order to avoid undue disruption of all of these sectors of the agricultural economy, the Managers expect USDA to provide adequate notice and opportunity for comment, consistent with the interim rule process, for Sections 1603 and 1604, to ensure these changes are implemented in a manner that is least disruptive to producers and other stakeholders, and that allows the programs to continue to achieve their objectives.

The Managers further expect that in the rulemaking process, USDA will give priority to addressing matters within the scope of these legislative changes and guidance in this Statement in order to minimize program and regulatory disruption, to maximize continuity and predictability, and to focus the scarce resources of the Department of Agriculture on implementing these and other specific regulatory requirements in this bill.

The Managers also expect that during the interim rule process USDA will amend the regulations as necessary or appropriate to implement these statutory changes consistent with the intent and guidance provided by the Managers throughout this Statement. The Managers expect the notice and comment period regarding the implementation of the AGI and payment limitation provisions to include issues such as, family definitions, denial of program benefits, notification of interests in operation, changes in farming operations, actively engaged, schemes and devices, apportionment of income for joint filers, and spousal eligibility. The Managers expect the Secretary to implement the AGI provision in a manner that provides equitable treatment, to the maximum extent practicable, to all producers.

(34) Suspension of Permanent Price Support Authority

The House bill provides the same as current law for 2008-2012 crops and for milk through December 31, 2012. (Section 1502)

The Senate amendment provides the same as the House measure except does not include peanuts. (Section 1702)

The Conference substitute adopts the House provision. (Section 1602)

(35) Payment Limitations

The House bill extends payment limitations in the 2002 farm bill, with revisions including the elimination of limitations on marketing loan benefits and loan deficiency payments. It amends the Food Security Act of 1985 to limit the total amount of direct payments that a person or legal entity may receive in a crop year to \$60,000, excluding peanuts; and counter-cyclical payments that a person or legal entity may receive in a crop year to \$65,000, excluding peanuts. For peanuts, a person or entity may not receive more than \$60,000 for direct payments, and no more than \$65,000 for counter-cyclical payments. The House bill defines the term “legal entity” as an entity that owns land or an agricultural commodity, or produces an agricultural commodity; and the term “person” as a natural person, and does not include a legal entity. The House bill provides for direct attribution for payments, 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. It provides that every payment made directly to a person will be combined with the person’s pro rata interests in payments received by a legal entity in which the person has an ownership interest. It further provides that for every payment made to a legal entity, the payment will be attributed to those persons with an ownership interest in the entity traced through four levels of ownership in the entities, and includes a framework for that attribution. (Section 1503)

The Senate amendment is similar to the House measure, except it establishes payment limitations under the new act at \$40,000 for a combination of both traditional direct and average crop revenue fixed payments, and \$60,000 for counter-cyclical payments and the revenue portion of average crop revenue payments. It strikes the definition of “loan commodity, thereby also terminating the limitations on marketing loan gains and loan deficiency payments,” adds definitions for “family member”, “legal entity”, and “person,” and includes spouses in the definition of family member. The Senate amendment provides similar direct attribution requirements, except 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. (Section 1703)

The Conference substitute adopts the Senate provision with an amendment that provides a \$65,000 payment limit 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 to participate in ACRE, and a limit in the amount of counter-cyclical and ACRE payments that reflects the \$65,000 limit plus the amount of 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. (Section 1603)

The change in the administration of the payment limit provisions from one based on separate “person” determinations to one that attributes income among persons and entities, based upon their share of participation, is, by design, less susceptible to manipulation by changing the farming structure to introduce multiple farming entities.

With this change, many farming operations that had been approved under current law, may wish to reorganize such operations for estate or tax purposes or for other reasons. It is the intent of the Managers that, consistent with the action taken by the Congress with the passage of the significant changes in farm program participation in 1987, that during the 2008 and 2009 program years, persons should not be penalized for changing their farming operation structure given such a significant change in the law administering payment limitations.

(35A) Special Rules

The House bill amends section 1001 of the Food Security Act of 1985 by inserting a new subsection (e) to essentially continue current rules for minor children, marketing cooperatives, trusts and estates, cash rent tenants, and federal agencies. For state, local governments, and their political subdivisions, it prohibits them from receiving direct and counter-cyclical payments unless they are the producer of all crops on the farm and the proceeds of the production benefits a public school or they have an existing share crop lease. If the state, local government, or political subdivision is the producer, all such qualified entities in a state have a combined limit of one entity for the payments they receive. For share crop leases, if the land is used to maintain a public school, the state, local government, or political subdivision may continue to receive payments under current law until the lease expires. It provides for a 2-5 year denial of benefits for evasion of payment limits, including the failure to disclose material information, and that benefits be denied on a pro-rata basis according to ownership. In addition, the language provides that the addition of a family member under the provisions of section 1001A will be considered to be a bona fide and substantive change. This language encompasses the addition of a spouse to a farming operation, given the new provisions in section 1001A concerning spouses. (Section 1503)

The Senate amendment provides the same as the House measure, except it maintained current law with regard to production on land owned by state and local governments when the proceeds are used to maintain a public school. The Senate amendment expands the enforcement capability of the Secretary and provides for extended penalties for individuals or entities that perpetuate a fraud or a scheme or device in order to exceed the applicable limit on payments. Persons or entities that commit fraud or equally serious actions can be subjected to a five-year denial of program benefits. Any member of a legal entity that participates in a scheme or device to evade the limitations shall be jointly and severally liable for any amounts determined to be payable to the Secretary. The Secretary may partially or fully release from liability any person who cooperates with the Secretary in enforcing payment limitation provisions. (Section 1703)

The Conference amendment adopts the Senate provision with an amendment to provide a single, combined statewide payment limit of \$500,000 upon all state and local governments and political subdivisions that receive farm program payments. This limit would not apply to states with populations less than 1.5 million. (Section 1603)

It is the intent of the Managers that the addition of a spouse (also a family member) will be considered to be bona fide and substantive – just as with the addition of any family member.

(35B) Three-entity rule; actively engaged in farming; denial of program benefits

The House bill amends the Food Security Act of 1985 to repeal the three-entity rule and to require notification of interests. Each entity or person receiving payments is to provide the Secretary the name and social security number of 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. (Section 1503)

The Senate amendment provides the same as the House measure. (Section 1703)

The Conference amendment adopts the Senate provision with an amendment to replace “presented false information that was material” with “failed to disclose material information” and to specify that the provisions apply to any legal entity and any member of any legal entity. (Section 1603)

(35C) Actively Engaged in Farming

The House bill amends the Food Security Act of 1985 to essentially continue the provisions that recipients be “actively engaged” in farming. Existing special classes of actively engaged participants are continued, with the exception that as long as one spouse is determined to be actively engaged, the other spouse shall be determined to have met the requirements of personal labor or active personal management. (Section 1503)

The Senate amendment provides the same as the House measure. (Section 1703)

The Conference substitute adopts the Senate provision. (Section 1603)

Current law concerning spouses made it very difficult for a spouse to be considered to be a separate person for the purpose of the application of the payment limits. In adopting the provision that if one spouse has been determined to be “actively engaged,” then the other spouse will be deemed to have made a significant contribution of active labor or active personal management to the operation as required by section 1001A(b)(2)(A)(i)(II), it is the intent of the Managers that this provision recognize the valuable contributions made by the spouse in a family farming operation as well as the significant value of these contributions to the overall success of family farming operations in America. It is further the intent of the Managers that in implementing this section, the Secretary shall consider such automatic “significant” contribution of active labor or active personal management to be commensurate with at least a 50% share in the profits and losses of the farming operation and to be at risk. It is the intent of the Managers to end the discrimination against spouses of farming families and reflect their true value to the farming operation. 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.

(35D) Transition

The House bill provides that the current provisions of Section 1001 of the Food Security Act of 1985 will remain applicable to the 2007 crop. (Section 1503)

The Senate amendment provides the same as the House measure. (Section 1703)

The Conference substitute provides that the current provisions of sections 1001, 1001A, and 1001B of the Food Security Act of 1985 will remain applicable to the 2007 and 2008 crops. (Section 1603)

(36) Adjusted Gross Income Limitation

The House bill extends the adjusted gross income limitation to programs under this Act and extends the effective period through the 2012 crop year. (Section 1504(a))

It also amends section 1001D of the Food Security Act of 1985, beginning with the 2008 crop year, to require that individuals or entities have an average adjusted gross income (AGI) not exceeding \$1 million in order to receive program payments. Further provides that an individual or entity with an AGI in excess of \$500,000 shall not be eligible for benefits, unless at least 66.66 percent of the AGI is derived from farming, ranching, or forestry operations, as determined by the Secretary. (Section 1504(b))

Modified AGI limits applicable to the 2008 through 2012 crop years. (Section 1504)

The Senate amendment extends the effective period through the 2012 crop year. (Section 1704(a))

It amends section 1001D the Food Security Act of 1985 to lower the applicable average adjusted gross income (AGI) limit for recipients of direct or counter-cyclical payments, marketing loan gain or loan deficiency payments and average crop revenue payments from the current level of \$2.5 million to \$1,000,000 for the 2009 crop year and to \$750,000 for the 2010 and subsequent crop years. Individuals or entities that receive 66.66% of their income from farming, ranching or forestry operations are exempted from this restriction. The Senate amendment establishes the income limitation for conservation programs at the current level of \$2.5 million, unless not less than 75 percent of the AGI is derived from farming, ranching, or forestry operations. (Section 1704(c))

The Senate Amendment provides that existing adjusted gross income provisions of the Food Security Act shall continue to apply with respect to the 2007 and 2008 crops. (Section 1704(d))

Authorizes the allocation of adjusted gross income among the individuals filing joint returns provided the allocation is supported by a certified public accountant or attorney. (Section 1704(b))

The Conference substitute provides an average adjusted gross nonfarm income cap of \$500,000. If the average AGI for nonfarm income of a person or legal entity exceeds \$500,000, they become ineligible for a host of farm programs, including the non-insured assistance program and the new disaster program. The Substitute also provides for an average adjusted gross farm income cap of \$750,000. If a person's or legal entity's average farm AGI exceeds \$750,000, then they become ineligible for direct payments.

The Conference substitute provides an average adjusted gross nonfarm income cap of \$1,000,000 for conservation programs unless two-thirds or more of the income of the person or legal entity is average adjusted gross farm income. 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. (Section 1604)

New section 1001D(a)(3) provides that married couples filing joint returns 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. The section requires that to secure this allocation married couples must provide a professional third party certification of the method used to

apportion the income, and the Secretary must determine that the submission is appropriate. The Managers expect the Secretary to apply this provision carefully and that its impact should be limited to the unique and special circumstances of each individual case.

The new provisions under section 1001D will take effect in 2009 and will be based on the 3 tax years preceding the most immediate preceding tax year. Since these tax years occur in the past and income decisions regarding them were based on past circumstances the Managers expect the Secretary to allow modifications to the allocation of income in these past years in order to implement the new income requirements in as least disruptive manner possible.

The Conference Substitute strengthens the certification requirements and ensures the Secretary can take appropriate action against a person or legal entity that fails to provide certifications concerning their average adjusted gross income, average adjusted gross farm income and average adjusted gross nonfarm income. Certifications are required to be provided at least once every three years. The Managers intend for the Secretary to deny program benefits to a person or legal entity that does not provide the certifications required in section 1001D, as amended, until such time as the certifications are actually provided. The Secretary is also to establish audit procedures that are designed to ensure that audits are directed toward those persons or legal entities that are most likely to exceed the adjusted gross income ceilings set out in section 1001D, but is not designed to authorize the Secretary to conduct repeated audits of operations based upon size alone.

(36A) Income Derived from Farming, Ranching or Forestry

The House bill amends section 1001D of the FSA by adding a new paragraph (3) to delineate income that is to be included in the portion of average adjusted gross income derived from farming, ranching, or forestry to include the following: the production of crops, livestock, or unfinished raw forestry products; the sale, including the sale of easements and development rights, of farm, ranch, or forestry land or water rights; the sale, but not as a dealer, of equipment purchased to conduct farm, ranch, or forestry operations when the equipment is otherwise subject to depreciation expense; the rental of land used for farming, ranching, or forestry operations; the provision of production inputs and services to farmers, ranchers, and foresters; the processing, storing, and transporting of farm, ranch, and forestry commodities; and the sale of land that has been used for agriculture.” (Section 1504(b)(3))

The Senate amendment provides the same as the House measure, except the Senate does not limit the sale of equipment to those other than dealers and does not include the provision regarding equipment subject to depreciation; includes income from water or hunting rights; includes packing in processing and shedding in storage; and includes payment or other income attributable to benefits received under any Title I or Title II program. (Section 1704(c))

The Conference amendment adopts the Senate provision with an amendment to clarify and expand upon the items included in the Senate amendment. Newly specified categories of farm income include the feeding, rearing or finishing of livestock and payments received under the noninsured assistance program (NAP), and under the Federal Crop Insurance Act. Income received from the sale of farm equipment or

production inputs or services to farmers can be considered farm income if two-thirds of a person's or legal entity's average adjusted gross income comes from the other sources of farm income. (Section 1604)

The Managers intend for the Secretary to create a method for determining a person's average adjusted gross farm income by including all income reported on IRS Schedule F (or other schedule for reporting farm or farm-related income), farming, ranching, or forestry related income specifically listed in the statute, and other income as determined by the Secretary to be income related to farming, ranching, or forestry activities. The items described in section 1001D(c) to be included in average adjusted gross farm income are intended to be illustrative and by no means an exclusive list. The Managers expect the Secretary to interpret, implement, and expand the sources of income derived from farming, ranching, or forestry to include the income or benefits from farming and farm-related activities other activities that the Secretary determines are derived directly or indirectly from farm or farm-related activities. Many of these activities may be in addition to those items reported on IRS Schedule F, Form 4853 (farm rental income), farm partnership returns, or other schedules or forms. As farming practices, farming enterprises, and farm-related activities continue to evolve and modernize, the Managers intend that the Secretary will expand the sources of income derived from farming, ranching, or forestry for these purposes to reflect these developments.

(37) Adjustments of Loans

The House bill amends section 162 of the 1996 farm bill by inserting “except for cotton and long grain, medium grain, and short grain rice” after “commodity”; extending the provisions; and adding provisions for cotton and rice.

The House bill authorizes the Secretary to make adjustments in the loan rate for cotton for differences in quality factors, and requires the Secretary to revise the marketing assistance loan program for cotton to better reflect market values for cotton. The House bill requires revisions, including: eliminating or revising warehouse location differentials to reflect market conditions; changing the way premiums and discounts are calculated by using a three-year weighted moving average of spot market data, weighted by each region's share of production; eliminating gaps between premium and discount differentials based on certain fiber lengths; and further capping premiums based on leaf and color considerations.

The House bill provides for discretionary revisions in— adjusting the loan rates schedule using non-spot market price data in addition to spot market data for cotton; and eliminating gaps between premium and discount differentials based on certain longer fiber lengths.

The House bill encourages USDA consultation with the private cotton industry when making the mandatory and discretionary adjustments.

The House bill amends section 162(e) of the 1996 farm bill to provide that “with respect to long grain rice and medium and short grain rice, the Secretary shall not make adjustments in the loan rates for such commodities, except for differences in grade and quality (including milling yields)”.

The House bill provides the same as section 162(c) of the 1996 farm bill, which allows the Secretary to establish county loan rates in a manner that results in the lowest

loan rate being 95% of the national average loan rate, if those loan rates do not result in an increase in outlays. Prohibits any adjustment resulting in an increase in the national average loan rate for any year.

The House bill provides the same as section 162 of the 1996 farm bill. (Section 1505)

The Senate amendment provides for adjustments in loan rates for loan commodities other than cotton for differences in grade, type, location, and other factors. (Section 1210(a))

Subsection (b) of the Senate amendment provides the same as current law. (Section 1210(b))

Subsection (d) of the Senate amendment provides the same as the House measure, except with respect to mandatory revisions, the Senate amendment eliminates warehouse location differentials.

With respect to discretionary revisions, the Senate amendment provides the same as the House measure.

With respect to consultation, the Senate amendment provides the same as the House provision, except that it requires consultation with the private cotton industry. (Section 1210(d))

With respect to rice, the Senate amendment prohibits the Secretary from making adjustments in the loan rates for long grain rice and medium grain rice, except for differences in grade and quality (including milling yields). (Section 1210(f))

Subsection (c) of the Senate amendment provides the same as current law. (Section 1210(c))

The Senate amendment provides the same as current law specifically for peanuts. (Section 1308)

The Conference substitute adopts the Senate provision with an amendment to simplify language related to the requirement to consult with the cotton industry. (Section 1210)

(38) Personal Liability of Producers for Deficiencies

The House bill provides the same as current law. (Section 1506)

The Senate amendment provides the same as current law. (Section 1709)

The Conference substitute adopts the Senate provision. (Section 1606)

(39) Extension of Existing Administrative Authority Regarding Loans

The House bill provides the same as current law. (Section 1507)

The Senate amendment provides the same as current law. (Section 1710).

The Conference adopts the Senate provision with an amendment. (Section 1607)

(40) Assignment of Payments

The House bill provides the same as current law. (Section 1508)

The Senate amendment provides the same as current law. (Section 1711)

The Conference substitute adopts the House provision with an amendment. (Section 1608)

(41) Tracking of Benefits

The House bill requires the Secretary to track the benefits provided under titles I and II directly or indirectly to individuals and entities. (Section 1509)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to give the Secretary discretionary authority to track benefits. (Section 1609)

(42) Upland Cotton Storage Payments

The House bill ends the practice of paying for upland cotton storage, handling and other costs associated with cotton going into the loan starting with the 2011 crop. (Section 1510)

The Senate amendment requires payment of cotton storage costs in the same manner and at the same rates as the Secretary provided for the 2006 crop of cotton effective for the 2008-2012 crop years. (Section 1204(h))

The Conference substitute adopts the Senate provision with an amendment to limit the payments to a percentage of the actual storage rates. (Section 1204(g))

(43) Government Publication of Cotton Price Forecasts

The House bill strikes the current prohibition on the publication of cotton price forecasts. (Section 1511)

The Senate amendment provides the same as the House measure. (Section 1714)

The Conference substitute adopts the Senate provision. (Section 1610)

(44) Prevention of Deceased Persons Receiving Payments Under Farm Commodity Programs

The House bill requires the Secretary to submit a report to Congress which identifies any estate of a deceased person that received payments under this title for more than two crop years following the death of the person. The Secretary is required to promulgate regulations specifying deadlines by which a legal entity that receives payments or other benefits under this title must notify the Secretary of any change in ownership of the entity, including the death of a person with direct ownership interest. Any entity that fails to comply may be denied such payments or benefits. The Secretary is required to recoup erroneous payments made on behalf of a deceased person, and to withhold payments that otherwise would be made to farming operations in which the deceased person was actively engaged until the funds have been recouped. The Secretary is required to biannually reconcile individual tax identification numbers with the Internal Revenue Service for recipients of payments under this title to determine recipients' living status. (Section 1512)

The Senate amendment prohibits the Secretary from providing any agricultural payment under this Act or Act amended by this Act to any deceased individual or estate of such individual after 2 program years after the date of death of the individual. The Secretary is required to submit reports to the respective committees on agriculture that describes the number of payments and the aggregate amount of payments to deceased individuals and estates of deceased individuals; and to specify for each such payment, the length of time the estate of the deceased individual has been open. (Section 11073)

The Conference substitute adopts the House provision with an amendment that provides for the Secretary to issue regulations to allow for the settlement of estates and to

preclude payments on behalf of deceased individuals that were not eligible for payment. The Secretary is directed to reconcile Social Security numbers of program participants with the Social Security Administration at least twice annually. (Section 1611)

(45) Hard White Wheat Development Program

The Senate amendment creates a program to compensate producers of hard white wheat. It establishes acreage limitation and payment rates and provides \$35 million for the period of fiscal years 2008-2012. (Section 1706)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to make the program subject to appropriations and to modify the period of effectiveness to fiscal years 2009-2012. (Section 1612)

(46) Durum Wheat Quality Program

The Senate amendment authorizes compensation to producers of durum wheat in an amount not to exceed 50% of the actual cost of fungicides applied to a crop of durum wheat of the producers to control wheat scab. It provides \$10 million for each of fiscal years 2008 through 2012 subject to appropriations. (Section 1707)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to modify the period of effectiveness to fiscal years 2009-2012. (Section 1613)

(47) Storage Facility Loans

The Senate amendment establishes a storage facility loan program to provide funds for producers of grains, oilseeds, pulse crops, hay, renewable biomass, and other storable commodities (other than sugar) to construct or upgrade storage and handling facilities for the commodities. It provides the terms of loans, amounts, and security requirements. (Section 1708)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment. (Section 1614)

(48) State, County, and Area Committees

The Senate amendment provides for producer representation on county or area committees that are combined or consolidated. The provision requires that minority representation of socially disadvantaged farmers and ranchers is maintained. The Senate amendment provides that the producer is eligible to serve only as a member of the county or area committee that the producer elects to administer the farm records of the producer. (Section 1715)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to require the Secretary to develop procedures for the purpose of maintaining representation of socially disadvantaged farmers and ranchers on combined or consolidated committees. (Section 1615)

(49) Prohibition on charging certain fees

The Senate amendment prohibits the Secretary from charging fees or related costs for the collection of commodity assessments. (Section 1716)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 1616)

(50) Signature Authority

The Senate amendment provides that if the Secretary approves a document containing signatures of program applicants, the Secretary shall not subsequently determine the document is inadequate or invalid because of the lack of authority of any applicant signing the document on behalf of the applicant unless the applicant knowingly and willfully falsified the evidence of signature authority or a signature. (Section 1717)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment ensuring that the Secretary can still seek proper documentation despite the Senate provision and that third party producers who relied upon the prior approval of documents by the Secretary in good faith and substantially complied with farm program requirements are not denied benefits due to erroneous representations of authority. (Section 1617)

The Managers intend for the Secretary to continue to seek proper affirmation of signature authority from appropriate parties even as this section upholds prior document approval by the Secretary despite inadequate or invalid signature authority.

(51) Modernization of Farm Service Agency

The Senate amendment requires the Secretary to modernize the Farm Service Agency information technology and communication systems to ensure timely and efficient program delivery at national, state, and county offices. (Section 1718)

The House bill contains no comparable provision.

The Conference substitute provides for a report addressing the needs of the Department and a detailed plan to fulfill the Department's needs. (Section 1618)

(52) Geospatial Systems

The Senate amendment requires the Secretary to ensure that all agencies of the Department of Agriculture consolidate the geospatial systems of the agencies into a single enterprise system that ensures that geospatial data is shareable, portable, and standardized. (Section 1719)

The House bill contains no comparable provision.

The Conference substitute provides that the Secretary shall ensure that all geospatial data of the agencies of the Department of Agriculture are portable and standardized. (Section 1619)

(53) Leasing of Office Space

The Senate amendment allows the Secretary to use Commodity Credit Corporation funds to lease space for use by agencies of the Department of Agriculture use provided the space is jointly occupied by the agencies. (Section 1720)

The House bill contains no comparable provision.

The Conference substitute provides for a report on the costs and time associated

with complying with U.S. General Services Administration (GSA) leasing procedures. (Section 1620)

(53A) Geographically disadvantaged farmers and ranchers

The Senate amendment establishes a new program to provide geographically disadvantaged farmers and ranchers direct reimbursement payments to cover the cost to transport agricultural commodities or inputs used to produce agricultural commodities. The Secretary may spend up to \$15,000,000 per fiscal year from funds appropriated to carry out this program. (Section 6021)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment. (Section 1621)

The Managers recognize the barriers to competition associated with the high transportation costs incurred by geographically disadvantaged farmers and ranchers. The Managers expect the Secretary to develop, in consultation with the eligible areas, an equitable allocation of the funds for such areas. The Managers also expect the Secretary to consult with eligible areas on administration of the program.

(53B) Implementation

The conference substitute provides \$50,000,000 to the Farm Service Agency to implement title I. (Section 1622)

(54) Repeals

The Senate amendment repeals section 1605 of the 2002 farm bill authorizing a Commission on Application of Payment Limitations; repeals section 1617 of the 2002 farm bill renewing availability of market loss assistance and certain emergency assistance to persons that failed to receive assistance under earlier authorities. (Section 1721)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 1623)

TITLE II—CONSERVATION

(1) Definitions (Section 1201 of 1985 Food Security Act (FSA))

The Senate amendment adds definitions in the 1985 FSA for “beginning farmer or rancher”, “Indian tribe”, “socially disadvantaged farmer or rancher”, “nonindustrial private forest land”, and “technical assistance”. The amendment authorizes the Secretary to employ a reasonable test of net worth or other measure to further qualify a beginning farmer or rancher. (Section 2001 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that removes the test of net worth for a beginning farmer or rancher. The Conference substitute further adopts the definition of a socially disadvantaged farmer or rancher as defined in Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279) and adds a definition of farm, integrated pest management, person and legal

entity, and livestock. The definition of livestock is intended to include alpaca and bison. (Section 2001 of Conference substitute)

(2) Review of Good Faith Determinations (Section 1212 of FSA)

The Senate amendment maintains the good faith exemption and provides for a second level review of highly erodible land 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 or his or her equivalent. The amendment allows for graduated penalties for compliance violations. (Section 2101 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. Conservation compliance was created in the 1985 FSA. It requires that individuals who farm highly erodible land to develop and apply a conservation plan or lose eligibility for farm program benefits. It has resulted in reductions in soil erosion but has often been inconsistently applied. Under current law, even a small compliance infraction requires the complete denial of farm program benefits.

The Conference substitute creates a system of graduated penalties, to be based on the severity of the violation. The amendment also creates a process to ensure that the Farm Service Agency Area Director or the Farm Service Agency State Director will review local compliance decisions. The Natural Resources Conservation Service will be involved to provide concurrence on technical issues.

The Managers believe this approach resolves a long-standing problem and provides for increased oversight of the violation process. The Managers are aware however, that current market conditions are encouraging commodity production on additional land and also changing cropping patterns. In light of the increase in new crop production, as well as changes in cropping systems, the Managers expect that the Secretary will increase whatever technical assistance, planning, monitoring, investigation, and enforcement activities may prove necessary to ensure that producers receiving farm program benefits continue to meet the applicable conservation compliance requirements. (Section 2002 of Conference substitute)

(3) Review of Good Faith Determinations (Section 1222 of FSA)

The Senate amendment maintains the good faith exemption and provides for a second level review of wetland compliance by the Farm Service Agency State Executive Director (with the technical concurrence of the NRCS State Conservationist) or the Farm Service Agency district director (with the technical concurrence of the Natural Resources Conservation Service area conservationist or his/her equivalent). (Section 2201 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers intend for this provision to provide for better review and enforcement of wetlands compliance provisions. It requires a second level of review of wetlands violations by the Farm Service Agency with the concurrence of the Natural Resources Conservation Service on

technical issues. The Managers intend for the Farm Service Agency to continue its primary role in compliance determinations. (Section 2003 of Conference substitute)

(4) Comprehensive Conservation Enhancement Program (Section 1230 of FSA)

The Senate amendment extends the program through 2012 and adds the Healthy Forests Reserve Program. The Environmental Quality Incentives Program (EQIP) is moved to the Comprehensive Stewardship Incentives Program (CSIP). (Section 2341) It exempts land enrolled in the Conservation Reserve Enhancement Program (CREP), land affected by State or local regulations that prohibit water use for agricultural production, and land in the State of Washington where enrollment is essential to Federal or State plans for sustainable wildlife habitat from the 25 percent county acreage cap. (Section 2301 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute does not reauthorize the program. The Healthy Forest Reserve Program is retained in the Forestry Title, and the county acreage cap is addressed in “Administrative Requirements for Conservation Programs”. (Section 1244 of the FSA). The Conference adopts a provision to exclude CREP acreage and continuous Conservation Reserve Program (CRP) acreage from the 25 percent cap if the county government concurs. This provision is separate and distinct from the existing waiver authority. As such, the Managers do not intend for the Secretary to survey producers, businesses, and other entities as is required by the existing waiver authority to implement this new provision.

The Managers recognize that a loss of access to water by agricultural producers can significantly impact conservation needs and local economies, and that producers need access to a wide range of conservation programs to help comply with a State or local law, order, or regulation prohibiting water use for agricultural production.

In making any determination on the applicability of the 25 percent county cropland CRP enrollment limitation, the Managers encourage the Secretary to maintain maximum flexibility for the enrollment of acreage in CRP that cannot be used for an agricultural purpose or is precluded from planting as a result of a State or local law, order, or regulation prohibiting water use for agricultural production.

(5) Conservation Reserve Program (Sections 1231, 1232, 1234, and 1235 of FSA)

(a) Conservation Reserve (Section 1231 of FSA)

The House bill extends CRP until 2012 and gives the Secretary authority to address issues raised by State, regional, and national conservation initiatives. It amends the land eligibility provision to include land the Secretary determines had been planted for 4 of the 6 years preceding the enactment of the Farm, Nutrition, and Bio-energy Act of 2007 (except for land enrolled in CRP as of that date). It maintains the existing maximum enrollment of 39,200,000 acres. It strikes specific enumeration of Pennsylvania, Maryland and Virginia, but maintains the Chesapeake Bay Region as a Conservation Priority Area. The House bill also provides that alfalfa grown as part of a rotation practice is a commodity for cropping history criteria in determining whether land is eligible to be enrolled. It extends the Pilot Program for Enrollment of Wetland and Buffer Acreage in CRP to 2012. (Section 2101 of the House bill)

The Senate amendment extends CRP until 2012 and adds pollinator habitat to the resources to be conserved and improved through the program. The Senate amendment also expands eligible land to include marginal pastureland if native vegetation is grown and the land contributes to the restoration of the long-leaf pine forest or similar rare and declining forest ecosystem. The Senate amendment modifies eligibility of land that would facilitate a net savings in groundwater or surface water to apply only to alfalfa and other forage crops. The section expands eligible land to include land enrolled in the flooded farmland program. The Senate amendment maintains the existing maximum enrollment of 39,200,000 acres. The Senate amendment expands the Chesapeake Bay Priority Area to include all parts in the Chesapeake Bay Watershed and adds the Prairie Pothole Region, Grand Lake St. Mary's Watershed, and Eastern Snake Plain Aquifer region as Conservation Priority Areas.

The Senate amendment expands the lands eligible for the Pilot Program for Enrollment of Wetland and Buffer Acreage to include shallow water areas that were devoted to a commercial pond-raised aquaculture and agricultural drainage water treatment areas that provide nitrogen removal and other wetland functions. The Secretary, in consultation with the State technical committee, shall establish the maximum size of the buffer acreage to be enrolled along with eligible lands, taking into consideration the farming practices used with respect to the cropland that surrounds the wetland or shallow water area. The section increases the maximum wetland size to 40 contiguous acres and makes all acres eligible for payment. (Section 2311 of the Senate amendment)

The Conference substitute adopts the Senate provision with an amendment. The substitute extends CRP until 2012 and provides the Secretary authority to address issues raised by State, regional, and national conservation initiatives. These "State, regional and national conservation initiatives" may include such things as the North American Waterfowl Management Plan, the National Fish Habitat Action Plan, the Greater Sage-Grouse Conservation Strategy, the State Comprehensive Wildlife Conservation Strategies (also referred to as the State Wildlife Action Plans), the Northern Bobwhite Conservation Initiative, and State forest resource strategies. The Managers intend for the Secretary to consider the goals and objectives identified in relevant fish and wildlife conservation initiatives when establishing State and national program priorities, scoring criteria, focus areas, or other special initiatives. The Managers expect the Department to work with conservation partners and State and Federal agencies, to the extent practicable, to complement the goals and objectives of these additional plans through its programs.

Regarding pollinators, the Managers have placed a provision in "Administrative Requirements for Conservation Programs" (Section 1244 of the FSA), which applies to all applicable conservation programs and encourages the Secretary to give priority to applications that provide pollinator habitat.

The Conference substitute adopts the House provision on land eligibility and updates the provision to include land the Secretary determines has been planted for 4 of the 6 years preceding the enactment of the Food, Conservation, and Energy Act of 2008.

While the Managers agreed to an overall reduction in CRP enrollment to 32,000,000 acres, this should not serve as an indicator of declining or reduced support for CRP. The Managers intend that CRP be implemented at authorized levels, and that the program continue as one of USDA's key conservation programs. USDA shall update rental rates and use incentive payments for continuous CRP practices to make the

program competitive with other programs and more economically viable for producers. The Managers support the use of partnership agreements with State wildlife agencies and nongovernmental organizations to assist in program promotion and implementation. Additionally, as general CRP contracts expire, the Managers encourage the enrollment of those acres in the Conservation Stewardship Program (CSP), Grassland Reserve Program (GRP) and the continuous CRP. The Managers expect that the Department will use incentive payments, promotional efforts, and agreements with the third parties mentioned above to ensure that the portions of general signup acreages that can be maintained in the program will be enrolled through continuous CRP.

The Conference substitute adopts the House language and makes a technical correction to include all States that make up the Chesapeake Bay Region as the Conservation Priority Area.

The substitute clarifies that alfalfa grown as part of a rotation practice is a commodity for cropping history purposes. The Managers encourage the Secretary to enroll irrigated alfalfa lands into ongoing CREP projects that address water quantity and quality issues. (Section 2101 of Conference substitute)

(b) Duties of Owner and Operators (Section 1232 of FSA)

The House bill maintains current law regarding managed haying and grazing outside of nesting seasons and expands the provision to allow a producer to conduct prescribed grazing for the control of invasive species on CRP lands. It allows for managed grazing and requires the Secretary to reduce the rental payment and require a management plan. It allows dryland crop production and grazing on CREP acres where CREP is initiated to address declining water resources. The Secretary is required to develop a conservation plan, determine eligibility of dryland crop production and grazing for crop insurance, reduce the rental payment, and renegotiate the agreement to allow for dryland crop production and grazing at the request of the State. Such lands shall be considered “noncropland” for crop insurance purposes. (Section 2101 of the House bill)

The Senate amendment adds that approved vegetative cover shall encourage the planting of native species and the restoration of biodiversity. It requires contract holders to actively manage the land throughout the term of the contract and clarifies that managed harvesting and grazing outside of nesting and brood rearing season is permitted if it is part of the conservation plan. The Senate amendment allows prescribed grazing for control of invasive species. The Senate amendment requires that the practices in the conservation plan be compatible with wildlife and wildlife habitat, clearly described and applicable through the duration of the contract, consistent with the Secretary’s priorities for local conservation management priorities, and actively managed. (Section 2311 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment. The substitute allows routine grazing, including prescribed grazing for the control of invasive species, with appropriate restrictions. The Managers expect that routine grazing will be performed in a manner that is consistent with the underlying purposes of the program and conducted under a site-specific vegetation plan that provides for grazing frequency (duration of time throughout the year, when authorized, and the number of years during the life of the CRP contract). The Managers further expect that guidelines for the vegetation plan and grazing use be developed in consultation with the State technical committee.

The Managers understand that there has been some concern over the current rules related to haying and grazing on CRP land and insufficient flexibility for forage use across varied landscapes while still achieving the purposes of the program. The Managers expect USDA to review rules developed to implement routine grazing and to provide for appropriate flexibility in grazing periods consistent with the conservation goals of the program based on site-specific natural resource conditions.

The Managers understand that there has been some complication in local areas with restricting access to buffers while gleaning the crop residue in a field. The Managers intend that short-term access to buffers that are adjacent to fields be allowed post-harvest without a reduction in payment. While grazing of the buffer is not intended in this action, the proximity to the field crop residue makes restricting access difficult. Due to the short term nature of this activity (60 days maximum), it should not result in a reduced payment and should be done in accordance with the contract. (Section 2107 of Conference substitute)

(b) Payments (Section 1234 of FSA)

The House bill requires the National Agricultural Statistics Service to survey annually the per-acre estimates of county average market dryland and irrigated cash rental rates for all counties with 20,000 acres or more of crop and pastureland. These surveys will be kept on the Department's website and made available to the public. (Section 2101 of the House bill)

The Senate amendment contains a similar provision. In accepting new enrollments, the section requires that if land provides equivalent environmental benefit to a competing offer then the Secretary shall, to the maximum extent practicable, accept an offer from an owner or operator who is a local resident. (Section 2311 of the Senate amendment)

The Conference substitute adopts the Senate provision regarding the NASS survey. In accepting contract offers (Section 1234(c)), the substitute adds a new requirement that the Secretary provide priority to offers from local residents if the offer provides equivalent conservation benefits when compared to other offers. (Section 2110 of Conference substitute)

(c) Contracts (Section 1235 of FSA)

The House bill allows the Secretary to modify a CRP contract to facilitate the transition of CRP land from a retiring owner to a beginning, socially disadvantaged, limited resource farmer or rancher in order to return some or all of the land to sustainable grazing or crop production. It allows the beginning, socially disadvantaged, or limited resource farmer or rancher to make land improvements and to begin the organic certification process one year before the CRP contract expires. The House bill: requires the retiring landowner to sell or lease the CRP land to the beginning, socially disadvantaged, or limited resource farmer for production purposes; requires a conservation plan; allows the farmer to enroll in the Conservation Security Program or EQIP upon taking ownership of the land; and provides CRP payments to the retiring owner/operator for an additional two years after the contract terminates. The House bill allows the beginning, socially disadvantaged, or limited resource farmer or rancher purchasing the CRP land to reenroll a partial field that is eligible for continuous sign-up and is part of a conservation plan.

The House bill requires the Secretary to allow an operator to terminate a contract that has been in effect for 5 years at any time. The section also provides that land enrolled in continuous sign-up is ineligible for early termination. (Section 2101 of the House bill)

The Senate amendment has no comparable provision to the House language on CRP transition options for beginning, socially disadvantaged, or limited resource farmers. The Senate amendment retains current language on early termination by an owner or operator but expands current law to permit contract termination if the participant is disabled or retired from farming and has endured financial hardship as a result of taxation from rental payments received. (Section 2311 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment regarding the transition of CRP land from a retiring farmer or rancher to a beginning or socially disadvantaged farmer or rancher. In implementing the CRP transition option, the Managers encourage the Department to publicize the availability of the transition option widely, including publicity aimed at CRP landowners who are not extending contracts or re-enrolling in the program and at beginning and socially disadvantaged farmers or ranchers. (Section 2111 of Conference substitute)

(6) Flooded Farmland Program (Section 1235B of FSA)

The Senate amendment adds a new flooded farmland program within CRP, which allows for the enrollment of flooded crop and grazing land or land rendered inaccessible because of flooding caused by the natural overflow of a closed basin in the Northern Great Plains region. The section requires that land enrolled must be at least 5 acres in size, flooded, and rendered incapable of production during the preceding three crop years and have no natural outlet. It provides for enrollment through the continuous sign-up process and requires that land enrolled have a consistent history of being used for the production of crops or used as grazing lands.

The Senate amendment allows enrollment of adjoining land that would enhance the conservation or wildlife value of the tract with reduction in rental payment. During participation in the program, owners are not eligible to participate in or receive federal crop insurance, noninsured crop disaster assistance, or any other federal agricultural crop disaster assistance program benefits for land included in the contract. The section also directs the Secretary to preserve the cropland base, allotment history, and payment yields applicable to the enrolled land and to adjust these values upon contract termination to ensure equitable treatment of the enrolled land relative to comparable land remaining in production in the county. The owner shall take actions as necessary to avoid degrading any wildlife habitat that has developed as a result of the natural overflow on the land covered by the contract. (Section 2312 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute deletes this section and makes modifications to CRP and the Wetlands Reserve Program (WRP) to accomplish the intent of the Senate amendment.

The pilot program for enrollment of wetland and buffer acreage in CRP is expanded to include land that had been cropped during 3 of 10 crop years prior to 2002 and after 1990 and is subject to a natural overflow of a prairie wetland. Wetlands and adjacent buffer areas are enrolled under the continuous sign-up process and are limited to no more than 40 acre tracts. The Managers expect the Secretary to require these

enrollments in the CRP wetland pilot program to have ratios of at least two-to-one in upland buffer areas, or greater where practicable, in order to maximize wildlife benefits. Participants must agree to restore wetland hydrology, establish appropriate vegetation, and refrain from commercial use of the land, among other duties during the term of the contract. (Section 2101 of the Conference substitute)

Eligible land in WRP is expanded to include cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole. These wetland areas along with functionally dependent uplands, as practicable, are to be enrolled in 30-year easements. In determining the compensation, the Secretary is expected to base the value on the use of the land prior to flooding and the corresponding value of such land in the county where the eligible land is located. The Managers expect that enrolling these permanently and temporarily flooded lands in the program will provide long term benefits for wildlife habitat and water management. To ensure that enrollment opportunity exists for these lands, the Secretary is directed to conduct an annual survey of the demand for enrollment in the Prairie Pothole Region and adjust annual allocation of program funds in these interested States. The Managers intend the allocations made available through this adjustment process to be subject to any annual pooling and reallocation of funds that the Secretary applies to the entire program. (Section 2201 of the Conference substitute)

(7) Wildlife Habitat Program (Sec 1235C of FSA)

The Senate amendment creates, for the years 2008 through 2012, a Wildlife Habitat Program within the CRP. The program would be available to CRP contract holders who have established softwood pine stands. It provides for agreements that shall have management strategies and practices that benefit wildlife, such as thinning, establishing wildlife food plots, burning, and seeding. Contracts are up to 5-years in term. The Secretary shall encourage cooperative arrangements among program participants, State and local government entities, and nongovernmental organizations to achieve the purposes of the program. The section provides cost-sharing and technical assistance to carry out the program. The program terminates on September 30, 2011. (Section 2313 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute deletes this section and makes modification in CRP to accommodate the intent of the Senate amendment. In providing funding and clarifying the availability of cost-sharing payments related to trees, the Managers encourage the Department to take this opportunity to improve the condition of resources on land enrolled in CRP and planted to trees. The Managers are especially interested in improving wildlife habitat on land in the Southeast in CRP planted to softwood pines. The Managers expect the Department to work with partners to identify areas with the greatest need and potential for improvement. The Managers encourage the use of all appropriate forest-management practices, including thinning and prescribed fire, to achieve the purposes of the program.

(8) Wetland Reserve Program (Section 1237 of FSA)

(a) Establishment (Section 1237(a-f) of FSA)

The House bill authorizes WRP through fiscal year 2012. The section adds wetland creation to the purposes of WRP and authorizes the Secretary to purchase floodplain easements. The section increases the maximum enrollment to 3,605,000 acres; provides for an annual enrollment goal of 250,000 acres, of which up to 10,000 acres may be enrolled as floodplain easements; and changes the program to operate on fiscal year basis. The section amends eligible lands to include riparian areas and floodplains. Flood plain lands are eligible if the land has been damaged by flooding at least once in the preceding calendar year or has been damaged by flooding at least twice in the past 10 years or if the enrollment of other land within the floodplain would aid in flood storage, flow, or erosion control. (Section 2401(a) and Section 2102 (a-c) of the House bill)

The Senate amendment authorizes WRP through fiscal year 2012. The section allows enrollment of 250,000 acres per fiscal year with no enrollments beginning in fiscal year 2013. Indian Tribes may enroll land through 30-year contracts, which shall be equivalent in value to a 30-year easement. The section includes riparian areas and riparian and adjacent areas that are linked to other parcels of wetlands protected under a wetlands reserve agreement or similar device. (Section 2321(1-3) of the Senate amendment)

The Conference substitute adopts the House language with an amendment. The substitute extends WRP to 2012, adds purposes to the establishment section, caps enrollment at 3,041,200, and focuses the program on private land. The substitute changes the program to a fiscal year basis. Enrollment conditions are modified to allow 30-year Tribal contracts. The substitute stipulates that values of such contracts shall be equivalent to 30-year easements.

The substitute does not include the expansion of riparian areas. The Managers recognize that riparian areas often provide extremely important habitat for wildlife, and that restored and protected riparian areas also help improve water quality, reduce sedimentation, and help manage floodwaters. Riparian areas are already eligible lands under WRP and may be enrolled either as uplands that are functionally dependent on a wetland or where they link wetlands that are otherwise protected by easements or a similar mechanism. (Section 2201 of Conference substitute)

(b) Easements and Agreements (Section 1237A of FSA)

The House bill states that compensation for easements shall be based on compensation formulas resulting in the lowest cost: percentage of fair market value according to the USPAP or a percentage of the market value determined by an area-wide survey; a geographic cap; or the landowners offer. Non-federal funds may be accepted to administer this program. (Section 2102 (e) of the House bill)

The Senate amendment adds a requirement that spraying or mowing is allowed if necessary to meet habitat needs of specific wildlife species. The amendment requires that the Secretary pay the lowest compensation for an easement among several alternative valuation methods. The compensation for easements may be provided to landowners in up to 30 payments of equal or unequal size. The section also adds a Wetlands Reserve Enhancement Program with the authority to enter into unique wetlands reserve agreements that may include compatible uses as reserved rights in the warranty easement deed restriction. (Section 2322(a-c) of the Senate amendment)

The substitute adopts the House provision with an amendment. It revises the process for determining the value of easements and contracts by requiring the Secretary

to provide the lowest amount of compensation based on a comparison of the fair market value of the land (as determined by either an appraisal based on the Uniform Standards for Professional Appraisals or an area-wide market survey), a geographic cap, or an offer made by the landowner.

The Managers intend for the Department to develop guidelines and provide direction for States regarding the method for determining the value of easements. The Managers do not intend for the Department to require States to use a specific appraisal process, such as the “Yellow Book” process or an appraisal rather than a market wide survey or analysis. The Department should grant flexibility to State conservationists who, in consultation with State technical committees, should determine the method that best fits the needs of their State.

The substitute provides the Secretary authority to accept non-Federal funds to assist in implementing the program but places this new authority in “Administrative Requirements for Conservation Programs” (Section 1244 of the FSA) so it applies to all conservation programs.

The substitute includes authority for a Wetlands Reserve Enhancement Program (WREP). The WREP authority is intended to allow the Secretary to enter into agreements with States similar to what is done under CREP. It is not intended as a way to enroll State-owned lands in the program. It is the intent of the Managers that the Secretary will implement WREP projects in order to provide focused, targeted resource benefits and to leverage federal funds.

The substitute provides authority for a Reserved Rights Pilot. The Managers intend for the Secretary to explore different warranty easement deeds consistent with the purposes of the program, while allowing a landowner to retain the right to use the land for grazing purposes. The Managers intend that any activities occurring under a reserved right easement be covered by a conservation plan developed and approved by the Secretary.

The substitute provides that easements with values less than \$500,000 be paid out over 1 to 30 years. Easements with values greater than \$500,000 are to be paid out over 5 to 30 years. The Secretary is granted authority to waive that requirement and make lump sum payments if necessary to carry out the purposes of the program. For land to be eligible for the WRP, the land must have remained under the same ownership for a minimum of 7 years. (Section 2208 of Conference substitute)

(c) Duties of Secretary (Section 1237C of FSA)

The House bill adds criteria for the Secretary to use when evaluating easement offers from landowners for wetlands or floodplains. The Secretary may consider the conservation benefits, the cost effectiveness, and whether the landowner or someone else is offering to contribute to the cost of the easement or other interest in the land to leverage Federal funds. In determining the acceptability of easement offers for flood plains, the Secretary may take into consideration the extent to which the purpose of the program would be achieved on the land, whether the land has flooded repeatedly in the past 10 years, whether the easement would contribute to restoration of surrounding lands, and other factors. (Section 2102 (f) of the House bill)

The Senate has no comparable provision.

The Conference substitute adopts the House language for evaluating wetlands. (Section 2207 of Conference substitute)

(d) Payments (Section 1237D of FSA)

The House bill is the same as current law with technical changes. It also changes the paragraph heading “State wetland and environmental enhancement” to “Wetlands Reserve Enhancement”. (Section 2102 (g) of the House bill)

The Senate amendment makes a conforming change to allow payments for 30-year contracts. (Section 2323 of the Senate amendment)

The Conference substitute adopts the Senate amendment. (Section 2205 of Conference substitute)

(3) Reports (Section 1237G of FSA)

The Senate amendment directs the Secretary to evaluate and report to Congress on the implications of long-term easements on Department of Agriculture resources by January 1, 2010. (Section 2322(d))

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers are concerned with the long-term implications of managing and monitoring wetland easements. The substitute requires the Secretary to provide a report on the number and location of conservation easements acquired under the WRP and an assessment of the extent to which the oversight of conservation easement agreements impacts the availability of USDA resources, including technical assistance. (Section 2210 of Conference substitute)

(9) Comprehensive Stewardship Incentives Program

The Senate amendment creates a new CSIP to coordinate the two primary working lands programs: EQIP and the Conservation Stewardship Program (CSP). The section defines resources of concern and requires the Secretary to manage EQIP and CSP in a coordinated manner. The Secretary shall ensure that resources of concern are identified at the State level and shall identify not more than 5 resources of concern within a watershed or region within a State. The section directs the Secretary to issue regulations to implement the CSIP, CSP, and EQIP no later than 180 days after the date of enactment of the 2007 Farm bill. (Section 2341 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute does not include CSIP. The substitute includes a provision in “Administrative Requirements for Conservation Programs” (Section 1244 of the FSA) that requires the Secretary to ensure that there is a streamlined application process for all conservation programs.

(10) Conservation Security Program

(a) Conservation Security Program (Section 1238 FSA)

The House bill states that no new contracts may be entered into under the Conservation Security Program after October 1, 2007. However, payments and modifications to existing contracts may be continued to be made until those contracts expire. (Section 2103(b) of the House bill)

The Senate amendment reauthorizes the Conservation Security Program for existing contracts only. The section provides \$2,317,000,000 for current contracts to remain available until expended and prohibits new contracts or renewals after enactment of the Farm Bill. (Section 2391 of the Senate amendment)

The Conference substitute adopts the Senate provision and provides such sums as necessary to carry out existing contracts.

(a) Definitions

The House bill defines conservation plan, conservation practice, management intensity, nondegradation standard, priority resource of concern, resource specific index, and socially disadvantaged farmer or rancher. (Section 2103(a) of the House bill)

The Senate amendment defines comprehensive conservation plan, stewardship contract, contract offer, enhancement payment, eligible land, livestock, management intensity, payment, practice, producer, program, resource conserving crop, resource conserving crop rotation, stewardship contract, and stewardship threshold. (Section 2391 of the Senate amendment)

The Conference substitute renames the program as the Conservation Stewardship Program (CSP) and defines conservation activities, conservation measurement tools, conservation stewardship plan, priority resource concern, resource concern, and stewardship threshold. (Section 1238D of the Conference substitute)

The Managers recognize that agricultural drainage systems are valuable conservation practices that can be carried out under the CSP and, in particular, that the installation of drainage management systems can provide benefits to water quality by reducing nitrogen loading from subsurface drainage as well as managing wildlife habitat. Thus, these practices are included as conservation activities.

The Conference substitute includes planning needed to address a resource concern as a conservation activity. Since CSP is intended to address multiple resource concerns in a coordinated manner, the Managers encourage the Secretary to implement the program in a manner that encourages comprehensive conservation planning through technical and financial assistance under this program. The Managers encourage the Secretary to use site-specific conservation planning as outlined in the National Planning Procedures Handbook and implement the program in a manner that encourages comprehensive conservation planning on all applicable resources through technical and financial assistance under the program.

The Managers are aware of the effort made by NRCS to develop resource-specific indices for implementing CSP and other conservation assistance programs and encourage this development. Where such indices are not available or practical, the Managers urge the Secretary to use substitute tools that measure the degree, scope, and range of conservation activities adopted by a producer to improve and sustain the condition of a resource.

The term stewardship threshold refers to the level of conservation and environmental management required to improve and conserve a resource. The Managers intend the Secretary to set the threshold at a level that ensures substantial and lasting conservation benefits.

(b) Conservation Security Program/Conservation Stewardship Program and Duties of the Producer

The House bill states that a new Conservation Security Program shall go into effect for fiscal years 2012 through 2017, and that the purpose of the Conservation Security Program is to assist producers in improving environmental quality by addressing priority resources of concern. To be eligible, a producer must already be addressing at least one priority resource of concern to the minimum level of management intensity and have an approved conservation offer. Eligible land includes private agricultural land, forest land, and land owned by Tribes. (Section 2103 of the House bill)

The Senate amendment identifies the purposes of the program as promoting agricultural production and environmental quality as compatible goals and to optimize environmental benefits by assisting producers to promote natural resource conservation. To be eligible, a producer must address priority resources of concern relating to both soil and water to at least the stewardship threshold, adequately address other resources of concern applicable to the operation, and meet or exceed the stewardship threshold for at least 1 additional priority resource of concern by the end of the contract.

The Senate amendment clarifies that eligible land includes cropland, pasture land, rangeland, other agricultural land used for the production of livestock, land used for agroforestry, land used for aquaculture, riparian areas adjacent to eligible land, Tribal lands, public land (if failure to enroll would defeat the purposes of the program), and State and school owned land. The Senate amendment states that all acres of all agricultural operations within a watershed or region that constitute a cohesive management unit shall be covered by the contract.

The Senate amendment includes provisions on contract offers, contract renewal, contract termination, and optimal crop rotations. (Section 2391 of the Senate amendment)

The Conference substitute establishes the program purpose of encouraging producers to address resource concerns in a comprehensive manner by installing and adopting new conservation activities, and by improving, maintaining and managing conservation activities in place at the operation. The Managers encourage the Secretary to place emphasis on improving and adding conservation activities.

The Conference substitute allows nonindustrial private forest land to be eligible with the limitation that not more than 10 percent of annual acres made available under the program can be forest land.

Under the program, land used for cropland that had not been planted, considered to be planted, or devoted to crop production for 4 of the 6 years prior to the date of enactment of this act shall not be the basis of any payment under the program, unless the reason the land did not meet the requirement is that: it had previously been enrolled in CRP; had been maintained in a long term crop rotation; or was incidental land needed for efficient operation, such as an area of a farm or ranch that had been used for structures that had been subsequently removed. The exceptions only apply if they were the direct cause of the producer's inability to meet the 4-of-6 year requirement.

The Managers want to clarify that the "additional criteria" authority provided in Section 1238F(b)(3) may not supersede or be more heavily weighted than the five required evaluation criteria in section 1238F(b)(1). Instead, the additional criteria may provide extra ranking points to help address specific priorities. Contracts shall permit all economic uses of the land that maintain the agricultural nature of the land and are

consistent with the conservation purposes of the program. The Managers intend for this to apply to conservation buffers or any other partial field conservation practice that may be included in the contract.

A producer may renew a CSP contract for an additional five-year period, provided the terms of the existing contract have been achieved to the satisfaction of the Secretary and the producer agrees to adopt new conservation activities. The Secretary is provided authority to require new conservation activities as part of the contract renewal process. It is the intent of the Managers that this could include expanding the degree, scope, and comprehensiveness of conservation activities adopted by a producer to address the original priority resource concerns or addressing one or more additional priority resource concerns.

The Secretary may allow for contract modification if the Secretary determines that a modification is consistent with achieving the purposes of the program. Modifications envisioned by the Managers include instances in which a producer enrolls a portion of the farm in a land retirement or easement program, gains or loses a lease, or has a change in production due to market or weather conditions. The Managers also intend for the Secretary to issue guidance for cases in which a producer has a change in production that requires a change to scheduled conservation practices and activities. The Managers expect the Secretary to approve the contract modification only as long as net conservation benefits will be maintained or improved as a result.

Supplemental payments are authorized for producers who adopt a beneficial crop rotation. The Managers intend for the supplemental payment to encourage producers to adopt new, additional beneficial crop rotations that provide significant conservation benefits. The payments are to be available to producers across the country and should not be limited to a particular crop, cropping system, or region of the country. In the Southeast, peanuts are an example of a crop that responds well to increased rotation lengths. Increased rotation lengths help peanut producers conserve water, more effectively control disease, reduce inputs to control disease and increase productivity.

On-farm conservation research and demonstration activities and pilot-testing projects can be approved as part of contract offers under the program. The Managers expect the Secretary to establish and publicize design protocols and application and contract offer procedures for individual producer and collaborative on-farm research and demonstration activities and for pilot testing projects so producers have a clear understanding of how to participate in either of these two options.

The substitute requires the Secretary to provide a transparent means by which producer may initiate organic certification under the National Organic Program while also participating in CSP. The Managers expect the Secretary to coordinate this program and the organic certification process to the maximum extent practicable.

(c) Duties of the Secretary

Under the House bill, the Secretary shall identify not more than 5 priority resources of concern for a watershed or area within a State. The House bill states that the payment amount shall be based on a portion of the actual costs, income forgone, and resource specific indices. The payment limitation on the Conservation Security Program is \$150,000 for the 5-year term of the contract.

Under the Senate amendment, an acreage allocation is specified, and contracts are limited to \$240,000 for all contracts entered into during any 6-year period. The Senate amendment enrolls 13,273,000 acres annually at a national average cost of \$19 per acre. (Section 2391 and 2341 of the Senate amendment)

The conference substitute provides that the allocation of acres to each State shall be based primarily on each State's proportion of eligible acres to the total number of eligible acres in all States. The Secretary shall also consider the extent and magnitude of conservation needs associated with agricultural production in each State, the degree to which implementation of the program is or will be effective in helping producers address those needs and other considerations in order to achieve equitable geographic distribution of funds.

In carrying out the program on a continuing enrollment basis, a producer can apply at any time during the year for the program, but the application will only be ranked at the time determined by the Secretary. The Managers intend for the program to be available nationwide to all agricultural producers, not only in specific watersheds or geographic regions within a State. The Managers specifically intend that the program not be restricted to particular watershed enrollments.

The Conference substitute requires the Secretary to undertake outreach activities and provide appropriate technical assistance to specialty crop and organic producers and to ensure they can effectively compete in the program. In providing outreach and technical assistance, the Managers encourage the Secretary to provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering organic educational and technical assistance to these producers.

Payments under the program are limited to \$200,000 for all contracts entered into by a producer in any 5-year period. This provision requires direct attribution to real persons. The Managers emphasize that direct attribution is a mandatory requirement. The Managers do not intend for the Secretary to pay for no-till or other common practices that have no cost to the producer.

The Managers encourage the Secretary to conduct outreach to encourage producers who are transitioning land out of the conservation reserve program to protect conservation values by enrolling in CSP. As part of this transition from land retirement to working lands conservation, the Managers urge the Secretary to encourage producers to maintain the land in a grass-based production system with appropriate wildlife protections through CSP or to adopt advanced resource-conserving cropping systems through CSP in tandem with placing conservation buffers and other appropriate partial field conservation practices, farmed wetlands, or special wildlife habitat practices in the continuous CRP. (Section 2301 of Conference substitute)

(11) Grassland Reserve Program (Section 1238N – 1238Q of FSA)

(a) Establishment and Purpose (Section 1238N)

The House bill establishes an enrollment goal of 1,340,000 acres by 2012. It revises the enrollment process to be based on acreage rather than funding and requires that at least 60 percent of program acreage be in long term easements and agreements. It adds a priority for enrolling CRP acres, except that no more than 10 percent of the acreage enrolled in any year maybe from CRP; and prohibits duplicate payments for such

land enrolled in GRP. It establishes that the method for determining the fair market value of enrolled land will be an appraisal, a market survey, a geographic cap, or the landowner offer; whichever results in the lowest amount of compensation to be paid. It authorizes the Secretary to enter into agreements with States and their subdivisions to advance the purposes of the program through a grassland reserve enhancement option. (Section 2104 of the House bill)

The Senate amendment eliminates short-term rental agreements and the requirement for enrollment of at least 40 contiguous acres. It provides for enrollment of land through 30-year contracts and easements and permanent easements. The 30-year contract option is included to encourage tribal participation in the program. A new authority is added for the Secretary to enter into cooperative agreements with eligible entities for the purpose of purchasing, holding, monitoring, and enforcing easements. The Senate amendment adds a definition of eligible entity, expands eligible land to include land that contains historical or archeological resources or would further goals of certain fish and wildlife plans or initiatives, and specifies that easements of the maximum duration by State law are equivalent to permanent easements. (Section 2381 of the Senate amendment)

The Conference substitute adopts an acreage enrollment goal of an additional 1,220,000 acres by 2012. The Conference substitute includes 10-, 15-, and 20-year rental contracts and permanent easements. Easements of the maximum duration allowed by State law are considered as permanent easements. The Managers expect that the 20-year rental contracts will be used to encourage tribal group participation in the program.

The Conference substitute strikes the House priority for 60 percent of acreage in long term contracts and retains current law that 60 percent of the funds would be dedicated to easements, while 40 percent of the funds would be dedicated to short term contracts. In addition, the Conference substitute adopts a priority for enrollment of CRP land with a modification to clarify that the priority applies upon expiration of the CRP contract.

The Conference substitute adopts the Senate additions to eligible land with technical corrections. It does not include a Grassland Reserve Enhancement provision. It adopts the Senate definition of eligible entity and authority for the Secretary to enter cooperative agreements with entities to purchase easements. It also adopts the House bill provision in regard to the method for determining fair market value with a technical correction.

(b) Requirements Relating to Easements and Contracts (Section 12380)

The Senate amendment modifies terms and conditions of easements and agreements to permit fire suppression and addition of grazing-related activities, such as fencing and livestock watering. Criteria for evaluating applications for enrollment are expanded to provide additional flexibility to the Secretary, and in the case of agreements with eligible entities, to provide a priority to applications that include a cash contribution or leverage other resources toward the purchase price of easements.

The House bill has no comparable provision.

The Conference substitute adopts the Senate amendment. The Managers expect these additions to encourage improved management of enrolled acreage, particularly where breaking of the soil surface may be required to manage invasive species or

improve grazing systems, and to leverage additional resources for the protection of grasslands.

The Conference substitute adds implementation of a grazing management plan as a new general requirement of landowners enrolling in the program. With the inclusion of a grazing management plan, the Managers emphasize the conservation purpose of the program, but further clarify that once established these plans are modified only by mutual agreement of the involved parties.

(c) Payments (Section 1238P)

The Senate amendment strikes rental agreement payments and modifies the rate of compensation for restoration agreements. Permanent easements will be paid at a rate of not less than 90 nor more than 100 percent of the eligible restoration costs. Thirty-year easements and contracts will be at the rate of not less than 50 nor more than 75 percent of the eligible restoration costs. The compensation schedule is lengthened to allow for up to 30 annual payments, corresponding to the newly established 30-year contract agreement.

The House bill has no comparable provision.

The Conference substitute adopts the cost-share rate for restoration agreements of not more than 50 percent of the costs of carrying out restoration activities.

(d) Delegation to Private Organizations (1238Q)

The House bill expands on the authority of the Secretary to transfer easement titles to private organizations and to also allow entities to own and write easements under this section, subject to periodic inspections by the Secretary.

The Senate amendment provides authority for the Secretary to enter into cooperative agreements with eligible entities for those entities to purchase, own, enforce, and monitor easements. Terms and conditions of cooperative agreements require entities to demonstrate qualifications, specify parcels to be enrolled, allow substitutions as agreed to by the parties, specify entity reporting on fund use, allow entities to use their own easement instruments, require appraisals using an industry approved method, allow a landowner contribution as a share of the purchase price, and specify a payment schedule. The Secretary shall require easements to contain a contingent right to protect the public investment.

The Conference substitute adopts the Senate amendment provision for cooperative agreements between the Secretary and eligible entities with a modification to the language specifying that eligible entities shall assume costs of administering and enforcing easements.

The Conference substitute adopts a requirement for a contingent right of enforcement. In selecting offers from eligible entities for funding, the Managers expect the Secretary to consider the sufficiency of the offer regarding effective monitoring and enforcement, reversionary interest, or other such factors that will affect the long-term integrity of easement being acquired under the program. The Conference establishes that eligible entities shall provide a share of the easement purchase price that is equal to the share provided by the Secretary. (Section 2403 of Conference substitute)

(12) ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.

(a) Purposes (Section 1240 of FSA)

The House bill adds forest management and organic transition as purposes of the program. It adds forest land and conserving energy to the list of purposes for installing conservation practices. Energy use, organic transition, and forest management are added to the list activities for which the Secretary will assist producers in making cost-effective changes. (Section 2105(a) of the House bill)

The Senate amendment adds forest management as a purpose of the program and adds forest land conservation and pollinators to the list of purposes for installing conservation practices. Fuels management and forest management are added to the list activities for which the Secretary will assist producers in making cost-effective changes. (Section 2351 of the Senate amendment)

The Conference substitute adopts the House bill with amendment. Forest management is added to the program purpose, and forest land and energy conservation are added to the resources to benefit from the installation of conservation practices. Fuels management and forest management are added to the list activities for which the Secretary will assist producers in making cost-effective changes. The Managers recognize the significance of the changes made to the program to reflect new needs and concerns. The Managers expect the Secretary to continue to help producers address conservation needs on their land while promoting agricultural production and environmental quality as compatible goals.

(b) Definitions (Section 1240A)

The House bill adds definitions for integrated pest management, socially disadvantaged farmer or rancher, and adds alpaca and bison to the definition of livestock. It also adds forest management and silviculture to land management practices for purposes of the program.

The Senate amendment adds a definition of producer that includes custom feeders and contract growers. It modifies eligible land to include private nonindustrial forest land and lands used for pond-raised aquaculture production. The amendment adds forest and fuels management and conservation planning to practices for purposes of the program.

The Conference substitute adopts the Senate amendment with an amendment to modify eligible land. The Managers intend for the Department to continue to provide assistance to custom feeders and contract growers through this program.

(c) Establishment (Section 1240B)

The House bill adds organic certification as a practice eligible for cost share payments; amends the exception to establish a 90-percent cost-share rate for beginning and socially disadvantaged farmers or ranchers and provides 90-percent cost-share for use of gasifier technology. It allows for the use of an approved third party for technical assistance. Energy efficient improvements and renewable energy systems are added to practices eligible for incentive payments. Promotion of pollinator habitat is added to the Special Rule for determining incentive payment rates. The Secretary is directed to reserve for 90 days not less than 5 percent of program financial assistance for each of beginning farmers or ranchers and socially disadvantaged farmers or ranchers. It makes market

agencies and custom feeding businesses eligible for technical and financial assistance. (Section 2105(c) through (h) of the House bill)

The Senate amendment adds conservation plans to practices eligible for incentive payments, reduces the maximum contract term to 5 years, and strikes the provision on bidding down. The cost-share rate exception for beginning and socially disadvantaged farmers or ranchers is amended to allow variable payment, not to exceed 90 percent, and authority to provide advance payments up to 30 percent for the purchase of materials or contracting. A guaranteed loan eligibility provision is included for eligible applicants that are not accepted into the program. Predator deterrence practices are added to the Special Rule for determining incentive payment rates. The Senate amendment authorizes assistance for water conservation and irrigation efficiency practices, air quality improvement practices and establishes a minimum eligibility requirement for program participation. (Section 2353 of the Senate amendment)

The Conference substitute extends the program through 2012 and maintains the 60 percent livestock funding allocation through 2012. It deletes the Senate provision on contract terms (1240B(b)(2)(B)) and bidding down (1240B(c)).

The Conference substitute does not include the Senate provision on the Special Rule (1240B(e)(2)). The Managers recognize that proactive, non-lethal options to deter predators protected by the Endangered Species Act of 1973, as well as delisted populations of gray wolves, grizzly bears, and black bears, are consistent with the purposes of EQIP.

The Conference substitute deletes the House provision on cost-share for gasifier technology. The Managers recognize the merits of new technologies, including gasification, as a means of safely disposing animal carcasses, thereby minimizing environmental impacts and threat of disease. As such, the Managers encourage the Secretary to consider EQIP applications involving poultry gasification and offer cost-share assistance of up to 75 percent.

The Conference substitute adopts the Senate provision for advance payments for beginning, socially disadvantaged and limited resource farmers or ranchers and deletes the Senate provision for guaranteed loan eligibility. The Conference substitute adopts the Senate provision with an amendment for cost-share rates and advance payments for beginning, socially disadvantaged, and limited resource farmers or ranchers.

The Managers expect EQIP to be available to organic producers for conservation activities related to organic transition and production. The Managers expect EQIP to be available to producers who are transitioning their operations to certified organic production and organic producers who may be transitioning additional acres or animal herds. The Managers are aware that organic conversion is a management-intensive activity and therefore encourage the Secretary to provide levels of technical and education assistance for organic conversion commensurate to the need.

(d) Evaluation of Offers (Section 1240C)

The House bill adds criteria to prioritize applications more completely and to evaluate applications in logical groupings relative to similar crop, livestock, or operation types. The Secretary is directed to ensure that the evaluation process is streamlined for

applicants that have an environmental management system in place or seek to complete an existing system. (Section 2105(i) of the House bill)

The Senate amendment adds a priority for applications that propose to improve existing practices or to complete a conservation system. (Section 2354 of the Senate amendment)

The Conference substitute adopts the House bill with an amendment on priority for applications. The Managers intend this evaluation process to prioritize State, regional, or local resource concerns, as well as allow for the grouping of applications of similar agriculture operations to allow for more equitable consideration.

(e) Duties of Producers (Section 1240D)

The House bill and Senate amendment modify the duties of producers to prohibit owners of enrolled forest land from conducting practices that may defeat the program purposes. (Section 2105(j) of the House bill and Section 2355 of the Senate amendment)

The Conference substitute adopts the House bill provision.

(f) Environmental Quality Incentives Program Plan (Section 1240E)

The House bill adds a forest provision to allow a forest management plan, forest stewardship plan, or similar plan to serve as a plan of operations. The House bill authorizes the Secretary to consider a permit required under a regulatory program to serve as a plan of operations in order to avoid duplication in planning. (Section 2105(k) of the House bill)

The Senate amendment allows a producer organization to act on behalf of its membership in submitting applications or conducting similar activities to facilitate program participation. The Senate amendment includes a provision for forest plans similar to the House bill. (Section 2356 of the Senate amendment)

The Senate amendment establishes a Chesapeake Bay Watershed Conservation Program under EQIP to assist producers in applying conservation practices on agricultural and nonindustrial private forestland in the Bay watershed to address natural resource concerns related to agriculture. (Section 2361 of the Senate amendment)

The Conference substitute adopts the House provision regarding forest land.

The Conference substitute strikes the Senate amendment provision on producer organizations. The Managers intend for the Secretary to allow producer associations and farmer cooperatives to act on behalf of their members in submitting applications, plans, or other program materials for their members to participate in this program. The Managers expect the Secretary to clarify this option in any rule or procedure related to this program.

The Conference substitute adopts a modification to the House bill provision to consider a permit required under a regulatory program to serve as a plan of operations. The Managers intend this addition to reduce duplication in planning but expect that the plan developed for a regulatory permit should contain the elements equivalent to those required in a Plan of Operations, including practices to be implemented, objectives of the plan, and any relevant terms and conditions to carry out the plan.

(g) Duties of the Secretary (Section 1240F)

The House bill requires the Secretary to provide assistance for a practice intended to conserve water if it will result in a reduction in consumptive water use, saved water remains in the source, and the practice will not result in increased consumptive use on the producer's operation. (Section 2105(l) of the House bill)

The Senate amendment has no comparable provision.

The Conference substitute retains current law. The Managers address the intent of the House bill under modifications made in Section 1240B to provide assistance for water conservation or irrigation efficiency improvements.

(h) Limitation on Payments (Section 1240G)

The House bill moves the limitation on payments to Section 2409. (Section 2409(b) of the House bill)

The Senate amendment includes a provision to require direct attribution of payments. (Section 2357 of the Senate amendment)

The Conference substitute provides for a payment limit of \$300,000 over 6 years. The Secretary is provided with the authority to waive that limit to \$450,000 in cases of special environmental significance. Projects of special environmental significance include methane digesters, other innovative technologies, and projects that will result in significant environmental improvement. The Secretary is expected to utilize this waiver to achieve the purposes of the program. (Section 2508 of Conference substitute)

(12) Conservation Innovation Grants (Section 1240H of FSA)

The House bill adds forest resource management as an eligible grant activity and adds eligible projects to include those that ensure the efficient and effective transfer of technologies. The House bill provides mandatory funding for a comprehensive conservation planning project in the Chesapeake Bay Watershed, incentive and cost-share payments for air quality concerns, and increased benefits for specialty crop producers.

The Senate amendment clarifies the purpose of the grants are to develop and transfer innovative conservation technology. The amendment seeks to increase participation by specialty crop producers.

The Conference substitute adopts the House provisions related to forest resource management and air quality.

The Conference substitute provides \$150,000,000 to help producers address air quality concerns. The Managers expect funds will be used to provide financial assistance to producers for air quality improvements that help them comply with Federal, State, or local air quality requirements associated with agricultural operations. The funds should be used for cost-effective methods in addressing air quality and to reduce emissions and pollutants from operations, including making improvements in mobile or stationary equipment such as engines.

The Managers believe conservation programs as implemented by USDA should recognize the use of innovative technology such as enhanced efficiency fertilizers. Enhanced efficiency fertilizers, which can protect water quality and reduce greenhouse emissions, include slow and controlled-release fertilizers (absorbed, coated, occluded or reacted) and stabilized nitrogen fertilizers (urease and nitrification inhibitors and nitrogen stabilizers) and are recognized by State regulators of fertilizers. (Section 2509 of Conference substitute)

(13) Ground and Surface Water Conservation (Section 1240I of FSA)

The House bill modifies the purpose of the existing Ground and Surface Water Conservation Program (GSWCP) to allow cooperative agreements between the Secretary, producers, government entities, and Tribes to achieve regional water quality or quantity goals in water quality priority areas. (Section 2106(a) of the House bill)

The House bill requires the Secretary to invite prospective partners to submit competitive grant proposals for a Regional Water Enhancement Program. Proposals will be competitively awarded based on the inclusion of the most lands and producers; the most activities versus costs; contribution to sustaining or enhancing agricultural production or rural economic development; development of performance measures to measure long term effectiveness; the capture of surface water runoff; the participation of multiple interested persons in improving issues of concern; and the assistance provided to producers to meet regulatory requirements that reduce the economic scope of their operation.

The House bill provides \$60,000,000 to be available for each of fiscal years 2008 through 2012.

The Senate amendment maintains the existing GSWCP and provides an increase in funding from \$60,000,000 to \$65,000,000 per year. The provision provides funding for each State that received funding under the program in previous years in an amount that is the simple average of funds provided for fiscal years 2002-2007 or the amount provided in 2007, whichever is greater. For States over the Ogallala Aquifer, not less than the greater of \$3,000,000 or the average of funds provided for fiscal years 2002-2007 is provided.

The Conference substitute adopts the House provision with an amendment. The substitute creates the Agricultural Water Enhancement Program (AWEP) and provides an additional \$40,000,000 in mandatory funding for the program.

The purpose of AWEP is to address water quality and water quantity concerns on agricultural land. The Managers expect the Department to balance its resources among the needs of producers in performing water quantity and quality activities. The Managers intend for producers to participate in the program directly or with other producers who have come together with a partner. The Managers intend for the Department to manage the program so that a producer who chooses to participate as an individual has the same opportunities as one who chooses to participate with a partner.

The purpose of authorizing partners in AWEP is to leverage federal funds and to encourage producers to collectively address specific water quality or quantity concerns. The Managers intend for the program to be delivered according to applicable program rules. Any federal funding must be delivered to producers; no federal funding may be used to cover the administrative expenses of partners.

The Managers expect the Department to require partners to clearly state their objectives and describe how they intend to leverage federal funds and the water quantity or water quality issues they intend to address. The Managers encourage the Department to require the measurement and quantification of actual resource outcomes as part of AWEP projects.

The Managers recognize that water quantity conservation is a significant nationwide concern. The Ogallala Aquifer is a critical source of groundwater for agricultural and municipal uses. Due to the scope and significance of the aquifer, there is a need for regional efforts to address groundwater management in the region. The Managers urge the Department to work with States and agricultural producers in the Ogallala region to coordinate Federal assistance with State programs and to encourage cooperation among States in implementing conservation programs and water reduction practices.

The Managers recognize that water use efficiency projects are an important means to encourage water conservation and expect the Department to continue to support such activities. The Managers intend that additional significance should be placed on water conservation practices that convert irrigated farming to dryland farming to encourage substantial water savings.

To ensure the effectiveness of proposals that convert irrigated farming to dryland farming, the Managers have included provisions to allow the Department to fund proposals for an extended period of five years. In setting the payment rate, the Secretary should take into account the change in the land value of converting an irrigated farming operation to a dryland farming operation.

The Managers intend for the Department to make the construction of small, on-farm reservoirs or irrigation ponds eligible for assistance through AWEP in drought-stricken areas. The Managers intend the Department to use the Drought Monitor as a guide to determine the areas eligible. Any area that has received a D4 drought designation for a month-long period during the previous two years should be eligible. The Managers intend the ponds to be no more than 40 acres in size.

The Managers believe these ponds and related activities will benefit wildlife and demonstrate the potential to capture on-farm surface water runoff in an environmentally beneficial manner. The Managers do not intend for any State water regulation or law to be waived.

In utilizing the authority to waive the eligibility provisions in Section 1001D, the Managers expect the Secretary to take into account the need to accomplish the purposes of the program by enrolling land that would be ineligible to participate in other conservation programs.

The Managers intend for the Secretary to give priority to producers in six priority areas: The Eastern Snake Plain Aquifer region, Puget Sound, the Ogallala Aquifer, the Sacramento River watershed, Upper Mississippi River Basin, the Red River of the North Basin, and the Everglades. (Section 2510 of Conference substitute)

(14) Grassroots Source Water Protection Program (Section 1240O of FSA)

The House bill increases the appropriations authorization from \$5,000,000 each fiscal year to \$20,000,000 each fiscal year through 2012. The provision provides a one-time infusion of \$10,000,000 in mandatory funding to be available until expended. (Section 2107 of the House bill)

The Senate amendment is similar but does not include the one-time infusion of \$10,000,000 in mandatory funding. (Section 2394 of the Senate amendment)

The Conference substitute adopts the Senate provision. (Section 2603 of Conference substitute)

(15) Conservation Private Grazing Land (Section 1240M of FSA)

The House bill (Section 2108) and the Senate amendment (Section 2392) extend the program through 2012.

The Conference substitute adopts the Senate provision. (Section 2601 of Conference substitute)

(16) Great Lakes Basin Program for Soil Erosion and Sediment Control (Section 1240P of FSA)

The House bill extends the program through 2012. (Section 2109 of the House bill)

The Senate amendment extends the program through 2012 and clarifies that the purpose of the program is to assist in implementing the recommendations of the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes. (Section 2395 of the Senate amendment)

The Conference substitute adopts the Senate provision with an amendment that includes using the recommendations of the Great Lakes Regional Collaboration Strategy as a basis for soil erosion and sediment control projects. (Section 2604 of Conference substitute)

(17) Discovery Watershed Demonstration Program (Section 1240Q of FSA)

The Senate amendment establishes that the Secretary shall carry out a demonstration program in not less than 30 small watersheds in States of the Upper Mississippi River basin to identify and promote the most cost effective and efficient ways of reducing nutrient loss to surface waters from agricultural lands. It allows for the Secretary to establish or identify appropriate partnerships to select the watersheds and to encourage cooperative efforts among the Secretary and State, local, and nongovernmental organizations. The amendment provides criteria for the selection of watersheds and prohibits the use of funds for administrative expenses. (Section 2397 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the House provision and does not include the program.

The Managers recognize that the loss of nitrogen and other nutrients from agricultural land impacts water quality in many parts of the nation. This is of particular concern in the States of the Upper Mississippi River basin.

The Discovery Watershed Demonstration Program was intended to address this loss of nutrients in these States through management projects operating on a watershed scale. The projects were to be based on agriculture-related water quality problems and include widespread participation from local producers in the selected watershed.

In Section 2707, the substitute provides for the Cooperative Conservation Partnership Initiative (CCPI), which is designed to encourage these types of activities. Given the cooperative nature of the proposed Discovery Watershed program, the Managers encourage the Secretary to consider locally developed projects for funding under CCPI.

(18) Emergency Landscape Restoration Program (Section 1240R of FSA)

The Senate amendment replaces the Emergency Conservation Program (ECP) and the Emergency Watershed Program (EWP) with a new Emergency Landscape Restoration Program. The purpose of the Emergency Landscape Restoration Program is to rehabilitate watersheds, nonindustrial private forest lands, and working agricultural lands adversely affected by natural catastrophic events.

The amendment authorizes such sums as necessary, provides for the temporary administration of ECP and EWP until final regulations are formulated, and repeals ECP and EWP. (Section 2398 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the House provision and does not include the program.

(19) Farm and Ranchland Protection Program (Section 1238I of FSA)

The House bill establishes a certification process for States. It allows grants to be made to certified States based on the demonstrated need for farm and ranch land protection. Up to 10 percent of those funds may be used for the costs of purchasing and enforcing easements. The bill states that the Secretary may also enter into agreements with eligible entities. The terms and conditions of the agreements must be consistent with the purposes of the program, as well as include a requirement consistent with agricultural activities regarding impervious surfaces. It also requires the use of a conservation plan for highly erodible cropland.

The House bill provides for the Federal Government to retain a Federal contingent right of enforcement or executory limitation in an easement to ensure its enforcement. This right is not considered an acquisition of property.

The House bill provides cost-share assistance for purchasing an easement, but the assistance may not exceed 50 percent of the appraised fair market value of the easement. The fair market value is determined by an appraisal using an industry-approved method. (Section 2110 of the House bill)

The Senate amendment modifies the definition of eligible forest land to include land that contributes to the economic viability of an operation or serves as a buffer. It also amends the definition to include land that is incidental to other eligible land to ensure efficient administration of the program. The provision requires the Secretary to enter into cooperative agreements with eligible entities as long as the terms and conditions of the cooperative agreement include: entity qualifications, specific projects, substitution of projects, use of funds, flexibility to use unique terms and conditions for easements, impervious surface limitation, appraisal method, and charitable contributions.

The Senate amendment requires the protection of Federal investment through an executory limitation, but specifies that the executory limitation is not a Federal

acquisition of real property and will not trigger any Federal appraisal or other real property requirements.

The amendment limits the amount the Secretary can share in the costs of purchasing the easement to 50 percent of the appraised fair market value and establishes minimum amounts entities pay based on the amount of landowner contributions. The Senate amendment requires appraisals based on Uniform standards of Professional Appraisal Practice or any other industry-approved standard. (Section 2371 of the Senate amendment)

The Conference substitute adopts the House provision with amendment.

The Managers expect the changes to the Farmland Protection Program (FPP) will provide flexibility and certainty to program participants. The substitute makes changes to the administrative requirements, appraisal methodology, and terms and conditions of cooperative agreements which shall make the overall program more user-friendly.

The substitute clarifies the purpose of the program as protecting land for agricultural use by limiting nonagricultural uses of the land. The substitute adopts the Senate provision to modify the definition of eligible land to include forestland and other land that contributes to the economic viability of an operation.

The substitute establishes a certification process similar to the House bill for all eligible entities. To become certified, entities must have the authority and resources to enforce easements, policies in place that are consistent with the purposes of the program, and clear procedures to protect the integrity of the program.

The substitute adopts terms and conditions for cooperative agreements similar to the Senate amendment. The cooperative agreement sets forth the working relationship between the Department and the entity in carrying out the program. The terms and conditions will stipulate the length of the agreement; allow for the substitution of qualified projects; and maintain, at a minimum, that the agreement is consistent with the purpose of the program, provide for adequate enforcement of the easement, and include a limit on impervious surfaces. Once an entity is certified, it may enter into an agreement for a minimum of five years with the Department. Non-certified entities may enter into agreements of not less than 3, but not more than 5 years. In selecting offers from eligible entities for funding, the Managers expect the Secretary to consider the sufficiency of the offer regarding effective monitoring and enforcement, reversionary interest, or other such factors that will affect the long-term integrity of easement being acquired under the program.

The Managers intend any violation of the terms and conditions will result in a penalty to the eligible entity and the agreement will remain in place. It is the expectation that the violation and penalty terms will be outlined in all cooperative agreements between the eligible entity and the Secretary.

The substitute provides for the Federal Government to retain a Federal contingent right of enforcement in an easement to ensure its enforcement. The Managers do not intend this right to be considered to be an acquisition of real property, but in the event an easement cannot be enforced by the eligible entity the Federal Government shall ensure the easement remains in force. (Section 2401 of Conference substitute)

(20) Farm Viability Program (Section 1238J of FSA)

The House bill reauthorizes the program through 2012. (Section 2111 of the House bill)

The Senate amendment reauthorizes the program through 2012. (Section 2396 of the Senate amendment)

The Conference substitute adopts the House provision. (Section 2402 of Conference substitute)

(21) Wildlife Habitat Incentive Program (Section 1240N of FSA)

The House bill reauthorizes the program through 2012. The bill raises the cost-share limitation for long-term projects from 15 percent to 25 percent. It also increases the cost-share rate for long-term agreements and activities that assist producers in meeting a regulatory requirement that impacts the economic scope of their operation from 15 to 25 percent. (Section 2111 of the House bill)

The Senate amendment authorizes Secretary to make incentive payments and increases the percentage of funds that can be used for projects longer than 15 years from 15 percent to 25 percent. The Senate amendment requires the Secretary to give priority to projects that would further the goals and objectives of State, regional, and national fish and wildlife conservation plans and initiatives. (Section 2393 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment. The substitute increases the limitation on cost-share payments for long-term projects to 25 percent and focuses the program on agricultural and nonindustrial private forest lands.

The substitute allows the Secretary to provide priority to projects that address issues raised by State, regional, and national conservation initiatives. These 'State, regional and national conservation initiatives' may include such things as the North American Waterfowl Management Plan, the National Fish Habitat Action Plan, the Greater Sage-Grouse Conservation Strategy, the State Comprehensive Wildlife Conservation Strategies (also referred to as the State Wildlife Action Plans), the Northern Bobwhite Conservation Initiative, and State forest resource strategies. The Managers intend for the Secretary to consider the goals and objectives identified in relevant fish and wildlife conservation initiatives when establishing State and national program priorities, scoring criteria, focus areas, or other special initiatives. The Managers expect the Department to work with conservation partners and State and Federal agencies, to the extent practicable, to complement the goals and objectives of these additional plans through USDA programs. (Section 2602 of Conference substitute)

(22) Agricultural Management Assistance Program (Section 524(b)(1) of Federal Crop Insurance Act)

The House bill adds Virginia and Hawaii as eligible States. It requires that 50 percent of available funds shall be used for construction or improvement of watershed management or irrigation structures, planting trees for windbreaks or improving water quality, and mitigating risk through diversification or various conservation practices; 40 percent may be used for any activity relating to risk management activities, including entering agriculture trade options, futures, or hedging; and 10 percent shall be used for organic certification cost-share assistance. (Section 2201 of the House bill)

The Senate adds Idaho as a participating State, extends the program through 2012, and provides an additional \$10,000,000 per year to the program (Section 524(b)(4)(B)(ii) through 2012. (Section 2601 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment and includes Hawaii as an eligible State. The Conference substitute provides an additional \$25,000,000 in mandatory funding for fiscal years 2008 through 2012. (Section 2801 of Conference substitute)

(23) Resource Conservation and Development Program (Section 1528 of Agriculture and Food Act of 1981)

The House bill clarifies that an area plan must be developed through a locally led process, and that the planning process must be conducted by a local council. It also provides that the Secretary shall designate a coordinator to provide technical assistance to councils. (Section 2202 of the House bill).

The Senate amendment is comparable to the House. (Section 2605 of the Senate amendment)

The Conference substitute adopts the Senate provision. (Section 2805 of Conference substitute)

(24) Small Watershed Rehabilitation (Section 14 of the Watershed Protection and Flood Prevention Act)

The House bill provides \$50,000,000 in mandatory funding for fiscal years 2009 through 2012. It authorizes appropriations for fiscal years 2007 through 2012 at the current funding level of \$85,000,000 per year. (Section 2203 of the House bill)

The Senate amendment extends program to 2012 and authorizes appropriations for fiscal years 2008 through 2012 as such sums as necessary. (Section 2604 of the Senate amendment)

The Conference substitute adopts the House provision and provides \$100,000,000 in mandatory funding for fiscal year 2009 to remain available until expended. (Section 2803 of Conference substitute)

(25) Chesapeake Bay Program for Nutrient Reduction and Sediment Control (Section 1240Q of FSA)

The House bill creates a new program at the Department to provide financial assistance to producers to minimize excess nutrients and sediments in order to restore, preserve, and protect the Chesapeake Bay. The program directs the Secretary to develop and implement a comprehensive plan to provide for innovative approaches to advance the improvement of water quality and enhance wildlife habitat. Critical projects include those in the Susquehanna, Shenandoah, Potomac and Patuxent River basins. The House bill includes a Sense of Congress that the Department is authorized and should be a member of the Chesapeake Bay Executive Council.

The Senate bill has no comparable provision.

The Conference substitute adopts the House provision with amendment.

The Chesapeake Bay is the nation's largest estuary. In 2000, Chesapeake Bay partners agreed to target water quality and habitat restoration as goals to improve the health of the Bay and its living resources. According to current estimates, the Bay will

not meet the 2012 agreement without a better coordinated plan and greater targeting of resources.

Farmers in the Chesapeake Bay region are under some of the most stringent environmental regulations in the country. Despite the desire and demand that exists among farmers in the region to participate in conservation programs, current funding levels and program allocations leave many behind. While the reliance upon conservation programs and the need for funding may not be unique to the Chesapeake, it is nonetheless uniquely critical to the success of the Bay restoration strategy and the ability of farmers to meet regulatory requirements.

The Managers intend the Chesapeake Bay Watershed Program be carried out on agriculture and forestlands in the Chesapeake Bay through the use of all conservation programs available to producers in the region. It is the expectation this program will be carried out through existing program mechanisms in coordination with other relevant Federal agencies working in the Bay watershed, such as the Chesapeake Bay Program Office.

The special consideration given to the rivers under this section are areas of critical need to the overall health of the Chesapeake Bay. The Managers intend that the Secretary focus initial program resources in these key basins and build upon successful implementation elsewhere in the Chesapeake Bay Watershed, as appropriate. These funds should be used to install practices to help control erosion and nutrient loading before it reaches the Bay, and that assessments will be made using existing models and information to evaluate the most cost-effective strategies for reducing nonpoint source nutrient inputs. This program provides \$438,000,000 in mandatory funding for fiscal year 2009 through fiscal year 2012. (Section 2605 of Conference substitute)

(26) Voluntary Public Access and Habitat Incentive Program (Section 1240R [House] or 1240S [Senate] of FSA)

The House bill 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 Secretary shall give priority to States and tribal governments that have consistent opening dates for migratory bird hunting for both residents and non residents. The House bill authorizes \$20,000,000 in discretionary funding for each of fiscal years 2008 through 2012. The program does not preempt a State or tribal government law, including liability law. (Section 2303 of the House bill)

The Senate amendment is comparable to the House bill. It includes a priority to States where the location of participating lands would be available to the public and provides \$20,000,000 per year in mandatory funding for each of fiscal years 2008 through 2012. (Section 2399 of the Senate amendment)

The Conference substitute adopts the Senate provision with an amendment. The Conference substitute provides \$50,000,000 in mandatory funds for this program. The Conference substitute includes a 25 percent reduction for the total grant amount if the opening dates for migratory bird hunting in the State are not consistent for residents and non-residents. (Section 2606 of Conference substitute)

(27) Muck Soils Conservation (Section 2303)

The House bill establishes a new program under which owners or operators of eligible land shall receive payments to conserve soil, water, and wildlife resources. Eligible land must be comprised of muck soil, be in agricultural production, have a spring cover crop, a winter crop, and year-round ditch banks seeded with grass. Payments are authorized for between \$300 and \$500 per acre per year. Appropriations are authorized at \$50,000,000 for each of fiscal years 2008 through 2012. (Section 2303 of the House bill)

The Senate amendment has no comparable provision.

The Conference substitute adopts the Senate provision and the provision is deleted. The Managers recognize the unique soils throughout the Hudson Valley of New York that are classified as muck soils. These soils are former wetlands that have been drained with ditches years ago to allow for crop production. Due to the extensive networking of drainage ditches, normal buffer setback requirements associated with current conservation programs take a large percentage of these highly productive lands out of production. The Managers encourage the Secretary to work through the State Conservationist to address the needs of muck soil farmers in the Hudson Valley, using existing conservation programs to conserve soil, water, and wildlife resources on these lands.

(28) Funding for Programs under the Food Security Act of 2985 (Section 1241 of FSA)

The House bill provides \$1,454,000,000 for fiscal years 2007 through 2012 and \$1,927,000,000 for fiscal years 2007 through 2017 for Conservation Security Program contracts entered into before Oct. 1, 2007. Conservation Security Program contracts entered into on or after Oct. 1, 2011, shall be funded in the amount of \$5,01,000,000 for fiscal year 2012 and \$4,646,000,000 for the period of fiscal years 2013 through 2017.

The Farm and Ranchland Protection Program is funded at \$125,000,000 in fiscal year 2008; \$150,000,000 in fiscal year 2009; \$200,000,000 in fiscal year 2010; \$240,000,000 in fiscal year 2011; and \$280,000,000 in fiscal year 2012.

EQIP is funded at \$1,250,000,000 in fiscal year 2008; \$1,600,000,000 in fiscal year 2009; \$1,700,000,000 in fiscal year 2010; \$1,800,000,000 billion in fiscal year 2011; and \$2,000,000,000 in fiscal year 2012.

WHIP is authorized at \$85,000,000 each of fiscal years 2008 through 2012.

(Section 2401 of the House bill)

The Senate amendment funds programs in title XII of the FSA for each of F 2008-2012 as follows:

- Conservation Security Program —\$2,317,000,000 for current contracts to remain available until expended;
- Conservation Stewardship Program— 13,273,000 acres for each of fiscal years 2008-2012;
- FPP— \$97,000,000 for each of fiscal years 2008-2012
- EQIP— for fiscal years 2008 and 2009: \$1,270,000,000; for fiscal years 2010-2012: \$1,300,000,000;
- WHIP— Same as House;
- Voluntary Public Access and Habitat Incentives Program— \$20,000,000 for each of fiscal years 2008-2012; and
- GRP— \$240,000,000 for fiscal years 2008-2012.

(Section 2401 of the Senate amendment)

The Conference substitute provides the following in additional new budget authority for these programs:

- CSP - \$1,100,000,000
- EQIP - \$3,393,000,000
- FPP - \$773,000,000

(Section 2701 of Conference substitute)

(29) Conservation Access (Section 1241 of FSA)

The Senate amendment creates a new Conservation Access program. The provision requires 10 percent of conservation program funds and 10 percent of CRP and WRP acreage enrolled in any year be used to assist beginning and socially disadvantaged farmers and ranchers with annual gross sales of \$15,000 or more. Any unused funds are to be re-pooled back to the original program and made available to all persons eligible for assistance.

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment. The Conference substitute provides that 5 percent of CSP acres and 5 percent of EQIP funds will be used to assist beginning farmers or ranchers, and an additional 5 percent of each to assist socially disadvantaged farmers or ranchers.

The Managers recognize the importance of providing intensive technical assistance to beginning and socially disadvantaged farmers or ranchers participating in farm bill conservation programs. The Managers encourage the Department to provide rates of technical assistance to beginning and socially disadvantaged farmers or ranchers commensurate with the special needs to ensure high participation levels and substantial and lasting conservation benefits.

In implementing the conservation access provisions, the Managers encourage the Secretary to develop, implement, and support cooperative agreements with entities, including community-based and nongovernmental organizations and educational institutions that have expertise in comprehensive conservation planning and assistance needs of beginning and socially disadvantaged farmers or ranchers.

The Managers recognize that off-farm employment is a necessity for most beginning farmers or ranchers, and that transition to a full-time agricultural occupation is a substantial challenge. The Managers also recognize the value that sound conservation can contribute to an enduring agricultural operation and a successful farming or ranching livelihood. The Managers intend for the Secretary to give priority to Conservation Access resources to beginning farmers or ranchers who are, or who are working toward, increasing their participation in the farming or ranching operation. (Section 2704 of Conference substitute)

(30) Improved Provision of Technical Assistance Under Conservation Programs (Section 1242 of FSA)

The House bill adds authority for contracting with third party providers to provide technical assistance to program participants, requires that the payment level for third party providers be established based on prevailing market rates where available, and directs the Secretary to consult with producers, extension and others in a review and

revision of conservation practice standards to ensure that they are complete and relevant. (Section 2402 of the House bill)

The Senate amendment adds 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. The Secretary is directed to provide technical assistance to all conservation and Agriculture Management Assistance program participants. Where financial assistance is not required, the Secretary may enter technical services contracts with program participants. (Section 2404 of the Senate amendment)

The Conference substitute adopts the Senate amendment with modifications. The Conference substitute reflects the Managers' two priorities for improving the delivery of technical assistance: 1) increasing the availability of technical assistance, and 2) ensuring that conservation technical standards and resources are locally relevant.

The demand for technical assistance exceeds the present supply of technical resources, and the private sector cadre envisioned in the 2002 Farm Bill has not developed. The modifications made in the substitute are intended to correct these deficiencies through authority for use of mandatory funds and multi-year contracts with third party providers, establishment of fair and reasonable payment rates, and a nationally consistent certification process. The requirement for approval of State-level certification criteria is intended to address the criticism that current requirements, particularly those added at the State level, result in a complicated and overly burdensome process that discourages participation.

The Managers expect that these changes will provide the certainty needed to encourage the development of a successful, skilled, and accountable third party provider sector, diminish the tension caused by tradeoffs between public and private sector resources, and make locally relevant conservation technical assistance from public and private sources increasingly available and accessible to producers. (Section 2706 of Conference substitute)

(31) Cooperative Conservation Partnership Initiative (Section 1243 of FSA)

The House bill requires the Secretary to enter into 2-to-5 year agreements with eligible entities to preferentially enroll producers in specified conservation programs. This will allow multiple producers and others to cooperate on improving specific resources of concern related to farming on a local, State or regional scale. Eligible partners are States, State agencies, State subdivisions including counties and conservation districts, Tribes, and nongovernmental organizations and associations with histories of working with farmers on agriculture conservation issues.

The Conservation Security Program, EQIP, and WHIP are the programs covered by the provision. Not less than 75 percent shall be used for State projects and not more than 25 percent for multi-State projects. It prohibits use of funds to pay for partner overhead or administrative costs. (Section 2403 of the House bill)

The Senate amendment includes "Special Rules Applicable to Regional Water Enhancement Projects" that adds a section to the Partnerships and Cooperation section for Regional Water Enhancement Projects. This section requires the Secretary to identify priority areas and names the following as priority areas: Chesapeake Bay, Upper Mississippi River basin, Everglades, Klamath River basin, Sacramento/San Joaquin River

watershed, Mobile River basin, Puget Sound, Ogallala Aquifer, Illinois River watershed (of Arkansas and Oklahoma), Champlain Basin, Platte River watershed (note: drafting error, this should be the Platte River Basin), Republican River Watershed, Chattahoochee river watershed, and the Rio Grande watershed.

The Senate amendment requires proposals to describe geographical location, identification of issues, baseline assessment, activities to be undertaken, and performance measures. It requires competitive awards of multi-year contracts for proposals that have the highest likelihood of success, involve multiple stakeholders, highest percentage of working agricultural lands, highest percentage of on-the-ground activities, the greatest contribution to sustaining agriculture, and suitable performance measures. (Section 2405 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment and names the initiative the Cooperative Conservation Partnership Initiative (CCPI).

The Managers intend that resources made available under CCPI be delivered in accordance with the basic program rules and mechanisms relating to basic program functions, such as appeals, payment limitations, and conservation compliance. The Conference substitute allows the Secretary to make certain programmatic adjustments better fit the local circumstances and goals and objectives of the special project identified for funding under the initiative. Proposed adjustments may be part of the application from the conservation partnership and forwarded to the State Conservationist or the Secretary for consideration. The Conference substitute provides for adjustments to provide producers preferential enrollment in the applicable program as part of the special project.

The Managers include the following as an example of a CCPI partnership: A cannery has closed and near-by orchards are going out of business. A local watershed council pulls together several partners such as a State university, a wildlife organization, and an organic growers' cooperative. They agree to work together to improve water quality and wildlife habitat while working with interested local producers to transition their orchards to organic grass-based cattle operations.

The watershed council files an application with the Department proposing to conduct local producer outreach; provide training on transitioning to a new agricultural sector, including organic certification and cattle management workshops; assist with tree removal; and assist in implementing habitat diversity practices with workshops, labor, and seed. The council asks for designation of \$10,000,000 in EQIP and \$250,000 in WHIP.

The State Conservationist agrees with the proposal and sets aside the approved resources, which will go to producers participating in the project. When the producer applies for the programs, they certify that they are a project participant. If they are qualified, they bypass the regular program ranking processes and enter into a contract in the identified program(s). Each program in this example stands on its own and all program rules apply. The difference is the streamlined application and the process that works to make the programs seamless in application.

The Conference substitute applies to all of the Department's conservation programs except CRP, WRP, FPP and GRP. The Managers intend that applications may propose projects for consideration by the State Conservationist or the Secretary that include innovative combinations of covered initiative programs, if such combinations aid significantly in meeting the goals and objectives of the project. It is also the intent of the

Managers that applicants may propose projects for consideration by the State conservationist or the Secretary that might work in tandem with the enhancement programs under CRP or WRP. (Section 2707 of Conference substitute)

(32) Regional Equity and Flexibility (Section 1241 of FSA)

The House bill raises the base amount of conservation funds that a State must receive in order to receive priority funding for conservation programs from \$12,000,000 to \$15,000,000. (Section 2404 of House bill)

The Senate amendment also increases the funding from \$12,000,000 to \$15,000,000 and adds CSP and the Agricultural Management Assistance Program to the programs considered in determining funding. It instructs the Secretary to conduct a review of conservation program allocation formulas to determine the sufficiency of the formulas in accounting for State-level economic factors, level of agricultural infrastructure, or related factors that affect conservation program costs. (Section 2402 of the Senate amendment)

The Conference substitute adopts the Senate provision with an amendment. (Section 2703 of Conference substitute)

(33) Administrative Requirements for Conservation Programs (Section 1244 of FSA)

The House bill authorizes for socially disadvantaged farmers to be added as a group the Secretary must provide incentives for to encourage participation in conservation programs. The Secretary must establish a single, simplified application process for initial requests of assistance under the conservation programs administered by NRCS. Applicants should not be required to provide information that is already available to the Secretary, and the process itself must minimize complexity and redundancy. (Section 2405 of the House bill)

The Senate amendment requires the Secretary to develop a streamlined application process for conservation programs and provide written notification of completion to Congress not later than 1 year after enactment. It requires the Secretary, at the request of the landowner, to cooperate with the Secretary of Interior and Secretary of Commerce to make Safe Harbor assurances available to the landowner under the Endangered Species Act. The provision allows producers to apply for conservation programs through a producer organization and that any applicable payment limits shall apply to individuals and not the organization.

The Senate amendment requires the Secretary to immediately implement policies and procedures to ensure proper payment to producers participating in conservation programs and correct other management deficiencies identified in the OIG report 50099-11-SF. It requires the Secretary to monitor and measure performance of conservation programs; to demonstrate the long-term benefits of the programs; and to coordinate program activities with the Soil and Water Resources Conservation Act. (Section 2405 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment to include a pollinator provision. Despite their value, native pollinators such as bees, butterflies, moths, flies, beetles, bats, or hummingbirds often are under-appreciated in terms of their contributions to the U.S. agricultural sector. Insect-pollinated crops directly contributed \$20,000,000,000 to the United States economy in 2000 alone. The Managers

recognize that many native pollinator groups, particularly those important to agriculture, are facing a serious risk of decline as a result of habitat loss, degradation, and fragmentation, among other factors.

The Managers see conservation programs as an important tool for creating, restoring, and enhancing pollinator habitat quantity and quality. The Managers expect the Secretary to encourage, within appropriate conservation programs, measures to benefit pollinators and their habitat, such as using plant species mixes in conservation plantings to provide pollinator food and shelter; establishing field borders, hedgerows, and shelterbelts to provide habitat in proximity to crops; establishing corridors that can expand and connect important pollinator habitat patches; and encouraging related pollinator-friendly production practices. (Section 2708 of Conference substitute)

(34) Annual Report on Participation by Specialty Crop Producers in Conservation Programs (Section 12512 of FSA)

The House bill requires the Secretary to submit a report to the House and Senate Agriculture Committees regarding specialty crop producer participation in conservation programs that tracks participation by crop and livestock type, includes a plan to improve access of specialty crop producers to conservation programs, and the describes the results of this plan. (Section 2406 of the House bill)

The Senate amendment had no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to modify the compliance and performance provisions of Section 1244 of FSA to accommodate the intent of the House bill. (Section 1244 of FSA)

(35) Promotion of Market Based Approaches to Conservation/Conservation Programs in Environmental Service Markets (Section 1245 of FSA)

The House bill directs the Secretary to research, analyze and enter into contracts and agreements to promote the development of uniform standards for quantifying environmental benefits, promoting the establishment of credit registries and third party verification, and facilitating private sector market based approaches for agriculture and forest conservation activities. An Environmental Services Standards Board is established to develop uniform standards for quantifying environmental services in order to help develop credit markets agriculture and forest conservation activities. (Section 2407 of the House bill)

The Senate amendment directs the Secretary to establish a framework to develop uniform standards, design accounting procedures, and establish a protocol to report environmental services benefits. It also directed the Secretary to establish a registry to report and maintain the benefits and verify that a farmer, rancher or forest land owner has implemented the conservation or land management activity. The Secretary is directed to focus first on carbon markets. (Section 2406 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment. The Secretary is directed to establish technical guidelines, including 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, as the Managers recognize that this is the most pressing emerging market in which agriculture

may be involved. The Secretary is expected to fulfill the intent of this section with resources available to the Department.

The adoption of this provision recognizes the growing opportunities for agriculture to participate in emerging environmental services markets. The Managers observe that the largest barrier to participation is the lack of standards and accounting procedures that make transparent the benefits that are being produced and marketed. The Managers believe that the most appropriate Federal lead for developing these common standards is the Secretary and expect the Secretary to move expeditiously to accomplish this task. (Section 2709 of Conference substitute)

(36) Establishment of State Technical Committees (Section 1261 of FSA)

The House bill changes the existing composition of State technical committees to include at least 12 producers representing a variety of crops, livestock, or poultry grown in the State.

The House bill states that State technical committees shall convene subcommittees to provide technical guidance and implementation recommendations. The topics subcommittees must address include: establishing priorities and criteria for State initiatives; private forestland protection issues; water quality and quantity issues; air quality, wildlife habitat, wetland protection, and other issues. (Section 2408 of the House bill)

The Senate amendment requires the Secretary to develop standard operating procedures to be used by the State technical committee in the development of technical guidelines for the implementation of the conservation provisions of this title. It makes local work groups subcommittees of the State technical committee, which exempts them from the Federal Advisory Committee Act. (Section 2501 of the Senate amendment)

The Conference substitute adopts the House provision with an amendment. The substitute requires the Secretary to develop standard operating procedures for the committees, updates the names of participating agencies, and deletes the requirement for establishing specific issue-area subcommittees. The substitute requires that public notice be given for meetings of the State technical committee and adds local working groups as subcommittees. The Managers expect that other relevant Federal agencies will also be invited to participate as needed. (Section 2711 of Conference substitute)

(37) Payment Limitation (Section 1246(a-c), 1244(i), 1238C(d), and 1240G of FSA)

The House bill imposes payment limitation of \$60,000 per fiscal year for any single program; \$125,000 for payments from more than one program. This limitation does not apply to WRP, FPP, or GRP. The House bill requires the Secretary to issue regulations ensuring direct attribution. Further, the Secretary shall issue such regulations as necessary to ensure that the total amount of payments are attributed to an individual by taking into account the individual's direct and indirect ownership interests in a legal entity that receives payments. Payments to individuals shall be combined with the individual's pro rata share of payments received by an entity in which the individual has a direct or indirect ownership interest. Likewise, payments made to an entity shall be attributed to those individuals with a direct or indirect ownership interest in the entity. (Section 2409 of the House bill)

The Senate amendment requires the Secretary to use direct attribution for all conservation programs. In the case of a producer organization, the limitation on payments on applicable programs shall apply to each participating producer and not to the entity. (Section 2405 and Section 2357 of the Senate amendment)

The Conference substitute moves the payment limitations into each individual program and deletes this Section.

(38) Inclusion of Income from Affiliated Packing and Handling Operations as Income Derived from Farming for Application of Adjusted Gross Income Limitation on Eligibility for Conservation Programs (Section 1001D(b)(1) of FSA)

The House bill allows income from packing and handling operations to be included as income derived from farming for purposes of payment eligibility. (Section 2501 of the House bill)

The Senate amendment has no comparable provision.

The Conference substitute adopts the Senate provision and deletes this section.

(39) Encouragement of Voluntary Sustainability Practices Guidelines

The House bill provides that the Secretary may encourage the development of voluntary sustainable practices guidelines for producers and processors of specialty crops. (Section 2502 of the House bill)

The Senate amendment has no comparable provision.

The Conference substitute adopts the Senate provision and does not include the provision.

(40) Farmland Resource Information (Section 1544 of Agriculture and Food Act of 1981)

The House bill provides that the Secretary shall design and implement educational programs emphasizing the importance of farming. One or more farmland information centers shall be designated to provide technical assistance and serve as central depositories for information on farmland issues. The centers shall be funded using no more than 0.05 percent of FPP funds per year but no less than \$400,000 annually and must be matched with non-federal funds or in-kind contributions. (Section 2503 of the House bill)

The Senate amendment has no comparable provision.

The Conference substitute adopts the Senate provision and does not include the provision.

(41) Pilot Program for Four-Year Crop Rotation for Peanuts

The House bill directs the Secretary to enter into contracts with peanut producers to implement a four-year crop rotation for peanuts. Funding for this pilot shall not exceed \$10,000,000 of mandatory funds for each of fiscal years 2008 through 2012. (Section 2504 of the House bill)

The Senate amendment provides that within CSP the Secretary shall provide additional payments to producers who agree to adopt resource-conserving crop rotations to achieve optimal crop rotations. (Section 2341 of the Senate amendment)

The Conference substitute adopts the Senate provision with an amendment.

(42) Agriculture Conservation Experienced Services Program (Section 307(a) of the Department of Agriculture Reorganization Act of 1994)

The Senate amendment authorizes the Secretary to enter into agreements with organizations to hire individuals 55 and older to provide assistance in administering conservation related programs. Funding for the program is authorized from EQIP, the Soil Conservation and Domestic Allotment Act (*16 U.S.C. 590a et seq*), and the Older Americans Act (*42 U.S.C. 3056*). The provision stipulates that agreements may not displace individuals employed by the Department. It allows the Secretary to provide tools, including agency vehicles, necessary to carry out the program. (Section 2602 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that limits individuals employed under this authority to providing only technical assistance. The Managers intend that the program be used solely for technical assistance and not for administrative tasks. (Section 2710 of Conference substitute)

(43) Technical Assistance (16 U.S.C 590(a) of Soil Conservation and Domestic Allotment Act and 16 U.S.C. 2001 of Soil and Water Resources Conservation Act)

In the Soil Conservation and Domestic Allotment Act, the Senate amendment clarifies that it is the policy of the United States to preserve soil, water, and related resources and to promote soil and water quality. It defines technical assistance to mean technical expertise, information and tools necessary for the conservation of natural resources on land active in agricultural, forestry or related uses.

In the Soil and Water Resources Conservation Act of 1977, the Senate amendment expands on 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 House bill has no comparable provision.

The Conference substitute adopts the Senate amendment to the Soil Conservation and Domestic Allotment Act. The Managers intend to clarify that it is the role of USDA to provide technical assistance to farmers, ranchers, and other eligible entities to assist in the conservation of soil, water, and related resources. The Managers recognize that the natural resource concerns that producers face are dynamic and preclude an inclusive list as responsibilities for USDA.

The Conference substitute adopts the Senate amendment to Soil and Water Resources Conservation Act with an amendment. The Act is extended to 2018. The Managers expect the delivery of appraisals and programs to be tied more closely to the Farm bill cycle, with the intent that these evaluations will inform development of future farm policy. (Section 2802 of Conference substitute)

(44) National Natural Resources Conservation Foundation (Section 351 of Federal Agriculture Improvement and Reform Act of 1996)

The Senate amendment updates existing foundation language and expands granting authority of the foundation to include making grants to individuals, entering into agreements with the Federal government, and making gifts to the foundation tax exempt. (Section 2606 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the House provision and does not include the provision.

(45) Desert Terminal Lakes (Sec 2507 of the Farm Security and Rural Investment Act of 2002)

The Senate amendment extends and reauthorizes through 2012. It allows funds to be used to lease or to purchase land, water appurtenant to the land, and related interests in the Walker River Basin from willing sellers.

The section provides \$200,000,000 in mandatory funds for fiscal years 2008 through fiscal year 2012. (Section 2607 in the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to provide \$175,000,000 in mandatory funding. (Section 2807 of Conference substitute)

(46) High Plains Water Study

The Senate amendment requires that program benefits under the 2007 Farm bill will not be denied to eligible individuals solely on the basis of participation in a one-time study of aquifer recharge potential in the high plains of Texas. (Section 2609 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers recognize that the ongoing depletion of the Ogallala Aquifer is an acute concern for the eight States that depend on it for agricultural, domestic, industrial uses, and other uses. This provision will allow agricultural producers to participate in a one-time study of aquifer recharge potential that will help inform State and local water conservation investment and policy to aid in managing this critical aquifer. The study is narrowly focused on a small number of playa lakes situated on agricultural land over the Ogallala Aquifer.

Playas are temporary wetlands unique to the High Plains of North America, numbering more than 60,000. Playas not only serve as the primary source of recharge for the Ogallala Aquifer, they are the most important wetland type for wildlife in this region. The Managers encourages the Department to further recognize the importance of playas through increased communication to landowners of the benefits of playas and conservation programs available. The Managers encourage the Department to work with the Playa Lakes Joint Venture to enhance the use of such programs like CRP to help ensure the protection of playas. (Section 2901 of Conference substitute)

(47) Payment of Expenses (Section 17(d) of the Federal Insecticide, Fungicide, and Rodenticide Act)

The Senate amendment amends the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136 et seq.) to require that the Department of State shall cover expenses incurred by Environmental Protection Agency staff participating on an

international technical, economic, or policy review board, committee, or other official body with respect to a related international treaty. (Section 2610 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 14209 of Conference substitute)

(48) Use of Funds for Salinity Control Activities Upstream of Imperial Dam (Sec202(a) of the Colorado River Basin Salinity Control Act)

The Senate amendment amends Section 202(a) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(a)) to create a Basin States Program to allow the Bureau of Reclamation, to carry out salinity control activities in the Colorado River basin. The provision requires the Secretary of Interior to consult with the Colorado River Basin Salinity Control Advisory Council when providing assistance in the form of grants, grant commitments, or the advancement of funds to Federal or non-Federal entities. It requires a planning report to Congress that describes the proposed implementation of the program and stipulates that no funds may be expended to implement the program until 30 days after the report is submitted to Congress. (Section 2611 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers intend for this provision to be fiscally neutral both as to appropriations and as to draws on the basin funds. It does not change the cost share ratios already established in Section 205(a) of the Act, nor does it change the percentage split between the two funds or the requirement that no more than 15 percent of the basin States cost share is to come from the Upper Colorado River Basin Fund. It is only intended to clarify the authority through which Reclamation expends the required cost share dollars. (Section 2806 of Conference substitute)

(49) Technical Corrections to the Federal Insecticide Fungicide, and Rodenticide Act (Section 33 of FIFRA)

The Senate amendment makes technical corrections to the pesticide registration service fee program in the Federal Insecticide, Fungicide, and Rodenticide Act. (Section 2612 of the Senate amendment)

The House bill has no comparable provision.

The Conference substitute adopts the House provision and does not include the provision. However, the Conference substitute includes a container recycling provision. (Section 14109 of Conference substitute)

The Managers have received concerns from numerous agricultural interests concerning pest resistance to first generation anticoagulant rodenticide products and the importance of low-cost, widely available effective rodenticides. The Managers encourage the Administrator of the Environmental Protection Agency to continue to classify second-generation rodenticides as general use products so as to minimize the potential consequences of reclassifying these materials as restricted use on target species resistance to first-generation rodenticides, potential non-target species poisoning, and cost and availability of rodenticides to the general public.

TITLE III—TRADE

(1) Agricultural Trade Development and Assistance Act of 1954

(a) Short Title (Section 1 of the Agricultural Trade Development and Assistance Act of 1954)

The Senate amendment changes the title of the underlying legislation to the Food for Peace Act. It also includes numerous conforming amendments. (Section 3001)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision on changing the title of the underlying legislation to the Food for Peace Act (Section 3001).

(b) United States Policy (Section 2 of the Food for Peace Act)

The Senate amendment deletes a paragraph describing market development as one of the objectives of the programs under this Act. This modification is made to reflect the approach taken in operating the program in recent years. (Section 3002)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision that deletes a paragraph in Section 2 describing market development as one of the objectives of the programs under this Act (Section 3002).

(c) Food Aid to Developing Countries (Section 3(b) of the Food for Peace Act)

The Senate amendment modifies the Sense of Congress in current law to (1) require the President to seek commitments from other donors; reinforces the need to keep recipient governments, non-governmental organizations, and private voluntary organizations involved in conducting needs assessment and implementing programs and ensure that a variety of options are available to provide needs-based emergency and non-emergency aid and (2) that the United States should increase food aid contributions consistent with the Uruguay Round Agreement on Agriculture. (Section 3003)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with a minor modification. (Section 3003).

(d) Trade and Development Assistance (Title I of the Food for Peace Act)

The Senate amendment renames Title I of the newly renamed Food for Peace Act from Development and Trade Assistance to Economic Assistance and Food Security. (Section 3004).

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision that renames Title I of the newly renamed Food for Peace Act from Development and Trade Assistance to Economic Assistance and Food Security (Section 3004).

(e) Agreements Regarding Eligible Countries and Private Entities (Section 102 of the Food for Peace Act)

The Senate amendment strikes references to potential recipient countries becoming commercial markets and strikes a requirement that organizations seeking funding under the Act prepare and submit agricultural market development plans. (Section 3005)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision that strikes references to potential recipient countries becoming commercial markets and strikes a requirement that organizations seeking funding under the Act prepare and submit agricultural market development plans (Section 3005).

(f) Use of Local Currency Payments (Section 104 of the Food for Peace Act).

The Senate amendment adds the objective of improving trade capacity of the recipient country to the set of goals to be achieved under agricultural development. It removes authority for specific agricultural development activities such as business development loans, facilities loans, and private sector agricultural development. It also specifies that private voluntary organizations and cooperatives may implement agreements under this title. (Section 3006)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision on modifying language governing the use of local currencies, with the following changes: rather than striking paragraphs (3), (4), (5), and (6), the substitute modifies paragraphs (3), (4), and (5) to update obsolete references and leaves paragraph (6) intact (Section 3006).

(g) General Authority (Section 201 of the Food for Peace Act)

The House bill amends the purposes of the Title II program to clarify that food deficits to be addressed include those resulting from man made and natural disasters. (Section 3001(a)).

The Senate amendment clarifies the objectives for assistance under Title II commodity donations. It adds the promotion of food security and support of sound environmental practices in paragraph (5); removes feeding programs as an objective in paragraph (6); and adds a new paragraph specifying the protection of livelihoods, provision of safety nets for food insecure populations and to encourage participation in educational, training, and other productive activities. (Section 3007)

The Conference substitute adopts both the House and Senate provisions, with a modification to paragraph (6) of the Senate provision to keep Section 201(6) intact and add a new paragraph (7) to reflect the need to promote economic and nutritional security for food insecure populations. (Section 3007).

The Managers recognize that humanitarian emergencies frequently occur due to a combination of factors, typically encompassing natural disasters, resource mismanagement and poor government policymaking. In most cases, the United States government ought to respond to such catastrophes with emergency assistance. However, if a disaster results mostly from poorly devised or discriminatory governmental policies in the recipient country, the Managers requests that the Administrator brief the relevant Congressional Committees before responding with assistance.

(h) Provision of Agricultural Commodities (Section 202 of the Food for Peace Act)

The House bill increases the percentage of Title II funding (currently at a range of 5 to 10 percent) that the Administrator may make available to eligible organizations for administrative and distribution costs to a range of 7 to 12 percent.

The House provision also expands the purposes for which such funds may be used to include developing monitoring systems for Title II programs. (Section 3001(b))

The Senate amendment revises current language to clarify that the fact that a project is being proposed in a country that does not have a U.S. Agency for International

Development mission or is not part of an overall development plan for the country cannot be used as the sole rationale for denying the proposal.

It modifies the share of Title II funds which can be used to cover logistical expenses incurred by the eligible organizations that carry out Title II programs from between 5 and 10 percent to not less than 7.5 percent.

It clarifies that such funds can be used to cover management, personnel, programmatic, operational activities, internal transportation, and distribution costs for new and existing programs. These funds can also be used to cover the costs of needs assessment and monitoring and evaluation. (Section 3008).

It also strikes language on streamlining program management included in the 2002 farm bill. It also inserts new language which permits the Administrator to use Title II funds to address food aid quality issues, and requires that regular reports on progress on these quality issues be made to the relevant Congressional Committees.

The Conference substitute adopts Senate language on paragraph (1) and paragraph (3) with modifications, providing \$4.5 million for fiscal years 2009 through 2011 to be used to study and improve food aid quality for fiscal 2009-2011 from funds made available under Section 3012. It adopts House language on paragraph (2) with the modifications that the range of Title II funding available for administrative and distributional expenses is increased to between 7.5 percent and 13 percent. (Section 3008).

The Managers urge the Administrator to explore the practicality of allowing Title II recipients to enrich or fortify Title II commodities overseas and produce high-value and processed products to support local manufacturing of food products in recipient countries. Such local products could include ready-to-use therapeutic and therapeutic and supplemental products and other fortified and processed foods that can be used successfully to treat severe and moderate malnutrition among children and provide nutritional support for people living with HIV/AIDS and other vulnerable groups.

(i) Generation and Use of Currencies by Private Voluntary Organizations and Cooperatives (Section 203 of the Food for Peace Act)

The House bill makes a technical correction. (Section 3001(c))

The Senate amendment adds activities involving micro-enterprises and village banking as a valid use of proceeds generated by monetization of commodities donated under Title II. (Section 3009)

The Conference substitute adopts the House provision (Section 3009).

The Managers recognize that microfinance and village banking, which relies on low dollar loans and collective responsibility, has flourished throughout the developing world for more than 30 years.

The Managers believe that similar activities such as micro-enterprise lending, village banking, and microfinance can be a valuable complement to development assistance projects under Title II of the Food for Peace Act, and encourages the Administrator to view micro-enterprise microfinance, and village banking projects as valid uses of local currency generated by monetization under this Act.

(J) Levels of Assistance (Section 204 of the Food for Peace Act)

The House bill extends requirements on overall minimum tonnage and minimum tonnage for non-emergency assistance provided under Title II through 2012. (Section 3001(d))

The Senate amendment extends only the overall minimum tonnage requirement for Title II programs through 2012. (Section 3010).

The Conference substitute adopts the House provision (Section 3010).

(k) The Food Aid Consultative Group (Section 205 of the Food for Peace Act)

The House bill extends the authority for the Food Aid Consultative Group (FACG). (Section 3001(e))

The Senate amendment requires that a representative of the maritime transportation sector be included in the Group.

It also requires the Administrator to consult with the FACG in developing regulations for the pilot local cash purchase program established in Section 3014, and extends the authority for the FACG through 2012. (Section 3011)

The Conference substitute adopts the House provision, and paragraph (1) of the Senate provision. (Section 3011).

(l) Administration (Section 207 of the Food for Peace Act)

The House bill deletes a requirement that if the U.S. Agency for International Development denies a proposal for a Title II project, it must specify conditions that must be met for the approval of such proposal.

It also adds a new provision that requires the U.S. Agency for International Development to establish and report on systems to improve and evaluate Title II assistance, including early warning systems to prevent famines. (Section 3001(f) and (g)) The Senate amendment provides more flexibility to the Administrator in terms of the time available to evaluate and determine whether to accept a proposal for assistance under Title II, and clarifies the intent of the law with respect to notifying an applicant why their proposal was rejected.

It deletes a requirement for handbooks which are no longer used within the Title II program. Information previously contained in such handbooks is now available through other outlets, such as the U.S. Agency for International Development website.

It deletes a specific deadline for submitting commodity orders, which on occasion can have the effect of slowing down the process, and substitutes a requirement that orders should be provided on a timely basis and it pushes back the date from December 1 to June 1 for a report on the programs, countries, and commodities approved to date within a fiscal year under Title II.

It adds language that allows the Administrator to use Title II funds to pay for assessment, data collection and management, and monitoring activities, and to hire contract workers to undertake such work in recipient or neighboring countries, without limiting existing authority to hire contractors to help address emergency food needs.

The Senate amendment also adds language allowing the Administrator to pay the World Food Program of the United Nations for indirect support costs of the commodities donated under Title II, requiring that the Administrator report to relevant Congressional committees on such payments. It also clarifies the authority of the Administrator to pay indirect costs associated with funds received or generated for programs to PVO's and cooperatives. It also requires that project reports should be submitted in such a form as can be readily displayed for public use on the U.S. Agency for International Development website. (Section 3012)

The Conference substitute adopts House language to require specific oversight, monitoring, and assessment activities and provides up to \$22 million annually of Title II

funds for monitoring and assessment activities for non-emergency programs. It provides that no more than \$8 million of these funds may be used for the Famine Early Warning Systems Network, but only if at least \$8 million is provided for this system from accounts funded pursuant to the Foreign Assistance Act of 1961. It also provides up to \$2.5 million of the \$22 million to upgrade the information technology systems associated with the food aid program in fiscal year 2009, to enhance the monitoring of these programs.

The Conference substitute also adopts Senate language on paragraphs (2) and (3), and provides contracting authority for personal service in order to undertake monitoring and assessments for non-emergency programs, as part of paragraph (5). It does not provide for additional authority to pay indirect support costs to the World Food Program or to private voluntary organizations. (Section 3012).

The Managers recognize the use of handbooks in Title II is no longer an efficient method of providing information to foster development of programs under this title by eligible organizations. Realizing the need for clear communication of guidelines and regulations to eligible organizations, the Managers expect the Administrator to ensure the accessibility and clarity of information previously dispensed in the handbooks such as in an electronic form readily available to the public, in addition to other means as determined appropriate by the Administrator.

The Managers believe that the provision of commodities overseas must be carried out in a timely manner and in a manner that is consistent with planned delivery schedules.

The Managers are aware that the U.S. Agency for International Development has received significant cuts in operating expenses in the President's budget and in Congressional appropriations over the last several years to carry out their operating expense which increasingly affects the Agency's ability to monitor its programs. Although the Managers appreciate these constraints, it expects the Administrator to make every effort to improve the monitoring and evaluation of U.S. food assistance programs. Therefore, the Managers provide the Administrator with the authority to contract for personal services from persons not employed by the U.S. Government to carry out monitoring and oversight activities. The Managers have been concerned that, in the past, the U.S. Agency for International Development has not had the authority or the resources for monitors for non-emergency food aid programs. The April 2007 Government Accountability Office report on U.S. food assistance programs found that monitoring of food assistance programs in-country by the U.S. Agency for International Development has been insufficient due to various factors, including limited staff, competing priorities, and legal restrictions on the use of food assistance resources. The Managers are concerned about the significant gaps in monitoring and evaluation of U.S. international food assistance programs and expects the Administrator to address this problem immediately by establishing a system to monitor food assistance programs. The language in this new subsection will allow the Administrator to address this criticism by employing non-emergency food aid monitors.

The Managers expect the Administrator to continue to use existing authority to pay those expenses required and agreed upon to the World Food Program.

(m) Assistance for Stockpiling and Rapid Transportation, Delivery, and Distribution of Shelf-Stable, Prepackaged Foods (Section 208 of the Food for Peace Act)

The House bill extends the authorization and increases annual funding for such grants from \$3 million to \$7 million. (Section 3001(h))

The Senate amendment reauthorizes this program and also increases the level that can be appropriated to assist in the development of shelf-stable, prepackaged foods for use in food aid programs from \$3 million to \$8 million. (Section 3013)

The Conference substitute adopts the Senate provision (Section 3013)

The Managers recognize the value added to U.S. food aid programs through cost sharing by implementing partners and recognize that preference is given to organizations that are able to provide such additional program funds. The Managers are supportive of the Administrator evaluating the inclusion of in-kind contributions when administering guidelines for cost sharing by non-profit organizations.

(n) General Authorities and Requirements (Section 401 of the Food for Peace Act)

The Senate amendment strikes the requirement that the Secretary make a determination about domestic supply of the commodity before releasing commodities for the food aid program. (Section 3015)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision (Section 3014).

(o) Definitions (Section 402 of the Food for Peace Act)

The Conference substitute consolidates several references to the appropriate committees of Congress with respect to reporting activities under the Food for Peace Act. (Section 3015).

(p) Use of Commodity Credit Corporation (Section 406 of the Food for Peace Act).

The Senate amendment clarifies that costs incurred to improve food aid quality to the list of activities and functions can be covered by the Commodity Credit Corporation through advance appropriations acts. (Section 3016)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision (Section 3016).

(q) Administrative Provisions (section 407 of the Food for Peace Act)

The House bill extends the authorization for prepositioning of commodities and increases the limit on funding available for prepositioning such commodities overseas from \$2 million to \$8 million. The bill also authorizes assessment and possible establishment of additional prepositioning sites. (Section 3001(i))

The Senate amendment reauthorizes pre-positioning of U.S. commodities abroad and increases the limit on funding available for prepositioning in foreign countries from \$2 million to \$4 million. It also requires that resource requests for multi-year or ongoing non-emergency assistance agreements be approved by October 1 of the fiscal year when the commodities will be delivered.

It also pushes the completion date for an annual report concerning the programs and activities of this Act from January 15 to April 1, and requires the Administrator to make the report available to the public by electronic and other means. (Section 3017)

The Conference substitute adopts the Senate provision, but increases funding for prepositioning to \$10 million, and adds the House language on studying the need for additional prepositioning sites (Sections 3017 and 3018(a)).

(r) Consolidation and Modification of Annual Reports regarding Agricultural Trade Issues (Section 407 of the Food for Peace Act)

The House bill amends requirements of the report the President must prepare on food aid programs that are carried out under the Act. (Section 3001(j))

The Senate amendment has no comparable provision.

The Conference substitute consolidates a number of reporting requirements and date changes for reports from both Senate and House bills (Section 3018).

(s) Expiration of Assistance (Section 408 of the Food for Peace Act)

The House bill reauthorizes agreements under the Act through 2/31/12. (Section 3001(k))

The Senate amendment reauthorizes agreements under the Act through December 31, 2012. (Section 3018)

The Conference substitute adopts the House provision (Section 3019).

(t) Authorization of Appropriations (Section 412 of the Food for Peace Act)

The House bill extends the Act through 2012, and sets authorization levels for Title II to \$2.5 billion. (Section 3001(l))

The Senate amendment reauthorizes appropriations for the Act through 2012. It also strikes subsection (b) and removes the President's authority to transfer funds between the programs under this Act. (Section 3019)

The Conference substitute adopts the House provision, modifying it with technical changes. (Section 3020).

(u) Micronutrient Fortification Programs (Section 415 of the Food for Peace Act)

The House bill extends authorization for the program through 2012 and amends the purposes. (Section 3001(m))

The Senate amendment reauthorizes the Micronutrient Fortification Program from the Farm Security and Rural Investment Act of 2002 and adds new authority to assess and apply technologies and systems to improve food aid. It also strikes subsection (b), which limits the number of countries in which this program can be implemented. (Section 3020)

The Conference substitute adopts the Senate provision (Section 3023).

(v) John Ogonowski and Doug Bereuter Farmer-to-Farmer Program (Section 501 of the Food for Peace Act)

The House bill provides a floor level of funding for the Farmer-to-Farmer program of \$10 million and extends the program through 2012. The House bill also increases authorization of appropriations for specific regions from \$10 million to \$15 million. (Section 3001(n))

The Senate bill reauthorizes the Farmer-to-Farmer program. (Section 3022)

The Conference substitute adopts the House provision (Section 3024).

The Managers recognize that organizations such as the Foods Resource Bank provide vital financial and technical assistance to agricultural production in developing countries in areas of financing, market access and knowledge, and development assistance. This assistance is generated through sale of crops grown in a cooperative effort between members of urban and rural churches and other organizations. These growing projects are an outstanding example of harnessing the grass-roots energy and generosity of Americans. Through use of these proceeds, these members of churches and organizations help to increase the technical knowledge and available capital, for farmers and others in targeted developing countries. These efforts enhance food security and increase productivity in these countries.

The Managers understand that in the recent years, the Foods Resource Bank has received matching funds through the Global Development Alliance established by the U.S. Agency for International Development. The Managers encourage the Administrator

to continue this funding and consider entering into longer term agreements with these organizations to provide for more certainty in project planning.

The Managers believe that providing funds to match such contributions leverage the government's investment and provide an incentive to expand the effort of growing projects working in the United States to raise money. Such an action would also increase public awareness of the plight of farmers in developing countries.

(2) Export Credit Guarantee Program (Sections 203 and 211 of the Agricultural Trade Act of 1978)

The House bill reduces the tenor of the GSM-102 Export Credit Guarantee Program to six months beginning in fiscal year 2008. (Section 3002)

The House bill and the Senate amendment both repeal authority for the Supplier Credit program, which provides guarantees to buyers of U.S. commodities in foreign countries for a period of not more than 180 days.

Both bills repeal authority for the GSM-103 Intermediate Credit Guarantee Program which provides guarantees for loans to purchase U.S. agricultural commodities with duration of between three years and ten years, and repeal the one percent cap on loan origination fees for the GSM-102 export credit guarantee program.

The Senate amendment reduces the tenor of the GSM-102 export credit guarantee program to no more than six months beginning in fiscal year 2012. The Senate amendment also clarifies how the U.S. Department of Agriculture should conduct evaluations of the creditworthiness of countries participating in export credit guarantee programs, and reduces the minimum amount that can be allocated to the export credit programs from its current \$5.5 billion to \$5 billion. (Section 3101)

The Conference substitute adopts the Senate provision, with the following modification: in lieu of the reduction in tenor for the GSM-102 program beginning in fiscal year 2012, the conference amendment includes a cap on the credit subsidy for the program of \$40 million annually (Section 3101).

The Managers eliminated proposals to limit the tenor of export credit guarantees to periods shorter than 3 years in length. In order to garner budget savings while preserving the 3 year tenor and effectiveness of the program to support U.S. agricultural exports, subsection (b) limits the available budget authority for the cost of the program, as determined on a net present value basis under the Federal Credit Reform Act of 1990.

Specifically, the Commodity Credit Corporation must make available each year GSM-102 guarantees in an amount not less than \$5.5 billion, or the amount of guarantees that can be supported by \$40 million in budget authority (plus any budget authority carried over from prior years) - whichever amount is less. It is expected that the U.S. Department of Agriculture can make available approximately \$4 billion annually in export credit guarantees on \$40 million in budget authority.

The Managers remain concerned that the U.S. Department of Agriculture has consistently failed to meet its statutory obligation to make available at least \$5.5 billion in export credit guarantees, to the detriment of U.S. agricultural exports and the ability of food importing countries to meet their food, feed, and fiber needs.

The Managers expect the U.S. Department of Agriculture to use this authority to design and operate the export credit guarantee program to maximize the export sales of agricultural commodities and to assist food importing countries' efforts to meet their

food, feed, and fiber needs, by making available and utilizing guarantees equal to at least the statutory minimum, and more as necessary to meet program demand.

Finally, the Managers believe that the changes in this section satisfy U.S. commitments to comply with the Brazil cotton case with regard to the export credit programs.

(3) Market Access Program (Sections 203 and 211 of the Agricultural Trade Act of 1978)

The House bill extends the program and makes organic commodities eligible for the program. It increases funding by \$25 million annually. (Section 3003)

The Senate amendment makes organic commodities eligible for the program. It also increases funding for the program from its current level of \$200 million for fiscal year 2007, raising it by \$10 million annually until fiscal year 2011, when it returns to baseline levels. (Section 3102)

The Conference substitute adopts the Senate provision, without the increase in funding above baseline levels (Section 3102).

(4) Food for Progress Act of 1985

The House bill extends the Food for Progress Act (7 United States Code 1736o) through 2012. (Section 3004)

The Senate amendment reauthorizes the program through 2012, and makes recipient governments, intergovernmental organizations, and private entities ineligible for the program. It also increases the amount that can be spent transporting commodities under Food for Progress from \$40 million to \$48 million for fiscal years 2008-through 2010. This figure is the effective cap on this program. (Section 3106)

The Conference substitute adopts the House provision and adds a provision requiring the Secretary to establish a project in Malawi under this program (Section 3105).

(5) McGovern-Dole International Food for Education and Child Nutrition Program

The House bill extends program through 2012, requires the Secretary of Agriculture to carry out the program, and provides mandatory funds of: \$0 for fiscal year 2008; \$140,000,000 for fiscal year 2009; \$170,000,000 for fiscal year 2010; \$230,000,000 for fiscal year 2011; \$300,000,000 for fiscal year 2012; and \$0 for fiscal year 2013. (Section 3005)

The Senate amendment establishes the U.S. Department of Agriculture as the permanent home for this program and reauthorizes the program through fiscal year 2012. Up to \$300 million may be appropriated annually to fund this program. (Section 3107)

The Conference substitute adopts the Senate provision, except it provides \$84 million in mandatory money for this program for fiscal year 2009, to be available until expended (Section 3106).

(6) Bill Emerson Humanitarian Trust

The House bill extends the Bill Emerson Humanitarian Trust through 2012. (Section 3006)

The Senate amendment specifies that the Trust can be held as a combination of commodities and cash, not to exceed the equivalent of 4 million metric tons and allows

the commodities to be exchanged for funds available under Title II or the McGovern-Dole program. The Secretary may sell commodities in the Trust onto the market if such sales will not disrupt the domestic market. It permits the Secretary to manage the funds held under the Trust to maximize its value.

The Senate amendment further clarifies the rules under which commodities or funds can be released from the Trust, and defines the term “emergency” for the purpose of release. It also clarifies the rules by which the Trust is managed by the Secretary, including specifying that price risks must be managed and allowing the funds held in the Trust to be invested in low-risk short-term securities or instruments. Instructs the Secretary to maximize the value of the Trust and instructs the Secretary to transfer saved storage costs back to the Trust from the CCC. The Senate amendment replaces the word “replenish” with the word “reimburse” throughout the language, reinforcing the notion that resources can be held through cash as well as commodities under this program. The program is reauthorized through fiscal year 2012. (Section 3201)

The Conference substitute adopts the Senate provision, with the following modifications: it removes the 4 million ton cap entirely, and no longer allows the Secretary to engage in futures market transactions with funds in the Trust. It also does not allow the exchange of funds available under Title II or the McGovern-Dole International Food for Education and Child Nutrition program, nor require transfer of foregone storage charges into the Trust (Section 3201).

The Managers expect the Trust to be used in a manner that recognizes its unique availability as a resource for food emergencies worldwide. The sale of commodities in the Trust should be undertaken in such a way as to prevent market disruptions and dramatic price fluctuations in the domestic market.

(7) Technical Assistance for Specialty Crops

The House bill extends the Technical Assistance for Specialty Crops through fiscal year 2012 and increases funding from \$2 million annually to \$4 million in 2008, ramping up to \$10 million for fiscal years 2011 and 2012. (Section 3007)

The Senate amendment extends Technical Assistance for Specialty Crops through fiscal 2012 and increases funding by \$19 million over the baseline. (Section 1833)

The Conference substitute adopts the House provision with annual funding ramped up to \$9 million in fiscal years 2011 and 2012, and adds a report (Section 3203).

(8) Representation by the United States at International Standard-Setting Bodies

The House bill authorizes the Secretary to enhance U.S. Department of Agriculture staff support for international standard-setting bodies, such as the *Codex Alimentarius*, the International Plant Protection Convention, and the World Animal Health Organization. (Section 3009)

The Senate amendment has no comparable provision.

The Conference substitute strikes this provision.

(9) Foreign Market Development Cooperator Program (Section 702 of the Agricultural Trade Act of 1978)

The House bill extends the program through fiscal year 2012. (Section 3010)

The Senate amendment increases funding for the Foreign Market Development Program from its current level of \$34.5 million annually for fiscal year 2007 by \$5 million for fiscal years 2008 and 2009, by \$10 million in fiscal year 2010, and returns to baseline levels in fiscal year 2011. (Section 3105)

The Conference substitute adopts the House provision (Section 3104).

(10) Emerging Markets and Facilities Loan Guarantee Program

The House bill extends the program through fiscal year 2012. (Section 3011)

The Senate amendment reauthorizes the Emerging Markets and Facilities Guarantee Loan Program through fiscal year 2012.

It permits the Secretary to waive requirements that U.S. goods be used in the construction of a facility under this program, if such goods are not available or their use is not practicable. It also permits the Secretary to provide a guarantee for this program for the term of the depreciation schedule for the facility, not to exceed 20 years. (Section 3202)

The Conference substitute adopts the Senate provision (Section 3204).

(11) Export Enhancement Program (Section 301 of the Agricultural Trade Act of 1978)

The House bill extends the program through fiscal year 2012. (Section 3012)

The Senate amendment repeals authority for the program. (Section 3103)

The Conference substitute adopts the Senate provision (Section 3103).

(12) Minimum Level of Nonemergency Food Assistance

The House bill provides that of Title II funds, the U.S. Agency for International Development must use at least \$450 million for non-emergency programs unless Congress provides otherwise with new legislation. (Section 3014)

The Senate amendment establishes a “safe box” for non-emergency, development assistance projects under Title II of \$600 million annually to be obligated and expended each fiscal year. (Section 3019)

The Conference substitute adopts the House provision, modified to reflect a phasing in of the safe box level beginning at \$375 million in fiscal year 2009 and ending at \$450 million in fiscal year 2012. It also provides an exception to the safe box designation, allowed to be exercised only if the President determines that an extraordinary food emergency exists and that resources available from the Bill Emerson Humanitarian Trust have been exhausted, and if the President has submitted a request for additional appropriations to Congress equal to the reduction in safe box and Emerson Trust levels (Section 3022).

(13) Global Crop Diversity Trust

The House bill requires the U.S. Agency for International Development to make a contribution on behalf of the United States to the Global Crop Diversity Trust of up to \$60 million over 5 years. United States contributions may not exceed one fourth of the total of funds contributed to the Trust from all sources. (Section 3014)

The Senate amendment requires the U.S. Agency for International Development to make contributions to the Global Crop Diversity Trust to assist in conservation of genetic diversity of key food crops around the world. Appropriations of \$60 million are

authorized for the period of the fiscal year 2008 through 2012 for this purpose, with a cap equal to 25 percent of all funds contributed to the Trust from all sources. (Section 3021)

The Conference substitute adopts the House provision, with a title change for the section (Section 3202).

(14) Report on Efforts to Improve Procurement Planning

The House bill requires that not later than 90 days after the date of the enactment the U.S. Agency for International Development and the U.S. Department of Agriculture shall submit to Congress a report on efforts taken to improve planning for food and transportation procurement, including efforts to eliminate bunching of food purchases. (Section 3015)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision (Section 3022).

(15) International Disaster

The House bill requires that for each of fiscal year 2008 through 2012, \$40 million of amounts made available to carry out Section 491 of the Foreign Assistance Act of 1961 shall be made available for famine prevention. (Section 3016)

The Senate amendment authorizes a pilot program for local/regional cash purchase. Subsection (a) provides several key definitions for the section. Subsection (b) establishes authority for the pilot program. Subsection (c) establishes the purposes for which the pilot program can be used. Subsection (d) establishes criteria for local or regional procurement. Subsection (e) requires the Administrator to initiate an external review of prior local/regional cash purchase activities by other donor countries, PVO's and intergovernmental organizations within 30 days of enactment. A report detailing the results of this review is also to be provided to the relevant Congressional Committees. This information would be used to assist in developing guidelines for the request for proposals. Subsection (f) authorizes the Administrator to request and approve applications for grants from eligible organizations under this section, and requires any projects authorized under this section to be completed by Sept. 30, 2011, to allow time to complete study of pilot results before expiration of authorized appropriations in subsection (k). Subsection (g) establishes requirements for specific projects in selecting proposals for grants. Subsection (h) lists information that would need to be included in grant applications. Subsection (i) requires the Administrator to arrange for independent evaluation of the pilot program results, and a report to the relevant Congressional Committees. It also lays out the factors that would have to be examined in the report. Subsection (j) requires the Administrator to promulgate guidelines for the operation of this pilot program. Subsection (k) authorizes appropriations of \$25 million for each year between fiscal 2009 and fiscal 2011 for this program, to be available until expended. (Section 3014)

The Conference substitute adopts the Senate provision, modified to provide that the project be conducted by the Secretary with \$60 million in mandatory funding between fiscal 2009 and 2012. It establishes requirements for undertaking such activities and requires the Secretary to promulgate rules or guidelines in order to award grants or cooperative agreements to conduct field-based projects using local or regional procurement. It also requires entities receiving grants or entering into agreements under

this section to provide data about market parameters and methodologies used to acquire eligible commodities locally or regionally, intended to be used to evaluate the effectiveness of local or regional procurement (Section 3206).

(16) Importation of Agricultural Products Made with Child Labor

The Senate amendment requires the Secretary of Agriculture, in cooperation with the Secretary of Labor, to develop standards that importers of agricultural products into the United States could choose to use to certify that those products were not produced with the use of abusive forms of child labor. (Section 3104)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision, modified to establish a consultative group of interested stakeholders charged with developing recommendations on practices that would enable companies to monitor and verify whether the food products they import are made with the use of child or forced labor. Guidelines developed from these recommendations would be released after a public comment period (Section 3205).

The Managers strongly support efforts to reduce and eliminate the use of child and forced labor. The Managers expect the Secretary of Agriculture to work with the multi-stakeholder Consultative Group to develop the recommendations for best practices for the voluntary, third-party certification initiative that will provide producers, importers, retailers and consumers with reasonable assurances as to what measures have been taken to ensure that the products are not produced with child labor. After the Consultative Group has issued its recommendations, the Managers expect the Secretary to develop guidelines for such best practices and release the guidelines for public comment. The outcome expected by the Managers is a voluntary, third-party certification effort is designed to reduce the likelihood that products produced with forced labor or child labor are imported into the United States as directed in the Trafficking Victims Protection Act of 2005.

The Managers recommend that the Secretary select officials from the Foreign Agricultural Service and the Agricultural Marketing Service to serve on the consultative group as the representatives of the U.S. Department of Agriculture. Additionally, the Managers recommend that the Department of Labor be represented by an individual from the Bureau of International Labor Affairs, and that the Department of State be represented by the Director of the Office to Monitor and Combat Trafficking in Persons of the Department of State.

(17) Biotechnology and Agricultural Trade Program

The Senate amendment reauthorizes the Biotechnology and Agricultural Trade Program through 2012. (Section 3203)

The House bill has no comparable provision.

The Conference substitute does not include this provision.

(18) Technical Assistance for International Trade Disputes

The House bill and the Senate amendment both authorize the Secretary to provide technical assistance for limited resource groups involved in trade disputes. This program is subject to appropriations. (House Section 3008 and Senate Section 3204)

The Conference substitute does not include this provision.

The Managers understand that the U.S. Department of Agriculture currently possesses the authority to provide technical advice, analytical support, and other assistance to help limited resource organizations and others involved in exporting U.S. agricultural commodities. The Managers encourage the U.S. Department of Agriculture to provide such assistance, particularly to entities that both face unfair trading practices and do not possess adequate internal resources to address these practices given the size of their domestic industry or membership. The Department is encouraged to seek appropriations for this purpose as needed.

(19) Importation of High Protein Food Ingredients

The Senate amendment requires the Secretary of Health and Human Services to report to Congress on the importation and use of high protein food ingredients. (Section 3206)

The House bill contains no comparable provision.

The Conference substitute does not include this provision.

(20) U.S.-Canada Softwood Lumber Agreement

The Senate amendment expresses the Sense of the Senate with respect to ensuring that imports of Canadian softwood lumber are consistent with the Softwood Lumber Agreement with Canada. (Section 11093)

The House bill contains no comparable provision.

The Conference substitute includes a softwood lumber importer declaration program. The purpose of the program is to assist in the enforcement of any international obligations that the United States and our trading partners assume with respect to trade in softwood lumber and softwood lumber products.

The Managers are concerned that existing U.S. importer declaration requirements are not sufficient to ensure compliance with such obligations. If the issue is not addressed, imports of noncompliant softwood lumber and softwood lumber products can harm U.S. producers.

The section amends the Tariff Act of 1930 by adding a new Title VIII, the “Softwood Lumber Act of 2008”. The Act directs the President to establish a softwood lumber importer declaration program. The program requires U.S. importers of softwood lumber and softwood lumber products to take certain steps to help the United States and its trading partners ensure that trade in these products is consistent with the terms of any relevant international agreement.

As part of the program, U.S. importers must provide certain information about each shipment of softwood lumber or softwood lumber products at the time the importer files the entry summary documentation. The importer must also declare that the importer has made appropriate inquiries about the shipment and that, to the best of the importer’s knowledge and belief, the imports of softwood lumber are consistent with certain terms of any relevant international agreement entered into by the country of export and the United States. The Act requires the Secretary of Treasury to reconcile the transaction-specific information provided by the U.S. importer with transaction-specific information provided by the country of export to the United States, if any. Such reconciliation is to include any revised transaction-specific export prices provided by the country of export.

The Secretary of Treasury must also periodically verify the accuracy of the importer declarations. The Act provides for the assessment of penalties against any person who knowingly violates the Act. The Act, however, holds harmless importers who have made appropriate inquiries and who maintain and produce substantiating documentation.

The Managers intend that the requirement for the importer to provide the estimated export charges, if any, is meant to apply to export charges estimated to be due at the time of shipment, recognizing that the exporter's final liability could increase or decrease at the time of final assessment.

The Managers intend that, in implementing the program, the President or his designee avoid placing an unnecessary burden on U.S. importers. In this respect, the Managers note that the statutory language creating the program neither includes nor references any authority for the President or his designee to establish user fees, processing fees, or any other fees of any kind. It is the intention of the Managers that any expenses associated with the administration of this program be covered with appropriated funds.

The Managers intend that this program meet all bilateral and multilateral obligations of the United States, including adherence to international rules and procedures regarding trade in softwood lumber. The Managers intend the program to be consistent with U.S. obligations under the Uruguay Round Agreements, including the General Agreement on Tariffs and Trade 1994, and any other bilateral or multilateral trade agreements to which the United States is a Party.

The Managers recognize the subject matter set forth in the Act falls under the jurisdiction of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

TITLE IV—NUTRITION PROGRAMS

(1) Renaming the Food Stamp Program

The House bill amends the Food Stamp Act of 1997 (FSA) by renaming the Food Stamp Program the Secure Supplemental Nutrition Assistance Program (SSNAP). Conforming amendments are made to other laws, documents, and records that reference either the Food Stamp Act or Food Stamp Program. (Section 4001)

The Senate amendment amends the short title of the FSA by renaming the Act the Food and Nutrition Act of 2007. It amends the renamed Food and Nutrition Act of 2007 to change the term “food stamp program” each place it appears to “food and nutrition program”.

The Senate amendment also makes conforming amendments to other laws that reference the Food Stamp Act/program. (Section 4001, Section 4909)

The Conference substitute adopts the Senate provisions with an amendment to rename the Food Stamp Program as the “Supplemental Nutrition Assistance Program” and to incorporate these changes into section 4001; and to incorporate technical changes and conforming amendments necessary to reflect the new title of the program and Act into section 4002. (Section 4001; Section 4002)

(2) Definition of Drug Addiction or Alcoholic Treatment and Rehabilitation Program

The House bill amends section 3(f) of the FSA by mandating that drug addiction or alcoholic treatment and rehabilitation programs meet the FSA's definition regarding such programs if the State Title XIX agency certifies that: the program is eligible to receive funds under Part B of Title XIX of the Public Health Service Act (even if no funds are being received); or is operating to further the purposes of Part B.

This section also provides that nothing in the FSA's definition of a drug addiction or alcoholic treatment and rehabilitation program is to be construed as requiring State or Federal licensure. (Section 4002)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(3) Nutrition Education

The House bill amends section 4(a) of the FSA by authorizing the Secretary, subject to appropriated funds, to administer the food stamp nutrition education program to eligible households.

Section 11(f) of the FSA is amended by specifically giving State agencies the discretion to implement nutrition education programs that promote healthy food choices that are consistent with the Dietary Guidelines for individuals who receive, or are eligible to receive program benefits.

States are given the discretion to deliver nutrition education directly to eligible recipients through agreements with the Cooperative State Research, Education and Extension Service and other State and community health and nutrition providers and organizations.

States wishing to provide nutrition education must submit a plan that identifies the uses of the funding for local projects and conforms to standards set forth by the Secretary in regulations or guidance.

States must, whenever practicable, notify applicants, participants, and eligible program participants of the availability of nutrition education.

The federal matching funds requirement is continued. (Section 4003)

The Senate amendment is the same as the House bill, with technical differences. (Section 4213)

The Conference substitute adopts the Senate provision. (Section 4111)

(4) Food Distribution on Indian Reservations

The House bill amends section 4 of the FSA by permitting the distribution of commodities, with or without the Secure Supplemental Nutrition Assistance Program, on Indian reservations whenever a request is made for concurrent or separate food program operations by a tribal organization.

Tribal organizations are permitted to be responsible for the commodity distribution, should the Secretary determine that they are capable of doing so. The prohibition from approving plans that permit households to simultaneously participate in the SSNAP and FDPIR programs is continued.

An appropriation of \$5,000,000 is authorized for fiscal years 2008 through 2012 for a traditional and local foods fund to distribute traditional and locally-grown foods,

designated by region, on Indian reservations. At least 50 percent of the food distributed through the fund must be produced by Native American farmers, ranchers, and producers.

The Secretary is required to submit a report to Congress on the FDPIR food package. The report is to include: a description of the process for determining the contents of the food package; the extent to which the package conforms to the 2005 Dietary Guidelines for Americans; the extent to which the food package addresses nutritional and health challenges specific to Native Americans and the nutritional needs of Native Americans; and plans to revise the food package (or any rationale for not revising it). (Section 4004)

The Senate amendment is similar to the House bill with technical differences but: (1) provides that, subject to the availability of appropriations, the Secretary may purchase bison meat for distribution through FDPIR, and (2) requires the Secretary to survey participants to determine which traditional foods are most desired.. (Section 4501)

The Conference substitute adopts the Senate provision with amendments to require that, where practicable, at least 50 percent of the food distributed through the traditional and locally grown foods fund be produced by Native American farmers, ranchers, and producers, and to require a report describing the activities carried out under the traditional and locally grown foods fund. (Section 4211)

(5) Excluding Combat Related Pay from Countable Income

The House bill amends section 5(d) of the FSA by specifically excluding combat-related military pay when determining income for program eligibility and benefits. (Section 4005)

The Senate amendment is the same as the House bill, with technical differences. (Section 4101)

The Conference substitute adopts the Senate provision with an amendment to specify that the exclusion of combat-related military pay becomes effective on October 1, 2008. (Section 4101)

(6) Increasing the Standard Deduction

The House bill amends section 5(e)(1) of the FSA by increasing the minimum standard deduction and indexing it for inflation as measured by the Consumer Price Index (CPI-U).

The minimum standard deduction is raised to:
\$145 (for the 48 contiguous States and the District of Columbia);
\$248 (for Alaska);
\$205 (for Hawaii);
\$128 (for the Virgin Islands);
and \$291 (for Guam).

The alternative minimum of 8.31 percent of the poverty guidelines is not changed.

On October 1, 2008 (and each October thereafter) the minimum dollar-denominated standard deductions (noted above) would be adjusted by the CPI-U change (for all items other than food) over the 12 months ending the previous June 30th (and rounded down to the nearest whole dollar). (Section 4006)

The Senate amendment amends section 5(e)(1) to increase the minimum *standard deduction* and index it for inflation as measured by the CPI-U.

The minimum standard deduction is raised to:
\$140 (for the 48 contiguous States and the District of Columbia);
\$239 (for Alaska);
\$197 (for Hawaii);
\$123 (for the Virgin Islands); and
\$281 (for Guam).

As in the House bill, the alternative minimum of 8.31% of the poverty guidelines is not changed, and the amounts specified for the standard deduction would be adjusted for annual changes in the CPI-U and rounded down. (Section 4102)

The Conference substitute adopts the Senate provision with an amendment to increase the minimum standard deduction to:

\$144 (for the 48 contiguous States and the District of Columbia);
\$246 (for Alaska);
\$203 (for Hawaii);
\$127 (for the Virgin Islands); and
\$289 (for Guam).

The Conference substitute indexes these amounts for inflation as measured by the CPI-U, rounded down and specifies that these increases become effective on October 1, 2008. (Section 4102)

(7) Deducting Dependent Care Expenses

The House bill amends section 5(e)(3) of the FSA by removing the caps on dependent care deductions. (Section 4007)

The Senate amendment is the same as the House bill.

The Conference substitute adopts the House provision with an amendment to make the removal of the caps on dependent care deductions effective on October 1, 2008. (Section 4103)

(8) Adjusting Countable Resources for Inflation

The House bill amends section 5(g) of the FSA by requiring that the resource (asset) dollar limits for SSNAP households be indexed. Limits are to be indexed annually for inflation (measured by the CPI-U) and adjusted to the nearest \$100. (Section 4008)

The Senate amendment amends section 5(g) by increasing the dollar limits on financial resources that an eligible household may own to \$3,500 (or \$4,500 for households with elderly or disabled members), and requiring that they be indexed annually for inflation (measured by the CPI-U) rounded down and adjusted down to the nearest \$250. (Section 4101(a))

The Conference substitute adopts the Senate provision with amendments to specify that the existing asset dollar limits be indexed annually for inflation as measured by the CPI-U and adjusted down to the nearest \$250, to specify that such policy become effective on October 1, 2008, and to make other technical changes. (Section 4104)

(9) Excluding Education Accounts from Countable Income

The House bill amends section 5(g) of the FSA by excluding tax-qualified education savings as countable financial resources. (Section 4009)

The Senate amendment is the same as the House bill, with technical differences. (Section 4104(c))

The Conference substitute adopts the Senate provision with an amendment to specify that such exclusions become effective on October 1, 2008, and to make other technical changes. (Section 4104)

(10) Excluding Retirement Accounts

The House bill amends section 5(g) of the FSA by excluding all tax-qualified retirement accounts/savings as countable financial resources. (Section 4010)

The Senate amendment is the same as the House bill with technical differences. (Section 4104(b))

The Conference substitute adopts the Senate provision with an amendment to specify that such exclusions become effective on October 1, 2008; and to make other technical changes. (Section 4104)

(11) Simplified Reporting

The Senate amendment amends section 6(c)(1) to allow States to require periodic reporting of changes in household circumstances (as opposed to reporting changes when they occur) by households with elderly/disabled members, migrant/seasonal farmworker households, and households in which all members are homeless. This provision limits the frequency with which these households must report changes (other than changes whereby they exceed the program's gross monthly income eligibility limits). Elderly/disabled households with no earned income are required to report no more often than once a year; migrant/seasonal farmworker and homeless households could be required to report no more often than once every 4 months. (Section 4105)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to specify that the simplified reporting policy change becomes effective on October 1, 2008. (Section 4105)

(12) Deobligate Food Stamp Coupons

The House bill amends the FSA by prohibiting States from issuing coupons, stamps, certificates or authorization cards, effective upon enactment of the Farm Bill.

The House bill provides that, effective one year after enactment of this Act, only Electronic Benefit Transfer (EBT) cards will be eligible for exchange at retail food stores that participate in the SSNAP.

The House bill also provides that coupons will no longer be an obligation of the Federal government, effective one year after enactment of the Farm Bill, thereby requiring that coupons be redeemed within that one-year period. (Section 4011)

The Senate amendment is similar to House bill with technical differences but: (1) directs the Secretary to require a state agency to issue or deliver benefits using alternative methods if the Secretary determines, in consultation with the Inspector General, that it would improve the integrity of the food and nutrition program; and (2) provides that no interchange fees shall apply to electronic benefit transfer transactions under the food and nutrition program. It also makes necessary conforming amendments as in the House bill. (Section 4202, 4001)

The Conference substitute adopts the Senate provision with amendments to strike the study relating to the use of program benefits and to make other technical changes. While this provision does generally prohibit the use of coupons in the Supplemental Nutrition Assistance Program (SNAP), it is not the Managers' intention to prohibit States from issuing benefits in a form other than EBT cards as part of efforts through SNAP to provide food assistance to eligible individuals affected by a disaster. (Section 4115)

(13) Eligibility for Single Unemployed Adults

The Senate amendment amends section 6(o) to lengthen the eligibility period for ABAWDs who are not working or in an employment/training or workfare program to 6 months in every 36-month period.

The Senate amendment eliminates the current provision of law under which an ABAWD who gains eligibility by meeting one of the 3 work-related tests, but subsequently fails to meet any of them, may remain eligible for an added 3 months. (Section 4107)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(14) Transitional Benefits

The Senate amendment amends section 11(s) to permit States to provide transitional food assistance benefits to households with children that cease to receive cash assistance under a *state-funded* public assistance program. (Section 4108)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to make the transitional benefits policy change effective on October 1, 2008. (Section 4106)

(15) Allow for the Accrual of Benefits

The House bill amends section 7(i) of the FSA by authorizing States to establish procedures for recovering electronically issued benefits from a household due to inactivity in the household's EBT account.

The House bill provides States with the discretion to recover benefits if an EBT account has been inactive for: (1) 3 months during which it continuously had a balance greater than \$1,000 (adjusted for inflation); or (2) 12 months, whichever is less.

The House bill also provides that a household whose benefits are recovered must receive notice, and have its benefits made available again, upon request not less than 12 months after the recovery of the benefits. (Section 4012)

The Senate amendment amends section 7(i) of the FSA to (1) require that States establish procedures for recovering electronically issued benefits from inactive benefit accounts and allow them to store recovered benefits off-line if the household has not accessed the account after 6 months and (2) require States to expunge benefits that have not been accessed by a household for 12 months.

States would also be required to notify households of stored benefits and make them available not later than 48 hours after a household's request. (Section 4106)

The Conference substitute adopts the Senate provision. (Section 4114)

(16) Increasing the Minimum Benefit

The House bill amends section 8(a) of the FSA by increasing the amount of the minimum benefit for 1 and 2-person households to 10 percent of the inflation-indexed “Thrifty Food Plan” for a 1-person household. (Section 4013)

The Senate amendment is the same as the House bill except that the effective date is stipulated as October 1, 2008.

The Conference substitute adopts the House provision with an amendment to specify that the minimum benefit shall be equal to 8 percent of the maximum benefit for a household of one, and to make the increase in the minimum benefit effective on October 1, 2008. The Managers understand that the Thrifty Food Plan changes on a monthly basis, and expect that the minimum benefit, as amended by this provision, will be calculated on an annual basis. (Section 4107)

(17) State Option for Telephonic Signature

The House bill amends Section 11(e)(2)(C) of the FSA by authorizing State agencies to establish a system for applicant households to sign an application by providing a recorded, verbal assent over the telephone.

The system must record the applicant’s verbal assent, as well as the information to which the assent was given. The State system is required to include safeguards against impersonation and identity theft.

The provision specifies that a household’s right to apply for food stamps in writing not be precluded.

The provision further specifies that if there are any errors in the application, the applicant must return a copy of the application with instructions for correcting such errors.

Applicants must satisfy all the requirements associated with a written signature on an application to ensure that the verbal assent triggers the effective date of the submission of the application. (Section 4014)

The Senate amendment is the same as the House bill with technical differences.

The Conference substitute adopts the Senate provision. (Section 4119)

(18) Technical Clarification Regarding Eligibility

The Senate amendment amends section 6(k) to require that the Secretary establish procedures to ensure that States use consistent procedures that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings. (Section 4201)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 4112)

(19) Split Issuance

The Senate amendment amends section 7(h) to require that any method for staggering the issuance of benefits throughout a month not include splitting any household’s monthly benefit into multiple issuances – unless a benefit correction is necessary. (Section 4203)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers recognize

that there may be situations in which individuals that leave a group home before the end of the month will still be eligible to receive program benefits. The Managers intend that, in such a situation, the Secretary interpret the term “benefit correction” to allow a second issuance of program benefits in a month. (Section 4113)

(20) Privacy Protection

The Senate amendment amends section 11(e)(8) to clarify rules pertaining to the disclosure of information obtained from applicant households. The provision bars use of this information by persons having access for any purpose other than program administration/enforcement activities, and also makes clear that applicants’ information may be used to comply with requirements for certifying schoolchildren as eligible for free school meals based on their family’s eligibility for food and nutrition assistance program benefits (Section 4205)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 4120)

(21) Civil Rights Compliance

The Senate amendment amends section 11(c) to specify in law that administration of the program must be consistent with the rights of households under the Age Discrimination Act, section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and title VI of the Civil Rights Act. (Section 4207)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 4117)

(22) Employment and Training

The Senate amendment amends section 6(d)(4) to include – as an eligible employment and training program activity – job retention services provided (for up to 90 days after securing employment) to individuals who have received other employment/training services under the program.

The Senate amendment also modifies section 6(d)(4) to permit individuals voluntarily participating in employment and training programs to participate beyond the required maximum of 20 hours a week (or a number of hours based on their benefit divided by the minimum wage). (Section 4208)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to make the changes authorized by this provision effective on October 1, 2008. (Section 4108)

(23) Codification of Access Rules

The Senate amendment amends section 11(e)(1) to clarify that States must comply with the Secretary’s regulations requiring the use of appropriate bilingual personnel and materials. (Section 4209)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 4118)

(24) Expanding the Use of EBT at Farmers Markets

The Senate amendment requires the Secretary to make grants to carry out projects to expand the number of farmers' markets that accept Food and Nutrition program electronic benefit transfer (EBT) cards. Grants may not be made for ongoing costs and may only be provided to entities that demonstrate a plan to continue to provide EBT card access. Mandatory funding of \$5 million is provided for these grants. (Section 4210)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision. Language incorporating the goals and objectives of the Senate provision appears in Section 10106 of the Horticulture and Organic Agriculture title.

(25) Review of Major Changes in Program Design

The House bill amends section 11(e)(6) of the FSA by specifying that only State agency Merit System employees are authorized to:

- (1) represent the State in any communications with prospective food stamp applicants, food stamp applicants, or recipient households regarding their application or participation in the food stamp program;
- (2) participate in making determinations regarding a household's compliance with the requirements of the FSA or its implementing regulations; or
- (3) make any other determinations required under this section.

The provision specifies that non-profit agencies that assist low-income individuals and households in applying for SSNAP benefits by helping the individuals and households complete and submit applications are exempted. The non-profit exemption applies to general application assistance, which is currently allowed as a food stamp outreach activity, and specialized projects that are operating under a waiver of the FSA and its implementing regulations.

State agencies are not prohibited from contracting for automated systems or issuance services or for assistance in verifying an applicant's identity.

Funds from any appropriations act are prohibited from being used for implementing or continuing any contract that fails to meet the specifications regarding State Merit System employees.

State agencies are prohibited from using Federal funds to: (1) perform or carry out contracts that fail to comply with the specifications regarding Merit System employees; or (2) pay any cost associated with the termination, breach, or full or partial abrogation of any contract that does not comply with the specifications regarding State Merit System employees.

State agencies are prohibited from conducting projects that fail to comply with the specifications regarding State agency Merit System employees.

State agencies are prohibited from privatizing food stamp eligibility determinations via the simplified food stamp program.

The Secretary of Agriculture may authorize a State agency, on a temporary basis, to use non-Merit State employees to determine eligibility for a disaster SSNAP program.

States have 120 days to bring any activities inconsistent with this section into compliance. (Section 4015)

The Senate amendment amends section 11(a) to clarify State responsibility for program administration (including cases where the program is operated on a state or locally-administered basis) and to require that program records kept to determine whether

the State is in compliance with the Act/regulations, that such records be available for review in any action filed by a household to enforce the Act/regulations, and to specify that inspection and audit requirements are subject to privacy requirements contained elsewhere in the Food and Nutrition Act.

The provision also amends section 11(a) to require the Secretary to develop standards for identifying major changes in State agency operations – such as substantial increases in reliance on automated systems, or potential increases in administrative burdens placed on applicant or recipient households. It further mandates that, if a State implements a major change in operations, it must notify the Secretary and collect any information the Secretary needs to identify and correct any adverse effects on program integrity or access. (Section 4211)

The Conference substitute adopts the Senate provision. (Section 4116)

(26) Preservation of Access and Payment Accuracy

The Senate amendment amends section 16(g) of the FSA to require that computerized systems for State program operations receiving federal matching payments must (1) be tested adequately before and after implementation (including through pilot projects evaluated by the Secretary), and (2) be operated under a plan for continuous updating (to reflect changed policy and circumstances) and testing (for effects on households and payment accuracy). (Section 4212)

The House bill has no comparable provision.

The Conference substitute accepts the Senate provision. (Section 4121)

(27) Grants for Simple Application and Eligibility Determination Systems and Improved Access to Benefits

The House bill provides no changes to the Secretary's authority to make grants and amends section 11(t)(1) of the FSA by extending the grant program through Fiscal Year 2012.

The Senate amendment amends section 11(t) of the Food and Nutrition Act to permanently extend the authority provided under that section. (Section 4801)

The Conference substitute adopts the Senate provision with an amendment to make technical changes and to link the authority for grants for simple application and eligibility determination systems and improved access to benefits to the availability of appropriations provided through section 18(a) of the Supplemental Nutrition Assistance Program (SNAP). The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(28) Civil Money Penalties and Disqualification of Retail Food Stores and Wholesale Food Concern

The House bill amends section 12 of the FSA by increasing the civil money penalties for retail stores and wholesale food concerns to \$100,000 for each violation of the FSA or its regulations. The requirement that a determination as to the assessment of civil money penalties be based on whether there would be hardship for recipient households is removed.

The provision stipulates that the period of disqualification:

(1) for a first violation is not to exceed 5 years; and

(2) for a second violation is not to exceed 10 years.

The provision does not change the permanent disqualification rules, or other requirements, governing applications containing false information.

The House bill requires the Secretary, in consultation with USDA's Inspector General, to establish procedures whereby participating food concerns may be immediately suspended for "flagrant violations," pending administrative and judicial appeal. Unsettled benefit claims would be subject to forfeiture—or returned to the food concern if the disqualification action is not upheld (without interest). (Section 4017)

The Senate amendment is the same as the House bill, with technical differences. It also amends section 12 to generally ease the conditions under which bonds are required of violating food concerns wishing to be re-approved for participation. The Secretary would be permitted to require bonds from food concerns disqualified for 180+ days (or subjected to a civil money penalty in lieu of a 180+ day disqualification). Bonds could be required for a period of not more than 5 years. Where a food concern has been sanctioned and commits a subsequent violation, the Secretary may require a collateral bond or irrevocable letter of credit regardless of the length of the disqualification period. (Section 4303)

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 4132)

(29) Major Systems Failures

The House bill provides that no changes are made to the methods by which a State agency is authorized to collect overissuances of coupons.

The prohibition on the amount of the reduction in a household's monthly allotment that a State agency is allowed to collect in the instance where overissuance of coupons has occurred is continued.

Section 13(b) of the FSA is amended by providing the Secretary with the discretion to determine that a State agency has overissued benefits to a substantial number of households as the result of a "major systemic error" by the State.

A State agency is given the option to appeal the Secretary's determination. However, if the State agency fails to appeal the Secretary's determination, or, in the case of an appeal, if the State agency is held liable, the State agency is required to reimburse to the Secretary the amount for which the State agency is liable.

The Secretary is authorized to prohibit, upon making a determination that over-issuances have occurred, the State agency from collecting the over-issuances from some or all of the affected households. (Section 4018)

The Senate amendment is the same as the House bill, with technical differences.

The Conference substitute adopts the House provision. The Managers have provided the Secretary with discretionary authority to determine when it is appropriate to prohibit a State agency from collecting overissuances from households that have been affected by a major system failure. In certain instances, it may be appropriate for the Secretary to allow the State to collect overissuances from households. The Managers expect that the Secretary will exercise this authority judiciously, and further expect that in circumstances where a major systems failure is attributable to a specific and deliberate action by the State, that states will not be allowed to pass along the costs associated with such systems failures to households. (Section 4133)

(30) Funding for Employment and Training Programs

The House bill provides no program changes. The funding level remains the same and is extended for each of the fiscal years 2008 through 2012. (Section 4019)

The Senate amendment amends section 16(h)(1) to limit the time unspent unmatched federal funding for employment and training program expenses may remain available to 2 years (as opposed to until expended). Also rescinds unspent employment and training program funds for any fiscal year before fiscal year 2008. It also provides permanent authorization for funding of employment and training programs. (Section 4304; Section 4801)

The Conference substitute adopts the Senate provisions with amendments to allow funds to remain available for 15 months rather than two years, to strike the requirement that any unobligated employment and training funds be rescinded, and to link the authority for funding for employment and training programs to the availability of appropriations provided through section 18(a) of the Supplemental Nutrition Assistance Program (SNAP). The language from subsection (b) of section 4801 of the Senate amendment is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4122)

(31) Reductions in Payments for Administrative Costs

The House bill amends section 16(k) of the FSA by extending the requirement to reduce State administrative cost payments through fiscal year 2012. (Section 4020)

The Senate amendment amends section 16(k) to permanently extend the requirement to reduce State administrative cost payments. (Section 4801)

The Conference substitute adopts the Senate provision with an amendment to make technical changes. The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(32) Performance Standards for Bio-Metric Identification Technology

The Senate amendment amends section 16 of the FSA to establish the conditions under which the Secretary may pay States the federal share (50%) of costs associated with the acquisition and use of biometric identification technology (e.g., fingerprints, retinal scans). In order to gain federal cost-sharing, States must provide a statistically valid and otherwise appropriate analysis of the cost effectiveness of using biometric identification technology to detect program fraud, demonstrate that the proposed technology is cost effective in reducing fraud and that no other fraud-detection methods are at least as cost-effective, and demonstrate that the system will comply with privacy protection rules. (Section 4302)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(33) Cash Payment Pilot Projects

The House bill amends section 17(b)(1)(B)(vi) of the FSA by extending the authority for cash-payment pilot projects through October 1, 2012. (Section 4021)

The Senate amendment amends section 17(b)(1)(B)(vi) by permanently extending

existing authority for cash-payment pilot projects to households whose members are 65 years old or entitled to SSI benefits. (Section 4801)

The Conference substitute adopts the Senate provision with an amendment for technical changes. The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(34) Findings of Congress Regarding Secure Supplemental Nutrition Assistance Program Education

The House bill contains Congressional findings regarding the Food Stamp Program noting that the FSA “plays an essential role in improving the dietary and physical activity practices of low-income Americans, [by] helping to reduce food insecurity, prevent[ing] obesity, and reduc[ing] the risks of chronic disease.”

The Secretary is encouraged to support the most effective interventions for nutrition education under the FSA, including public health approaches and traditional education, to increase the likelihood that recipients and potential recipients of benefits under the SSNAP program choose diets and physical activity practices that are consistent with the Dietary Guidelines for Americans. (Section 4022)

The Senate amendment is the same as the House bill with technical differences.

The Conference substitute deletes both the House and Senate provisions. The Managers recognize that nutrition education plays an essential role in improving the dietary and physical activity practices of low-income individuals in the United States, helping to reduce food insecurity, prevent obesity, and reduce the risks of chronic disease. Expert organizations, such as the Institute of Medicine, indicate that dietary and physical activity behavior change is more likely to result from the combined application of public health approaches and education than from education alone.

The Managers expect that the Secretary will support and encourage implementation of the most effective methods, informed by current science, for nutrition education under the Food and Nutrition Act, including those that are consistent with recommendations and actions of expert bodies to promote healthy eating and physical activity behavior change. Funds provided under the Food and Nutrition Act should be used for activities that promote the most effective implementation of programs to increase the likelihood that recipients of, and those potentially eligible for, supplemental nutrition assistance program benefits will choose diets and physical activity practices consistent with the Dietary Guidelines for Americans. The Managers recognize that state nutrition education activities under the Food and Nutrition Act work best when coordinated with other federally funded food assistance and public health programs and when policies are implemented to leverage public/private partnerships to maximize the resources and impact of the programs.

(35) Eligibility Disqualification

The Senate amendment amends section 6 of the FSA to disqualify (for a period determined by the Secretary) persons found by a court or administrative agency to have intentionally obtained cash by misusing program benefits to obtain money for return of deposits on containers. It also modifies section 6 to disqualify (for a period determined by the Secretary) persons found by a court or administrative agency to have intentionally sold any food that was purchased using program benefits. (Section 4305)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. The Managers do not intend for this provision to include inadvertent de minimis actions such as an individual who purchases a brownie mix with program benefits, then makes brownies and sells them at a school bake sale. (Section 4131)

(36) Definition of Staple Foods

The Senate amendment amends section 3 to (1) add dietary supplements to the list of accessory food items that are not classified as staple foods for the purpose of approving the participation of food concerns in the program, and (2) require the Secretary to issue regulations to ensure that adequate stocks of staple foods are available on a continuous basis in approved food concerns. (Section 4401)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(37) Accessory Food Items

The Senate amendment amends section 9 of the FSA to require that, within 1 year of enactment, the Secretary issue proposed regulations defining dietary supplements: multivitamin-mineral supplements providing prescribed minimum amounts of essential vitamins and minerals that do not exceed prescribed daily upper limits and certain prescribed amounts of folic acid or calcium. Final regulations as to dietary supplements must be issued within 2 years of enactment. No dietary supplements may be purchased with program benefits until the earlier of (1) the date of final regulations with regard to dietary supplements, or (2) the date the Secretary certifies a voluntary system of labeling for identification of eligible dietary supplements. (Section 4402)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(38) Nutrition Education and Promotion Initiative to Address Obesity

The House bill amends section 17 of the FSA by adding a new section that authorizes the Secretary to establish a demonstration program, to be known as the "Initiative to Address Obesity Among Low-Income Americans," to develop and implement strategies to reduce obesity among low-income Americans.

The Secretary is authorized to enter into competitively awarded contracts, cooperative agreements, or grants with public or private organizations or agencies.

Agencies are required to submit applications to the Secretary, and the Secretary is to evaluate demonstration proposals using a variety of criteria, including: (1) identifying a low-income target audience that corresponds to individuals living with incomes at or below 185 percent of the poverty level; (2) incorporating scientifically-based strategies that are designed to improve diet quality through more healthful food purchases, preparation, or consumption; and (3) a commitment to a demonstration plan that allows for rigorous outcome evaluation, including data collection.

Projects that limit the use of SSNAP program benefits are prohibited from receiving funding. The Secretary is authorized to use funds to pay costs associated with monitoring, evaluating, and disseminating the Initiative's findings.

An appropriation of \$10,000,000 is authorized for fiscal years 2008 through 2012.

No new grants are to be made after September 30, 2012. (Section 4023)

The Senate amendment amends section 17 to require and fund pilot projects to develop and test methods of using the Food and Nutrition program to improve the dietary and health status of participants and to reduce overweight, obesity, and associated comorbidities. Among other initiatives, projects may include those providing increased program benefits, increased access to farmers' markets, incentives to participating vendors to increase the availability of healthy foods, adding vendor approval requirements with respect to carrying healthy foods, point-of-purchase incentives to encourage program participants to buy fruits, vegetables, and other healthy foods, and providing integrated communication and education programs (including school-based nutrition coordinators).

These pilot health and nutrition promotion projects would include independent evaluations and annual reports on their status.

Mandatory funding of \$50 million is provided, and up to \$25 million must be used for point-of-purchase incentive projects. (Section 4403)

The Conference substitute adopts the House provision with amendments to specify that the purpose of the section is to carry out pilot projects to develop and test methods for improving the dietary and health status of households in the Supplemental Nutrition Assistance Program, as well as to reduce obesity and other diet-related diseases in the United States; specify the types of pilot projects that the Secretary may consider; include a requirement relating to evaluations and reports of the pilot projects; specify mandatory funding amounts and require that the Secretary use not more than \$20 million of that mandatory funding to carry out a point-of-purchase pilot project to encourage households to purchase fruits, vegetables, or other healthy foods. (Section 4141)

(39) Hunger Free Communities

The Senate amendment requires the Secretary to conduct and periodically update a study of major matters relating to hunger in the United States. The study would assess data on hunger and food insecurity and measures that have been carried out or could be carried out to achieve goals of reducing domestic hunger. It also would contain recommendations for removing obstacles to domestic hunger goals and otherwise reducing domestic hunger.

The Senate amendment authorizes grants to food program service providers and local nonprofit organizations (like emergency feeding organizations) for the federal share (up to 80%) of projects that assess community hunger problems and meet, or develop new resources/programs to meet, goals for achieving hunger-free communities.

The provision authorizes matching grants to emergency feeding organizations for infrastructure development.

Appropriations of \$50 million a year (through fiscal year 2012) are authorized. (Section 4405)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with amendments to strike the definition of food security; strike the study and report relating to hunger; specify that not more than 50 percent of the funds made available under this section be used for the federal share of collaborative grants; strike requirements relating to the contents of collaborative grants and priority for eligible entities that meet certain criteria; and to

make other technical changes. (Section 4405)

(40) State Performance on Enrolling Children Receiving Program Benefits for Free School Meals

The Senate amendment requires the Secretary to submit annual reports that assess the effectiveness and practices of each State in enrolling school-aged children in households receiving food stamp benefits for free school meals using “direct certification” (a current-law procedure allowing children in families receiving program benefits to be deemed automatically eligible for free school meals). (Section 4406)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to add the House Committee on Education and Labor to the list of recipients of the reports produced by the Secretary in accordance with this section. The Managers recognize the time and data constraints for developing the report scheduled to be provided on or before December 31, 2008, and expect that this report will include as much data as possible given such constraints. (Section 4301)

(41) Authorization of Appropriations

The House bill amends section 18(a)(1) of the FSA by reauthorizing appropriations to carry out that Act through 2012. (Section 4024)

The Senate amendment amends section 18(a)(1) of the Food and Nutrition Act by permanently reauthorizing appropriations to carry out the Act. (Section 4801)

The Conference substitute adopts the Senate provision with an amendment to make technical changes and to extend authority for appropriations to carry out the Supplemental Nutrition Assistance Program (SNAP) through fiscal year 2012. The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(42) Consolidated Block Grants for Puerto Rico and American Samoa

The House bill amends section 19(a)(2)(A) of the FSA by extending to 2012 the Secretary’s authority to provide funds to Puerto Rico and American Samoa to administer their nutrition assistance programs. (Section 4025)

The Senate amendment amends section 19(a)(2)(A)(ii) of the Food and Nutrition Act by permanently extending the Secretary’s authority to provide funds to Puerto Rico and American Samoa to administer their nutrition assistance programs. (Section 4801)

The Conference substitute adopts the Senate provision with an amendment to make technical changes and to link the authority for consolidated block grants for Puerto Rico and American Samoa to the availability of appropriations provided through section 18(a) of the Supplemental Nutrition Assistance Program (SNAP). The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(43) Study on Comparable Access to Nutrition Assistance Program Benefits for Puerto Rico

The House bill amends section 19 of the FSA by authorizing the Secretary to conduct a study on the feasibility of including Commonwealth of Puerto Rico in the SSNAP program, in lieu of providing Puerto Rico with a block grant.

The study is to include, among other findings: (a) an assessment of the administrative, financial, and other changes that would be required for Puerto Rico to establish a comparable SSNAP program; (b) a discussion of the appropriate program rules under other sections of the FSA, such as benefit levels, income eligibility standards, and deduction levels for Puerto Rico to establish a comparable SSNAP program; (c) an estimate of the impact on Federal and Commonwealth benefit and administrative costs; and (d) an estimate on the impact of the SSNAP program on hunger and food insecurity among low-income Puerto Ricans. (Section 4026)

The Senate amendment is the same as the House bill (with technical differences), but provides mandatory funding of \$1 million to conduct the study. (Section 4206)

The Conference substitute adopts the Senate provision. (Section 4142)

(44) Reauthorization of Community Food Project Competitive Grants

The House bill continues the Secretary's authority to make grants. Section 25 of the FSA is amended by authorizing an appropriation of \$30,000,000 a year through fiscal year 2012 for community food projects. The eligibility requirements remain unchanged.

Section 25 of the FSA is amended by expanding the list of preferences for selecting community food projects to include projects that are designed to serve special needs in the areas of: (1) emergency food service infrastructure; (2) retail access to underserved markets; (3) integration of urban and metro-area food production in food projects; and (4) technical assistance for youth, socially disadvantaged individuals, and limited resource groups.

The Federal share of the cost of establishing or carrying out a community food project is not to exceed 75 percent of the cost of the project during the time of the grant.

The maximum term of a grant is increased to 5 years.

No changes are made to the Secretary's authority.

The Secretary is required to allocate, for each of the fiscal years 2008 through 2012, out of the funds made available to carry out community food projects, \$500,000 for the project to address common community problems.

The Senate amendment amends section 25 of the Food and Nutrition Act to provide \$10 million a year in mandatory funding for community food projects, through fiscal year 2012.

The Conference substitute adopts the Senate provision with amendments to authorize the establishment of and provide a grant to the Healthy Food Urban Enterprise Development Center; to provide authority for the Center to provide subgrants to eligible entities for the purpose of carrying out feasibility studies, as well as to establish and facilitate enterprises that process, distribute, aggregate, store, and market healthy affordable foods; to provide mandatory funding of \$1,000,000 a year for fiscal years 2009 through 2011 for the Center, and to incorporate these changes into section 4402. The Senate provision providing mandatory funding of \$5 million a year for the Community Food Projects competitive grants appears in section 4406. (Section 4402; Section 4406)

(45) Emergency Food Assistance Program

The House bill amends section 27 of the FSA by increasing the Emergency Food Assistance Program (TEFAP) commodity purchase requirement. In fiscal year 2008, the Secretary is authorized to purchase a total of \$250,000,000 in commodities; for fiscal years 2009 through 2012, the dollar amount is to be indexed annually for food-price inflation. (Section 4028)

The Senate amendment is substantially similar to the House bill with technical differences and without the requirement to index the base amount of \$250 million per year. (Section 4110)

The Conference substitute adopts the Senate provision with amendments to increase mandatory funding to \$190,000,000 in fiscal year 2008, \$250,000,000 in fiscal year 2009 and subsequently indexed for food-price inflation during fiscal years 2010 through 2012. (Section 4201)

(46) Authorization of Appropriations

The House bill amends section 204(a) of the Emergency Assistance Food Act of 1983 by increasing the authorization of appropriations to \$100,000,000 a year, through fiscal year 2012. (Section 4201)

The Senate amendment amends section 204(a) of the Emergency Food Assistance Act by permanently increasing the authorization of appropriations to \$100 million a year. It also requires that State TEFAP agencies submit operation and administrative plans every 3 years (as opposed to every 4 years under current law) and makes clear that funds may be applied to the cost of administering wild game donations. (Section 4802, 4601)

The Conference substitute adopts the Senate provisions with amendments to specify that amendments to State operation and administrative plans may be submitted as necessary; and to combine sections 4802 and 4601 into a single section. (Section 4201)

(47) Distribution of Commodities Special Nutrition Projects

The House bill provides that no changes are made to the mandate encouraging reprocessing agreements, with respect to surplus commodities.

Section 1114(a)(2)(A) of the Agriculture and Food Act (AFA) is amended by extending, through fiscal year 2012, the requirement for the Secretary to encourage reprocessing agreements. (Section 4202)

The Senate amendment is the same as House bill with technical differences. (Section 4802)

The Conference substitute adopts the Senate provision with an amendment for technical changes. The language for this provision is incorporated into a single section reauthorizing the Supplemental Nutrition Assistance Program and other domestic nutrition assistance programs. (Section 4406)

(48) Commodity Distribution Program

The House bill amends section 4(a) of the Agriculture and Consumer Protection Act of 1973 (ACPA) by extending the Secretary's authority through fiscal year 2012.

Section 5 of the ACPA is amended by extending through fiscal year 2012 the ACPA requirement concerning inflation-indexed caseload slot grants.

Section 5(d)(2) of the ACPA is amended by extending the requirement that the Commodity Credit Corporation (CCC) furnish cheese and nonfat dry milk for the Community Supplemental Food Program (CSFP) through fiscal year 2012.

Section 5(g) of the ACPA is amended by mandating that local agencies are to use funds made available under the CSFP to provide assistance to low-income elderly individuals, women, infants, and children in need for food assistance in accordance with any regulations the Secretary may prescribe. Conforming amendments are made stipulating that CSFP benefits are available to low-income elderly individuals.

Section 5 of the ACPA is further amended by requiring the Secretary to establish maximum income eligibility standards for the CSFP that are the same for all applicants. The standards are not to exceed the maximum income limits established for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) – i.e., 185 percent of the federal poverty income guidelines. (Section 4203)

The Senate amendment amends section 4(a) of the ACPA by permanently extending the Secretary's authority to purchase and distribute agricultural commodities for food assistance programs (including the Commodity Supplemental Food Program).

The Senate amendment permanently extends the ACPA requirement in section 5 for inflation-indexed caseload slot grants, and permits State to serve low-income elderly persons with income up to 185% of the federal poverty income guidelines, if the Secretary determines that annual appropriations have enabled every State seeking to participate in the CSFP to participate.

Section 4602 bars the Secretary from requiring any State or local CSFP program to prioritize assistance to a particular group of individuals that are low-income elderly persons or women, infants, and children. (Section 4802, 4602)

The Conference substitute adopts the Senate provisions with amendments to make technical changes to incorporate the reauthorization of the Commodity Supplemental Food Program into Section 4406; incorporate language relating to the prohibition on requiring State or local agencies to prioritize assistance to certain groups of individuals into section 4221. (Section 4406; Section 4221)

The Managers recognize the importance of the Commodity Supplemental Food Program (CSFP) as a critical nutrition program that serves primarily the vulnerable population of low-income elderly Americans. CSFP provides nutritious food, often in the form of food boxes for home delivery, that are designed to meet the dietary needs of seniors, women, and children in 32 states, two Indian tribal organizations, and the District of Columbia. In fiscal year 2007, 93 percent of the recipients were elderly individuals with an annual income at or below \$13,273. CSFP serves a unique niche by providing nutritious commodities to homebound seniors who are at severe risk for hunger.

The Managers fully support the continued operation of this program and recognize the need for a substantial expansion of the CSFP. The Managers note that there are five states that have currently been approved by USDA for entry into CSFP (Arkansas, Delaware, Oklahoma, New Jersey and Utah) subject to the availability of appropriations. Provided that sufficient funds are appropriated by Congress, the Managers encourage the Secretary to approve all remaining states for expansion and to expand caseload in all participating states.

(49) Periodic Surveys of Foods Purchased by School Food Authorities

The Senate amendment amends section 6 of the Richard B. Russell National School Lunch Act to require periodic nationally representative surveys of food purchased by schools participating in the school lunch program. It also provides funding of \$3 million for each survey. (Section 4901)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to provide one-time funding of \$3,000,000 to carry out the section. (Section 4307)

(50) Healthy Food Education and Program Replicability

The Senate amendment amends section 18(i) to provide that sponsored projects may promote healthy food education and that the Secretary must give priority to projects that can be replicated in schools. It also authorizes a new pilot project (at \$10 million) in not more than 5 States under which grants are made to “high-poverty” schools for initiatives with hands-on gardening. No cost-sharing is required. (Section 4903)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to strike the authorization of appropriations to carry out the provision. (Section 4303)

(51) Purchase of Fresh Fruits and Vegetables for Distribution to Schools and Service Institutions

The House bill amends section 10603 of the Farm Security and Rural Investment Act of 2002 (FSRIA) by increasing the dollar amount of fresh fruits, vegetables and other specialty foods the Secretary must procure for schools and service institutions participating in programs under the National School Lunch Act to at least \$50,000,000 a year for each of the fiscal years 2008 and 2009 and \$75,000,000 a year for each of the fiscal years 2010 through 2012. As under current law, these amounts may be spent through the Department of Defense (DoD) Fresh Program. (Section 4301)

The Senate amendment provides that, in lieu of purchases required under Sec. 10603, the Secretary purchase fruits, vegetables, and nuts for use in domestic food assistance programs using Section 32 funds.

Purchase amounts are set at: \$390 million for fiscal year 2008, \$393 million for fiscal year 2009, \$399 million for fiscal year 2010, \$403 million for fiscal year 2011, and \$406 million for fiscal year 2012 and each year thereafter.

Items purchased may be in frozen, canned, dried, or fresh form.

The Senate amendment also allows the Secretary to offer value-added products containing fruits, vegetables or nuts after taking into consideration whether demand exists for the value-added product and the interest of entities that receive fruits, vegetables and nuts under this program. (Section 4907)

The Conference substitute adopts the House language with an amendment to retain the current \$50 million a year requirement to acquire fresh fruits and vegetables for distribution in accordance with section 6(a) of the Richard B. Russell National School Lunch Act. The Managers expect the purchases of fresh fruits and vegetables previously made through the Department of Defense Fresh Program will continue under an equivalent procurement mechanism. (Section 4404)

(52) Buy America Requirements

The House bill includes Congressional findings that: (1) Federal law requires that commodities and products purchased with Federal funds be, to the extent practicable, of domestic origin; (2) Federal Buy American statutory requirements seek to ensure that purchases made with Federal funds benefit domestic producers; and (3) the School Lunch Act requires the use of domestic food products for all meals served under the program, including food products purchased with local funds. (Section 4302)

The Senate amendment is the same as the House bill, with technical differences. (Section 4906).

The Conference substitute adopts the House provision. (Section 4306)

(53) Expansion of Fresh Fruit and Vegetable Program

The House bill amends section 18(f) of the Richard B. Russell National School Lunch Act (NSLA) by expanding the fresh fruit and vegetable program in elementary and secondary schools. Mandatory funding is increased from \$9,000,000 to \$70,000,000 a year, and the program is to be available nationwide in: (A) 35 elementary and secondary schools in each State; and (B) additional elementary and secondary schools in each State in proportion to the student population of the State.

The Senate amendment replaces the current fresh fruit and vegetable program, beginning with the 2008-2009 school year. The new program would provide mandatory funding (\$225 million in the first year, indexed for inflation in later years) and authorize additional appropriations for a program to make free fresh fruits and vegetables available in participating elementary schools nationwide.

Participating elementary schools would be selected by States with priority generally given to schools with the highest proportion of children eligible for free or reduced-price school meals, those that partner with entities that provide non-federal resources, and those that evidence efforts to integrate the program with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity.

Funding would be allocated among States under a formula distributing roughly half of the funds equally among States and apportioning the remainder based on State population. At least 100 schools chosen to participate must be operated on Indian reservations. Per-student grants would be determined by the State but could not be less than \$50, or more than \$75, annually.

An evaluation is required and provided funding of \$3 million to remain available until expended.

The Senate amendment changes the final report's due date to December 31, 2012.

The Secretary is authorized, in selecting schools to participate in the program, to encourage plans for implementation that include locally grown foods.

The Secretary is required to establish requirements to be followed by States in administering the Fresh Fruit and Vegetable Program—the initial set of requirements must be established not later than 1 year after the enactment.

The Secretary is allowed to reserve up to 1% of program funding for administrative expenses related to the program. States may use up to 5% of program funding for administrative expenses. (Section 4904)

The Conference substitute adopts the Senate provision with several amendments. The substitute deletes Senate language allowing a consortia of schools to apply for

funding. The substitute includes a new requirement that state agencies administering the program initiate special outreach to schools with significant numbers of children eligible for free or reduced price meals informing them of their eligibility for the program. The substitute includes a new provision to ensure that states currently receiving funding under the program do not see a reduction in their funding as the program is phased in over time. The substitute includes an amendment which allows states to reserve funding for program administration, in accordance with regulations promulgated by the Secretary. And the substitute includes several provisions intended to aid the Secretary as the program transitions from the existing requirements of section 18(f) to the new requirements established by this section. Mandatory funding is provided through section 32 of the Act of August 24, 1935 in the amounts of \$40,000,000 on October 1, 2008; \$65,000,000 on July 1, 2009; \$101,000,000 on July 1, 2010; \$150,000,000 on July 1, 2011; \$150,000,000 indexed for inflation according to the CPI-U on July 1, 2012. (Section 4304)

It is the intent of the Managers to specifically target available program funding to schools with the highest proportion of children who are eligible for free and reduced price meals, in accordance with (d)(1)(B). Accordingly, the Managers expect that, provided the rest of a school's application is acceptable, that a school with a higher proportion of children eligible for free and reduced-price meals will be selected to participate rather than a school with a lower proportion of children eligible for free and reduced-price meals.

As the name of the program makes clear, it is the intent of the program to provide children with free fresh fruits and vegetables. It is not the intent of the Managers to allow this program to provide other products, such as nuts, either on their own or comingled with other foods, such as in a trail mix. The Managers support the inclusion of all fruits and vegetables in the federal nutrition programs where supported by science and will continue to work with the Department on promoting access to all fruits and vegetables.

(54) Purchases of Locally Produced Foods

The House bill amends section 9(j) of the NSLA by authorizing the Secretary to:

- (1) encourage institutions that receive funds under the NSLA and the Child Nutrition Act (CNA) to purchase, to the maximum extent practicable and appropriate, locally-produced foods;

- (2) advise institutions about the policy related to purchasing locally-produced foods and post information related to this policy on the website maintained by the Secretary; and

- (3) allow institutions receiving funds under the NSLA and the CNA, including the DoD Fruit and Vegetable Program, to use geographic preference in their procurement of locally-produced foods. (Section 4304)

The Senate amendment is the same as the House bill, except that Senate amendment pertains to locally produced fruits and vegetables. (Section 4902)

The Conference substitute adopts the House provision with an amendment to specify that the Department of Agriculture is required to allow institutions to use a geographic preference for the procurement of unprocessed, locally grown and raised agricultural products. (Section 4302)

The Managers do not intend that the Food and Nutrition Service interpret the term "unprocessed" literally, but rather intend that it be logically implemented. In specifying

the term “unprocessed,” the Managers’ use of the term intends to preclude the use of geographic preference for agricultural products that have significant value added components. The Managers do not intend to preclude de minimis handling and preparation such as may be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.

(55) Seniors Farmers’ Market Nutrition Program

The House bill amends section 4402 of FSRIA by: (1) extending mandatory funding of \$15,000,000 for the Senior Farmers’ Market Nutrition Program through fiscal year 2012; and (2) authorizing additional appropriations of \$20,000,000 for fiscal year 2008, \$30,000,000 for fiscal year 2009, \$45,000,000 for fiscal year 2010, \$60,000,000 for fiscal year 2011, and \$75,000,000 for fiscal year 2012.

Honey is added to the list of items to be covered by program vouchers.

The value of benefits provided to eligible Senior Farmers’ Market Nutrition Program recipients is prohibited from being considered income or resources for any purposes under any Federal, State or local law. State and local governments are also prohibited from collecting taxes on food purchased with vouchers distributed under the program. (Section 4401)

The Senate amendment amends section 4402 by permanently extending mandatory funding for the senior farmers’ market nutrition program (at \$15 million a year). It also mandates additional funding of \$10 million a year.

Provisions regarding the treatment of senior farmers’ market nutrition program benefits are the same as in the House bill. (Section (4701, 4702)

The Conference substitute adopts the House provision with an amendment to strike the authorization of additional appropriations to carry out the program, and to make other technical changes. The Senate provision requiring additional mandatory funds is adopted and appears in section 4405 with an amendment to increase current mandatory funding to \$20,600,000 a year. (Section 4231)

(56) Congressional Hunger Center

The House bill amends section 4404 of FSRIA with provisions similar to those contained in current law. Provisions in this section differ from those in current law by authorizing annual appropriations of \$3,000,000 a year, through fiscal year 2012, and by specifically naming the Congressional Hunger Center as the administering entity for Emerson and Leland fellowships. (Section 4402)

The Senate amendment is the same as the House bill, with technical differences and requires: 1) issuance of a grant from USDA to the Congressional Hunger Center to administer the program (as opposed to a contract in the House bill); and (2) an appropriations authorization set at “such sums as are necessary.” (Section 4404)

The Conference substitute adopts the Senate provision with an amendment to strike language pertaining to congressional findings, and make other technical changes. (Section 4401)

(57) Joint Nutrition Monitoring

The House bill amends Subtitle D of Title IV of FSRIA by authorizing the Secretary of Agriculture, along with the Secretary of Health and Human Services, to continue to provide jointly for national nutrition monitoring and related research activities.

Among other duties, the two Secretaries are required to: (a) collect continuous dietary, health, physical activity, and diet and health knowledge data on a nationally representative sample; (b) periodically collect data on special at-risk populations as identified by the Secretaries; (c) distribute information on health, nutrition, the environment, and physical activity to the public in a timely fashion; (d) analyze new data that becomes available; (e) continuously update food composition tables; and (f) research and develop data collection methods and standards. (Section 4403)

The Senate amendment is the same as the House bill, with technical differences. Freestanding provision. (Section 7501)

The Conference substitute adopts the House provision with a technical amendment to structure the language as a freestanding provision. (Section 4403)

(58) Team Nutrition Network

The Senate amendment provides mandatory funding for Team Nutrition Network activities -- \$3 million a year through fiscal year 2012. (Section 4905)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(59) Agricultural Policy and Public Health

The Senate amendment requires the Government Accountability Office (GAO) to assess whether the agricultural policies of the U.S. have an impact on health, nutrition, overweight and obesity, and diet-related chronic disease. (Section 4908)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(60) Sense of the Congress

The House bill expresses the sense of Congress that food items provided pursuant to the Federal School Meal Program should be selected so as to reduce the incidence of juvenile diabetes and to maximize nutritional value. (Section 4404)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(61) Grain Pilot Program

The Senate amendment amends the Richard B. Russell National School Lunch Act to establish a pilot project to provide grain products in selected elementary and secondary schools. Funding of \$4 million is provided – to be supplied from funds available for the senior farmers' market nutrition program and community food projects. (Section 4912)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with amendments to purchase whole grain products for distribution in the school lunch and breakfast programs; provide an evaluation of the pilot program; and to require that funding to carry

out this program be utilized from funds made available under Section 32 of the Act of August 24, 1935. (Section 4305)

(62) Report on Federal Hunger Programs

The Senate amendment requires the Government Accountability Office (GAO) to submit a report that surveys all federal programs that seek to alleviate hunger or food insecurity or improve nutritional intake. (Section 4913)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(63) Food Employment Empowerment and Development Program

The Senate amendment authorizes a “food employment empowerment and development” program under which grants would be made to encourage the effective use of community resources to combat hunger and the causes of hunger through food recovery and job training initiatives. (Section 4914)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision. The Managers note that the activities authorized under the Senate provision are eligible for funding under the Community Food Projects (CFP) competitive grants program, and encourage organizations seeking federal assistance to carry out such activities to submit an application for funding through CFP.

The Managers recognize the Community Food Projects (CFP) program is designed to provide one-time grant funding for projects that meet the food needs of low-income people, increase the self-reliance of communities in providing for their own food needs, and plan for long-term solutions to address such needs. The Managers acknowledge that the Food Employment Empowerment and Development (FEED) Program meets the requisite eligibility standards for funding under the CFP program.

The goal of the FEED Program is to encourage the effective use of community resources to combat hunger and the root causes of hunger by creating opportunity through food recovery and job training. In general, eligible participants of the FEED Program, such as school based programs, will focus their efforts in the following areas:

- (1) Recovery of donated food from area restaurants, caterers, hotels, cafeterias, farms, or other food service businesses and distribution of meals or recovered food to nonprofit organizations.
- (2) Training of unemployed and underemployed adults for careers in the food service industry.
- (3) Carrying out of a welfare-to-work job training.

The Managers expect USDA to give full consideration to CFP grant applications that meet the goals of the FEED program.

(64) Infrastructure and Transportation Grants to Support Rural Food Bank Delivery of Perishable Foods

The Senate amendment authorizes competitive grants – totaling \$10 million a year through fiscal year 2012 – to expand the capacity and infrastructure of food banks to improve their ability to handle “time-sensitive” (perishable) food products, to improve

identification of potential providers of donated food, and to support the procurement of locally-produced food from small and family farms and ranches. (Section 4915)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with amendments to structure the provision as an amendment to the Emergency Food Assistance Act of 1983; provide a requirement that the Secretary use not less than 50 percent of grant funds for rural areas; specify authorized levels of appropriations; and to make other technical changes. (Section 4202)

(65) Reauthorization and Application

The House bill extends the various expiring authorities through fiscal year 2012 in sections 4016, 4019, 4020, 4021, 4024, 4025, 4027, 4028, 4201, 4202, and 4203 of this Act, except for the authorization of appropriations for the nutrition information and awareness program established by Section 4403 of FSRIA. (Section 4016, 4019, 4020, 4021, 4024, 4025, 4027, 4028, 4201, 4202 and 4203)

The Senate amendment extends most expiring authorities indefinitely. Community food projects, authority in section 1114(a)(2) of the AFA, and the nutrition information and awareness program are extended through FY2012.

The Senate amendment also stipulates that, except as otherwise provided, the amendments made in the Nutrition title take effect April 1, 2008. It also provides that States may implement amendments made in Sections 4101 through 4110 beginning on a date determined by the State during the period between April 1 and October 1, 2008. States are given the option to implement amendments made by sections 4103 and 4104 for a certification period that begins not earlier than an implementation date between April 1 and October 1, 2008 (as determined by the State).

This section provides that the amendments made in sections 4101-4104, 4107-4109, 4110(a)(2), 4208, 4701(a)(3), 4801(g), and 4903 terminate September 30, 2012. (Section 4801, 4802, 4803, 4910, 4911)

The Conference substitute adopts the Senate provision with amendments for technical changes, to extend various expiring authorities through fiscal year 2012, and to link various expiring authorities to the availability of appropriations provided through section 18(a) of the Supplemental Nutrition Assistance Program (SNAP). The language for this provision is incorporated into a single section reauthorizing SNAP and other domestic nutrition assistance programs. (Section 4406)

(66) Study on Purchases of Food with Program Benefits

The Senate amendment requires GAO to conduct a study of the effects of a rule requiring that food stamp benefits only be used to purchase food included in the most recent thrifty food plan market basket. (Section 4202)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(1) Farming Experience

The Senate amendment amends section 302(a)(2) of the Consolidated Farm and Rural Development Act (Con Act) by clarifying that the Secretary may take into consideration all farming experience of a loan applicant when considering eligibility for farm ownership loans. (Section 5001)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 5001)

(2) Refinancing of Guaranteed Farm Ownership Loans for Beginning Farmers or Ranchers

The Senate amendment amends Section 303 of the Con Act by allowing beginning farmers or ranchers to refinance a delinquent guaranteed farm ownership loan with a direct farm ownership loan. (Section 5002)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(3) Conservation loan guarantee program

The House bill amends section 304 of the Con Act by creating a conservation loan guarantee program. The Secretary is authorized to provide loan guarantees and interest subsidies, or both, to farmers, ranchers, and other entities that are controlled by farmers and ranchers and primarily and directly engaged in agricultural production to carry out qualified conservation projects.

The Secretary is required to give priority to: qualified beginning farmers or ranchers; socially disadvantaged farmers or ranchers; owners or tenants who use the loans to convert to sustainable or organic agricultural production systems; and producers who use the loans to build conservation structures or establish conservation practices to comply with section 1212 of the Food Security Act of 1985.

The term “qualified conservation loan” is defined as a loan in which: the proceeds are used to cover the costs of the borrower in carrying out a qualified conservation project; the principal amount of the loan is not more than \$1 million; the loan repayment period is 10 years; and the total amount of all processing fees does not exceed an amount to be prescribed by the Secretary.

The term “qualified conservation project” is defined as conservation measures that address provisions of the borrower’s conservation plan.

The term “conservation plan” is defined as a plan, approved by the Secretary, that for a farming or ranching operation, identifies the conservation activities that will be addressed with the conservation loan, including the installation of conservation structures; the establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes; the installation of water conservation measures; the installation of waste management systems; and the establishment of improvement or permanent pasture; compliance with section 1212 of the Food Security Act of 1985; and any other emerging or existing conservation practices, techniques, or technologies approved by the Secretary.

The amount of the interest subsidies the Secretary may provide is limited to 500 basis points, if the principal amount of the loan is less than \$100,000; 400 basis points, if

the principal amount of the loan is not less than \$100,000 and is less than \$500,000; and 300 basis points in all other cases.

The Secretary is prohibited from approving any application for the program unless the Secretary determines that the loan sought by the applicant, as described in the application, would be a qualified conservation loan, and the project for which the loan is sought is likely to result in a net benefit to the environment.

Necessary appropriations are authorized for each of the fiscal years 2008 through 2012. (Section 5001)

The Senate amendment amends section 304 of the Con Act. The transition to organic and sustainable farming practices is to be an eligible loan purpose. The implementation of one or more practices under the Environmental Quality Incentives Program is also to be an eligible loan purpose.

Beginning farmers or ranchers and socially disadvantaged farmers or ranchers are to be given priority in this program.

The loan restriction of \$50,000 is eliminated. (Section 5003)

The Managers agreed to include the House provision in the Conference substitute, with an amendment. The amendment establishes a conservation loan and loan guarantee program where eligible borrowers may get a loan or loan guarantee to carry out qualified conservation projects. The Secretary shall guarantee 75 percent of the principle loan amount guaranteed under this program. It is the intent of the Managers that the loan program established in the section should complement financial assistance offered in the conservation title of this Act. In addition to the priorities established under the program, the Secretary shall give strong consideration to loan applicants who are waiting funding under conservation programs authorized and established under title XII of the Food Security Act of 1985. (Section 5002)

Qualified conservation projects eligible to receive funding under this program must have a conservation plan that identifies the conservation activities that will be addressed by a loan made under this program. It is the Manager's view that conservation structures that address soil, water and related resources include sod waterways, permanently vegetated stream borders and filter strips, wind breaks, shelterbelts, living snow fences, and other vegetative practices.

It is also the Managers intent that the Farm Service Agency operating loan limitations established in section 312 of the Con Act are to apply to a loan or loan guaranteed under this program.

(4) Limitations on amount of ownership loans

The House bill amends section 305(a)(2) of the Con Act by setting the farm ownership loan limit at \$300,000.

The Secretary is required to establish a plan, in coordination with the activities under section 359, 360, 361, and 362 of the Con Act, to encourage borrowers to graduate to private commercial or other sources of credit. (Section 5002)

The Senate amendment is the same as the House bill but has no comparable provisions requiring the Secretary to establish graduation criteria. (Section 5004)

The Conference substitute adopts the Senate provision. (Section 5003)

(5) Down payment loan program

The House bill amends section 310E of the Con Act by: including socially disadvantaged farmers or ranchers in the down payment loan program; setting the Farm Services Administration (FSA) portion of the loan at 45 percent; fixing the interest rate for the program at 4 percent below the regular direct farm ownership interest rate or 1 percent, whichever is greater; setting the duration of the loan at 20 years; requiring a borrower down payment of 5 percent; and setting the maximum price for the farm or ranch at \$500,000.

The Secretary is authorized to establish annual performance goals to promote the use of the down payment loan program and other joint financing participation loans as the preferred choice for direct real estate loans made by lenders to qualified beginning farmers or ranchers or socially disadvantaged farmers or ranchers. (Section 5003)

The Senate amendment amends section 310E of the Con Act by: allowing socially disadvantaged farmers or ranchers to be eligible for the down payment loan program; setting the FSA portion of the loan at 45 percent; and adjusting the interest rate for the down payment loan to the greater of 4 percent below the interest rate for the regular farm ownership loan or 2 percent.

The duration of the loan, the borrower payment, and the maximum price are the same as the House bill.

The Secretary is required to establish annual performance goals to promote the use of the down payment loan program and joint financing arrangements. (Section 5004)

The Conference substitute adopts the House provision with an amendment to adjust the interest rate to 4 percent below the regular direct farm ownership interest rate or 1.5 percent, whichever is greater. (Section 5004)

(6) Beginning farmer and rancher contract land sales program

The House bill amends section 310F of the Con Act by: expanding the beginning farmer and rancher contract land sales program to include socially disadvantaged farmers or ranchers; making the program permanent and expanding it nationwide; requiring program participants to provide a down payment of 5 percent of the purchase price of the farm or ranch; setting the maximum purchase price for the farm or ranch that is the subject of the contract land sale at \$500,000; and setting the loan guarantee period, for a loan provided under this program, at 10 years.

The land seller is given the option of choosing either a prompt payment guarantee or a standard guarantee. A prompt payment guarantee consists of either three amortized annual installments or an amount equal to three annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments). A standard guarantee plan covers an amount equal to 90 percent of the outstanding principal of the loan. (Section 5004)

The Senate amendment is the same as the House bill except socially disadvantaged farmers or ranchers are not added as eligible participants. In addition, the Senate amendment does have a standard guarantee plan. (Section 5006)

The Conference substitute adopts the House provision with amendment. The amendment clarifies that in order for a private seller to use the standard guarantee

plan they must obtain a servicing agent who will be responsible for servicing activities associated with the contract land sale. Further, the amendment allows the Secretary to phase-in use of the standard guaranteed option. (Section 5005)

(7) Loans to purchase highly fractioned lands

The House bill amends section 1 of Public Law 91-229 (25 U.S.C. 488) by giving the Secretary of Agriculture the discretionary authority to make and insure loans, as provided in section 309 of the Con Act, to eligible purchasers of highly fractioned lands, pursuant to section 204(c) of the Indian Land Consolidation Act. (Section 5005)

The Senate amendment is the same as the House except it amends section 205(c) of the Indian Land Consolidation Act. (Section 5401)

The Conference substitute adopts the Senate provision. (Section 5501)

(8) Farming Experience; Direct operating loan term limitations

The Senate amendment amends section 311(a) of the Con Act by clarifying that the Secretary may take into consideration all farming experience of a loan applicant when considering eligibility for farm operating loans. The period that a participant is eligible for direct operating loan assistance is extended by 1 year. (Section 5105)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to delete the provision that extends the period of time a borrower is eligible for direct farm operating loan assistance. (Section 5101)

(9) Limitations on amount of operating loans

The House bill amends section 313(a)(1) of the Con Act by limiting the amount of an operating loan other than one guaranteed by the Secretary to \$300,000. (Section 5012)

The Senate amendment includes the same provision as the House bill. (Section 5102)

The Conference substitute adopts the House provision. (Section 5102)

(10) Suspension of limitation on period for which borrowers are eligible for guaranteed assistance

The House bill amends section 5102 of the Farm Security and Rural Investment Act of 2002 (FSRIA) by suspending, until January 1, 2008, a limitation placed on the number of years that borrowers are eligible to receive guaranteed assistance on operating loans. (Section 5012)

The Senate amendment repeals section 319 of the Con Act. This section provides a limitation on the number of years a borrower is eligible to receive guaranteed assistance on operating loans. (Section 5103)

The Conference substitute adopts the Senate provision with amendment. The amendment extends the waiver on guaranteed operating loan term limits through December 31, 2010. (Section 5103)

(11) Beginning Farmer and Rancher Individual Development Accounts

The Senate amendment amends the Con Act by adding after section that establishes the New Farmer Individual Development Account Pilot Program (IDA). Its purpose is to match the savings of beginning farmers or ranchers to help them establish a pattern of savings and build assets which will help their long term farm viability.

The terms demonstration program, eligible participant, individual development account, qualified entity are defined. Subsection (a) creates definitions that will be used throughout this section.

The Secretary is authorized to establish a pilot program to be administered by the FSA (FSA) in at least 15 states. Each qualified entity that receives a grant under the pilot program must provide a 25 percent non-Federal match of the grant awarded. An eligible participant will enter into a contract with a qualified entity that requires: a monthly deposit into a personal savings by the eligible participant; an agreement on the eligible expenditure for which the savings will be used when the contract is completed; and an agree upon a match of not more than 3 to 1 for every dollar for saved by the eligible participant provided by the eligible entity. An eligible participant cannot receive more than \$9,000 in matching funds for each fiscal year of the contract.

The Senate amendment establishes an application process in which eligible entities receive a grant to administer the IDA program. When considering applications for the program, the Secretary is to give a preference to qualified entities that have a track record of serving eligible participants and expertise in dealing with financial management aspects of farming. The maximum grant a qualified entity may receive is \$300,000 to carry out the IDA program.

Qualified entities that receive a grant must submit, to the Secretary, an annual report that includes the following: an evaluation the demonstration project's progress; the amounts in the reserve fund; the amounts deposited in each IDA; the amounts withdrawn from the IDA and the purpose for which the money was withdrawn; and information about the demonstration program and participants.

The Secretary is authorized to promulgate regulations that ensure the termination of pilot program and control of the reserve fund in case of early termination of a demonstration program.

An appropriation of \$10,000,000 is authorized for each fiscal year 2008 through 2012. The Secretary is prohibited from using more than 10 percent of the funds made available to administer the program and provide technical assistance to qualified entities. (Section 5201)

The House bill has no comparable provisions.

The Conference substitute adopts the Senate provision with amendment.

The amendment increases the non-Federal match of the grant amount from 25 percent to 50 percent. Federal grant money used for administrative costs is limited to 10 percent. The amendment caps the savings match a qualified entity may provide under the program at not more than 200 percent of the participant's savings. Furthermore, the amendment reduces the maximum federal grant amount to \$250,000. (Section 5301)

The Managers are aware that farmers over the age of 65 outnumber those below the age of 35 by more than 2 to1. Access to credit and land are two of the largest problems facing beginning farmers or ranchers today. The increased cost of

farmland, equipment, and other farm inputs have created a significant barrier to farm entry. To ensure the future viability of U.S. farming, the Managers are aware of the need to develop public policies that address the unique challenges beginning farmers and ranchers face. The New Farmer Individual Development Accounts Pilot Program (IDA) is designed to help those with modest means save build assets and enter the financial mainstream. This pilot program would assist beginning farmers or ranchers by using matched savings accounts, the proceeds of which may be used toward capital expenditures for a farm or ranch operation, including expenses associated with the purchase of farmland, buildings, equipment, livestock, infrastructure, or the acquisition of training. The Managers intend that the IDA established by a qualified entity for an eligible participant will be separate from the personal savings of the eligible participant. The IDA account and funding shall be controlled by the qualified entity. Upon completion of an IDA contract by an eligible participant, the qualified entity shall supply funds from the IDA account directly toward the eligible purchase on behalf of the eligible participant.

It is the Managers' intent that eligible participants must also complete financial training established by the qualified entity establishing the IDA for the participant. Such training may involve education and technical assistance related to budgeting, business planning, recordkeeping, banking, farm credit management, cash flow management, market development, equity investment, land access and land tenure options, and other similar financial training needs. It is the intent of the Managers that eligible entities may create their own financial management training programs or utilize curricula and training events of other organizations, businesses, and institutions. The Managers encourage FSA to coordinate with eligible entities who may want to make use of the borrower financial and farm management training programs established under Section 359 of the Con Act as part of their financial management training offering. The Managers believe when considering applications to carry out eligible demonstrations the term 'new farming opportunities' used in the application criteria means either starting a farm or converting to other production

(12) Inventory sales preferences

The House bill amends section 335(c) of the Con Act by restoring the first priority given to socially disadvantaged farmers or ranchers whenever the Secretary sells or leases property. The Secretary is required to ensure that socially disadvantaged farmers or ranchers are included in the process whenever property is sold or leased. (Section 5021)

The Senate amendment amends section 335(c) of the Con Act by making socially disadvantaged farmers or ranchers eligible for inventory property in the first 135 days the Secretary is able to sell the inventory property. If one or more eligible socially disadvantaged or beginning farmers offer to purchase the same property in the first 135 days, the buyer is to be chosen randomly. (Section 5202)

The Conference substitute adopts the Senate provision. (Section 5302)

(13) Loan Authorization Levels

In section 346(b)(1) of the Con Act the Senate Amendment increases the loan authorization for FSA loan programs to \$4,226,000,000.

Section 346(b)(2)(A) increases the loan authorization for direct loans to \$1,200,000,000. The authorization for the direct farm ownership loan program is increased to \$350,000,000, and the authorization for the direct operating loan program is increased to \$850,000,000. (Section 5204)

The House bill has no comparable provisions.

The Conference substitute adopts the Senate provision. (Section 5303)

(14) Loan fund set-asides

The House bill amends section 346(b)(2)(A)(i)(I) of the Con Act by increasing the amount of direct farm ownership loans that the Secretary is to reserve for beginning farmers or ranchers to 75 percent. Of the funds reserved for beginning farmers or rancher in the direct farm ownership program, 66 percent of those funds are reserved for the down payment loan program and joint financing arrangements.

Section 346(b)(2)(A)(ii)(III) of the Con Act is amended by increasing the amount of direct operating loans the Secretary is to make available to beginning farmers or ranchers to 50 percent.

Section 346(b)(2)(B)(i) of the Con Act is amended by increasing the amount of guaranteed farm ownership loans that the Secretary is to reserve for beginning farmers or ranchers to 40 percent. (Section 5022)

The Senate amendment is the same as the House provision. (Section 5204)

The Conference substitute adopts the Senate provision. (Section 5302)

(15) Transition to private commercial or other sources of credit

The House bill amends section 344 of the Con Act by requiring the Secretary, when making or insuring a real estate or operating loan, to establish regulations that have as their goal transitioning borrowers to other sources of credit, including private commercial credit, in the shortest practicable period of time. (Section 5023)

The Senate amendment is the same as House provision.

The Conference substitute adopts the House provision. (Section 5304)

(16) Interest Rate reduction program

The Senate amendment amends section 351(a) of the Con Act by clarifying that interest assistance is to be available for new guaranteed operating loans or restructured guaranteed operating loans. (Section 5205)

The House bill has no comparable provisions.

The Conference substitute deletes the Senate provision.

The Managers are aware that the Secretary has amended regulations under the guaranteed loan program to limit the availability of interest rate reduction authorized under section 351 of the Con Act to new guaranteed operating loans. The Managers believe that non-statutory limitations in the program's regulations will deter the immediate availability of funds that may be appropriated in the future for interest rate reductions for other categories of guaranteed loans. It is the Managers' expectation that the regulations and policies for the guaranteed loan

program should clarify that interest rate reduction may be available for all new and restructured guaranteed loans.

(17) Extension of the right of first refusal to reacquire homestead property to immediate family member of borrower-owner

The House bill amends section 352(c)(4)(B) of the Con Act by extending, in the case of a socially disadvantaged farmer or rancher, the right of first refusal to reacquire a homestead property to members of the immediate family of the borrower.

It allows, in the case of a socially disadvantaged farmer or rancher, for an independent appraisal of the property by an appraiser selected by the immediate family member of the borrower. (Section 5024)

The Senate amendment has no comparable provisions.

The Conference substitute adopts the House provision. (Section 5305)

(18) Deferral of shared appreciation recapture amortization.

The Senate amendment amends section 353(e)(7)(D) of the Con Act by clarifying that deferral is an available servicing tool and limits any deferral to 1 year. (Section 5206)

The House bill has no comparable provisions.

The Conference substitute deletes the Senate provision.

The Managers are aware that under subsection (e)(7)(D) of section 353 of the Con Act, the Secretary has permitted borrowers to seek only re-amortization of amortized Shared Appreciation recapture payments despite the reference in that section to all "loan service tools under section 343(b)(3) [7 USC § 1991(b)(3)]." It is the Managers' expectation that the Secretary will amend program regulations and policies to clarify that the full range of loan service tools set out in subsection (b)(3) of section 343 of the Con Act is available for modification of amortized Shared Appreciation recapture payments.

(19) Rural development and farm loan program activities

The House bill amends Subtitle D of the Con Act by prohibiting the Secretary from completing a study or entering into a contract with any private party to carry out, without a specific authorization in an Act of Congress, a competitive source activity of the Secretary, including USDA support personnel, relating to rural development or farm loan programs. (Section 5025)

The Senate amendment amends the Con Act by adding a new section, 365, that prohibits the Secretary from completing or entering into a contract with a private party to carry out competitive sourcing activities relating to rural development, housing, and farm loan programs at the United States Department of Agriculture. (Section 5207)

The Conference substitute adopts the House provision. (Section 5306)

The managers intend this provision to cover USDA's Rural Development mission area, including rural cooperative, business, housing, and energy programs.

(20) Technical correction

The Senate amendment amends section 3.3(b) of the Farm Credit Act (FCA) of 1971 by making a technical correction. It strikes “per” in the first sentence and inserts “par”. (Section 5302)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 5402)

(21) Banks for cooperatives voting stock

The House bill amends section 3.3(c) of the FCA by authorizing the board of a bank for cooperatives to determine the terms and conditions for the issuance and transfer of bank voting stock to bank for cooperatives customers and other Farm Credit System associations.

A conforming amendment is made to section 4.3A(c)(1)(D) of the FCA to add to the list of borrowers eligible to hold voting stock under the bylaws of the banks for cooperatives persons and entities eligible to borrow from banks for cooperatives. (Section 5031)

The Senate amendment has no comparable provisions.

The Conference substitute adopts the House provision. (Section 5403)

(22) Confirmation of the Farm Credit Administration Chair

The Senate amendment amends section 5.8(a) of the FCA by requiring the advice and consent of the Senate for the confirmation of chairman of the Farm Credit Administration. (Section 5303)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(23) Rural utility loans

The House bill amends section 8.0(9) of the FCA to allow rural utility loans (loans, or interest in a loan, for electric and telephone facilities) to be considered as “qualified loans”. (Section 5032)

The Senate amendment amends section 8.0(9) of the FCA by adding a new subparagraph to allow rural utility loans (loans, or interest in a loan, for electric and telephone facilities) to be considered as “qualified loans” for Federal Agricultural Mortgage Corporation financing.

Section 8.6(a)(1) of the FCA is amended by making conforming and technical changes to the standards established under section 8.8(a) of the FCA related to agricultural real estate loans and rural utility loans.

Section 8.8(a) of the FCA is amended by authorizing the creation of appropriate underwriting, security, and repayment standards for agricultural mortgage loans and rural utility loans.

Minimum criteria standards are set for agricultural real-estate loans focused on individual borrower traits (loan-to-value ratio, sufficient cash flow, documentation standards, appraisal process, actively engaged in farming, speculation in real estate, and consideration of real estate tax purposes). These standards do not apply to rural utility loans.

Loan amounts for agricultural production are established. The limitation does not apply to rural utilities loans. (Section 5306)

The Conference substitute adopts the Senate provision. (Section 5406)

(24) Farm Credit System Insurance Corporation

The House bill amends section 1.12(b) of the FCA to change the method that each Farm Credit System (FCS) bank must use to assess associations and other financing institutions to cover the costs of making Farm Credit System Insurance Corporation (FCSIC) premium payments under Part E of Title V of the FCA. FCS banks are required to compute the assessments on lenders in an “equitable manner.”

Section 5.55(a) of the FCA is amended by mandating that the premiums due from System institutions will no longer to be collected annually when the aggregate amount in the Farm Credit Insurance Fund does not exceed the secure base amount. The premium due from any insured System institution is to be based on the average outstanding insured debt.

Section 5.55(b) of the FCA is amended by allowing the FCSIC to collect premiums more frequently than annually.

Section 5.55(c) of the FCA is amended by authorizing FCS banks to deduct a percentage of investments guaranteed by the Federal government and a percentage of investments guaranteed by State governments when calculating the secure base amount.

Section 5.55(d) of the FCA is amended by authorizing the FCSIC to use the principal outstanding on all loans made by an insured FCS bank or the amount outstanding on all investments made by an insured system bank for purposes of premium calculations and secure base amount calculations.

Section 5.55(e) of the FCA is amended by requiring the FCSIC to use year-end numbers in calculating excess funds, with respect to the secure base amount. The formula concerning payments from the Farm Credit Insurance Fund Allocated Insurance Reserve Accounts is simplified.

Section 5.56(a) of the FCA is amended by authorizing FCS banks to file certified statements quarterly.

Section 5.58(10) of the FCA is amended by clarifying that FCSIC has the authority to adopt rules and regulations concerning section 1.12(b) of Title I of the FCA, the “Authority to Pass Along Cost of Insurance Premiums.” (Section 5033)

The Senate amendment amends section 1.12 (b) of the FCA to allow FCS banks to have flexibility in deciding how to pass along insurance premiums to their affiliates. This section specifies that premiums are to be computed in an equitable manner. (Section 5301)

The Senate amendment also amends section 5.55(a) of the FCA by allowing the total insured debt obligations on which premiums are assessed to be subtracted by 90 percent for investments guaranteed by the Federal government and 80 percent for investments guaranteed by State governments.

Section 5.55(b) of the FCA is amended by allowing the FCSIC to collect premiums more frequently than annually.

Section 5.55(c) of the FCA is amended by adjusting the outstanding insured obligations of all insured System banks by excluding an amount equal to the sum of 90 percent of federal government guaranteed loans and investments and 80 percent of state government-guaranteed loans and investments when calculating the “secure base amount”.

Section 5.55(d) of the FCA is amended to determine the principal outstanding on all loans made by an insured System bank, or the amount outstanding on all investments made by an insured System bank, for the purpose of premium calculations and “secure base amount” collections.

Subsection 5.55(e) of the FCA is amended by allowing the Farm Credit System Insurance Fund to use year-end numbers rather than the average daily balance when calculating excess funds and simplifying the current formula concerning payments from the Allocated Insurance Reserve Accounts. (Section 5304)

Section 5.56(a) of the FCA is amended by allowing System banks to collect insurance premiums quarterly rather than annually. (Section 5305)

Section 5.58(10) of the FCA is amended to clarify that FCSIC has the authority to adopt rules and regulations concerning section 1.12(b) the FCA. (Section 5301)

The Conference substitute adopts the Senate provision with technical amendments. (Sections 5401, 5404, and 5405)

(25) Risk-based capital levels

The House bill amends section 8.32(a)(1) of the FCA by allowing FSCIC to calculate risk-based capital levels for rural electric and telephone loans. (Section 5034)

Section 8.32(a)(1) of the FCA is amended by creating a new subparagraph (B) that directs the FCA to establish a risk-based capital standard for rural utility loans. (Section 5306)

The Conference substitute adopts the Senate provision. (Section 5406)

(26) Farm Credit System Equalization

The Senate amendment amends the FCA by establishing a new section, 7.7, which equalizes lending authorities among FCS associations in Alabama, Mississippi, and Louisiana.

The Federal Land Banks or Credit Associations are given the ability to make short- and intermediate-term loans, and Production Credit Associations are given the ability to make long-term loans. The new authorities can only be exercised if the board of directors of the association and a majority of voting stockholders approve.

The FCA is authorized to issue charter amendments to reflect the new lending authority. (Section 5307)

The House bill has no comparable provision.

The Conference substitution adopts the Senate provision. (Section 5407)

(27) Emergency Loans for Equine Farmers and Ranchers

The Senate amendment amends section 321(a) of the Con Act to allow equine farmers and ranchers to be eligible for FSA emergency loans. (Section 5404)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 5201)

The managers are aware that family farmers and ranchers who breed and raise horses are eligible for the FSA’s emergency loan program. In order to be eligible for a loan under this section, the farmer or rancher must meet all of the relevant requirements of the Con Act, including the credit elsewhere test. The farmer or rancher must also be primarily engaged in the operation and must not have an

operation larger than a family farm. Horse owners who use horses for racing, showing, recreation, or pleasure are not eligible for the emergency loan program. Further, the regulation that implements a specifically authorized equine disaster assistance program is not applicable to the change made by this provision.

(28) Operating Loan Assistance for Commercial Fisherman

The Senate amendment amends section 343(a)(1) of the Con Act by amending the definition of farmer and farming to include commercial fishing for the purposes of operating loans.

Section 343 of the Con Act is amended by adding a new subsection, (c) that defines farm to include a commercial fishing enterprise; the owner or operator of which is unable to obtain credit from a bank or other lender, as determined by the Secretary. (Section 6020)

The House bill has no comparable provision.

The conference substitute deletes the Senate provision.

TITLE VI—RURAL DEVELOPMENT

(1) Definition of rural

The House bill directs the Secretary to prepare and submit a report to the House and Senate Agriculture Committees that: (a) assesses the varying definitions of rural used by the U.S. Department of Agriculture (USDA); (b) describes what effect those varying definitions have on USDA programs; and (c) makes recommendations on ways to better target the funds provided through rural development programs. (Section 6001)

The Senate amendment amends section 343(a)(13) of the Consolidated Farm and Rural Development Act (Con Act) to provide a standard definition for “rural” and “rural area to exclude: (1) cities of 50,000 or more; (2) any urbanized area contiguous and adjacent to a city of 50,000 or more, except for narrow strips of urbanized areas; and (3) any collection of contiguous census blocks with a housing density of 200 housing units per square mile that is adjacent to a city of 50,000 or adjacent to an urbanized area, except for narrow strips of such territory. An exception to this definition is provided for Honolulu and Puerto Rico where cities and counties are coterminous. An applicant may appeal the determination of the Secretary with regard to the housing density factor.

The Senate amendment retains the rural area eligibility in current law for the water and waste disposal loans and grants program, as a city, town, or unincorporated area that has a population of no more than 10,000 inhabitants. For purposes of determining eligibility for Community Facility loans, the Senate amendment applies the standard definition’s housing density requirement, thereby making the definition of rural for the purposes of eligibility for such loans any area that meets the standard definition’s criteria and is less than 20,000 in population.

The Undersecretary for Rural Development may designate a place to be of rural character and include in that designation any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than 2 census blocks that are otherwise considered not in a rural area.

The Secretary is required to submit a report, once every 2 years, to the House and Senate Agriculture committees on the various definitions of “rural” and “rural area” that are used with respect to USDA programs, the effects the definitions have on those programs, and recommendations on how to better target funds provided through rural development programs.

The Senate amendment makes changes to other definitions. “Sustainable agriculture” is defined as a system of plant and animal production that will satisfy human food and fiber needs, enhance environmental quality and the natural resources, make efficient use of nonrenewable resources and integrate biological cycles and controls, sustain the viability of the farming operation, and enhance the quality of life for farmers and society. “Technical assistance” is defined as managerial, financial, operational, and scientific analysis and consultation. The definition of “farmer” and “farming” is amended to include commercial fishermen, and for the purpose of the Farm Service Agency operating loan program the definition of “farm” is amended to include a commercial fishing enterprise in which the owner or operator is unable to obtain commercial credit from a bank or other lender. (Section 6020)

The Conference substitute adopts the Senate amendment with several modifications. The housing density criterion in the Senate amendment is struck from the standard definition of “rural” and “rural area” and from Community Facilities Program eligibility. However, USDA is directed to conduct a rulemaking to develop additional restrictions on areas that consist of any collection of contiguous census blocks with a housing density of 200 housing units per square mile that is adjacent to a city of 50,000 or adjacent to an urbanized area. The exception for the standard definition of “rural area” for Honolulu and Puerto Rico is retained, as is the eligibility of isolated census blocks that would otherwise be considered non-rural simply because they are connected by not more than 2 census blocks to an urbanized area.

The eligibility for water and waste disposal loans and grants program and the community facility program are unchanged from current law.

To address urbanized area mapping complications, the Undersecretary for Rural Development is provided with the authority to determine a place to be of rural character if: (1) it is located in an urbanized area with localities at least 40 miles apart and not located next to a city of more than 150,000 people; or (2) is within one-quarter mile of a rural/non-rural boundary. This authority may not be delegated and must be done in consultation with State rural development directors and Governors. The consideration of a petition for such a determination must be made public and is subject to appeal. A report must be submitted to the Congress annually on the use of this authority.

The Conference substitute adopts the Senate provision requiring a report, once every 2 years, on the definitions of “rural” and “rural area” that are used with respect to USDA programs, the effects the definitions on those programs, and recommendations on how to better target funds provided through rural development programs.

The Conference substitute strikes the definitions of technical assistance, sustainable agriculture, and the modifications made to “farmer” and “farming”. (Section 6018)

The Managers have authorized the Secretary of Agriculture to make areas of the Commonwealth of Puerto Rico and the County of Honolulu, Hawaii eligible for Rural Development programs because the unique governmental structure of those entities

prevents Census Bureau maps from adequately capturing the demographics of these island areas. The Managers do not expect the Secretary to provide access to rural development programs to areas that are urban or do not meet other requirements of the applicable programs, but do expect the Secretary to recognize areas that meet the intent and spirit of the law.

(2) Water, waste disposal and wastewater facility grants

The House bill extends the authorization for appropriations in section 306(a)(2)(A) of the Con Act through 2012. (Section 6002)

The Senate amendment is the same as the House bill. (Section 6001)

The Conference substitute adopts the House provision. (Section 6001)

(3) Rural business opportunity grants

The House bill extends the authorization of appropriations for 306(a)(11)(a) of the Con Act through 2012. (Section 6003)

The Senate amendment is the same as the House bill. (Section 6002)

The Conference substitute adopts the Senate provision. (Section 6003)

(4) Rural water and wastewater circuit rider program

The House bill amends section 306(a)(22)(A) of the Con Act by increasing the authorization of appropriations for the rural water and wastewater circuit rider program to \$25,000,000 for each of the fiscal years 2008 through 2012. (Section 6004)

The Senate amendment increases the authorization to \$20,000,000. (Section 6004)

The Conference substitute adopts the House provision. (Section 6006)

(5) Tribal college and university essential community facilities

The House bill amends section 306(a)(25)(B) of the Con Act by prohibiting the Secretary from requiring non-Federal financial support in an amount that is greater than 5 percent of the total cost of developing essential community facilities at tribal colleges and universities. The authorization is extended to 2012. (Section 6005)

The Senate amendment provides that the maximum Federal grant tribal colleges and universities may receive for the cost of developing essential community facilities in rural areas is 95 percent. The authorization is extended through 2012. (Section 6007)

The Conference substitute adopts the House provision. (Section 6007)

(6) Child day care facility grants, loans, and loan guarantees

The Senate amendment amends section 306(a)(19) of the Con Act (the community facilities program) by providing \$40,000,000 in mandatory funding, to remain available until expended, starting in 2008. The Secretary is authorized to make grants, loans and loan guarantees to pay the Federal share of the cost of developing and constructing day care facilities for children in rural areas. The mandatory funding provided under this section is to be in addition to any other funds and authorities relating to development and construction of rural day care facilities. (Section 6003)

The House contains no comparable provision.

The Conference substitute provides that the program will not receive mandatory funding, but the current set-aside for this purpose in the community facility program will be extended from April 1 to June 1. (Section 6004)

(7) Community facility loans and grants for freely associated States and outlying areas

The Senate amendment reserves 0.5 percent of community facility loans and grants for freely associated States and outlying areas. If, after 180 days within a fiscal year, an insufficient number of applications have been received to account for 0.5 percent then the unused funds are to be reallocated to make loans and grants to otherwise eligible entities located in the States. (Section 6008)

The House contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers note the higher infrastructure costs faced by those in the freely associated States and outlying areas of the United States due to the very considerable distances involved in transporting building materials and equipment necessary for infrastructure projects to these areas. In addition, severe storms that are common to these areas cause repeated damage to infrastructure. USDA resources from the community facilities program and from the Rural Utilities Service programs can be of tremendous help in alleviating these serious problems. The Managers expect the Secretary to fully take into account the higher costs that are involved in infrastructure projects in this region and to provide assistance to allow improvements to infrastructure that will be resilient to storms and less likely to be damaged by them even though those costs of construction are higher.

(8) Priority for community facility loan and grant projects with high non-Federal share

The Senate amendment provides that priority will be given to community facility projects with non-Federal funding that is substantially greater than the minimum requirement. (Section 6009)

The House contains no comparable provision.

The Conference substitute deletes the Senate provision.

(9) Emergency and Imminent Community Water Assistance Grant Program

The House bill is the same as section 306A of the Con Act, which authorizes the Secretary to provide grants to assist residents in rural areas and small communities comply with the Water Pollution Control Act or the Safe Drinking Water Act. The authorization of appropriations remains the same and is extended through 2012. (Section 6006)

The Senate amendment provides the same as the House bill. (Section 6011)

The Conference substitute adopts the House provision. (Section 6008)

(10) Water systems for rural and native villages in Alaska

The House bill amends section 306D(d)(1)(a) of the Con Act by extending the authorization of appropriations through 2012. (Section 6007)

The Senate amendment provides that the Denali Commission may be eligible for grants to improve solid waste disposal sites that are contaminating or threatening to

contaminate rural drinking water in the State of Alaska. The program is extended through 2013. (Section 6012)

The Conference substitute includes the House provision, with an amendment to provide a \$1,500,000 authorization for each of the fiscal years 2008 through 2012 under the Solid Waste Disposal Act for the Denali Commission to provide assistance to municipalities in Alaska. (Section 6009)

(11) Grants to finance water well systems in rural areas

The House bill provides for an extension of the authorization of the program through 2012 and provides that the level of matching funds is not to be taken into account when determining priority in awarding grants. The payment by a grant recipient of audit fees, business insurance, salary, wages, employee benefits, printing costs, and legal fees associated with the purpose of the grant program is to be considered as the providing of matching funds by the grant recipient. (Section 6008)

The Senate amendment extends the program through 2012. (Section 6013)

The Conference substitute adopts the House provision with a modification to strike the change with respect to consideration of the matching fund levels, and to increase the limitation on the amount that can be expended on each well from \$8,000 to \$11,000. (Section 6010)

(12) Grants to Develop Wells in Isolated Areas

The Senate amendment amends section 306F of the Con Act by authorizing \$10,000,000 for a new program for each of the fiscal years 2008 through 2012. The new program allows the Secretary to make grants to nonprofit organizations to develop and construct household, shared, and community wells in isolated areas when a traditional water system is not practical due to distance, geography and limited number of households present. Priority is given to applicants that have experience in developing similar types of wells in rural areas. As a condition of receipt of a grant, the water from the well is to be tested annually for quality and the results made available to well users and the appropriate State agency. The grant amount is limited to an amount not to exceed the lesser of \$50,000 and the amount that is 75 percent of the costs of a single well and associated system. Grants are prohibited in areas where a majority of users' household incomes exceed the nonmetropolitan median household income. (Section 6013)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(13) Rural Cooperative Development Grants

The House bill amends section 310B(e)(5) of the Con Act by authorizing the Secretary to give preference to grant applications that:—

- (A) demonstrate a proven track record in administering activities to promote and assist in the development of cooperatively and mutually owned businesses;
- (B) demonstrate previous expertise in providing technical assistance in rural areas to promote and assist in the development of cooperatively and mutually owned businesses;
- (C) demonstrate the ability to assist in the retention of businesses, facilitate the establishment of cooperative and new cooperative approaches, and generate employment opportunities that will improve the economic conditions in rural areas;

(D) commit to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the U.S.;

(E) demonstrate a commitment to—

(i) networking with and sharing the results of its efforts with other cooperative development centers and other organizations involved in rural economic development efforts; and

(ii) developing multi-organization and multi-State approaches to address the cooperative and economic development needs of rural areas; and

(F) commit to provide a 25-percent matching contribution with private funds and in-kind contributions, except that the Secretary is prohibited from requiring non-Federal financial support in an amount that is greater than 5 percent in the case of a 1994 institution.

The Secretary is authorized to award 1-year grants to centers that have not received prior funding and evaluate programs that receive grant funding. The Secretary is given the discretion to award grants for a period of more than 1 year, but not more than 3 years, to programs that the Secretary determines are meeting the criteria of the program. The Secretary is also given the discretion to extend for only 1 additional 12-month period the period in which a grantee may use a grant made under this section.

The Secretary is authorized to enter into a cooperative research agreement with one or more qualified academic institutions for the purpose of conducting research on the national economic effects of all types of cooperatives.

The Secretary is authorized to reserve 20 percent of appropriated funds for grants for cooperative development centers, individual cooperatives, or groups of cooperatives serving socially disadvantaged communities when the appropriated funds for a fiscal year exceed \$7,500,000. If the Secretary determines the number of applications received for this purpose is insufficient, the Secretary is authorized to use the funds for the purposes outlined in this section.

The current law authorization is retained and extended through 2012. (Section 6009)

The Senate amendment is the same as the House bill except that it requires the Secretary to award multi-year grants to programs that the Secretary determines meet the parameters of the program and provides a definition for the term socially disadvantaged. (Section 6015)

The Conference substitute adopts the Senate provision with minor changes. (Section 6013)

(14) Criteria to be applied in providing loans and loan guarantees under the business and industry loan program

The House bill amends section 310B(g) of the Con Act by authorizing the Secretary, in providing loans and loan guarantees under the Business and Industry Loan Program, to consider applications more favorably—when compared to other applications—when the project described in the application supports community development and farm and ranch income by marketing, distributing, storing, aggregating, or processing locally or regionally produced agricultural product.

A “locally or regionally produced product” is defined to mean an agricultural product: (1) which is produced and distributed in the locality or region where the finished product is marketed; (2) which has been shipped a total of distance of 400 or fewer miles,

as determined by the Secretary; and (3) about which the distributor has conveyed to the end-use consumers information regarding the origin of the product or production practices, or other valuable information. (Section 6010)

The Senate amendment authorizes the Secretary to make loans and loan guarantees to individuals, cooperatives, businesses, and other entities to establish and facilitate enterprises that process, distribute, aggregate, store, and market locally-produced agricultural food products.

The term “locally-produced agricultural food product” is to mean an agricultural product that is raised, produced, and distributed within the locality or region and that is transported less than 300 miles from the origin of the agricultural product or the State in which the agricultural product is produced.

The term “underserved community” is to mean an urban, rural, or Indian tribal community that has, as determined by the Secretary: (i) limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets or a high incidence of diet-related disease as compared to the national average, including obesity; and (ii) a high rate of food insecurity or a high poverty rate.

The priorities for awarding loans and loan guarantees under this program are for projects that support community development and farm and ranch income by marketing, distributing, storing, aggregating, or processing a locally produced agricultural product; or for projects that have components benefiting underserved communities, as defined in this section.

The recipients of loans and loan guarantees may use up to \$250,000 in loan or loan guarantee funds per retail or institutional facility to modify and update facilities to accommodate locally-produced agricultural food products and to provide outreach to consumers about the sale of locally-produced agricultural food products.

The Secretary is required to submit an annual report to the House and Senate Agriculture Committees that describes the projects carried out using loans and loan guarantees provided under this program. The report is to include the characteristics of the communities served and benefits of the projects. (Section 6017)

The Conference substitute adopts the Senate provision with modifications. The distance for which a product can travel and still be considered for the program is extended to 400 miles. “Underserved community” is defined as an urban, rural, or Indian tribal community that has, as determined by the Secretary: (i) limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets; and (ii) a high rate of food insecurity or a high poverty rate. Priority for the program is given to entities proposing to provide product to underserved communities.

The Conference substitute does not include the Senate provision allowing recipients to redistribute loan or loan guarantee proceeds to retail or institutional facilities. However, the Managers expect recipients of business and industry loans and loan guarantees under this section to include applicants who propose to work with retail establishments in underserved communities to supply items to promote and ensure the salability of the locally-produced agricultural food product. (Section 6015)

The Managers expect the Administrator of the Rural Business Cooperative Service to work in coordination with the Administrator of the Agricultural Marketing Service on implementation of this program.

The Managers are aware of the increased demand for locally and regionally produced foods. Although demand exists for locally and regionally produced foods, producers in many parts of the country have difficulties finding markets and processing facilities as well as establishing distribution channels. In many instances, retail outlets are not interested in buying from smaller volume producers because they cannot provide sufficient and consistent supply of food products. The Managers expect this section to help bridge the gap between the production of locally and regionally produced agricultural food products and the processing and distribution of those products. A distributor could work with several farmers in an area and build the necessary relationships with small, medium or large retail outlets, schools, hospitals or other institutions to provide a marketing channel for locally and regionally produced foods.

(15) Cooperative equity security guarantee

The Senate amendment amends section 310B of the Con Act to allow Business and Industry guarantees for loans made for the purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests primarily in cooperative organizations. (Section 6014)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with technical changes. (Section 6012)

(16) Appropriate technology transfer for rural areas

The House bill provides for the establishment of a national technology transfer program for rural areas to assist agricultural producers that are seeking information to help them: (1) reduce their input costs; (2) conserve their energy costs; (3) diversify their operations through new energy crops and energy generation facilities; and (4) expand markets for their agricultural commodities through the use of sustainable farming practices. The Secretary is authorized to carry out the program by making a grant or entering into a cooperative agreement with a national non-profit agricultural assistance organization. A grant or cooperative agreement entered into is to provide 100 percent of the cost of providing information. The program is authorized at \$5,000,000. (Section 6011)

The Senate amendment is substantially similar to the House bill. (Section 6018)

The Conference substitute adopts the Senate provision with minor changes to elaborate on the purpose of the program. (Section 6016)

(17) Grants to improve technical infrastructure and improve quality of rural health care facilities

The House bill authorizes a grant program for rural health facilities to assist such facilities in: purchasing health information technology to improve quality health care and patient safety or, improving health care quality and patient safety, including the development of: a) quality improvement support structures to assist rural health systems

and professionals; and b) innovative approaches to financing and delivery of health services to achieve rural health quality goals. (Section 6012)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(18) Rural Hospital loans and loan guarantees

The Senate amendment provides \$50,000,000 in mandatory funding in fiscal year 2008, to remain available until expended, for loans and loan guarantees for rehabilitating and improving hospitals with not more than 100 acute beds in rural areas. Not less than \$25,000,000 is to be allocated to hospitals with fewer than 50 beds. (Section 6006)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(19) Rural Entrepreneur and Microloan Assistance Program

The House bill provides for the establishment of a rural entrepreneurship and microenterprise grant and loan program, authorized for \$20,000,000 per year for each of the fiscal years 2008 through 2012. Grants may be made to qualified organizations to: (i) provide training, operations support, or rural capacity-building services to qualified organizations to assist them in developing microenterprise training, technical assistance, market development assistance, and other related services; (ii) assist in researching and developing best practices in delivering training, technical assistance, and microcredit to rural entrepreneurs; and (iii) carry out other projects that the Secretary deems to be consistent with the purposes of the program. As a condition of receiving a grant, the qualified organization is required to match not less than 25 percent of the total amount of the grant. In addition to cash from non-Federal sources, the matching share may include indirect costs or in-kind contributions funded under non-Federal programs.

A rural microloan program is established to: (i) make loans to qualified organizations for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing rural microbusiness concerns; and (ii), in conjunction with the loans provide grants for the purpose of providing intensive marketing, management, and technical assistance to small businesses. The term of the loan is to be 20 years and the loan is to bear an annual interest rate of at least 1 percent. The Secretary has the discretion to defer payments, both principal and interest, for 2 years beginning on the date the loan is made. The amount of a grant given in connection with the loan program is not to be more than 25 percent of the total outstanding balance of the loan the organization received and, as a condition of receiving a grant, the qualified organization is required to match not less than 15 percent of the total amount of the grant.

No more than 10 percent of the assistance received by a qualified organization is to be used to pay administrative expenses. An organization that receives either a rural entrepreneurship and microenterprise grant or a rural microloan has to provide the Secretary any information that the Secretary requires to ensure that the grant or loan is being used for its intended purposes. (Section 6013)

The Senate amendment amends Subtitle D of the Con Act by authorizing the Secretary to establish a Rural Microenterprise Program to provide low-or-moderate income individuals with the skills necessary to establish a new rural microenterprise and to continue technical and financial assistance to rural microenterprises. The Senate and

House sections are substantially similar; however, the Senate section requires the Secretary to ensure that grant recipients include microenterprise development organizations of varying sizes and that serve racially and ethnically diverse populations.

Mandatory funding of \$40,000,000, to remain available until expended, is provided starting in fiscal year 2008. Not less than \$25,000,000 of the funds provided are to be used to carry out grants for the Rural Microenterprise Program. Not less than \$15,000,000 of the funds provided are to be used to carry out the Rural Microloan Program; of that amount, not more than \$7,000,000 is to be used to support direct loans. In addition to mandatory funding, an authorization of appropriations is provided for each of fiscal years 2009 through 2012 to carry out this program. (Section 6022)

The Conference substitute adopts the House provision with modifications. The Conference substitute strikes as an eligible use of program funding research and development of best practices in delivering training, technical assistance and microcredit to rural microenterprises. Additionally, the Conference substitute provides \$15,000,000 in mandatory funding, to remain available until expended, in the following years: fiscal year 2009 (\$4,000,000); fiscal year 2010 (\$4,000,000); fiscal year 2011 (\$4,000,000); and fiscal year 2012 (\$3,000,000). (Section 6022)

The Managers intend that the Microentrepreneur Assistance Program will be used to assist microenterprises located in rural areas. However, a microenterprise development organization receiving assistance under the program need not be located in a rural area to be eligible to participate. A microenterprise development organization is eligible so long as the organization provides assistance to microentrepreneurs located in rural areas, facilitates access to capital for a microenterprise in a rural area, or has a demonstrated record of delivering services to microentrepreneurs located in a rural area.

In addition, in making grants available to microenterprise development organizations to support microenterprise development, the Managers intend that the Secretary shall not require an organization to have received a loan in order to receive a grant under subsection (b)(4)(a).

(20) Criteria to be applied in considering applications for rural development projects.

The House bill amends subtitle D of the Con Act by authorizing the Secretary to review the income demographics, population density, and seasonal population increases, and other factors as determined by the Secretary, for eligible communities that submit applications for rural development programs authorized or modified by title VI of the 2007 Farm Bill, or section 306, 306A, 306C, 306D, 306E, 310(c), 310(e), 310B(b), 310B(c), 310B(e), or 370B, or subtitles F, G, H, or I, of the Con Act.

The Secretary is authorized to issue regulations to establish the limitation that a rural area cannot exceed in order to remain eligible for rural development funds. (Section 6014)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(21) National sheep industry improvement center

The House bill provides for the continuation of the National Sheep Industry revolving fund to promote strategic development activities and collaborative efforts to strengthen and enhance the production and marketing of sheep or goat products in the

United States; by optimizing the use of available human capital and resources within the sheep and goat industries, and adopting flexible and innovative approaches to solving the long-term needs of the U.S. sheep or goat industry.

The House bill eliminates the requirement that the National Sheep Industry Improvement Center be required to privatize its revolving fund and authorizes appropriations of \$10,000,000 for each of the fiscal years 2008 through 2012. (Section 6015)

The Senate amendment renames the program as the National Sheep and Goat Industry Improvement Center. The Senate amendment also eliminates the requirement that the National Sheep Industry Improvement Center be required to privatize its revolving fund. The Senate amendment provides for new mandatory funding of \$1,000,000 for fiscal year 2008, to be available until expended, and authorizes \$10,000,000 for each of the fiscal years 2008 through 2012 for infrastructure development, business planning, production, resource development and market and environmental research. (Section 11009)

The Conference substitute adopts the Senate provision with modifications. It retains the existing name of the Center and provides \$1,000,000 in mandatory funds for the Center. (Section 11009 of the Livestock Title)

(22) National Rural Development Partnership

The House bill extends authorization through 2012. (Section 6016)

The Senate amendment extends the authorization to 2012 and amends subsection (h) of section 378 of the Con Act by establishing the termination date for this authority as September 30, 2012. (Section 6024)

The Conference substitute adopts the House provision. (Section 6019)

(23) Historic Barn Preservation

The House bill amends section 379A(c) of the Con Act by extending the authorization for this program through 2012 and providing that the Secretary, in making grants, is to give the highest priority to funding projects that identify, document, and conduct research on historic barns and that develop and evaluate appropriate techniques or best practices for protecting historic barns. (Section 6017)

The Senate amendment establishes that a grant may be made to an eligible applicant for “eligible projects” that rehabilitate or repair historic barns; preserve historic barns; and identify, document, survey, and conduct research on historic barns or farm structures and that evaluate techniques or best practices for protecting these structures. (Section 6025)

The Conference substitute adopts the House provision with technical changes. (Section 6020)

(24) NOAA weather transmitters

The House bill is the same as section 379B of the Con Act. The authorization remains the same and is extended through 2012. (Section 6018)

The Senate amendment is identical to the House bill. (Section 6026)

The Conference substitute adopts the House provision. (Section 6021)

(25) Delta Regional Authority

The House bill provides for the extension of the Delta Regional Authority (DRA) to 2012. (Section 6019)

The Senate amendment provides for the extension of the (DRA) and also authorizes the Secretary to award grants to the Delta Health Alliance (DHA) for the development of health care services, health educational programs, health care job training, and for public health facilities in the Delta region. The DHA must solicit input from local governments, public health care providers and other entities in the Mississippi Delta region. (Section 6029)

The Conference substitute adopts the House provision with modifications to add counties to the eligible region for the DRA. (Section 6025) In addition, the Conference substitute establishes a separate section called Health Care Services, which authorizes \$3,000,000 annually for each of fiscal years 2008 through 2012 for healthcare services in the Delta Region to be provided by a consortium of regional institutions. (Section 6024)

The Managers note that, for the purposes of the Delta Health Care Services provision, the term “Delta region” refers to the Mississippi River Delta region. The Managers recognize the serious unmet health needs in this region and authorize this program with the goal of promoting collaboration among entities that are working in the region to provide access to quality health care.

(26) Northern Great Plains Regional Authority

The House bill provides for an extension of the Northern Great Plains Regional Authority (NGPRA), which provides funding for programs and projects designed to serve the needs of distressed counties and isolated areas of distress in the States of Iowa, Minnesota, Nebraska, North Dakota and South Dakota. The House bill broadens the Authority’s support for resource conservation districts.

The House bill makes several modifications to the authority by: (1) changing the formula for the federal share of the NGPRA’s administrative expenses—the formula is: for fiscal year 2007, 100 percent; for fiscal year 2008, 75 percent; and for fiscal year 2009, 50 percent; (2) eliminating the order of priority, with respect to funding for economic and community development projects, and the prohibition on providing funds for projects located in nondistressed counties; (3) and reducing to 25 percent, the minimum amount of funds that the authority is to allocate to transportation, telecommunication, and public infrastructure projects.

The House bill also adds “renewable energy projects” among the projects that are eligible to receive funds. (Section 6020)

The Senate amendment provides for an extension of the NGPRA and makes changes similar to the House, with respect to renewable energy investments and the proportion of funds made available to distressed counties. The Senate amendment allows the NGPRA to organize and operate without a Federal member if such a member has not been confirmed by the Senate 180 days after enactment. With respect to the tribal chairperson, the Senate amendment allows the leaders of the Indian tribes in the region to select a member if a tribal chairperson has not been confirmed by the Senate within 180 days of enactment.

The Senate amendment provides that, among other duties, the NGPRA is to develop comprehensive and coordinated plans and programs for multistate cooperation to

advance the economic and social well-being of the region and approve grants for the economic development of the Northern Great Plains region. Additionally, the assessment of needs and assets of the region should include available research, demonstrations, investigations, assessments, and evaluations from the regional boards established under the Rural Collaborative Investment Program (RCIP).

The Senate amendment provides that the NGPRA should enhance the capacity of, and provide support for, multistate development and research organizations, local development organizations and districts, and resource conservation districts in the region.

The Senate amendment amends section 383B(g)(1) of the Con Act by providing a 100 percent federal cost share for fiscal years 2008 and 2009, a 75 percent Federal cost-share for fiscal year 2010, and a 50 percent Federal cost-share for fiscal year 2011 and beyond.

The Senate amendment adds a new provision to provide assistance to States in developing plans to address multistate economic issues, including plans to: develop a regional transmission system for the movement of renewable energy; assist in the harmonization of transportation policies and regulations that impact the interstate movement of goods and individuals; encourage and support interstate collaboration on federally-funded research of national interest; and establish regional working groups on agriculture development and transportation concerns.

Multistate economic issues are to include: renewable energy development and transmission, transportations planning and economic development, information technology, movement of freight and persons in the region; conservation land management, and federally funded research.

The Senate amendment would allow grants to be awarded to multistate, local or regional development district organizations for administrative expenses. Grants may not exceed 80 percent of the administrative expenses of the local development district and no grant may exceed 3 years in duration. The contribution of the grantee may be in cash or in-kind, fairly evaluated, and can include equipment, space and services.

The Senate amendment removes the requirement for local development districts to serve as lead organizations and liaison between State, tribal, and local governments, nonprofit groups, the business community, and citizens. (Section 6030)

The Conference substitute adopts the Senate amendment, but modifies it to require that the NGPRA consult and coordinate, as appropriate, with tribal leaders in the region should a Federal or tribal chairperson not be appointed and confirmed. Generally, a local development district will operate as the lead organization serving a multicounty area in the region. However, the Federal cochairperson, or the Secretary, if no person has been confirmed, may designate an Indian tribe or an alternative organization to serve in that capacity. Organizations that are suitable to serve in such a capacity include rural conservation and development districts, a Rural Economic Area Partnership (REAP) zone organizations, or regional organizations established under RCIP. (Section 6026)

(27) Rural Collaborative Investment Program/Rural Strategic Investment Program

The House bill provides for the extension of the rural strategic investment program (RSIP) in section 385E of the Con Act with an authorization of appropriations of \$25,000,000 for fiscal years 2008 through 2012. The preservation and promotion of “rural heritage,” as defined in this section, are added to the criteria for regional plans, for

the purpose of making regional strategic planning grants—which are competitive grants awarded to Regional Boards for the purpose of developing, maintaining, and evaluating regional plans.

In awarding innovation grants, the National Board is to give priority to Regional Boards that, among other criteria, demonstrate a plan to protect and promote rural heritage. (Section 6021)

The Senate amendment amends section 385A of the Con Act by establishing a Regional Rural Collaborative Investment Program (RCIP) to provide rural regions with a flexible investment vehicle to develop and implement locally prioritized, comprehensive strategies for achieving regional competitiveness, innovation and prosperity.

The Senate amendment requires the Secretary to appoint a National Rural Investment Board and establish a National Institute on Regional Rural Competitiveness and Entrepreneurship. The National Institute on Regional Rural Competitiveness and Entrepreneurship will work with the Secretary to create a National Rural Investment Plan and a Rural Philanthropic Initiative, certify Regional Rural Investment Boards, and make Regional Innovation Grants to Regional Boards to implement approved regional strategies. These Regional Boards are to be multijurisdictional, multisectoral, regional entities which are broadly representative of the long-term economic, community and cultural interests of a region, and are comprised of public, private and non-profit organizations and residents of the region. A region must include a population of at least 25,000 individuals or in regions with a population density of less than 2 persons per square mile, a population of at least 10,000 individuals. The Regional Board designs a Regional Investment Strategy and competes for Regional Innovation Grants.

Grants of not more than \$150,000 are to be provided on a competitive basis to certified Regional Boards to develop, implement and maintain Regional Investment Strategies, developed through a collaborative and inclusive public process. Regional Investment Strategies are to provide an assessment of the region's competitive advantage, an analysis of the region's economic and community development challenges, opportunities, and resources, a plan of action to implement the goals of the strategies identified, and performance measures by which to evaluate implementation.

Regional Innovation Grants shall be provided on a competitive basis to certified Regional Boards, to implement projects and programs identified in funded Regional Investment Strategy Grants. The Secretary is to give priority to strategies that demonstrate significant leverage of capital, quality job creation, and asset-based development. A Regional Board may not receive more than \$6,000,000 in Regional Innovation Grants during any 5-year period.

Long-term loans may be provided to eligible community foundations to assist in the implementation of funded Regional Investment Strategies. The eligible community foundation must be located in the covered region, provide a 25 percent match, and use the funds to implement priorities within the Regional Investment Strategy.

The Senate amendment provides \$135,000,000 in mandatory funding to remain available until expended. Of the amounts made available, the Secretary is to use \$15,000,000 for Regional Investment Strategy Grants, \$110,000,000 for Regional Innovation Grants, \$5,000,000 to administer the National Board, and \$5,000,000 to administer the National Institute. (Section 6032)

The Conference substitute adopts the Senate provision, with modifications to incorporate rural heritage as a goal of the program. An appropriation of \$135,000,000 is authorized for fiscal years 2009 through 2012 to carry out this program. (Section 6028)

(28) Northern Border Economic Development Commission

The Senate amendment adds a new subtitle to the Con Act that establishes the Northern Border Economic Development Commission (NBEDC) made up of a Federal member appointed by the President with the advice and consent of the Senate. The membership of the Commission includes the Governors of each State in the region that elects to participate in the Commission. The State cochairperson is a Governor of a participating State in the region. The State cochairperson will serve for a term of not less than a year. Each State member may have a single alternate, who is appointed by the Governor of the State from among the Governor's cabinet. Each Commission may appoint and fix the compensation of an executive director to carry out the duties of the Commission.

Although the Commission has the authority to determine what constitutes a quorum of the Commission, the Federal cochairperson must be present to reach a quorum. Alternate members cannot be counted toward the quorum. Decisions, such as approval of State, regional, or subregional development plans or strategy statements, allocations to States, and modifications to the Commission's code, may not be made without a quorum.

The Senate amendment establishes the duties and administrative actions of the Commission. The amendment specifies that the Commission is required to submit an annual report to Congress. In addition, Federal agencies are required to work with the Commission.

Any State member, alternate, official, or employee of the Commission, their immediate family, organization, or organization for which the employee has an arrangement concerning prospective employment, are prohibited from participating personally or substantially in a matter in which the employee has a financial interest. A conflict of interest can be overcome by full disclosure to the Commission and a subsequent determination by the Commission that the matter will not substantially affect the integrity of the work of the Commission.

The Senate amendment confers upon the Commission the authority to approve grants to improve economic development or the region. Grants may be provided from Federal appropriations, other Federal and State grant funds, or any other sources. The Federal cochairperson is permitted to use funds made available to the program to fund any portion of the basic Federal contribution to a project of activity under a Federal grant program in the region in an amount not to exceed 80 percent of the project cost. The Commission is also permitted to make grants to local development districts for administrative expenses as long as the grant does not exceed 80 percent of the administrative expense of the local development district receiving the grant.

States participating in the Commission are required to submit a development plan for the area of the region represented by the State member. In developing the plan, the State must consult with the appropriate organizations. The Commission is to encourage public participation in developing such plans. Any State or regional development plan or any multistate subregional plan that is proposed must be reviewed by the Commission.

An appropriation of \$30,000,000 is authorized for each of fiscal years 2008 through 2012; not more than 5 percent of the appropriated amount is to be used for administrative expenses. The authority of the Commission is terminated on October 1, 2012. (Section 6034)

The House contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications to establish the Northern Border Regional Commission, the Southeast Crescent Regional Commission, and the Southwest Border Regional Commission in a new subtitle "Regional Economic and Infrastructure Development" in Title 40 of the U.S. Code. (Section 14217 of the Miscellaneous Title)

The Conference substitute establishes commission membership, voting structure, and staffing; outlines conditions for financial assistance; authorizes grants to local development districts; establishes an Inspector General for the commissions; and includes other provisions designed to produce a standard administrative framework.

Each Commission includes a Federal cochairperson, appointed by the President and confirmed by the Senate. The Federal Cochairperson will appoint an alternate Federal cochairperson. The membership of the Commission also includes the Governors of each State in the region that elects to participate in the Commission. The State cochairperson is a Governor of a participating State in the region. The State cochairperson will serve for a term of not less than a year. Each State member may have a single alternate, who is appointed by the Governor of the State from among the Governor's cabinet. Each Commission may appoint and fix the compensation of an executive director to carry out the duties of the Commission.

Each State member is required to submit a development plan for the area of the region represented by the State member. In carrying out the development planning process, a State will consult with local development districts, local units of government, and universities and take into account the goals, objectives, and recommendations of these entities. Each Commission is to establish priorities in an economic and infrastructure development plan for its region, including 5-year regional outcome targets. The Commission will, to the extent practicable, encourage and assist public participation in the plans and programs of the Commission.

The Commission is authorized to hold hearings, take testimony under oath, and request information from State and Federal agencies; adopt, amend, and repeal bylaws and rules governing the conduct of Commission; request the head of any Federal department or of any State agency or local government to detail to the Commission personnel needed to carry out the duties of the Commission; provide Commission employees with retirement and other benefits; accept, use, and dispose of gifts; enter into contracts to carry out Commission duties; establish a central office and field offices for the Commission; and provide an appropriate level of representation in Washington, D.C.

The Federal Government will pay 50 percent of the administrative expenses of the Commission and the States participating in the Commission will pay 50 percent of such expenses. Each Commission is required to hold an initial meeting no later than 180 days after the date of enactment of this Act.

Any State member, alternate, official, or employee of the Commission, their immediate family, organization, or organization for which the employee has an arrangement concerning prospective employment, are prohibited from participating

personally or substantially in a matter in which the employee has a financial interest. A conflict of interest can be overcome by full disclosure to the Commission and a subsequent determination by the Commission that the matter will not substantially affect the integrity of the work of the Commission.

Governments of Indian tribes in the region of the Southwest Border Regional Commission are allowed to participate in matters in the same manner and to the same extent as State agencies and instrumentalities in the region.

Not less than 90 days after the last day of the each fiscal year, each Commission will submit to the President and Congress a report on the activities carried out by the Commission in the past fiscal year. The report will include a description of the criteria used by the Commission to designate counties, a list of the counties designated in each category, an evaluation of the progress of the Commission in meeting the goals identified in the Commission's economic and infrastructure development plan, and any policy recommendations approved by the Commission.

Each Commission may make grants to State and local governments, Indian tribes, and public or nonprofit organizations for projects to develop infrastructure in the region, including transportation, public, and telecommunications infrastructure; assist the region in obtaining job skills training; provide assistance to severely economically distressed and underdeveloped areas that lack financial resources for improving basic health care and other public services; promote resource conservation; promote the development of renewable and alternative energy sources; and other measures to achieve the purposes of this subtitle.

The Commission will allocate at least 40 percent of any grant amounts provided for transportation, public, or telecommunications infrastructure for the region. The Commission may use amounts appropriated to carry out this subtitle to fund a project or activity under a Federal grant program in the region in an amount that is above the fixed maximum portion of the cost of the project otherwise authorized by applicable law, but may not exceed 50 percent of the costs of the project, except for distressed counties or regional projects. The maximum contribution for a project or activity to be carried out in a distressed county may be increased to 80 percent. A Commission may increase the maximum grant for a project from 50 percent to 60 percent under the normal criteria of section 15501 and from 80 percent to 90 percent for a distressed county if the project or activity involves three or more counties or more than one State and the Commission determines that the project or activity will bring significant inter-state or multi-county benefits to a region.

An application to a Commission for a grant or any other assistance for a project is to be made through, and evaluated for approval by, the State member of the Commission representing the applicant. Upon certification by a State member of a Commission of an application for a grant or other assistance for a specific project under this section, an affirmative vote of the Commission shall be required for approval of the application.

Each Commission is required, in considering programs and projects to be provided assistance and in establishing a priority ranking of the requests for assistance, to consider: the relationship of the project or class of projects to overall regional development; the per capita income and poverty and unemployment and out migration rates in an area; the financial resources available to the applicants for assistance seeking to carry out the project; the importance of the project in relation to the other projects that

may be in competition for the same funds; the prospects that the project will improve opportunities for employment, the average level of income, or the economic development of the area on a continuing basis; and the extent to which the project design provides for detailed outcome measurements by which grant expenditures and the results of the expenditures may be evaluated.

The Commission may make grants to a local development district to assist in the payment of development planning and administrative expenses. In the case of a State agency certified as a local development district, a grant may not be awarded to the agency under this section for more than 3 fiscal years. The contributions of a local development district for administrative expenses may be in cash or in-kind services including space, equipment, and services.

A local development district is to operate as a lead organization serving multi-county areas in the region at the local level and serve as a liaison between the State and local governments, nonprofit organizations, the business community, and citizens that are involved in multi-jurisdictional planning; provide technical assistance; and provide leadership and civic development assistance.

Supplements to Federal grant programs may be made because certain States and local communities, including local development districts, may be unable to take maximum advantage of Federal grant programs for which they are eligible because they lack the economic resources to provide the required State or local matching share. Supplemental funds may also provide necessary funding for a project to be carried out in the region when there are insufficient funds available under applicable Federal law.

A Commission, with the approval of the Federal cochairperson, may use amounts made available to carry out this subtitle for any part of the basic Federal contribution to projects or activities under the Federal grant programs authorized by Federal laws and to increase the Federal contribution to projects and activities under the programs above the fixed maximum part of the cost of the projects or activities otherwise authorized by the applicable law.

For a project for which any part of the basic Federal contribution to the project or activity under a Federal grant program is proposed to be made under this subtitle, the Federal contribution is not to be made until the responsible Federal official administering the Federal law authorizing the Federal contribution certifies that the program, project, or activity meets the applicable requirements of the Federal law and could be approved for Federal contribution under that law if amounts were available under the law for the program, project, or activity. Amounts provided pursuant to this subtitle are available without regard to any limitations on areas eligible for assistance or authorizations for appropriation in any other law.

The Federal share of the cost of a project or activity receiving assistance under this subtitle shall not exceed 80 percent.

A State is not required to engage in or accept a program under this subtitle without its consent.

The Conference substitute establishes the designation of distressed, transitional, and attainment counties and isolated areas of distress in the region. Not later than 90 days after the date of enactment of this Act, and annually thereafter, each Commission is required to designate counties under 4 categories. The categories will include: (1) distressed counties, defined as counties that are the most severely and persistently

economically distressed and underdeveloped and have high rates of poverty, unemployment, or out migration; (2) transitional counties, defined as counties that are economically distressed and underdeveloped or have recently suffered high rates of poverty, unemployment, or out migration; (3) attainment counties, which are counties that are not designated as distressed or transitional counties; and (4) isolated areas of distress, defined as areas, located in counties designated as attainment counties, that have high rates of poverty, unemployment, or out migration.

A Commission is to allocate at least 50 percent of the appropriations made available to the Commission to carry out this subtitle for programs and projects designed to serve the needs of distressed counties and isolated areas of distress in the region.

No funds may be provided to a county designated as an attainment county except for funding the administrative expenses of local development districts, a multi-county project that includes participation of the attainment county, and other projects if a Commission determines that the project could bring significant benefits to areas of the region outside the attainment county.

For the isolated area of distress designation to be effective, the designation must be supported by the most recent Federal data available or if no recent Federal data are available, by the most recent data available.

Counties are not eligible for assistance in more than 1 region. A political subdivision included in the region of more than 1 Commission will select the Commission with which it will participate by notifying, in writing, the Federal cochairperson and the appropriate State member of the Commission. The selection of a Commission by a political subdivision will apply in the fiscal year in which the selection is made and will apply in each subsequent fiscal year unless the political subdivision, at least 90 days before the first day of the fiscal year, notifies another Commission in writing that the political subdivision will participate in that Commission and also transmits a copy of such notification to the Commission in which the political subdivision is currently participating. In this section, the term "Commission" includes the Appalachian Regional Commission.

An Inspector General for Commissions, appointed in accordance with the Inspector General Act of 1978, is established for each Commission. All of the Commissions are to be subject to a single Inspector General. Each Commission is to maintain accurate and complete records of all transactions and activities of the Commission and make them available to the Inspector General for audit and examination. The Inspector General will audit the activities, transactions, and records of each Commission annually.

Representatives of each Commission, the Appalachian Regional Commission, and the Denali Commission will meet biannually to discuss issues confronting regions suffering from chronic and continuous distress as well as successful strategies for promoting regional development. The chair of each meeting will rotate among the Commissions, with the Appalachian Regional Commission to host the first meeting.

The region of the Southeast Crescent Regional Commission is defined as consisting of all counties of the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Florida not already served by the Appalachian Regional Commission or the Delta Regional Authority.

The region of the Southwest Border Regional Commission is defined as consisting of the following political subdivisions:

- (1) ARIZONA- The counties of Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Pinal, Santa Cruz, and Yuma in the State of Arizona.
- (2) CALIFORNIA- The counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura in the State of California.
- (3) NEW MEXICO- The counties of Catron, Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra, and Socorro in the State of New Mexico.
- (4) TEXAS- The counties of Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Coke, Concho, Crane, Crockett, Culberson, Dimmit, Duval, Ector, Edwards, El Paso, Frio, Gillespie, Glasscock, Hidalgo, Hudspeth, Irion, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Loving, Mason, Maverick, McMullen, Medina, Menard, Midland, Nueces, Pecos, Presidio, Reagan, Real, Reeves, San Patricio, Shleicher, Sutton, Starr, Sterling, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Willacy, Wilson, Winkler, Zapata, and Zavala in the State of Texas.

The region of the Northern Border Regional Commission is defined to include the following counties:

- (1) MAINE- The counties of Androscoggin, Aroostook, Franklin, Hancock, Kennebec, Knox, Oxford, Penobscot, Piscataquis, Somerset, Waldo, and Washington in the State of Maine.
- (2) NEW HAMPSHIRE- The counties of Carroll, Coos, Grafton, and Sullivan in the State of New Hampshire.
- (3) NEW YORK- The counties of Cayuga, Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Oswego, Seneca, and St. Lawrence in the State of New York.
- (4) VERMONT- The counties of Caledonia, Essex, Franklin, Grand Isle, Lamoille, and Orleans in the State of Vermont.

An authorization of \$30,000,000 is provided for each of fiscal years 2008 through 2012 for each Commission to carry out this subtitle; not more than 10 percent of the funds made available to a Commission in a fiscal year may be used for administrative expenses.

The Managers note that within the Southeastern region of the United States – defined for the purposes here to include the coastal and central portions of the seven Southeastern States from Virginia to Mississippi – approximately 40 percent of the counties have had 20 percent or more of their citizens living in poverty, on average, during the last 30 years. Additionally, this region has experienced natural disasters at a rate of 2 to 3 times greater than any other region of the U.S. The Southeastern United States is one of the last areas of the country without a Federal authority dedicated to ending poverty and strengthening communities. The Southeast Crescent Authority will be a valuable tool to assist State and local officials, county development organizations, and many others in providing resources and leveraging additional funds to assist communities with the greatest need.

With regards to the Southwest border, an Interagency Task Force on the Economic Development of the Southwest Border found that 20 percent of the residents in this region live below the poverty level. Unemployment rates often reach as high as 5 times the national unemployment rate and a lack of adequate access to capital has created economic disparities that have made it difficult for businesses to start up in the region. Border communities have long endured a depressed economy and low-paying jobs. The Southwest Border Regional Commission will help foster planning to encourage infrastructure development, technology development and deployment, education and workforce development, and community development through entrepreneurship.

Finally, the Northern Border region, while abundant in natural resources and rich in potential, lags behind much of the nation in its economic growth. In this region, 12.5 percent of the population lives in poverty. Furthermore, the median household income in this region is more than \$6,500 below the national average. Due to this region's historic reliance on a few basic industries and agriculture, unemployment through layoffs in traditional manufacturing industries is persistent. In addition, the population growth in this region increased by only 0.6 percent between 1990 and 2000, while the U.S. population rose by 13.2 percent during that same period. The Northern Border Regional Commission will assist in supporting traditional industries while fostering new industry in the region.

(29) Multijurisdictional regional planning organizations

The Senate amendment reauthorizes section 306(a) of the Con Act through fiscal year 2012. (Section 6005)

The House bill contains no comparable provision.

The conference substitute deletes the Senate provision.

(30) Rural Economic area partnership zones

The Senate amendment amends section 310B of the Con Act by requiring the Secretary to continue to carry out the existing rural economic area partnerships in New York, North Dakota, and Vermont in accordance with terms and conditions contained in the memorandums of agreement entered into by the Secretary through 2012. (Section 6019)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications to ensure that only those rural economic area partnership zones in effect on date of enactment are to be extended to 2012. (Section 6017)

(31) SEARCH grants

The Senate amendment amends section 306(a) of the Con Act by authorizing the Secretary to make grants to eligible communities for feasibility study, design, and technical assistance under the water and waste disposal and wastewater facilities grant program. The grants are to fund up to 100 percent of the eligible project cost and are to be subjected to the least documentation requirements practicable.

An "eligible community," for the purposes of this section, is defined as a community that has a population of 2,500 or fewer inhabitants and is financially

distressed. Not more than 4 percent of funds available for water, waste disposal and essential community facilities are to be used to carry out this program. (Section 6010)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications to ensure that the program is modeled after the existing pre-development planning grants. (Section 6002)

The Managers expect that a community will meet the definition of “financially distressed” if the median household income of the probable area to be served by the proposed project is either below the poverty line or below 80 percent of the statewide nonmetropolitan median household income based on available historic statistical information going back to the last decennial census if no more recent data is available. It is the Managers’ intent that the latest data on income be used without the taking of an income survey that would escalate the cost.

(32) Grants to Broadcasting Systems

The Senate amendment reauthorizes current law through fiscal year 2012. (Section 6016)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 6014)

(33) Geographically Disadvantaged Farmers and Ranchers.

The Senate amendment establishes a new program to provide geographically disadvantaged farmers and ranchers direct reimbursement payments to transport agricultural commodities, or inputs used to produce the commodities.

To be eligible for direct reimbursement payments the farmer or rancher must provide the Secretary proof that transportation or agricultural commodity or inputs occurred over the distance of more than 30 miles. The total amount of direct reimbursement payments provided by the Secretary is not to exceed \$15,000,000 for each fiscal year. Necessary sums are authorized to be appropriated to carry out this program. (Section 6021)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with technical changes. (Section 1620 of the Commodity Title)

The Managers recognize the barriers to competition associated with the high transportation costs incurred by geographically disadvantaged farmers and ranchers. The Managers expect the Secretary to develop, in consultation with the eligible areas, an equitable allocation of the funds for such areas. The Managers also expect the Secretary to consult with eligible areas on administration of the program.

(34) Artisanal Cheese Centers

The Senate amendment amends Subtitle D of the Con Act by requiring the Secretary to establish artisanal cheese centers for education and technical assistance for the manufacturing and marketing of artisanal cheese by small and medium-sized producers and businesses. Necessary sums are authorized to be appropriated for each of the fiscal years 2008 through 2012 . (Section 6023)

The House bill contains no provision.

The Conference substitute deletes the Senate provision.

(35) Grants to train farmworkers in new technologies and to train farm workers in specialized skills necessary for higher value crops.

The Senate amendment extends section 379(c) of the Con Act through fiscal year 2012. (Section 6027)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(36) Grants for expansion of employment opportunities for individuals with disabilities in rural areas

The Senate amendment amends the Con Act by adding a new section, 379E, which authorizes a new grant program to nonprofit organizations to expand employment opportunities for individuals with disabilities in rural areas.

To be eligible to receive a grant under this section the eligible entity must have: a significant focus on serving the needs of individuals with disabilities; demonstrated knowledge and expertise in employment of and advising on accessibility issues for individuals with disabilities; expertise in removing barriers to employment for individuals with disabilities; existing relationships with national organizations focused on the needs of rural areas; affiliates in a majority of the States; and a working relationship with USDA.

Grants are to be used to expand or enhance employment opportunities, or self-employment and entrepreneurship opportunities, of people with disabilities. An appropriation of \$2,000,000 for each of the fiscal years 2008 through 2012 is authorized. (Section 6028)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with minor modifications that strike the requirements that the entity have affiliates in a majority of States and a working relationship with USDA. (Section 6023)

(37) Rural Business Investment Program

The Senate amendment extends the Rural Business Investment Program authorization through 2012 with the following modifications: debentures may be prepaid at any time, distributions may be made to cover tax liability, USDA fees are limited to a \$500 application fee and USDA will not be required to operate the program with other Federal agencies. (Section 6031)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, but removes the provision allowing distributions to be made to cover tax liability. The limitation on funding from certain financial institutions is maintained and raised 25 percent. (Section 6027)

(38) Funding of pending rural development loan and grant applications

The Senate amendment provides \$135,000,000 in mandatory funding to fund applications that are pending for water systems, waste disposal systems and emergency community water assistance grants. (Section 6033)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with a modification to provide \$120,000,000 in mandatory funds for this purpose. (Section 6029)

(39) Expansion of 911 areas

The House bill extends through 2012 section 315(a) of the Rural Electrification Act (REA), which authorizes the Secretary to make telephone loans to State or local governments, Indian tribes, or other public entities for the expansion of rural 911 access and integrated emergency communication in rural areas. (Section 6022)

The Senate amendment also amends section 315 of the REA by expanding eligibility to emergency communications providers, State or local governments, Indian tribes, or other public entities for facilities and equipment to expand or improve 911 access, interoperable emergency communications, homeland security communications, transportation safety communication and location technologies used outside urbanized areas. Funds made available for telephone or broadband loans are authorized to be used for the program for each of the fiscal years 2008 through 2012. Government-imposed fees to emergency communications providers are allowed as security for a loan. (Section 6107)

The Conference substitute adopts the Senate provision with modifications to allow emergency communications equipment providers to apply for loans on behalf of municipalities where they serve when those municipalities are unable to incur such debt. The Conference substitute also adds clarifying language to ensure that the program operates only in rural areas. (Section 6107)

(40) Access to broadband telecommunications services in rural areas

The House bill provides for several modifications of section 601 of the REA, which authorizes the Secretary to provide loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.

The House bill changes the definition of an “eligible rural community” to include any area in the United States that is not: included within the boundaries of any city, town, borough, or village, whether incorporated or unincorporated, with a population of more than 20,000 inhabitants; and the urbanized area contiguous and adjacent to such a city or town. The term “incumbent service provider” is defined to mean an entity that is providing broadband service to at least 5 percent of the service area proposed in the application.

The House bill requires priority to be given to applications proposing to serve communities in the following order: (1) no incumbent service provider; (2) 1 incumbent service provider; or (3) 2 incumbent service providers who, together, serve not more than 25 percent of the households in the service area proposed in the application.

This section prohibits the Secretary from making a loan under 2 conditions: (1) the loan is to any community where there are more than 3 incumbent service providers, unless;

- (a) the loan is to an incumbent service provider of the community;
- (b) the other providers in that community are notified of the application before approval by the Secretary, and have sufficient time to comment on the application; and

(c) the application includes substantially increasing the quality of broadband service in the community and the provision of broadband service to unserved households inside and outside the community; or

(2) the loan is for new construction (i.e. the construction or acquisition of broadband facilities and equipment by a new entrant into the community) in any community in which more than 75 percent of the households may obtain affordable broadband service, on request, from at least 1 incumbent service provider.

The House bill authorizes the Secretary to take steps to reduce the costs and paperwork associated with applying for a loan or loan guarantee under this section by first-time applicants, particularly those who are smaller and start-up Internet providers. It also mandates that not more than 25 percent of loans are to be made available, in a single fiscal year, to entities that serve more than 2 percent of the telephone subscriber lines in the United States.

The House bill provides that the period of a loan or loan guarantee cannot exceed 35 years, as the borrower may request, so long as the Secretary determines that the loan is adequately secured; the Secretary is to consider whether the recipient is, or would be, serving an area that is not receiving broadband services.

This section also requires the Secretary to ensure that the type, amount, and method of security used to secure a loan or loan guarantee is commensurate to the risk involved with the loan or loan guarantee, particularly when the loan or loan guarantee is issued to a financially healthy, strong, and stable entity. The Secretary is also required, in determining the amount and method of security, to consider reducing the security in areas that do not have broadband service.

The Secretary must annually report to Congress by December 1 of each fiscal year on the rural broadband loan and loan guarantee program. The annual report is to include information pertaining to the loans made, communities served, speed of broadband service offered, and types of services offered by applicants and recipients, length of time taken to approve applications submitted, and outreach efforts undertaken by USDA.

The House bill establishes a “National Center for Rural Telecommunications Assessment” to assess the effectiveness of the rural broadband loan and loan guarantee program, increase broadband penetration and purchase in rural areas; and develop assessments of broadband availability in rural areas. An appropriation of \$1,000,000 is authorized for each of the fiscal years 2008 through 2012 for the Center.

The House bill mandates that the Secretary is required to set aside 10 percent of appropriated funds for eligible tribal communities. Unobligated amounts contained in the reserve for tribal communities will be released by June 30 of each fiscal year. (Section 6023)

The Senate amendment maintains current law, with respect to the purposes for which loans and loan guarantees may be made, but provides that they should be provided to “rural areas,” as defined in section 6105 of this Act. All references to eligible rural communities have been changed to rural areas.

The Senate amendment defines the term “mobile broadband” to mean any “broadband service” that is provided over a licensed spectrum through the use of a mobile station or receiver communicating with a land station or other mobile stations communicating among themselves.

Under the Senate amendment, highest priority is to be given to applicants that offer to provide broadband service to the greatest proportion of households currently without broadband service. A provider is considered to offer broadband service to a rural area if the provider makes the service available to households in the rural area at not more than average prices as compared to the prices at which similar services are made available in the nearest urban area, as determined by the Secretary. Eligible entities are required to: submit a proposal to the Secretary that meets the requirements for a project to offer to provide service to a rural area; offer to provide broadband service to at least 25 percent of households in a specified rural area that do not currently have such service offered to them; and agree to complete buildout of the broadband service within 3 years.

The Senate amendment prohibits the Secretary from making or guaranteeing loans for projects in areas where 3 or more existing providers already offer to provide comparable service.

The Secretary is given the discretion to require an entity to provide a cost-share in an amount not to exceed 10 percent of the amount of the loan or loan guarantee. The Secretary is also given the discretion to require an entity that proposes to have a subscriber projection of more than 20 percent of the broadband market in a rural area to submit a market survey. However, the Secretary is prohibited from requiring a market survey from an entity that projects to have less than 20 percent of the broadband market.

State, local governments, and Indian tribes are eligible to receive loans or loan guarantees available under this section.

No entity may acquire more than 20 percent of the resources of the program outlined under this section in a fiscal year.

The Senate amendment requires the Secretary to include a notice of applications on the Secretary's website for 90 days, post information relating to the broadband proposal on the website, establish a timeline on the website to track applications, and establish procedures for processing loan and loan guarantee applications (including requests for additional information). Not later than 45 days after the date on which the Secretary approves an application the documents necessary for closing the loan or loan guarantee are to be provided to the applicant. Not later than 10 business days after the date of receipt of a valid documentation requesting disbursement of the approved, closed loan, the disbursement of the loan funds is to occur.

The Senate amendment requires the Secretary to establish an optional pre-application process under which an applicant may apply to RUS for a binding determination of whether the area proposed to be served is eligible prior to preparing a full loan application.

An application for a loan or a loan guarantee under this section, or a petition for reconsideration of a decision on such an application, is to be considered under eligibility and feasibility criteria that are no less favorable to the applicant than the criteria in effect on the original date of submission of the application.

The Senate amendment establishes the annual rate of interest as the lower of: (i) the cost of borrowing to the Treasury Department for comparable obligations; or (ii) 4 percent. The loan or loan guarantee may not exceed 30 years. The type, amount, and method of security used to secure a loan or loan guarantee is commensurate to the risk involved with the loan or loan guarantee, particularly when the loan or loan guarantee is issued to a financially healthy, strong, and stable entity.

Similar to the House bill, the Senate amendment provides for a National Center for Rural Telecommunications Assessment. The authorization of appropriations for the Center is the same as the House bill. The Center is required to submit an annual report that describes its activities, the results of the research it has carried, and any additional information that the Secretary may request.

The Senate amendment allows the Secretary to provide the proceeds of any loan made or guaranteed under the REA for the purpose of refinancing another telecommunications-related loan made under REA.

An appropriation of \$25,000,000 is authorized for each of the fiscal years 2008 through 2012. (Section 6110)

The Conference substitute adopts the Senate amendment with modifications. The definition of incumbent service provider is retained from the House bill.

The Conference substitute maintains the definition of rural area from the Senate amendment. The Conference substitute prohibits the Secretary from making a loan in any area where there are more than 3 incumbent service providers unless the loan meets all of the following requirements: (1) the loan is to an incumbent service provider that is upgrading service in that provider's existing territory; (2) the loan proposes to serve an area where not less than 25 percent of the households are offered service by not more than 1 provider; and (3) the applicant is not eligible for funding under another provision of the REA.

The Conference substitute also prohibits the Secretary from making a loan in any area where not less than 25 percent of the households are offered broadband service by not more than 1 provider unless a prior loan has been made in the same area under this section.

The Conference substitute provides that the highest priority is to be given to applicants that offer to provide broadband service to the greatest proportion of households currently without broadband service. Eligible entities are required to submit a proposal to the Secretary that meets the requirements for a project to offer to provide service to a rural area and agree to complete buildout of the broadband service within 3 years.

The Conference substitute prohibits any eligible entity that provides telecommunications or broadband service to at least 20 percent of the households in the United States from receiving an amount of funds under this section for a fiscal year in excess of 15 percent of the funds authorized and appropriated for the broadband loan program.

The Conference substitute allows the Secretary to require an entity to provide a cost-share in an amount not to exceed 10 percent of the amount of the loan or loan guarantee. The Secretary is also allowed to require an entity that proposes to have a subscriber projection of more than 20 percent of the broadband service market in a rural area to submit a market survey. However, the Secretary is prohibited from requiring a market survey from an entity that projects to have less than 20 percent of the broadband market.

The Conference substitute requires public notice of each application submitted, including the identity of the applicant, the proposed area to be served, and the estimated number of households in the application without terrestrial-based broadband. The Conference substitute authorizes the Secretary to take steps to reduce the costs and

paperwork associated with applying for a loan or loan guarantee under this section by first-time applicants, particularly those who are smaller and start-up Internet providers.

The Conference substitute allows the Secretary to establish a pre-application process under which a prospective applicant may seek a determination of area eligibility.

The Conference substitute provides that an application, or a petition for reconsideration of a decision on such an application, that was pending on the date 45 days before enactment of this Act and that remains pending on the date of enactment of this Act is to be considered under eligibility and feasibility criteria in effect on the original date of submission of the application.

The current law rate of interest for direct loans—which is the rate equivalent to the cost of borrowing to the Department of Treasury for obligations of comparable maturity or 4 percent—is retained. The Secretary is to consider existing recurring revenues at the time of application in determining an adequate level of credit support.

The Conference substitute requires the Secretary to ensure that the type, amount, and method of security used to secure a loan or loan guarantee is commensurate to the risk involved with the loan or loan guarantee, particularly when the loan or loan guarantee is issued to a financially healthy, strong, and stable entity. The Secretary is also required, in determining the amount and method of security, to consider reducing the security in areas that do not have broadband service.

The Conference substitute requires that the Secretary report to Congress by December 1 of each fiscal year on the rural broadband loan and loan guarantee program. The annual report is to include information pertaining to the loans made, communities served and proposed to be served, speed of broadband service offered, types of services offered by the applicants and recipients, length of time to approve applications submitted, and outreach efforts undertaken by USDA.

The Conference substitute authorizes the program at \$25,000,000 to be appropriated for each of fiscal years 2008 through 2012. (Section 6110)

The Conference substitute provides for a National Center for Rural Telecommunications Assessment and criteria for the Center. The Center is to assess the effectiveness of programs carried out under this section, work with existing rural development centers to identify appropriate policy initiatives, and provide an annual report that describes the activities of the Center, the results of research carried out by the Center, and any additional information that the Secretary may request. An appropriation of \$1,000,000 is authorized for each of the fiscal years 2008 through 2012. (Section 6111)

The Managers expect the Secretary to consider the unique way of life in rural America and to be mindful that mobile broadband technologies are applicable to farmers, ranchers, and small rural business owners. Fixed broadband service will continue to be important in rural homes and offices, but mobile technologies also may have a role to play in expanding broadband access to rural residents. The Managers expect the Secretary to weigh all appropriate technologies, including the unique characteristics of mobile broadband service and technologies, during consideration of applications.

With respect to applications not described in Section 601(c)(2) of the REA, as amended by this section, the Managers expect the Secretary to incorporate the new criteria as soon as practicable, taking into consideration the need to act upon pending applications within a reasonable time.

The Managers expect the Secretary to provide the necessary resources to expedite the processing of applications under this section. The Managers also expect that the notice of applications will be posted on the Agency's website in a manner that will be easy for interested members of the public to find the information described and would be posted in a manner consistent to the way similar notices are currently posted on the Agency's website. It is intended that such notices shall not contain any proprietary information as defined by section 552(b)(4) of title 5 of the United States Code. Finally, the Managers also intend that in addition to the notice, the Agency will also post on its website with respect to each loan and loan guarantee application the status of the Agency's consideration of the application and an estimate of when the Agency's consideration will be concluded which shall be regularly updated.

(41) Study of Federal Assistance for Broadband Infrastructure

The Senate amendment instructs the Comptroller General of the U.S. to conduct a study and review of the Rural Utilities Service (RUS) administration of Federal broadband programs with recommendations for changes. (Section 6113)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(42) Comprehensive rural broadband strategy

The House bill requires the Secretary to submit to the President and the Congress a report describing a comprehensive rural broadband strategy that includes:

(1) recommendations to:

(A) promote interagency coordination of Federal agencies and improve and streamline policies, programs, and services;

(B) coordinate among Federal agencies regarding existing broadband or rural initiatives that could be of value to rural broadband development;

(C) address both short- and long-term solutions and needs for a rapid buildout of rural broadband solutions and applications for Federal, State regional, and local government policy makers;

(D) identify how specific Federal agency programs and resources can best respond and overcome obstacles that currently impede rural broadband deployment; and

(E) promote successful model deployments and appropriate technologies being used in rural areas so that State, regional, and local governments can benefit from the success of other State, regional, and local governments; and

(2) a description of goals and timeframes to achieve the strategic plans and visions identified in the report. (Section 6031)

The Senate amendment requires the Secretary of Agriculture and the Chairman of the Federal Communications Commission (FCC) to submit a report to the Committees on Energy and Commerce and Agriculture of the House and the Committees on Commerce, Science, and Transportation and Agriculture, Nutrition and Forestry of the Senate describing a comprehensive rural broadband strategy with recommendations for improvement.

The Senate amendment includes recommendations to: (A) promote interagency coordination of Federal agencies and improve and streamline policies, programs, and services; (B) coordinate among Federal agencies regarding existing broadband or rural

initiatives that could be of value to rural broadband development; (C) address both short- and long-term solutions and needs for a rapid buildout of rural broadband solutions and applications for Federal, State, regional, and local government policy makers; (D) identify how specific Federal agency programs and resources can best respond and overcome obstacles that currently impede rural broadband deployment.

This Senate amendment stipulates that the Chairman of the FCC, in coordination with the Secretary of Agriculture, is to update and evaluate the report required under this section on an annual basis.

The Senate amendment modifies section 306(a)(20)(E) of the Con Act by striking the reference to dial-up Internet access. (Section 6111)

The Conference substitute adopts the Senate provision to require a report on Federal broadband strategy with technical changes and a modification to require the update of the report required under this section in the third year following enactment. (Section 6112)

The Conference substitute adopts the Senate provision striking an obsolete reference to dial-up Internet and places the provision in a separate section. (Section 6005).

(43) Community connect grant program

The House bill amends the REA by authorizing the Secretary to provide financial assistance to eligible applicants for the provision of broadband transmission service that fosters economic growth and delivers enhanced services. The Secretary is authorized to prioritize grants that will enhance community access to telemedicine and distance learning. Grant applicants are required to provide a matching contribution of at least 15 percent of the grant amount requested.

An appropriation of \$25,000,000 is authorized for fiscal years 2008 through 2012. (Section 6024)

The Senate amendment contains no comparable provision.

The Conference substitute strikes the House provision

(44) Connect the Nation

The Senate amendment provides that the subtitle of this section is to be cited as the "Connect the Nation Act." (Section 6201)

The Senate amendment also creates a competitive, matching grant program (80 federal/20 state) called the "Connect the Nation Act of 2007" to be housed at Department of Commerce for eligible statewide public-private partnerships to benchmark current access and use, build detailed GIS maps of service, and create demand through grassroots teams. Eligible entities would be limited to 4 years of participation. Grant applications would be reviewed through a peer review process. Collaboration is required between State agencies, service providers, and relevant labor organizations, and community organizations to be considered eligible. An appropriation of \$40,000,000 for each of the fiscal years 2008 through 2012 is authorized. (Section 6202)

The House contains no comparable provision.

The Conference substitute deletes the Senate provision.

(45) Distance Learning and Telemedicine

The House bill amends the Food, Agriculture, Conservation, and Trade Act (FACT Act) by authorizing the Secretary to provide grants to noncommercial education television broadcast stations that serve rural areas for the purposes of developing digital facilities, equipment, and infrastructure to enhance digital services to rural areas. (Section 6028)

The House bill amends section 2335A of the FACT Act by extending the authorization of appropriations to fiscal year 2012. (Section 6029)

The Senate amendment permits as allowable purposes for receiving financial assistance library connectivity and public television station digital conversion. The Secretary is required to establish, by notice, the amount of financial assistance available to applicants in the form of grants, costs of money loans, combinations of grants and loans, or other financial assistance. Libraries or library support organizations, public television stations and parent organizations of public television stations, and schools, libraries, and other facilities operated by the Bureau of Indian Affairs or Indian Health Service are added as eligible for assistance. In prioritizing financial assistance the Secretary may also consider the cost and availability of high-speed network access.

The Senate amendment allows the following as eligible purposes under this section: the development, acquisition, and digital distribution of instructional programming to rural users; the development and acquisition of computer hardware and software, audio and visual equipment, computer network components, telecommunications transmission facilities, data terminal equipment, or interactive video equipment, teleconferencing equipment, or other facilities that would further telemedicine services, library connectivity, or distance learning services; the provision of technical assistance and instruction for the development or use of the programming, equipment, or facilities; the acquisition of high-speed network transmission equipment or services that would not otherwise be available or affordable to the applicant; costs relating to the coordination and collaboration among and between libraries on connectivity and universal service initiatives, or the development of multi-library connectivity plans that benefit rural users; and competitive grants, for public television stations or a consortium of public television stations, to provide education, outreach, and assistance, in cooperation with community groups, to rural communities and vulnerable populations with respect to the digital television transition, and particularly the acquisition, delivery, and installation of the digital-to-analog converter boxes.

The Senate amendment reauthorizes appropriations through 2012. (Section 6302)

The Conference substitute adopts the Senate provision with modifications to provide that only libraries are added as eligible entities, clarifying current law. No additional uses are added. However, the Managers direct that public television entities are eligible to receive assistance under this section for high-speed telecommunication services in rural areas to provide educational programming for schools and communities in rural areas. (Section 6201)

(46) Agricultural innovation center demonstration grants

The House bill provides for an extension of section 6402 of the Farm Security and Rural Investment Act of 2002 (FSRIA) by authorizing an appropriation of \$6,000,000 for each of the fiscal years 2008 through 2012. (Section 6025)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 6203)

(47) Rural firefighters and emergency services assistance program

The House bill amends section 6405 of the FSRIA by authorizing the Secretary to award grants to eligible entities to enable such entities to provide for improved emergency medical services (EMS) in rural areas. Grants may be used to pay the cost of training firefighters and emergency medical personnel in firefighting and emergency medical practices in rural areas.

Eligible entities must be: a State EMS office or association; a State office of rural health; a local government entity; an Indian tribe; or any other entity determined appropriate by the Secretary. To receive a grant under this section the eligible entity must prepare and submit an application to the Secretary that includes: a description of the activities to be carried out under the grant and an assurance that the applicant will comply with the grant program's matching fund requirement.

Under the House bill, eligible entities are to use grant funds only in rural areas to: (1) hire, recruit or train EMS personnel; (2) recruit or retrain emergency EMS personnel; (3) fund training to meet State or Federal certification requirements; (4) provide training for firefighters and emergency medical personnel for improvements to the training facility, equipment, and personnel; (5) develop new ways to educate emergency health care providers through the use of technology-enhanced educational methods; (6) acquire EMS vehicles and equipment; (7) acquire personal protective equipment for EMS personnel as required by the Occupational Safety and Health Administration (OSHA); (8) educate the public concerning CPR, first aid, injury prevention, safety awareness, illness prevention, and other emergency preparedness topics. Preference is to be given to applications that reflect a collaborative effort by 2 or more eligible entities and are submitted by eligible entities who intend to use grant funds to: hire, recruit, or train EMS personnel; recruit or retrain volunteer EMS personnel; fund training to meet State or Federal certification requirements; or develop new ways to educate emergency health care providers through the use of technology-enhanced educational methods. Appropriations of not more than \$30,000,000 are authorized for each of the fiscal years 2008 through 2012; no more than 10 percent of appropriated funds in a fiscal year may be used for administrative expenses. (Section 6026)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with minor changes. The funds made available under this section are not to go to entities operating on a for-profit basis. Additionally, the amount allowed for administrative expenses is decreased to 5 percent. (Section 6204)

(48) Value-added agricultural product market development grants

The House bill extends the program through fiscal year 2012 and provides \$30,000,000 in mandatory funding for each fiscal year. Of the mandatory funds, 10 percent is to be set aside for projects benefiting beginning farmers and ranchers or socially disadvantaged farmers or ranchers and 10 percent is to be set aside for applications that propose to develop mid-tier value chains, which are defined in this section as local and regional supply networks that link independent producers with business and cooperatives that market value-added agricultural products. Should viable

applications for these 2 purposes not meet the full 10 percent set-aside, amounts unobligated by June 30 may be reallocated. The House bill requires the Secretary, in awarding grants under this section, to consider applications more favorably, when compared to other applications, to the extent that the project proposed in the application contributes to increasing opportunities for operators of small and medium-sized farms and ranchers structured as “family farms”— as defined in the regulations prescribed under section 302 of the Con Act. (Section 6027)

The Senate amendment provides for an extension of the program through 2012 and updates the definitions of “assisting organization,” “technical assistance,” and “value-added agricultural product.” Under the Senate amendment, a grant recipient can receive no more than \$300,000 in the case of grants including working capital or \$100,000 in the case of all other grants. The amount of grant funds provided to an assisting organization for research, training, technical assistance, and outreach for a fiscal year may not exceed 10 percent of the total funds that are used to make grants.

The Senate amendment requires that grants made under this section be limited to a 3-year term. The Secretary is authorized to offer a simplified application form and process for project proposals that request less than \$50,000. The Secretary is also authorized, to the maximum extent practicable, to provide grants to projects that provide training and outreach activities in areas that have received relatively fewer grants. The Senate amendment adds a priority for projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small and medium-sized farms and ranchers that are not larger than family farms and support new ventures that do not have well-established markets or product development staffs and budgets, including the development of local food systems and the development of infrastructure to support local food systems. (Section 6401)

The Conference substitute adopts the Senate provision with modifications. The Secretary is required to reserve 10 percent of funds for projects that benefit beginning farmers or ranchers or socially disadvantaged farmers or ranchers and 10 percent of funds for projects proposing to develop mid-tier value-chains. Priority in awarding grants should go for projects that contribute to increasing opportunities for beginning farmers and ranchers, socially disadvantaged farmers or ranchers, and operators of small and medium-sized farms and ranches that are structured as family farms. Mandatory funding of \$15,000,000, to remain available until expended, is to be provided in fiscal year 2009. The authorization of appropriations for the program is extended through 2012. (Section 6202)

The Managers are aware of the increasing producer interest in mid-tier value chains that are strategic alliances between small and mid-sized farms and ranches and other supply chain partners that deal in significant volumes of high-quality, differentiated food products and distribute rewards equitably across the supply chain. The Managers expect that awards under this new mid-tier value chain component of the program will support strategic alliances in which the producer, producer group, farmer cooperative, or majority-controlled producer based venture participate in developing the overall framework and specific rules for the alliance.

(49) Guarantees for bonds and notes

The House bill extends guarantees for bonds and notes issued for electrification or telephone purposes through 2012. (Section 6030)

The Senate amendment extends eligibility for guarantees for telephone installation purposes; expands the funds available for guarantees to \$1,000,000,000; requires the annual fee paid for the guarantee of a bond or note to be equal to 30 basis points of the amount of the unpaid principal; and requires a lender to pay fees required on a semi-annual basis on a schedule structured by the Secretary.

The Senate amendment also extends the Secretary's authority to guarantee payments to September 30, 2012. (Section 6106)

The Conference substitute adopts the Senate provision, with a modification to allow the provision expanding the funds available for guarantees to apply immediately upon enactment. (Section 6106)

(50) Study of rural transportation issues

The House bill authorizes the Secretary of Agriculture, in coordination with the Secretary of Transportation, to conduct a study, and submit a report to Congress on the results of the study within 9 months of the date of enactment of this Act, on railroad issues, with respect to the movement of agricultural products, domestically produced renewable fuels and domestically produced resources for the production of electricity in rural America.

The study includes an examination of the importance of freight railroads to: the delivery of equipment, seed, fertilizer, and other products important to the development of agricultural commodities and products; the movement of agricultural commodities and products to market; the delivery of ethanol and other renewable fuels; the delivery of domestically produced resources for use in the generation of electricity in rural America; the location of grain elevators, ethanol plants, and other facilities; the development of manufacturing facilities; the vitality and economic development of rural communities; the sufficiency in rural America of railroad capacity, the sufficiency of rail competition, the reliability of rail service, and the reasonableness of rail prices; and the accessibility to rail customers in rural America of Federal processes for the resolution of rail customer grievances with the railroad. (Section 6032)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment expanding the study to include other modes of transportation, including truck and barge. (Section 6206)

(51) Energy Efficiency Programs

The Senate amendment amends sections 2(a) and 4 in the REA by authorizing the Secretary to extend loans to energy efficiency programs. (Section 6101)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 6101)

The Managers note that assistance is authorized under this section for renewable energy, including geo-thermal ground loops, under sections 2 and 4 of the REA as amended. The Managers expect that applications for such assistance will be properly considered and when meritorious, that they should be funded.

(52) Loans and grants for electric generation and transmission

The Senate amendment amends section 4 of the REA by requiring the Secretary to make loans and grants for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric services to persons in rural areas if appropriated funds are made available. (Section 6102)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

If funds are appropriated for Section 4 of the REA, the Managers expect the Secretary to make funds available for baseload generation.

(53) Fees for electrification baseload generation loan guarantees

The Senate amendment amends the REA by adding a new section, 5, which allows the Secretary to charge an upfront fee to cover the cost of loan guarantees. The fee is to be at least equal to the costs of the loan guarantee. The Secretary is given the authority to establish a separate fee for each loan. (Section 6103)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision, but adopts an amendment to require a study on the electric power generation needs in rural areas. (Section 6113)

(54) Deferment of payments to allow loans for improved energy efficiency and demand reduction

The Senate amendment amends section 12 of the REA by requiring the Secretary to allow borrowers to defer payment of principal and interest on any direct loan to enable the borrower to make loans to residential, commercial, and industrial consumers to install energy efficient measures or devices that reduce the demand on electric systems for 60 months. (Section 6104)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications to allow energy efficiency and use audits as an eligible purpose under the program. (Section 6103)

The Conference substitute also makes technical changes to allow for direct lending from the U.S. Department of Treasury for RUS financing. Under the authority conferred to it under section 4 of the REA, RUS has the ability to guarantee loans made by the Federal Financing Bank (FFB), an agency of the U. S. Department of the Treasury (Treasury), to rural electric providers. Through approval of both the Office of Management and Budget and the appropriations process, direct loans from the Treasury have been used in addition to the FFB loan guarantees for several years. Language is included in a new section authorizing the loan rate program through Treasury with a requirement that cost of money loans be made with 1/8 of 1 percent added to the interest rate. This will effectively take the place of the FFB program. The loans should continue to be scored at a negative subsidy. (Section 6102)

The Managers expect that this language will enable the loans to be processed more efficiently and still protect the taxpayer investment in a strong, modern infrastructure in rural America.

(55) Rural electrification assistance

The Senate bill amends the definition of “rural area” to mean an area that excludes: (1) cities of 50,000 or more; (2) any urbanized area contiguous and adjacent to a city of 50,000 or more, except for narrow strips of urbanized areas; and (3) any collection of contiguous census blocks with a housing density of 200 housing units per square mile that is adjacent to a city of 50,000 or adjacent to an urbanized area, except for narrow strips of such territory. The definition is also amended to include any area within the service area of a borrower for which a borrower has an outstanding loan made under titles I through V of the REA. (Section 6105)

With respect to loans and loan guarantees made under the rural broadband program, the term rural area also excludes a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants.

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with modifications. Rural area is defined to mean an area that excludes a city or town of 20,000 or more, or is an area within the service area of a borrower for which a borrower has an outstanding loan made under titles I through V of the REA. (Section 6104)

(56) Electric loans for Renewable Energy

The Senate amendment amends Title III of the REA by adding a new section, 317, which allows the Secretary to make loans to rural electric cooperatives for purposes of electric generation and transmission of renewable energy. Renewable energy source is defined as a qualified energy resource under section 45(c)(1) of the Internal Revenue Code of 1986. (Section 6108)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications. The provision to allow transmission under this section is deleted with the understanding that the agency currently possesses authorization to make loans for such transmission. Additionally, the definition of renewable energy source is redefined to mean “an energy conversion system fueled from a solar, wind, hydropower, biomass, or geothermal source of energy.” (Section 6108)

The Managers expect the Secretary to make electric loans under this title for electric generation from renewable energy resources to rural and nonrural residents.

(57) Bonding requirements

The Senate amendment amends Title III of the REA by adding agency procedures for loans or grants under this Act. The amendment: (1) requires that loan applicants are contacted at least once each month by RUS regarding the status of any pending loan applications; (2) requires the Secretary to ensure that applicants for any RUS grants have the opportunity to present a case for financial need and that these special economic circumstances are considered in determining the grant status of the applicant; (3) allows the Secretary to adjust population limitations related to digital mobile wireless service; and (4) requires the Secretary to review bonding requirements for all programs administered by RUS. (Section 6109)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision to require the Secretary to review bonding requirements for all programs administered by RUS, but strikes the other provisions in the Senate amendment. (Section 6109)

The Managers are aware of significant annual increases in the cost of labor and materials in major electric generation and transmission projects resulting in parallel increases in cost for Surety and Performance Bonds. The cost of Surety and Performance Bonds precludes some contractors from bidding on projects successfully. The Managers therefore request the Secretary give consideration to other measures that will ensure more contractors can bid on projects and simultaneously protect the government's investment in these projects. Suggestions have been made that lines of credit or parent company guarantees are examples of methods that could provide such protection for both the borrowers and the government.

(58) Substantially underserved trust areas

The Senate amendment provides that Native American trust lands, where more than 20 percent of the population does not have electric, telecommunications, broadband or water service, are to be considered substantially underserved trust areas. The Secretary may make programs administered by RUS available to such areas at lower loan rates and may waive non-duplication requirements. (Section 6112)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with modifications to ensure only that only the restrictions and requirements specified under this section are waived with this authority. The authority of the Secretary to waive non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant program administered by RUS to facilitate the construction, acquisition, or improvement of infrastructure is not to affect any loan or grant program administered by the U.S. Environmental Protection Agency. In addition, the language in this section is not intended to amend, alter, or affect any statutory provisions contained in the Safe Drinking Water Act or any regulations promulgated under that Act, including any orders or guidance issued pursuant to that authority. (Section 6105)

(59) Rural electronic commerce extension

The Senate amendment reauthorizes section 1670(e) of the FACT Act through 2012. (Section 6301)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(60) Insurance of loans for housing and related facilities for domestic farm labor

The Senate amendment amends section 514 (f)(3) of the Housing Act of 1949, by extending the definition of "domestic farm labor" to include any person who receives a substantial portion of their income from the processing of agricultural or aquaculture commodities. (Section 6402)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 6205)

(61) Housing Assistance Council

The Senate amendment provides for the “Housing Assistance Council Authorization Act of 2007.” (Section 6501)

This section authorizes the Secretary of Housing and Urban Development (HUD) to provide financial assistance to the Housing Assistance Council (HAC) for the purpose of supporting community-based housing development organizations’ community development and affordable housing projects and programs in rural areas. (Section 6502)

The Senate amendment requires the Comptroller General to audit any institution receiving funds from HAC and a GAO report on the use of any funds appropriated to HAC over the past 10 years. (Section 6503)

The Senate amendment prohibits funds from subtitle D of this Act from being used to provide housing assistance to persons not lawfully present in the United States. (Section 6504)

The Senate amendment prohibits funds from being used to lobby or retain a lobbyist. (Section 6505)

The House bill contains no comparable provisions.

The Conference substitute adopts the Senate amendment, with modifications to allow the GAO to use private, independent audits for the review of HAC. (Sections 6301, 6302, 6303, 6304, and 6305)

(62) Interest Rates for Water and Waste Disposal

The Senate amendment amends section 307(a)(3) of the Con Act to ensure that interest rates for intermediate and poverty rate loans are tied to the current market rate. The poverty rate is set at 60 percent of the market rate and the intermediate rate is set at 80 percent of the market rate. (Section 12602)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment, with modifications to exclude from the interest rate change, those loans that have been approved prior to the enactment of this Act. (Section 6011)

TITLE VII—RESEARCH

(1) Definitions

The House bill defines terms necessary to implement this Act: capacity program, competitive program, capacity program critical base funding, competitive program critical base funding, ASCARR Institution, Secretary, Directors, Under Secretary, and Hispanic-serving agricultural college and university. (Section 7101)

The Senate amendment amends the Department of Agriculture Reorganization Act of 1994 to define the terms: advisory board, competitive program, director, infrastructure program, and institute (Section 7401). The Senate amendment amends Section 1404 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (NARETPA) to define the terms Hispanic-serving agricultural colleges and universities, and Hispanic-serving institution, and to expand ‘college’ and ‘university’ to include research foundations maintained by a college or university. (Section 7001)

The Conference substitute adopts the House provision with an amendment to include the terms defined in the House bill and the Senate amendment.

The Conference substitute defines the following terms necessary to implement this Act: capacity and infrastructure program, capacity and infrastructure program critical base funding, competitive program, competitive program critical base funding, Hispanic-serving agricultural colleges and universities, NLGCA Institution (non-land-grant colleges of agriculture), 1862 Institution, 1890 Institution, and 1994 Institution. (Section 7501)

The Conference substitute amends section 1404 of the NARETPA to define Hispanic-serving agricultural colleges and universities, Hispanic-serving institution, and NLGCA Institutions (non-land-grant colleges of agriculture), and to expand the definition of ‘college’ and ‘university’ to include research foundations maintained by a college or university. (Section 7101)

The Conference substitute amends section 251 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971) to define the terms ‘capacity and infrastructure program’ and ‘competitive program’. (Section 7511)

(2) Budget Submission and Funding

The House bill requires the President to submit with the annual budget request a single line item reflecting the total funding requested for competitive programs for the fiscal year and the previous five fiscal years. The capacity program critical base funding request should be apportioned among programs based on priorities established by the Under Secretary of Research, Education, and Economics, and the Directors of the National Agricultural Research Program Office (NARPO). Additional funds requested should enhance 1890 institutions, 1994 institutions, small 1862 institutions, ASCARR institutions, and Hispanic-serving agricultural colleges and universities. The competitive program critical base funding request should be apportioned among programs based on priorities established by the Under Secretary and Directors of NARPO. Additional funds requested should support the study of emerging problems and their solutions. Necessary funds are authorized to be appropriated. Competitive programs under this section include only those requested by the President for funding. (Section 7102)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to include the total amount requested by the President for the research, extension, and education activities of the Research, Education, and Economics (REE) mission area of the Department in a single budget line item. The Conference substitute recommends that out of funds above the capacity and infrastructure critical base funding level, budgetary emphasis should be placed on certain institutions; and out of funds above the competitive program critical base funding level, budgetary emphasis should be placed on emerging problems. (Section 7506)

The Managers recognize the numerous benefits of competitive research programs and have supported the expansion of funding for these programs. The Managers encourage the Department to make every effort to increase support for competitive programs while maintaining the needs of capacity and infrastructure programs when making budgetary decisions.

The Managers expect the Secretary to review, in conjunction with the consultative panel on the Extension Indian Reservation Program (also known as the Federally Recognized Tribes Extension Programs), the demand for and status of extension services on Indian reservations and reflect that need in their budget submission.

(3) Additional Purposes of Agricultural Research and Extension

The House bill amends section 1403 of the NARETPA to add the following to the purposes of agricultural research and extension: integrating and organizing agricultural research, extension, education, and related programs to respond to 21st century challenges; continuing to meet the needs of society from a local, tribal, State, national, and international perspective; minimizing duplication and maximize coordination of the program at all levels; positioning the research, extension, education, and related programs to expand the portfolio to increase its contribution to society.(Section 7103)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(4) National Agriculture Research Program Office

The House bill establishes six research Program Offices, collectively known as the “National Agricultural Research Program Office” (NARPO) within the office of the Under Secretary of Agriculture for Research, Education, and Economics. The NARPO will coordinate the programs and activities of the research agencies within the mission area to the maximum extent practicable. The NARPO will include the following offices:

- (1) Renewable energy, resources, and environment;
- (2) Food safety, nutrition, and health;
- (3) Plant health and production and plant products;
- (4) Animal health and production and animal products;
- (5) Agriculture systems and technology; and
- (6) Agriculture economics and rural communities.

Each research program office will have a director appointed by the Under Secretary. The requirements to qualify for one of the director positions include performance of outstanding research, extension, or education in agriculture or forestry, a doctoral-level degree, and other standards as required for appointment to a senior level of the competitive service.

The Directors will formulate programs, assess workforce needs, cooperate with the National Agricultural Research, Extension, Education, and Economics Advisory Board (NAREEE Advisory Board) in planning for personnel needs, develop strategic planning and priorities for Department-wide research, extension, education, and related activities, and communicate with program beneficiaries.

The Under Secretary, along with the Directors, and in consultation with the NAREEE Advisory Board, will direct and coordinate programs within relevant departmental agencies to focus on understanding program problems and opportunities, and addressing those problems along with national, regional, and local priorities.

The Under Secretary will coordinate with the Directors and receive the advice of the NAREEE Advisory Board to ensure that programs are integrated and coordinated.

The Under Secretary will fund each Program Office with appropriated funds made available to the agencies within the mission area. The total number of staff for all Program Offices will not exceed 30 full time positions and will have to be filled by current positions.

The Under Secretary will integrate leadership functions from existing program offices to ensure that program offices are the primary program leaders.

The Under Secretary will develop and implement specialty crop research activities, facilitate information delivery, and ensure coordination among research initiatives related to specialty crops. (Section 7104)

The Senate amendment requires coordination between the Agricultural Research Service (ARS) and the National Institute of Food and Agriculture (NIFA) – formerly the Cooperative State Research, Education, and Extension Service (CSREES). The Under Secretary for Research, Education, and Economics will coordinate the programs under the authority of the Administrator of ARS and the Director of NIFA. The staff of the Administrator and the Director, including national program leaders, are required to meet on a regular basis to: increase coordination and integration of research programs at ARS and the research, extension, and education programs of NIFA; coordinate responses to emerging issues; minimize unnecessary duplication of work and resources at the staff level of each agency; use the extension and education program to deliver knowledge to stakeholders; address critical needs facing agriculture; and focus the research, extension, and education funding strategy of the Department. An annual report to Congress is required on efforts to increase coordination between ARS and NIFA.

The Undersecretary for Research, Education, and Economics is charged with undertaking a roadmap to identify major opportunities and gaps in agricultural research, extension, and education and to use this roadmap to set the research agenda and recommend funding levels for programs in this mission area of the Department.

Such sums necessary for activities undertaken to develop the roadmap are authorized. (Sections 7402)

The Conference substitute adopts the House provision with an amendment to change the name of the name of the office to the Research, Extension, and Education Office (REEO) and to integrate it into the office of the Under Secretary for Research, Education, and Economics. The Conference substitute also captures the roadmap from the Senate amendment.

The Conference substitute requires the Under Secretary for Research, Education, and Economics to have specialized training or significant experience in agricultural research, education, and economics. The Under Secretary is designated as the chief scientist of the Department and is tasked with the coordination of the research, education, and extension activities of the Department.

The Conference substitute organizes the REEO into six Divisions:

- (1) Renewable energy, natural resources, and environment;
- (2) Food safety, nutrition, and health;
- (3) Plant health and production and plant products;
- (4) Animal health and production and animal products;
- (5) Agriculture systems and technology; and
- (6) Agriculture economics and rural communities.

Each Division will be led by a Division Chief. The Division Chiefs are to be selected by the Under Secretary to promote leadership and professional development, to enable personnel to interact with other agencies of the Department, and to allow for the rotation of Department personnel into the position of Division Chief. Each Division Chief is required to have conducted exemplary research, extension, or education in the field of agriculture or forestry and is required to have earned an advanced degree at an institution of higher education. Each Division Chief is limited to a four-year term of service. The duties of each Division Chief include addressing the agricultural research, extension, and education needs and priorities within the Department and communicating with stakeholders, as well as the development of the roadmap as described in section 7504 of this Act. (Section 7511 and Section 7504)

The Managers expect the REEO to be staffed and funded from appropriations made available to the agencies within the REE mission area. There is concern that the REEO will evolve into a new layer of bureaucracy. To address this, the Managers have included language to limit the number of staff positions for the REEO to 30 full-time current positions.

The Managers expect the REEO Divisions to coordinate the research, extension, and education activities across the Department. The Managers expect the Division Chiefs of each office to: coordinate the functions of intramural and extramural research, extension, and education programs to ensure the maximum integration of activities; and to formulate programs, assess workforce needs, and cooperate with the agencies of the REE mission area and the NAREEE Advisory Board in developing strategic planning and priorities for the Department.

The Managers expect that once REEO is operational, the Division Chiefs will be able to track, report, and identify research gaps, unnecessary duplication among programs, and assess the needs for immediate, emerging, and future needs for research, extension, and education programs.

(5) Establishment of Competitive Grant Programs under the National Institute for Food and Agriculture

The House bill establishes the NIFA within CSREES to administer all competitive programs as defined in section 7101 of this Act. (Section 7105)

The Senate amendment transfers all authorities under CSREES to NIFA, and all programs currently under CSREES will continue under NIFA. NIFA will be headed by a Director, who is required to report to and consult with the Secretary on the research, extension, and education activities of NIFA. The Director will work with the Under Secretary for Research, Education, and Economics to ensure proper coordination and integration of all research programs that are within the responsibility of the Department.

The Senate amendment establishes four offices at NIFA to increase competitive grant opportunities and re-establish the importance of the land-grant college and university system. First, the Office of the Agricultural Research, Extension, and Education Network administers all infrastructure programs (also known as capacity programs) such as those funded by formula funds at state agricultural experiment stations and the extension service. Second, the Office of Competitive Programs for Fundamental Research administers competitive programs that fund fundamental (basic) food and agricultural research, such as the National Research Initiative's basic research projects.

Third, the Office of Competitive Programs for Applied Research administers competitive programs for applied food and agricultural research. Fourth, the Office of Competitive Programs for Education and Other Purposes administers competitive programs for education and other fellowships. The Director of NIFA has the discretion to divide programs that intersect more than one competitive program office.

The Senate amendment authorizes appropriations for NIFA, above the authorizations of individual programs, to be allocated according to recommendations in the roadmap to be developed by the Under Secretary of Research, Education and Economics under section 7402 of this Act.

The Senate amendment includes a series of conforming amendments to modify each place in current law to reflect the change from “Cooperative State Research, Education, and Extension Service” to “National Institute of Food and Agriculture”. (Section 7401)

The Conference substitute adopts the Senate provision to modify the appointment, supervision, compensation, and authorities of the Director of NIFA and to modify the organization of offices under NIFA. It also modifies the programs under the definition of “capacity and infrastructure program” and “competitive program”;

The Conference substitute provides that NIFA will be established by October 1, 2009. The Director of NIFA is required to be a distinguished scientist and will be appointed by the President. The Director is required to report to the Secretary or the designee of the Secretary and will serve a six-year term, subject to reappointment for an additional six-year term.

The Conference substitute also provides the Director with discretion to organize NIFA into offices and functions to administer fundamental and applied research and extension and education programs. The NIFA Director is required to ensure an appropriate balance between fundamental and applied research programs, and is required to promote the use and growth of competitively awarded grants.

The Conference substitute provides an authorization of appropriations for NIFA without fiscal year limitation, in addition to funds appropriated to each program administered by the Institute. The appropriated funding is required to be allocated according to recommendations in the roadmap described in section 7504 of this Act.

The Managers are concerned about the visibility of competitive research grants, the increasing demands placed on the land-grant system, and the weakening financial support of both competitive grants and formula funds. By restructuring CSREES, the Managers intend for NIFA to raise the profile of agricultural research, extension, and education. The Managers believe that NIFA will be commensurate in stature with other grant-making agencies across the Federal government, such as the National Institutes of Health and the National Science Foundation. The Managers intend for NIFA to be an independent, scientific, policy-setting agency for the food and agricultural sciences, which will reinvigorate our nation’s investment in agricultural research, extension, and education.

The Managers are concerned about the balance between fundamental and applied research at the Department. The Managers note that the Conference substitute gives the Director of NIFA discretion to establish offices, to set appropriate policy, and to address problems that agricultural research, extension, and education can help solve. In particular, the Managers intend that the Director place emphasis on fundamental research because

this type of research is the engine and cornerstone for all other types of research. Although fundamental research across the sciences is funded by the National Science Foundation, the Managers expect NIFA to play a larger role in funding this type of research. However, the Managers recognize that without applied research, the fruits of fundamental research would never be used to solve the pressing needs of the public. Therefore, the Managers intend for the Director to carefully analyze the needs of the agricultural research, extension, and education system and address them accordingly by allocating appropriate staff and resources within NIFA. (Section 7511)

(6) Merging of IFAFS and NRI

The House bill combines the Initiative for Future Agriculture and Food Systems (IFAFS) with the National Research Initiative (NRI) by repealing section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998, except for section 401(b)(3) of that Act which will remain in effect, and incorporating the priorities under section 401 into subsection (b) of the Competitive, Special, and Facilities Research Grant Act.

This section states that competitive grants authorized under the new program are to be available to State agricultural experiment stations, all colleges, universities, university research foundations, research institutions and organizations, Federal agencies, national laboratories, private organizations, corporations, and individuals.

The term of any grant received under this program will not exceed 10 years. All grant awards are to be made on the basis of peer and merit review. Funds may not be used for construction.

Within the combined program, there will be two separate programs for basic and applied research, to be referred to as NRI and IFAFS respectively. Out of the funds made available to the combined program, 60 percent will fund NRI and 40 percent will fund IFAFS.

Within the NRI allocation, funding will be allocated as follows: 30 percent for multidisciplinary teams; 20 percent for mission-linked systems research; not less than 10 percent for education and research opportunities. The offer or availability of matching funds shall not be taken into account when making a grant. The match requirement may be waived in certain cases.

Matching funds will be required for IFAFS grants if the grant is for applied, commodity-specific research and not national in scope.

In addition to NRI grants, the Secretary may conduct a program in agricultural, food, and environmental sciences in a variety of specified categories. Funding made available under current law for IFAFS will be transferred to this new combined program. The House bill authorizes \$500,000,000 to be appropriated and to remain available until expended for obligations incurred in that fiscal year.

This section repeals the authority for construction of non-Federal agricultural research facilities with appropriated Federal funds. (Section 7106)

The Senate amendment amends Section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 to add sustainable and renewable agriculture-based energy production, ecosystem services, and beginning farmers and ranchers to the purposes of IFAFS.

This section strikes a provision allocating \$200,000,000 per year in mandatory funds for IFAFS and provides \$45,000,000 in mandatory funds for IFAFS to be obligated 30 days after the enactment of the farm bill. This section requires 32 percent of appropriated funds for the NRI to go towards IFAFS grants if funds are not appropriated or obligated for IFAFS. (Section 7201)

The Senate amendment amends the Competitive, Special, and Facilities Research Grant Act to add research on agricultural genomics and biotechnology, classical animal and plant breeding, beginning farmers and ranchers, and the judicious use of antibiotics to the research priorities of the NRI.

This section modifies the availability of grant funds for classical plant and animal breeding to ten years and establishes National Research Support Project-7 for research on drugs for use in minor animal species. (Section 7307)

The Conference substitute adopts the House provision with an amendment to replace subsection (b) of the Competitive, Special, and Facilities Research Grant Act to create a new program, titled the “Agriculture and Food Research Initiative” (AFRI), to award competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences. The program combines the priority areas of the NRI with the purposes and priority areas of IFAFS. There are six priority areas in AFRI:

- (1) Plant health and production and plant products;
- (2) Animal health and production and animal products;
- (3) Food safety, nutrition, and health;
- (4) Renewable energy, natural resources, and environment;
- (5) Agriculture systems and technology; and
- (6) Agriculture economics and rural communities.

The term of competitive grants awarded under AFRI may not exceed 10 years.

Under AFRI, the Secretary will seek proposals to conduct research, extension, or education activities in a specific priority area, determine the relevance and merit of proposals, and award grants on the basis of merit, quality, and relevance as determined by experts in the specific subject area.

AFRI funds are to be allocated in the following manner: 60 percent will be made available for fundamental research and 40 percent will be made available for applied research. Of the allocation for fundamental research, not less than 30 percent will be made available for multidisciplinary research and not more than two percent will be made available for equipment grants.

Grants awarded through AFRI may also be used to assist in the development of capabilities in the agricultural, food, and environmental sciences to certain institutions, investigators, and faculty members where such development is necessary.

Eligible entities that may receive grants through AFRI include State agricultural experiment stations, colleges and universities, university research foundations, other research institutions and organizations, Federal agencies, national laboratories, private organizations or corporations, individuals, or groups thereof.

AFRI funds are prohibited from being used for the construction, acquisition, remodeling, or alteration of a facility or building.

For equipment grants funded through AFRI, the cost of the equipment required may not exceed 50 percent of the Federal funds. The Secretary may waive this matching requirement under specified conditions. For grants awarded to conduct applied research

that is commodity-specific and not of national scope, the grant is required to be matched with equal matching funds from a non-Federal source.

The authorization level for AFRI is set at \$700,000,000 from fiscal year 2008 through fiscal year 2012, of which not less than 30 percent is required to be made available for integrated research. (Section 7406)

The Managers expect that in providing an annual authorization of appropriations of \$700,000,000 that AFRI will receive substantial funding to carry out its purposes in the annual appropriations process. NRI and IFAFS have been consistently underfunded despite the growing list of identified needs in agricultural research, extension, and education.

The Managers created AFRI to enhance the work funded by NRI and IFAFS. As such, AFRI should receive the combined level of authorized and mandatory funding that NRI and IFAFS, respectively, were to receive in previous fiscal years. The Managers expect that AFRI be funded at increasing levels each fiscal year to meet identified priority agriculture research, extension and education demands.

The Managers are aware of the importance of supporting public sector conventional plant and animal breeding, as evidenced by the specific mention of this priority under the “plant health and production and plant products” and “animal health and production and animal products” priorities in AFRI. The Managers intend that the term “conventional breeding,” also known as “classical breeding,” refer to breeding techniques which rely on creating an organism with desirable traits through controlled mating and selection. Because conventional breeding is critical to the development of seeds and breeds that are well adapted to local conditions and changing environmental constraints, these efforts are important to the food and agriculture sector. The Managers are aware that participatory breeding programs, where producers are involved in the process of developing new plant varieties and animal breeds, yield varieties and breeds that are better adapted to local environments. The Managers encourage an emphasis on funding of conventional plant and animal breeding as part of the new AFRI.

The Managers are aware of the need for integrated research, extension, and education activities to stimulate entrepreneurship across rural America to support business development, improve skills of current and emerging entrepreneurs, expand access to capital, and build entrepreneurial networks. Under the priority area of “agriculture economics and rural communities,” AFRI includes “rural entrepreneurship” to increase competitive funding for integrated entrepreneurship activities. The Managers intend for this priority area to include both agricultural and rural development ventures, including strengthening non-farm, self-employment for farm and rural populations.

The Managers intend that most program areas within AFRI would have grant terms of short duration. However, the Managers are aware that there are areas of research where longer-term grants are needed, such as conventional plant and animal breeding, environmental research, and nutrition research. The Managers expect the Secretary to use 10-year grant terms only when it is critical for long-term systems research.

The Managers encourage the Director of NIFA to continue to support National Research Support Project-7 and to work cooperatively with the Center for Veterinary Medicine of the Food and Drug Administration to facilitate the development and approval of drugs for minor species and minor uses for major species. (Section 7406)

In order to improve the Department's capacity to develop programs designed to

address critical and emerging issues, leverage Federal resources, and promote public and private sector participation, Congress created an Integrated Research, Education, and Extension Competitive Grants Program in 1998. The Managers continue to support this important competitive grants program and have extended the authorization for these activities in section 7306 of this Act. To further expand on these activities, the Managers have included a provision in this section which directs that not less than 30 percent of the funds made available to AFRI be used for integrated research, extension, and education competitive grants. It is the intent of the Managers that with these additional funds, the Department will be able to expand the number and scope of programs supported under this authority.

(7) Capacity Building Grants for ASCARR Institutions

The House bill establishes a competitive grant program for ASCARR Institutions to maintain and expand education, outreach, and research capacity relating to agriculture, renewable resources, and other similar fields. Necessary sums are authorized to be appropriated. (Section 7107)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to add a new section, 1473F, to NARETPA, and to replace the term “ASCARR” with the term “NLGCA,” an abbreviation for “non-land-grant colleges of agriculture.” (Section 7138)

(8) Establishment of Research Laboratories for Animal Disease

The House bill authorizes the Secretary to establish animal disease research laboratories, and to the extent that an animal disease constitutes a threat to the livestock industry, authorizes the Secretary to conduct research, diagnostics, and other activities. This section prohibits a person, State, or Federal agency from importing, transporting, or storing at a research facility a live virus that the Secretary determines to be a threat to livestock, such as Foot and Mouth Disease. The Secretary may, however, import, transport, or store such a live virus and may also allow for a person, State, or Federal agency to do the same if it is in the public interest. Necessary sums are authorized to be appropriated. (Section 7108)

The Senate amendment requires the Secretary to issue a permit to the Department of Homeland Security for work on live Foot and Mouth Disease virus at the National Bio- and Agro-Defense Laboratory. This section allows the Secretary to invalidate the permit if research is not conducted in accordance with its regulations. This section clarifies that the suspension, revocation, or impairment of the permit is only to be made by the Secretary of Agriculture and is a nondelegable function. (Section 11016)

The Conference substitute adopts the Senate provision with an amendment to replace the term “National Bio- and Agro-Defense Laboratory” with “any facility that is a successor to the Plum Island Animal Disease Center and charged with researching high-consequence biological threats involving zoonotic and foreign animal diseases.” (Section 7524)

(9) Grazinglands Research Laboratory

The House bill requires that Federal land and facilities currently administered by the Department as the Grazinglands Research Laboratory shall not be declared excess or surplus property. (Section 7109)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to sunset the provision at the end of fiscal year 2012. (Section 7502)

(10) Research Training

The House bill requires plant genetic researchers that receive certain federal funds to complete an approved training program. (Section 7110)

The Senate has no comparable provision.

The Conference substitute deletes the House provision.

(11) Fort Reno Science Park Research Facility

The House bill allows the Secretary to lease land at the Grazinglands Research Laboratory to the University of Oklahoma. (Section 7111)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7503)

(12) Assessing the Nutritional Composition of Beef Products

The House bill allows the Secretary to award a grant, contract, or other agreement to a land-grant university to update the Nutrient Composition Handbook for Beef. Necessary sums are authorized to be appropriated. (Section 7112)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(13) Sense of Congress Regarding Funding for Human Nutrition Research

The House bill states that it is the sense of Congress that human nutrition research has the potential for improving the health of Americans. (Section 7113)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(14) Advisory Board

The House bill amends Section 1408(g)(1) of NARETPA by increasing the maximum annual appropriations for the NAREEE Advisory Board to \$500,000. (Section 7201)

The Senate amendment amends Section 1408 of NARETPA by increasing the maximum annual appropriations for the NAREEE Advisory Board to \$500,000 and to change the membership of the board from 31 to 24 members. The Senate amendment mandates that members representing the following organizations are no longer to be

members of the board: a national animal commodity organization; a national crop commodity organization; a national aquaculture association; a non-land grant college or university with a historic commitment to research in the food and agricultural sciences; the portion of the scientific community not closely associated with agriculture; an agency within the Department that lacks research capabilities; a research agency of the Federal Government other than the Department; and national organizations directly involved in agricultural research, extension, and education. One member actively engaged in aquaculture is added to compensate for the loss of a representative from a national aquaculture association. (Section 7002 and Section 7401)

The Conference substitute adopts the Senate provision with an amendment to include a member representing NLGCA institutions; a member actively engaged in the production of a food animal commodity recommended by a coalition of national livestock organizations; a member actively engaged in the production of a plant commodity recommended by a coalition of national crop organizations; and a member actively engaged in aquaculture recommended by a coalition of national aquaculture organizations. (Section 7102)

(15) Advisory Board Termination

The House bill (section 7202) and the Senate amendment (section 7002) extend section 1408(h) of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7102)

(16) Renewable Energy Committee

The House bill adds a new section, 1408B, to NARETPA that requires the executive committee of the NAREEE Advisory Board to establish and appoint initial members to a permanent renewable energy subcommittee responsible for studying the research, extension, and economics programs affecting the renewable energy industry. The renewable energy committee will submit annual reports to the Board with the committee's findings and recommendations.

This section states that the Renewable Energy Subcommittee shall coordinate with the Biomass Research and Development Act Technical Advisory Committee.

This section states also that when preparing the annual budget recommendations for the Department, the Secretary shall take into account the recommendations made by the committee and adopted by the NAREEE Advisory Board. (Section 7203)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to make technical changes in the Renewable Energy Committee. (Section 7104)

(17) Specialty Crop Committee Report

The House bill amends section 1408A(c) of NARETPA by expanding the list of recommendations the Specialty Crops Subcommittee must make annually to the NAREEE Advisory Board to include economic analyses of the specialty crops sector and data that provides applied information useful to specialty crop growers. (Section 7204)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to make technical changes. (Section 7103)

(18) Inclusion of UDC Grants and Fellowships for Food and Agricultural Sciences Education

The House bill amends section 1417 of NARETPA by adding the University of the District of Columbia (UDC) as an eligible university to compete for food and agricultural sciences education grants and fellowships. (Section 7205)

The Senate amendment is the same as the House provision with technical differences. (Section 7004)

The Conference substitute adopts the Senate provision. (Section 7106)

(19) Grants and Fellowships for Food and Agricultural Sciences Education

The House bill amends section 1417(j) of NARETPA by adding agriculture programs for grades K-12 to the purposes of these grants. The current authorization of appropriations of \$60,000,000 for each fiscal year is extended through 2012. This section requires a report on the distribution of funds to teaching programs. (Section 7206)

The Senate amendment is the same as House provision with technical differences. (Section 7007)

The Conference substitute adopts the House provision with an amendment to require a biennial report. (Section 7109)

(20) Grants for Research on Production and Marketing of Alcohols and Industrial Hydrocarbons from Agricultural Commodities and Forest Products

The House bill (section 7207) and the Senate amendment (section 7008) extend section 1419(d) of NARETPA through 2012.

The Conference substitute adopts the Senate provision with an amendment to repeal this section from current law. (Section 7110)

(21) Policy Research Centers

The House bill amends section 1419A of NARETPA by including the Food Agricultural Policy Research Institute (FAPRI) and the Agricultural and Food Policy Center (AFPC) as eligible to receive grants under the policy research center authorization and extending the authorization of appropriations through 2012. (Section 7208)

The Senate amendment amends section 1419A of NARETPA by including FAPRI, the AFPC, the Rural Policy Research Institute, and the Community Vitality Center as eligible to receive grants under the policy research center authorization and extending the authorization of appropriations through 2012. (Section 7009)

The Conference substitute adopts the Senate provision with an amendment to remove the Community Vitality Center, add the Drought Mitigation Center, and clarify that the specialty crops sector should be covered by the centers. (Section 7111)

The Managers recognize specialty crops are a vital component of agriculture in the Midwestern region of the United States and encourage the development of a collaborative research program at a land-grant university to support specialty crop research focused on genetic resource development, sustainable production practices, and improved marketing systems. The Managers recognize the resources and expertise available among the Midwestern land-grant universities, such as Purdue University, and encourage the Secretary to support continued expansion of the specialty crop research, extension, and education capabilities of these institutions.

(22) Human Nutrition Intervention and Health Promotion Research Program

The House bill (section 7209) and the Senate amendment (Section 7010) extend section 1424(d) of NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7114)

(23) Pilot Research Program to Combine Medical and Agricultural Research

The House bill (section 7210) and the Senate amendment (section 7011) extend section 1424A(d) of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7115)

The Managers recognize the potential for the development of pharmaceuticals for human use through the use of bovine blood products. The usefulness of bovine blood products has resulted from a number of technical advances. These advances ensure the proper and necessary level of control of the animal-based raw materials so that they can now meet or exceed the requirements to develop safe and efficacious pharmaceuticals for human use. The Managers encourage the Secretary to fund pilot projects through this authorization to accelerate the development of pharmaceuticals for human use from bovine blood products.

(24) Nutrition Education Program

The House bill authorizes appropriations of \$90,000,000 for each fiscal year through 2012 to carry out the food and nutrition education program. (Section 7211)

The Senate amendment has no comparable provision. (Section 7012)

The Conference substitute deletes the House provision.

(25) Continuing Animal Health and Disease Research Programs

The House bill (section 7212) and the Senate amendment (section 7014) extend section 1433(a) of NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7117)

(26) Cooperation Among Eligible Institutions

The House bill requires the Secretary to encourage cooperation among institutions eligible for funding under continuing animal health and disease research programs in setting research priorities. (Section 7213)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7118)

(27) Appropriations for Research on National or Regional Problems

The House bill (section 7214) and the Senate amendment (section 7015) extend section 1434(a) of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7119)

(28) Authorization Level of Extension at 1890 Land-Grant Colleges

The House bill (section 7215) and the Senate amendment (section 7017) modify section 1444(a)(2) of NARETPA by increasing from 15 to 20 percent the Smith-Lever (extension) formula funding allocated to 1890 institutions.

The Conference substitute adopts the House provision. (Section 7121)

(29) Authorization Level for Agricultural Research at 1890 Land-Grant Colleges

The House bill (section 7216) and the Senate amendment (section 7018) modify section 1445(a)(2) of NARETPA by increasing from 25 to 30 percent the Hatch Act (research) formula funding that is allocated to 1890 institutions.

The Conference substitute adopts the Senate provision. (Section 7122)

(30) Grants to Upgrade Agriculture Food Sciences Facilities at the District of Columbia Land-Grant University

The House bill (section 7217) and the Senate amendment (section 7020) amend NARETPA by adding an authorization of \$750,000 in annual appropriations for grants to be made to UDC to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research.

The Conference substitute adopts the Senate provision. (Section 7124)

(31) Grants to Upgrade Agricultural and Food Sciences Facilities at 1890 Land-Grant Colleges, Including Tuskegee University.

The House bill (section 7218) and the Senate amendment (section 7019) extend section 1447(b) of NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7123)

(32) National Research and Training Virtual Centers.

The House bill (section 7219) and the Senate amendment (section 7021) extend section 1448 of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7126)

(33) Matching Funds Requirement for Research and Extension Activities of 1890 Institutions.

The House bill (section 7220) and the Senate amendment (section 7022) extend section 1455 of NARETPA through 2012.

The Conference substitute adopts the House provision with an amendment to update current law and clarify the current requirement of providing equal matching funds from non-Federal sources. (Section 7127)

(34) Hispanic-Serving Institutions

The House bill extends section 1455(c) of NARETPA through 2012. (Section 7221)

The Senate amendment amends section 1455 of NARETPA by removing the ability to receive a grant without a competitive application process. The modification also allows single institutions to receive grants. The annual appropriation is increased from \$20,000,000 to \$40,000,000 and the authorization of appropriations is extended through 2012. (Section 7023)

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 7128)

(35) Hispanic-Serving Agricultural Colleges and Universities.

The House bill adds a new section, 1456, to NARETPA which establishes an endowment fund, an institutional capacity building grant program, and a competitive grant program to benefit Hispanic-serving agricultural colleges and universities (HSACUs).

This section defines Hispanic-serving agricultural colleges and institutions as institutions that qualify as Hispanic-serving institutions under the Higher Education Act and offer an associate, bachelor, or other accredited degree in agricultural fields of study.

This section authorizes necessary funds to be appropriated for the endowment fund, extension, and institutional capacity building, and competitive grants through 2012. A formula for the distribution of appropriations is authorized for the endowment and maintenance of Hispanic-serving agricultural colleges and universities in the same manner prescribed under the Second Morrill Act. (Section 7222)

The Senate amendment is similar to the House provision with technical differences. (Section 7024)

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 7129)

(36) International Agricultural Research, Extension, and Education

The House bill (section 7223) and the Senate amendment (section 7025) modify section 1458(a) of NARETPA by allowing the Secretary to give priority under this

program to institutions with existing memoranda of understanding or agreements with U.S. institutions or State or Federal agencies. This section includes HSACUs as organizations the Secretary may enter into agreements with to help develop a sustainable global agricultural system. This section adds HSACUs to the list of universities eligible for support to do collaborative research with other countries on U.S. agricultural competitiveness. This section also adds HSACUs to the list of colleges and universities where Federal scientists are involved with research conducted internationally. This section establishes a program to provide fellowships to U.S. or foreign students to study at foreign agricultural colleges.

The Conference substitute adopts the Senate provision with an amendment to add anti-hunger and nutrition efforts and increased quantity, quality, and availability of food to the purposes of agreements between eligible institutions or organizations and the Department. (Section 7130)

(37) Competitive Grants for International Agricultural Science and Education Programs

The House bill (section 7224) and the Senate amendment (section 7026) extend section 1459A(c) of the NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7131)

(38) Limitation on Indirect Costs for Agricultural Research, Education, and Extension Programs

The House bill amends section 1462(a) of NARETPA to allow a recipient of any grant administered under the REE mission area, excluding those administered under the Small Business Act, to use up to 19 percent of Federal funds for indirect costs. (Section 7225)

The Senate amendment amends section 1462(a) of NARETPA by raising from 19 to 30 percent the allowance of indirect costs a recipient institution can use from a competitive grant awarded by the Department. (Section 7027)

The Conference substitute adopts the House provision with an amendment to increase the indirect cost limitation to 22 percent. (Section 7132)

(39) Research Equipment Grants

The House bill (section 7226) and the Senate amendment (section 7028) extend section 1462A(e) of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7133)

(40) University Research

The House bill (section 7227) and the Senate amendment (section 7029) extend section 1463 of NARETPA through 2012. (Section 7227)

The Conference substitute adopts the House provision. (Section 7134)

(41) Extension Service

The House bill (section 7228) and the Senate amendment (section 7030) extend section 1464 of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7135)

(42) Supplemental and Alternative Crops

The House bill (section 7229) and the Senate amendment (section 7032) extend section 1473D(a) of NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7136)

(43) Aquaculture Assistance Programs

The House bill extends section 1477 of NARETPA through 2012. (Section 7230)

The Senate amendment extends section 1477 of NARETPA through 2012 and amends section 1475(f) of the Act to prioritize the study and management of Viral Hemorrhagic Septicemia (VHS). (Section 7033)

The Conference substitute adopts the House provision and adds VHS research as a high-priority item in section 7203 of this Act.

The Managers are aware of the devastating impacts that VHS is having on freshwater fish populations in the United States. The Managers encourage the Department's Animal and Plant Health Inspection Service to coordinate its VHS management activities with State natural resource management agencies and tribes to research, develop, and implement a comprehensive set of priorities for managing VHS, including providing funds for research into the spread of the disease, surveillance, monitoring, risk evaluation, enforcement, screening, and management. (Section 7140)

(44) Rangeland Research

The House bill extends section 1483(a) of NARETPA through 2012. (Section 7231)

The Senate amendment extends section 1483(a) of NARETPA through 2012 and amends section 1480(a) of the Act by authorizing pilot programs to address natural resources management issues and facilitate the collection of information and analysis to provide information for improved management of public and private rangeland. (Section 7034)

The Conference substitute adopts the House provision. (Section 7141)

(45) Special Authorization for Biosecurity Planning and Response.

The House bill (section 7232) and the Senate amendment (section 7035) extend section 1484(a) of NARETPA through 2012.

The Conference substitute adopts the Senate provision. (Section 7142)

(46) Resident Instruction and Distance Education Grants Program for Insular Area Institutions of Higher Education

The House bill (section 7233) and the Senate amendment (section 7036) extend sections 1490(f) and 1491 of NARETPA through 2012.

The Conference substitute adopts the House provision. (Section 7143)

(47) Hispanic-Serving Institutions

The House bill (section 7234) and the Senate amendment (section 7001) modify section 1404 of NARETPA to give the term “Hispanic-Serving Institution” the same definition as section 502(a) of the Higher Education Act of 1965.

The Conference substitute adopts the House provision with an amendment to move it into the definitions section of this Act. (Section 7101)

(48) Specialty Crop Policy Research Institute

The House bill amends section 1419A of NARETPA by establishing a Specialty Crop Policy Research Institute within FAPRI. The objectives are to produce and disseminate analyses of the specialty crop sector and an annual review on the state of the specialty crop industry. Necessary sums are authorized to be appropriated. (Section 7235)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to incorporate the purposes of this section into subsection (a)(1) of section 1419A of NARETPA. (Section 7111)

(49) Emphasis of Human Nutrition Initiative

The House bill amends section 1424(b) of NARETPA (7 U.S.C. 3174(b)) to add a new emphasis to the Human Nutrition Intervention and Health Promotion Research Program to examine the efficacy of agricultural programs in promoting the health of disadvantaged populations. (Section 7236)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7113)

(50) Grants to Upgrade Agriculture and Food Sciences Facilities at Insular Area Land-Grant Institutions

The House bill amends NARETPA by authorizing assistance to insular land-grant institutions to acquire, alter, or repair facilities or equipment for agricultural research. An appropriation of \$8,000,000 is authorized for each fiscal year through 2012. (Section 7237)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7125)

(51) Veterinary Medicine Loan Repayment

The Senate amendment amends section 1415A of NARETPA by setting a deadline for rulemaking to implement the National Veterinary Medical Services Act (NVMSA). This section amends NVMSA to prioritize large and mixed animal practitioner shortages in rural communities and prohibits funds to be used for the existing Federal employee loan repayment program under 5 U.S.C. 5379. (Section 7003)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to clarify the priorities within NVMSA and to disapprove of the transfer of funds from CSREES to the Food Safety and Inspection Service (FSIS). The funds are required to be transferred back CSREES from FSIS. (Section 7105)

The Managers continue to be frustrated by the lack of progress by the Department in implementing NVMSA. When developing this legislation, the House Committee on Agriculture worked closely with the various agencies of the Department to ensure that the legislation was drafted in a manner in which it could be implemented and administered. During Committee consideration, amendments were included at the Department's request to ensure quick and efficient implementation. In a legislative report submitted by the Secretary of Agriculture, with the consent of the Office of Management and Budget, the Department reiterated its support and recommended that the legislation be enacted. More than \$2,000,000 has been appropriated for this program, yet the Department has not taken steps to develop regulations to implement it. Instead, the Managers note that CSREES, to which authority to administer NVMSA had been delegated, chose to transfer funds appropriated for this important program to another agency of the Department to assist in loan repayment for Federal employees. While this funding transfer was technically within the authority of the NVMSA legislation, it was not in line with the intent of Congress in developing this legislation. The Managers disapprove of this funding transfer and expect the full amount of funds that were transferred to be returned. Likewise, amendments have been included in NVMSA to prevent further funding transfers.

In a hearing held before the House Subcommittee on Livestock, Dairy, and Poultry on February 7, 2008, representatives of the Department were asked repeatedly if the Administration intended to propose legislation to amend NVMSA to speed its implementation. To date, no proposed legislation has been submitted, leading the Managers to conclude that the Department has sufficient funding and capability to implement and administer this law. The Managers have therefore included a deadline for the Department to propose regulations for NVMSA and expect the Department to meet this deadline without further delay.

(52) Expansion of Food and Agricultural Sciences Award

The Senate amendment amends section 1417(i) of NARETPA by expanding the current National Agricultural Teaching Award to include research and extension. (Section 7006)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 7108)

(53) Purposes and Findings Relating to Animal Health and Disease Research

The Senate amendment amends Section 1429 of NARETPA to add a purpose supporting research on the judicious use of antibiotics. (Section 7013)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(54) Animal Health and Disease Research Program

The Senate amendment amends section 1434(b) of NARETPA by clarifying that 1890 institutions are eligible for animal health and disease research grants under this section. (Section 7015)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 7120)

The Managers are concerned about arthropod-borne diseases that increasingly affect the U.S. livestock industry and wildlife. Consequently, the Managers expect the Agricultural Research Service to update the March 2005 feasibility study on the modernization of the arthropod-borne animal disease research laboratory.

(55) Farm Management Training and Public Farm Benchmarking Database

The Senate amendment adds a new section, 1468, to NARETPA that establishes a National Farm Management Center to improve farm management knowledge and the skills of agriculture producers through an education program. It also authorizes the creation of a database that will allow for the comparison of farm management data among producers. This section authorizes annual appropriations for the center and database through 2012. (Section 7037)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to modify the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) and to allow the Secretary to make competitive research and extension grants for the purposes of the program. (Section 7208)

The Managers recognize that the Center for Farm Financial Management at the University of Minnesota has a proven record of providing farm financial planning, marketing, and credit analysis and encourage the Department to continue to support its benchmarking efforts.

(56) Tropical and Subtropical Agricultural Research

The Senate amendment adds a new section, 1473E, to NARETPA that establishes a competitive program for research on tropical and subtropical agriculture. Annual appropriations for the program are authorized through 2012. (Section 7038)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds tropical and subtropical research as a high priority item in Section 7203 of this Act.

(57) Regional Centers of Excellence

The Senate amendment adds a new section, 1473F, to NARETPA that establishes regional centers of excellence, including a Poultry Sustainability Center of Excellence, funded by Federal, state, and industry funds to research a specific commodity. Annual appropriations are authorized for the centers through 2012. (Section 7039)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and gives priority to regional centers of excellence that leverage funds from Federal, State, and private sector sources to research a specific agricultural commodity or concern under Section 7203 of this Act.

(58) National Drought Mitigation Center

The Senate amendment adds a new section, 1473G, to NARETPA that authorizes the Secretary to enter into an agreement with the National Drought Mitigation Center. Annual appropriations are authorized for the Center through 2012. (Section 7040)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds the National Drought Mitigation Center as one of the research institutions and organizations that is eligible to receive funding through the policy research center authorization in section 7111 of this Act.

(59) Agricultural Development in the American-Pacific Region

The Senate amendment adds a new section, 1473H, to NARETPA that establishes consortia of institutions in the American-Pacific region to carry out integrated research, extension, and instruction programs in support of food and agricultural sciences. Annual appropriations are authorized for the consortia through 2012. (Section 7041)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds agricultural development in the American-Pacific region as a high priority item in Section 7203 of this Act.

(60) Farm and Ranch Stress Assistance Network

The Senate amendment adds a new section, 1473K, to NARETPA that establishes a farm and ranch stress assistance network to provide behavioral programs to participants in the U.S. agricultural sector. Annual appropriations are authorized for the network through 2012. (Section 7044)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to clarify the activities covered under this authorization and to make technical changes. (Section 7522)

(61) Rural Entrepreneurship and Enterprise Facilitation

The Senate amendment adds a new section, 1473L, to NARETPA to establish a program for the promotion of rural entrepreneurship, rural business development, and collaboration among rural entrepreneurs, local business communities, nonprofit organizations, and K-12 and higher education institutions. The program also provides rural entrepreneurs with technical assistance and access to capital, and it determines the best methods of entrepreneurial training. Annual appropriations for the program are authorized. (Section 7045)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(62) Seed Distribution

The Senate amendment adds a new section, 1473M, to NARETPA that establishes a program to distribute vegetable seeds to underserved communities free-of-charge. Annual appropriations are authorized for the program through 2012. (Section 7046)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to award grants on a competitive basis and to make technical changes. (Section 7523)

(63) Farm and Ranch Safety

The Senate amendment adds a new section, 1473N, to NARETPA that establishes a grant program to determine how to decrease the incidence of injury and death on farms and ranches. Annual appropriations for the program are authorized through 2012. (Section 7047)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds farm and ranch safety as a high priority item in section 7203 of this Act.

(64) Women and Minorities in STEM fields

The Senate amendment adds a new section, 1473O, to NARETPA that establishes a grant program to increase participation by women and underrepresented minorities from rural areas in science, technology, engineering, and mathematics fields (STEM fields). Annual appropriations for the program are authorized through 2012. (Section 7048)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds women and minorities in STEM fields as a high priority item in section 7203 of this Act.

(65) Natural Products Research Program

The Senate amendment adds a new section, 1473P, to NARETPA that establishes a research program for the discovery, development, and commercialization of pharmaceuticals and agrichemicals from natural products, including those from plant,

marine, and microbial sources. Annual appropriations are authorized for the program. (Section 7049)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 7525)

(66) International Anti-hunger and Nutrition Program

The Senate amendment adds a new section, 1473Q, to NARETPA that authorizes the Secretary to support nonprofit organizations that focus on promoting research concerning anti-hunger and improved nutrition efforts internationally and increased quantity, quality, and availability of food. (Section 7050)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision and adds the purposes of the Senate amendment to section 7130 of this Act.

(67) Consortium for Agricultural and Rural Transportation Research and Education

The Senate amendment adds a new section, 1473R, to NARETPA that establishes a research program focusing on critical rural and agricultural transportation and logistics issues facing agricultural producers and other rural businesses. Annual appropriations of \$19,000,000 are authorized for each fiscal year through 2012. (Section 7051)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to give priority to institutions that apply as a group and to make technical changes. (Section 7529)

(68) Regional Centers of Excellence in Food Systems Veterinary Medicine

The Senate amendment adds a new section, 1473S, to NARETPA that establishes a grant program for veterinary schools to support centers of emphasis in food systems veterinary medicine. Annual appropriations for the centers are authorized through 2012. (Section 7052)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision, adds food systems veterinary medicine as a high priority item in Section 7203 of this Act, and captures the purposes of the Senate amendment in the regional centers of excellence provision under section 7203 of this Act.

(69) National Genetics Resources Program

The House bill extends section 1635(b) of the FACT Act through 2012. (Section 7301)

The Senate amendment extends section 1635(b) of the FACT Act through 2012 and adds research on plant and animal breeding to the purposes and functions of this program as listed in section 1632 of the FACT Act. (Section 7101)

The Conference substitute adopts the House provision. (Section 7201)

(70) National Agricultural Weather Information System

The House bill extends section 1641(c) of the FACT Act through 2012. (Section 7302)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7202)

The Managers recognize the importance of creating a southern mesonetwork of weather stations to support applied research in solar and wind energy production. The Managers are aware of the capabilities and experience of the Center for Earth and Environmental Studies at Texas A&M International University in this area and believe this institution could prove to be a valuable resource in the Rio Grande Valley.

(71) Partnerships

The House bill amends section 1672(d) of the FACT Act by requiring that grant proposals received must be scientifically meritorious and involve cooperation of multiple entities in order to receive priority consideration under the High Priority Research and Extension Initiative. (Section 7303)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7203)

(72) Aflatoxin Research and Extension

The House bill amends section 1672(e)(3) of the FACT Act by changing the existing grant description contained in current law to improve and commercialize aflatoxin control in corn and other crops. (Section 7304)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision. (Section 7203)

(73) High Priority Research and Extension Areas

The House bill amends section 1672 of the FACT Act by adding the following to the High Priority Research and Extension Area Initiatives: farmed and wild cervid disease and genetic research; air emissions from livestock operations; swine genome project; cattle fever tick program; colony collapse disorder program; synthetic gypsum from power plants research; cranberry research program; sorghum research initiative; and a bean health research program. (Section 7305)

The Senate amendment amends section 1672 of the FACT Act by adding the following to the High Priority Research and Extension Area Initiatives: Colony Collapse Disorder and Pollinator Research Program; Marine Shrimp Farming Program; Cranberry Research Program; Turfgrass Research Initiative; Pesticide Safety Research Initiative; Swine Genome Project; High Plains Aquifer Region; Cellulosic Feedstock Transportation and Delivery Initiative; Deer Initiative; Pasture-Based Beef Systems; Sustainable Agricultural Production for the Environment; Biomass-Derived Energy Resources;

Brucellosis Control and Eradication; and Bighorn and Domestic Sheep Disease Mechanisms. (Section 7102)

The Conference substitute adopts the Senate provision with an amendment to add the following to the list of high-priority research and extension initiatives: Air Emissions from Livestock Operations; Swine Genome Project; Cattle Fever Tick Program; Synthetic Gypsum; Cranberry Research Program; Sorghum Research Initiative; Marine Shrimp Farming Program; Turfgrass Research Initiative; Agricultural Worker Safety Research Initiative; High Plains Aquifer Region; Deer Initiative; Pasture-Based Beef Systems Research Initiative; Agricultural Practices Relating to Climate Change; Brucellosis Control and Eradication; Bighorn and Domestic Sheep Disease Mechanisms; Agricultural Development in the American-Pacific Region; Tropical and Subtropical Agricultural Research; Viral Hemorrhagic Septicemia; Farm and Ranch Safety; Women and Minorities in STEM Fields; Alfalfa and Forage Research Program; Food Systems Veterinary Medicine; Biochar Research.

The Conference substitute also strikes the following from section 1672 of the FACT Act: Brown citrus aphid and citrus tristeza virus research and extension; Mesquite research and extension; Red meat safety research and extension; Grain sorghum ergot research and extension; Low-bush blueberry research and extension; Wild pampas grass control, management, and eradication research and extension; Sheep scrapie research and extension; Forestry research and extension; Wind erosion research and extension; Crop loss research and extension; Harvesting productivity for fruits and vegetables; Agricultural marketing; Beef cattle genetics; Dairy pipeline cleaner; Development of publicly held plants and animal varieties; and Specialty crop research. (Section 7204)

The Managers encourage the Secretary to support collaborative research focusing on the development of viable strategies for the prevention, diagnosis and treatment of infectious, parasitic, and toxic diseases of farmed deer and the mapping of the deer genome. This initiative may be carried out by a consortium that can include land-grant universities and veterinary schools with appropriate facilities and experience in husbandry and care of captive cervidae. The consortium may carry out research dedicated to developing vaccines for epizootic hemorrhagic disease and blue tongue disease in farmed deer and may work to map the deer genome with emphasis on the identification of genes that confer resistance or susceptibility to disease relevant to the production of farmed deer.

The Managers recognize the unique needs of the Appalachian region for the Pasture-Based Beef Systems Initiative.

The Managers intend that the term “Caribbean and Pacific basins” refers to the States of Hawaii and Florida, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

The Managers intend that the term “American-Pacific region” refers to the States of Hawaii and Alaska, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(74) High Priority Research and Extension Initiative

The House bill extends Section 1672(h) of the FACT Act through 2012. (Section 7306)

The Senate amendment extends section 1672(h) of the FACT Act through 2012 and authorizes an annual appropriation of \$20,000,000 for the Colony Collapse Disorder and Pollinator Research Program. (Section 7102)

The Conference substitute adopts the House provision. (Section 7204)

(75) Nutrient Management Research and Extension Initiative

The House bill amends section 1672A of the FACT Act by giving a priority to grant proposals that address unique regional concerns as eligible for priority treatment. The House bill also adds dairy cattle waste as a type of waste to be studied to develop new methods of managing air and water quality. The authorization of appropriations is extended through 2012. (Section 7307)

The Senate amendment: establishes a consortium of land grant colleges in the northeast region to perform research on dairy nutrient management and energy production (Section 9023); establishes a Southwest regional dairy, environment, and private land program for the research, development, and implementation of solutions for issues faced by the dairy industry (Section 11092); and extends section 1672A of the FACT Act through 2012. (Section 7103)

The Conference substitute adopts the House provision with an amendment to include the production of renewable energy from animal waste as an eligible activity to receive grants under this section. (Section 7205)

The Managers recognize that different regions of the country have varying needs for both energy development and nutrient management, and that cooperative efforts by institutions and States will leverage available resources to address problems and identify solutions. The Managers therefore encourage the development of regional consortia in which partners would work together to accomplish the goals of developing viable nutrient management systems, energy products from manure, and to assess these systems for cost, performance, and function among dairy, poultry, and swine operations.

(76) Agricultural Telecommunications Program

The House bill (section 7308) and the Senate amendment (section 7105) extend section 1673(h) of the FACT Act through 2012.

The Conference substitute adopts the House provision with an amendment to repeal section 1673 of the FACT Act. (Section 7209)

(77) Assistive Technology Program for Farmers with Disabilities

The House bill (section 7309) and the Senate amendment (section 7106) extend section 1680(c)(1) of the FACT Act through 2012.

The Conference substitute adopts the Senate provision. (Section 7210)

(78) Organic Research

The House bill amends section 1672B of the FACT Act by expanding the Organic Agriculture Research and Extension Initiative to examine optimal conservation and environmental outcomes for organically produced agricultural products and to develop new and improved seed varieties that are particularly suited for organic agriculture. This section authorizes \$25,000,000 in mandatory funding for each of fiscal years 2008 through 2012. Appropriations of \$25,000,000 are authorized for each of fiscal years 2009 through 2012. The Director of NARPO is to coordinate this program to avoid duplication. (Section 7310)

The Senate amendment amends Section 1672B of the FACT Act by authorizing mandatory funds of \$16,000,000 per year for fiscal years 2008 through 2012 for the Organic Agriculture Research and Extension Initiative. (Section 7104)

The Conference substitute adopts the House provision with an amendment to provide the initiative with a total of \$78,000,000 in mandatory funds for fiscal year 2009 through fiscal year 2012. (Section 7206)

Organic farming has the potential to capture atmospheric carbon and store it in the soil in the form of soil organic matter. The Managers encourage continued support of the research at the Rodale Institute regarding this research as it relates to certified organic standards.

(79) National Rural Information Center Clearinghouse

The House bill (section 7311) and the Senate amendment (section 7107) extend section 2381(e) of the FACT Act through 2012.

The Conference substitute adopts the House provision. (Section 7212)

(80) New Era Rural Technology Program

The House bill establishes a grant program for community colleges to develop an agriculture-based renewable energy and timber industry workforce. Annual appropriations are authorized for the program through 2012. (Section 7312)

The Senate amendment adds a new section, 1473J, to NARETPA to establish a grant program for community colleges to develop an agriculture-based renewable energy and timber industry workforce and provides the definition of rural community college. Annual appropriations are authorized for the program through 2012. (Section 7043)

The Conference substitute adopts the House provision with an amendment to make technical changes and to add a new section, 1473E, to NARETPA. (Section 7137)

The Managers recognize the importance of developing a workforce to support the fields of bioenergy, agriculture-based renewable energy resources, and pulp and paper manufacturing. The Managers recognize that Alabama Southern Community College, Northeast Iowa Community College, Eastern Iowa Community College District, Hawkeye Community College, Neosho County Community College, Kennebec Valley Community College, Itasca Community College, York Technical College, Midstate Technical College, Jones County Junior College, Minnesota West Technical and Community College, Orangeburg-Calhoun Technical College, Horry-Georgetown Technical College, and Central Carolina Technical College are among the rural

community colleges that have a proven record and the ability to develop and implement programs to supply certified technicians. The Managers encourage the Secretary to work with these community colleges to establish the New Era Rural Technology Program.

(81) Partnerships for High-Value Agricultural Product Quality Research

The House bill (section 7401) and the Senate amendment (section 7202) extend section 402(g) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) through 2012.

The Conference substitute adopts the Senate provision with an amendment to repeal section 402 of AREERA. (Section 7302)

(82) Precision Agriculture

The House bill (section 7402) and the Senate amendment (section 7203) extend section 403(i)(1) of AREERA through 2012.

The Conference substitute adopts the House provision with an amendment to repeal section 403 of AREERA. (Section 7303)

(83) Biobased Products

The House bill (section 7403) and the Senate amendment (section 7204) extend section 404(e)(2) of AREERA through 2012.

The Conference substitute adopts the House provision. (Section 7304)

(84) Thomas Jefferson Initiative for Crop Diversification

The House bill (section 7404) and the Senate amendment (section 7205) extend section 405(h) of AREERA through 2012.

The Conference substitute adopts the Senate provision with an amendment to repeal section 405 of AREERA. (Section 7305)

(85) Integrated Research, Education, and Extension Competitive Grants Program

The House bill (section 7405) and the Senate amendment (section 7206) extend section 406(f) of AREERA through 2012.

The Conference substitute adopts the Senate provision. (Section 7306)

(86) Fusarium Graminearum Grants

The House bill amends section 408 of AREERA to provide a technical correction and extends the authorization of appropriations through 2012. (Section 7406)

The Senate amendment extends section 408(e) of AREERA through 2012. (Section 7207)

The Conference substitute adopts the House provision. (Section 7307)

(87) Bovine Johne's Disease Control Program

The House bill (section 7407) and the Senate amendment (section 7208) extend section 409(b) of AREERA through 2012.

The Conference substitute adopts the Senate provision. (Section 7308)

(88) Grants for Youth Organizations

The House bill amends section 410 of AREERA to provide additional flexibility in content delivery and management of grant funds to recipient organizations under this section. The authorization of appropriations is extended through 2012. (Section 7408)

The Senate amendment extends section 410(c) of AREERA through 2012. (Section 7209)

The Conference substitute adopts the House provision. (Section 7309)

(89) Agricultural Research and Development for Developing Countries

The House bill (section 7409) and the Senate amendment (section 7210) extend section 411(c) of AREERA through 2012. (Section 7409)

The Conference substitute adopts the House provision. (Section 7310)

(90) Agricultural Bioenergy and Biobased Products Research Initiative

The House bill adds a new section, 412, to AREERA that establishes a bioenergy and biobased products research initiative to enhance the production, sustainability, and conversion of biomass to renewable fuels and related products. The research initiative will be supported by a bioenergy and biobased product laboratory network that will focus research on improving biomass production and sustainability and improving biomass conversion in biorefineries. The Director of NARPO, established under section 7410 of the House bill, will coordinate projects and activities under the Biomass Research and Development Act of 2000 to coordinate and maximize the strengths of the Department and the Department of Energy. The Secretary is authorized to carry out research and award grants on a competitive basis. Appropriations are authorized at \$50,000,000 for each of fiscal years 2008 through 2012. The Director of NARPO is to coordinate this program to avoid duplication of projects carried out under the Biomass Research and Development Act. (Section 7410)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment to incorporate the purposes of sections 9010 and 9020 of the House bill, and sections 9010, 9011, 9022, and 9025 of the Senate amendment.

The Conference substitute, titled the "Agricultural Bioenergy Feedstock and Energy Efficiency Research and Extension Initiative," establishes a program to award competitive grants for projects with a focus on supporting on-farm biomass crop research and the dissemination of results to enhance the production of biomass energy crops and the integration of such production with the production of bioenergy. The Conference

substitute directs the Secretary to establish a best-practices database on the production of various biomass crops and on the harvesting, transport, and storage of biomass crops.

The Conference substitute authorizes competitive grants for on-farm energy efficiency research and extension projects aimed at improving the energy efficiency of agricultural operations. (Section 7207)

The Managers encourage the Secretary to consider the approach of the New Century Farm at Iowa State University as a model for integrated research in the areas of biomass crop research and the production of bioenergy and to use its established capabilities.

The Managers encourage the Secretary to consider the Future Farmsteads program at the University of Georgia as a model for on-farm energy efficiency research and to use its established capabilities.

Additionally, the Managers encourage the Secretary to use the capabilities of the Colorado Renewable Energy Collaboratory in carrying out this section.

The Managers recognize the significant work Arkansas State University is conducting in the area of plant cell wall structure and function and encourages the Secretary to continue to recognize the value of plant-produced, biotechnology-derived, enzymatic-developed products.

The Managers are aware of the work being done at the Pennsylvania State University on all aspects of biofuels development from plant transformation to production, harvest, and storage to fuel formulation and engine testing.

(91) Specialty Crop Research Initiative

The House bill adds a new section, 413, to AREERA that establishes the Specialty Crop Research Initiative to develop and disseminate science-based tools to address the needs of specific crops and their regions, including work in plant breeding and genetics, safety, quality, and yield; efforts to identify and address threats posed by invasive species; marketing; pollination; and efforts to improve production. The Secretary is authorized to award competitive grants through this program. Appropriations are authorized at \$100,000,000 for each of fiscal years 2008 through 2012. Additionally, \$215,000,000 in mandatory funds is to be provided in fiscal year 2008 to remain available until expended. The Director of NARPO shall coordinate this program to avoid duplication. (Section 7411)

The Senate amendment adds a new section, 412, to AREERA that establishes a Specialty Crop Research Initiative. This section is similar to the House provision and has additional language to include in the purposes of the program the optimization of organic specialty crop production and research on methods to prevent, control, and respond to pathogen contamination of specialty crops, including fresh-cut produce. Mandatory funding is provided at \$16,000,000 per year for fiscal years 2008 through 2012 for the initiative. (Section 7211)

The Conference substitute adopts the House provision with an amendment that adds a new section, 412, to AREERA. It expands the initiative to a research and extension initiative; incorporates the prevention, detection, monitoring, control, and response to food safety hazards in the production and processing of specialty crops, including fresh products; allocates 10 percent of the funds obligated through this

initiative to each of the research and extension activities described in this section; and provides \$230,000,000 in mandatory funds for fiscal years 2008 through 2012. (Section 7311)

The Managers intend that most activities funded by the initiative would have grant terms of short duration. However, the Managers are aware that there are areas of research where longer term grants are needed, such as research related to tree fruits. The Managers expect the Secretary to use 10-year grant terms only when it is critical for long-term systems research.

The Managers recognize the critical importance of research directed at food safety hazards in the production and processing of specialty crops including fresh fruits and vegetables. The Managers encourage the Secretary to select projects for funding in this area that focus on applied research and technology transfer.

(92) Office of Pest Management Policy

The House bill extends section 614(f) of AREERA through 2012. (Section 7412)

The Senate amendment amends section 614 of AREERA by placing the Office of Pest Management Policy within the Office of the Chief Economist and extending the authorization of appropriations through 2012. (Section 7212)

The Conference substitute adopts the House provision. (Section 7313)

(93) Food Animal Residue Avoidance Database Program

The Senate amendment amends section 604 of AREERA by authorizing annual appropriations of \$2,500,000 for the Food Animal Residue Avoidance Database program. (Section 7213)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that clarifies that the authorized funds are in addition to other funds available as specified in section 604(c) of AREERA. (Section 7312)

(94) Critical Agricultural Materials Act

The House bill (section 7501) and the Senate amendment (section 7301) extend section 16(a) of the Critical Agricultural Materials Act through 2012.

The Conference substitute adopts the Senate provision. (Section 7401)

(95) Equity in Educational Land-Grant Status Act of 1994

The House bill extends sections 533(b), 535, and 536(c) of the Equity in Educational Land-Grant Status Act of 1994 (EELGSA) through 2012. (Section 7502)

The Senate amendment extends sections 533(b), 535, and 536(c) of EELGSA through 2012 and amends section 532 of the EELGSA to add Ilisagvik College in Alaska to the list of land-grant tribal colleges. (Section 7302)

The Conference substitute adopts the Senate provision with an amendment to redistribute endowment funds that would be paid to a 1994 Institution among other 1994

Institutions if that 1994 Institution declines to accept funds or fails to meet existing accreditation requirements. (Section 7402)

(96) Agricultural Experiment Station Research Facilities Act

The House bill (section 7503) and the Senate amendment (section 7305) extend section 6(a) of the Research Facilities Act through 2012.

The Conference substitute adopts the House provision. (Section 7405)

(97) National Agricultural Research, Extension and Teaching Policy Act Amendments of 1985

The House bill (section 7306) and the Senate amendment (section 7306) extend section 1431 of the NARETPA Amendments of 1985 through 2012.

The Conference substitute adopts the Senate provision. (Section 7416)

(98) Competitive, Special and Facilities Research Grant Act (National Research Initiative)

The House bill amends section 2 of the Competitive, Special, and Facilities Research Grant Act (CSFRGA) to extend the authorization of appropriations through 2012 and to repeal the authority to limit allowable overhead costs. (Section 7505)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision but reauthorizes section 2 of the CSFRGA in section 7406 of this Act.

(99) Agricultural Risk Protection Act of 2000 (Carbon Cycle Research)

The House bill extends the section 221 of the Agricultural Risk Protection Act of 2000 (ARPA) through 2012. (Section 7506)

The Senate amendment extends the section 221 of ARPA through 2012 and transfers authority for this program from that Act to the Farm and Energy Security Act of 2007. (Section 7315)

The Conference substitute adopts the House provision. (Section 7407)

(100) Renewable Resources Extension Act of 1978

The House bill (section 7507) and the Senate amendment (section 8201) extend section 6 of the Renewable Resources Extension Act of 1978 (RREA) and section 8 of RREA through 2012. (Section 7507)

The Conference substitute adopts the House provision. (Section 7413)

The Managers are aware of the U.S. Forest Service's (USFS) work on the Fire Research and Management Exchange System, an Internet-based, centralized national portal for access to and exchange of science-based data, analysis tools, training materials, and other information related to interagency wildland fire management. The Managers recognize that the system can make a major contribution to science-based understanding

and response to wildland fires, which continue to threaten many areas of our nation. The Managers expect the USFS to continue to work with its partners to develop a plan for nationwide implementation by 2011.

(101) National Aquaculture Act of 1980

The House bill (section 7508) and the Senate amendment (section 7311) extend section 10 of the National Aquaculture Act of 1980 (16 U.S.C. 2809) through 2012. (Section 7508)

The Conference substitute adopts the Senate provision. (Section 7414)

(102) Construction of a Chinese Garden at the National Arboretum

The House bill amends the Act of March 4, 1927, (20 U.S.C.191 et seq.) by authorizing the construction of a Chinese garden at the National Arboretum. (Section 7509)

The Senate amendment amends the Act of March 4, 1927, (20 U.S.C.191 et seq.) by authorizing the construction of a Chinese garden at the National Arboretum, prohibiting federal funds from being used for the construction of the Chinese Garden, and requiring an annual report to Congress on the budget and expenditures of the National Arboretum. (Section 7312)

The Conference substitute adopts the House provision. (Section 7415)

(103) Public Education Regarding Use of Biotechnology in Producing Food for Human Consumption

The House bill extends section 10802 of the Farm Security and Rural Investment Act of 2002 (FSRIA) through 2012. (Section 7510)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision and repeals section 10802 of FSRIA. (Section 7411)

(104) Fresh Cut Produce Safety Grants

The House bill authorizes the Secretary to award competitive research and extension grants to improve and enhance the safety of fresh cut produce. Universities, colleges, and other entities that have relationships with producers of fresh cut produce are eligible. Grant recipients must provide an equal amount of matching funds or in-kind support from non-federal sources. The Director of NARPO is to coordinate this program to avoid duplication. Mandatory funding of \$25,000,000 is provided for each of fiscal years 2008 through 2012. Additionally, an appropriation for necessary funds is authorized from fiscal year 2008 through fiscal year 2012. (Section 7511)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision and incorporates the purposes and priorities of this program and funding into section 7311 of this Act.

(105) UDC/EFNEP Eligibility

The House bill (section 7512) and the Senate amendment (section 7313) amend Section 208 of the District of Columbia Public Postsecondary Education Reorganization Act (Public Law 93–471; 88 Stat. 1428) to make the UDC eligible for the Expanded Food and Nutrition Education Program.

The Conference substitute adopts the Senate provision. (Section 7417)

(106) Hatch Act of 1887

The House bill amends Section 3(d)(4) of the Hatch Act of 1887 by requiring a 50 percent match of funds from the District of Columbia in order for UDC to receive formula funds for agricultural research. The Secretary is allowed to waive the matching requirement if necessary. (Section 7513)

The Senate amendment amends Section 3(d)(4) of the Hatch Act of 1887 by requiring a 50 percent match of funds from the District of Columbia in order for UDC to receive formula funds for agricultural research. The Secretary is allowed to waive the matching requirement if necessary. This section also amends Section 6 of the Hatch Act of 1887 by eliminating Penalty Mail Authorities for State agricultural experiment stations and the extension service and making conforming amendments to NARETPA and to 39 U.S.C. 3202(a). (Section 7304)

The Conference substitute adopts the Senate provision. (Section 7404)

(107) Smith-Lever Act

The Senate amendment amends Section 3 of the Act of May 8, 1914 (7 U.S.C. 343) to allow 1890 institutions to participate in the Children, Youth, and Families Education and Research Network Program. This section also amends section 5 of the Act of May 8, 1914 (7 U.S.C. 345) to eliminate the Governor's Report requirement for the extension service. (Section 7304)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to change programs authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) into programs that award competitive grants and to add a conforming amendment to section 1444(a)(2) of NARETPA. (Section 7403)

(108) Education Grants to Alaska Native Serving Institutions and Native Hawaiian Serving Institutions

The Senate amendment amends section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 by permitting consortia of Alaska Native and Native Hawaiian Serving Institutions to designate fiscal agents and allocate funds for their members. (Section 7308)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to add this provision as a new section, 1419B, to NARETPA. (Section 7112)

(109) McIntire-Stennis Cooperative Forestry Act

The Senate amendment amends Section 2 of the McIntire-Stennis Cooperative Forestry Act (16 U.S.C. 582a-1) by authorizing the participation of 1890 institutions to participate in the McIntire-Stennis cooperative forestry program. (Section 7310)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 7412)

(110) Exchange or Sale Authority

The Senate amendment adds Section 307 to Title III of the Federal Crop Insurance and Department of Agriculture Reorganization Act of 1994 by authorizing USDA to exchange, sell, or otherwise dispose of any qualified items of personal property and to retain and apply the sale or other proceeds to acquire any qualified items of personal property or to offset costs related to the maintenance, care, or feeding of any qualified items of personal property. (Section 7314)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 7408)

(111) Enhanced Use Lease Authority Pilot Program

The Senate amendment adds a new section, 308, to Title III of the Federal Crop Insurance and the Department of Agriculture Reorganization Act of 1994 by establishing a pilot program that allows non-Federal entities to use and invest in capital improvements at the Beltsville Agricultural Research Center and the National Agricultural Library by leasing non-excess property of the Center or the Library. (Section 7316)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to limit the terms of leases established under this authority to 30 years, sunset this authority five years after the date of enactment of this Act, and make technical changes. (Section 7409)

(112) Research and Education Grants for the Study of Antibiotic-Resistant Bacteria in Livestock

The Senate amendment establishes a competitive grant program for research and education on antibiotic-resistant bacteria in livestock. (Section 7317)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to modify the purposes of this research program. (Section 7521)

The Managers are aware that resistance to antibiotics is a serious and growing public health concern in the United States and around the world. The Managers intend that section 7521 of this Act provide the necessary research and information for livestock producers as well as the general public to minimize the use of such drugs while still ensuring healthy animals and people. The Managers encourage the Secretary to fund

research that can minimize the development and spread of antibiotic-resistant bacteria and to make this a priority research area within relevant competitive research programs, including national programs related to animal production and water quality.

(113) Merit Review of Extension and Educational Grants

The House bill amends subsection (a)(2)(A) of section 103 of AREERA by inserting NIFA as the administering body for which merit review procedures must be established. (Section 7601)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(114) Review of Plan of Work Requirements

The House bill (section 7602) and the Senate amendment (section 7503) require a review of the Plan of Work requirements under NARETPA, the Hatch Act, and the Smith-Lever Act. They also require a report to Congress identifying measures to streamline the plan of work requirements

The Conference substitute adopts the House provision with an amendment to remove the reporting requirement. (Section 7505)

(115) Multistate and Integration Funding

The House bill amends section 3 of the Hatch Act of 1887 and section 3 of the Smith-Lever Act by requiring that, of the federal formula funds States receive under these Acts, 25 percent must be spent on the integration of cooperative research and extension activities. (Section 7603)

The Senate amendment has no comparable provision.

The Conference substitute deletes the House provision.

(116) Expanded Food and Nutrition Education Program

The House bill amends section 1425 of NARETPA by changing the allocation of funds in excess of the amount appropriated in fiscal year 1981. Funds in the amount of \$100,000 are to be distributed to each land-grant college and university. The authorization of appropriations is increased to \$90,000,000 through 2014. (Section 7604)

The Senate amendment is the same as House provision with technical differences. (Section 7012)

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 7116)

(117) Grants to 1890 Schools to Expand Extension Capacity

The House bill (section 7605) and the Senate amendment (section 7005) amend section 1417(b)(4) of NARETPA to add extension as one of the purposes for which grants may be made through this program.

The Conference substitute adopts the House provision. (Section 7107)

(118) Borlaug International Agricultural Science and Technology Fellowship Program

The House bill establishes a fellowship program that provides scientific training to individuals from eligible countries that specialize in agricultural research, extension, and education. Necessary sums are authorized to be appropriated without fiscal year limitation. (Section 7606)

The Senate amendment adds a new section, 1473I, to NARETPA that authorizes annual appropriations for the Borlaug International Agricultural Science and Technology Fellowship Program. The fellowship program brings scientists from developing countries to U.S. land-grant institutions to learn about improving agricultural productivity. (Section 7042)

The Conference substitute adopts the Senate provision. (Section 7139)

(119) Cost Recovery

The House bill amends Section 1473A of NARETPA by raising the indirect cost cap for cost reimbursable agreements between the Secretary and State cooperative institutions or colleges and universities from 10 percent to 19 percent. (Section 7607)

The Senate amendment amends Section 1473A of NARETPA by raising the indirect cost cap for cost reimbursable agreements between the Secretary and State cooperative institutions or colleges and universities from 10 percent to 30 percent. (Section 7031)

The Conference substitute deletes both the House and Senate provisions.

(120) Organic Food and Agricultural Systems Funding

The House bill expresses a sense of Congress that a portion of the annual funding provided for ARS should support research specific to organic food and agricultural systems. (Section 7608)

The Senate amendment expresses a sense of the Senate that recognizes the need to increase funding at USDA for research specific to organic agriculture to keep pace with the expansion of the organic sector of U.S. agriculture. (Section 7505)

The Conference substitute deletes the House and Senate provisions.

(121) Demonstration Project Authority for Temporary Positions

The Senate amendment authorizes the demonstration project authority for temporary positions indefinitely. (Section 7502)

The House bill has no comparable provision.

The Conference substitute adopts the Senate provision. (Section 7528)

(122) Modifications to Information Technology Service

The Senate amendment prohibits the Secretary from implementing any modification that reduces the availability or provision of information technology service, or administrative management control of that service, including data or center service agency, functions, and personnel at the National Finance Center and the National Information Technology Center service locations until a notification is received by Congress from the Department. This section requires the Secretary to report to Congress and the Government Accountability Office on specified administrative modifications made to the National Finance Center and National Technology Center service locations. (Section 7506)

The House bill has no comparable provision.

The Conference substitute deletes the Senate provision.

(123) Studies and Reports by the Department of Agriculture, the Department of Health and Human Services, and the National Academy of Sciences on Food Products from Cloned Animals.

The Senate amendment requires studies on the safety and the impact on trade of allowing food products from cloned animals and their offspring into the food supply. The Secretary of Health and Human Services (HHS) is prohibited from issuing the final draft risk assessment on food from cloned animals and their offspring. The Secretary of HHS is also prohibited from lifting the voluntary moratorium on allowing food from cloned animals and their offspring from entering the food supply until after the studies are completed. (Section 7507)

The House bill has no comparable provision.

The Conference substitute deletes the Senate amendment.

(124) Animal Bioscience Facility in Bozeman, Montana

The Senate amendment authorizes appropriations of \$16,000,000 for the construction of an animal bioscience facility in Bozeman, Montana. (Section 7508)

The House bill has no comparable provision.

The Conference substitute deletes the Senate amendment.

TITLE VIII—FORESTRY

(1) National priorities for private forest conservation

The House bill amends section 2 of the Cooperative Forestry Assistance Act of 1978 (CFAA) by requiring the Secretary to focus on a set of three national private forest conservation priorities when allocating appropriated CFAA funds: (1) conserving and managing working forest landscapes; (2) protecting forests from threats, including wildfire, hurricane, tornado, windstorm, snow or ice storm, flooding, drought, invasive species, or insect or disease outbreak, and restoring appropriate forest types in response to such threat [included because paragraphs (1) & (3) contain full list of items]; and (3) enhancing public benefits from private forests, including air and water quality, forest

products, forestry-related jobs, production of renewable energy, wildlife and wildlife habitat, and recreation. The House bill requires the Secretary to submit a report to Congress describing how funding has been used under the CFAA, and through other programs administered by the Secretary, to address the three national priorities. (Section 8001)

The Senate amendment amends section 2 of the CFAA by adding a new subsection which requires the Secretary to focus on a set of three national private forest conservation priorities when allocating appropriated CFAA funds. The national priorities are: (1) conserving and managing working forest landscapes for multiple values and uses; (2) protecting forests from threats to forest and forest health including unnaturally large wildfires, hurricanes, tornadoes, windstorms, snow and ice storms, flooding, drought, invasive species, insect or disease outbreak, development, and restoring appropriate forest structures and ecological processes in response to such threats; and (3) enhancing public benefits from private forests including air and water quality, forest products, forest-related jobs, production of renewable energy, wildlife, enhancing biodiversity, the establishment of wildlife corridors and habitat, and recreation. The Senate amendment amends section 2 of the CFAA by adding a new subsection that requires the Secretary to submit a report to Congress describing how CFAA funds were used to address the three national priorities and the outcomes achieved in meeting the national priorities. (Section 8001)

The Conference substitute adopts the House provision with minor changes. (Section 8001)

(2) Long-term, state-wide assessments and strategies for forest resources

The House bill amends section 2 of the CFAA by adding a new section that requires, for a State to be eligible to receive CFAA funds, that the State forester—or equivalent State official—develop and submit a State-wide assessment of forest resource conditions and a State-wide forest resource strategy. The State-wide assessment of forest conditions is to encompass a number of factors, including: the conditions and trends of forest resources in the State; the threats to forest lands and resources in the State, consistent with the three national priorities; any priority areas or regions in a State that are of priority; and any areas that are of priority to more than just that State. The State-wide forest resource strategy is to encompass a number of factors, including: strategies for addressing threats to forest resources in the State outlined in the State-wide assessment of forest conditions; and a description of the resources available to the State forester—or equivalent State official—from all sources to implement the State-wide forest resource strategy. The State forester—or equivalent State official—is required to submit the State-wide forest resource strategy on an annual basis. The State-wide assessment of forest resource conditions is to be updated as the Secretary or State forester—or equivalent State official—determines to be necessary. The State forester—or equivalent State official—is required in developing the State wide assessment and annual strategy, to coordinate with the State Forest Stewardship Committee established for the State, the State wildlife agency, and the State Technical Committee. The Secretary is prohibited from using more than \$10 million in a fiscal year to implement this section. (Section 8002)

The Senate amendment amends the CFAA by inserting after section 19 a new section entitled “Comprehensive Statewide Forest Planning” under which requires Secretary to provide financial and technical assistance to States for use in the development and implementation of statewide forest resource assessments and plans. For a State to be eligible for CFAA funding, the State forester or equivalent State official must develop a statewide forest resource assessment and plan. At a minimum, the statewide forest resource assessment and plan should identify each critical forest resource in the State consistent with national priorities; incorporate any current forest management plan in the State; address the needs of the region without regard to State borders; provide a comprehensive statewide plan for managing forestland that achieves the three national priorities; and include a multiyear forest management strategy for forest management. The statewide forest resource and plan should include a multiyear integrated forest management strategy. The State Forester—or equivalent State official—is required to coordinate with the State Forest Stewardship Coordination Committee, State wildlife agencies, the State Technical Committee and other applicable Federal land management agencies in developing statewide assessments and plans. Subsection (b)(3) requires the Secretary to review the statewide assessments and plans established under this section. Subsection (d) authorizes \$10,000,000 to be appropriated to carryout this section. (Section 8004)

The Managers adopt the House provision in the Conference substitute with amendment. The amendment allows Secretary to require the long term State-wide assessment and strategy to be updated and resubmitted as the Secretary or State Forester or equivalent State official determines necessary. The Managers expect that the assessments and strategies will guide the annual allocation of federal resources available under the authorities of the CFAA, to focus such resources on national priorities. In developing and updating the State-wide assessments and strategies, applicable Federal land management agencies are added to the list of organizations with which the State forester or equivalent State official are expected to coordinate. Existing forest management plans of the State are to be incorporated when developing State-wide assessments and strategies. The Conference amendment authorities up to \$10,000,000 to provide States financial and technical assistance needed for the development of the assessments and strategies under this section. The Conference amendment requires the State forester— or equivalent State official—to submit an annual report to the Secretary demonstrating how federal resources under the CFAA were used to implement the state-wide strategy. (Section 8002)

The Managers intend that Multi-State areas that are a regional priority should reflect areas identified at both the national and state level through assessment and mapping efforts. The Managers recognize that there is a national assessment and mapping effort underway and encourage consideration be given to multi-state areas identified in this effort.

(3) Community forest and open space program

The Senate amendment amends the CFAA by adding a new section, 7A, entitled “Community Forest and Open Space Conservation Program.” The program provides Federal matching grants to help county or local governments, Indian tribes, or non-profit organizations acquire private forests that are threatened by conversion to non-forest uses

and are economically, environmentally and culturally important to communities. The terms “eligible entity,” “Indian tribe,” “local governmental entity,” “non-profit organization,” “program” and “Secretary” are defined. The Federal cost share of a grant provided under the program is to equal not more than 50-percent of the cost to acquire one or more parcels of land. Eligible entities are permitted to provide a non-Federal match in cash, donation, or in kind equal to the outstanding amount. An application process is established whereby an eligible entity is required submit to the State forester or equivalent official (or in the case of an eligible entity that is an Indian tribe an equivalent official of the Indian tribe) an application that includes a description of land to be acquired and a forest plan that includes a description of community benefits achieved from acquisition. Eligible entities must provide public access for recreational use consistent with the purposes of the program and are prohibited from converting the property to other uses. Eligible entities that sell or convert land acquired under this program to non-forest use must reimburse the Federal government in an amount equal to the greater of the sale price or current appraisal value of the land. Eligible entities that either sell or convert the land are prohibited from being eligible for additional grants under the program. The Secretary is authorized to allocate 10-percent of funds made available for the program to State foresters— or equivalent officials (or in the case of an eligible entity that is an Indian tribe an equivalent official of the Indian tribe)— for program administration and technical assistance. An appropriation of such sums as necessary is authorized to carryout the program. (Section 8002)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8003)

The Managers strongly encourage eligible entities acquiring forestland with resources under this program to manage the forestland as “working forests,” generating economic benefits and providing jobs and economic stability to communities. The Managers encourage the Secretary to provide a level of oversight over these acquired forests, to see that these goals are met and maintained. The authorities in this program allow non-profit organizations to use funds to acquire properties under this program. The Managers intend such authorities to be used only when a non-profit organization’s acquisition of forestland results in a clear benefit to the community, and where there is not a significant loss in the property-tax base for the community. Where a local government entity can perform the same functions as the non-profit, the Managers encourage the Secretary to work with the local government entity. Additionally, revenues generated by the non-profit in the management of forestland acquired under the program should be used for the direct benefit of the local community.

(4) Assistance to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau

The House bill amends section 13(d)(1) of the CFAA to specify that the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic are Palau are to be included in the terms “United States” or “States” for purposes of the CFAA. (Section 8003)

The Senate amendment is the same as the House bill. (Section 8005)

The Conference substitute adopts the House provision. (Section 8004)

(5) Changes to Forest Resource Coordinating Committee

The House bill amends section 19(a) of the CFAA by revising the Forest Resource Coordinating Committee (FRCC).

The House bill states the FRCC is to be composed of the following: the Chief of the Forest Service, the Chief of the Natural Resources Conservation Service, the Director of the Farm Service Agency; and the Administrator of the Cooperative State Research, Education, and Extension Service.

The House bill states the FRCC is to be composed of the following persons: at least three State foresters or equivalent State officials from geographically diverse regions of the United States; a representative of a State fish, a private nonindustrial forest landowner, a forest industry representative, a conservation organization representative, a land grant university or college representative, a representative of a State Technical Committees, and such other persons as the Secretary determines appropriate.

The House bill states the FRCC is to perform a number of duties, including: (1) providing direction to the United States Department of Agriculture (USDA) and enabling coordination with State agencies and the private sector to address the three national priorities; (2) clarifying individual agency responsibilities for each agency represented on the FRCC regarding the three national priorities; (3) providing advice on the allocation of funds, including competitive funds; and (4) assisting in developing a report on efforts to address the three national priorities.

The House bill requires the FRCC to meet twice a year to discuss the national priorities and issues regarding nonindustrial private forest land. (Section 8004)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with minor changes. (Section 8005)

(6) Changes to State Forest Stewardship Coordinating Committees

The House bill amends section 19(b)(1)(B)(ii) of the CFAA by specifying that a representative from a State Technical Committee is to be on the State Forest Stewardship Coordinating Committee (SFSCC). It also amends section 19(b)(2)(C) of the CFAA by mandating that the SFSCC is to make recommendations for the State-wide assessments and strategies. The House bill strikes section 19(b)(3) and 19(b)(4) of the CFAA. (Section 8005)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 8006)

(7) Forest legacy applications

The House bill maintains current law.

The Senate amendment amends section 19(b)(2)(D) of the CF AA by stating that applications submitted by Indian tribes do not have to pass through the State Coordinating Committee. (Section 8003)

The Conference substitute deletes the Senate provision.

(8) Competition in programs under Cooperative Forestry Assistance Act of 1978

The House bill authorizes the Secretary to competitively allocate a portion of CFAA funds to State foresters or equivalent State officials. The Secretary is required to consult with the FRCC when determining the allocation of funds. The Secretary is also required to give priority for funding to States in which the strategies listed in the State-wide assessments best promote the three national priorities. (Section 8006)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 8007)

(9) Cooperative forest innovation partnership projects

The House bill states the Secretary is authorized to competitively allocate not more than 5 percent of CFAA funds to support innovative national, regional, or local education, outreach, or technology projects that the Secretary determines would increase the ability of USDA to address the national priorities outlined in section 8001. State or local governments, Indian tribes, land-grant colleges or universities, or private entities, are authorized to compete for the funds. The House bill states the Secretary is prohibited from covering more than 50 percent of the total cost of a project. The Secretary is required, in calculating the total cost of a project and the contributions made with regard to the project, to include in-kind contributions. (Section 8007)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 8008)

(10) Healthy forest reserve program

The House bill amends section 508(2) of the Healthy Forests Restoration Act by extending the Healthy Forests Reserve Program to 2012, and providing \$10 million in mandatory funding for each of the fiscal years 2008 through 2012. (Section 8101)

The Senate amendment moves the Healthy Forest Reserve Program into the Food and Security Act of 1985. An authorization of such sums as necessary are authorized for fiscal years 2008 through 2012 to carry out the program. The 99-year easement option is eliminated and replaced with a permanent easement option. Indian tribes are encouraged to participate in the program by being allowed to enroll in 30-year contracts. The Senate amendment strikes section 502(e) of the Healthy Forest Restoration Act, which limits the amount of acreage that can be enrolled in the program to 2 million acres. (Section 2331)

The Managers agree to adopt the House provision in the Conference substitute, with amendment. The current 99 year easement option is replaced with a permanent easement option. Indian tribes are allowed to enter into 10-year cost-share agreements or 30 year contracts that are equivalent to the value of a 30 year easement. Of the funds expended in a fiscal year, not more that 40 percent of the funding can be used for cost-share agreements while not more than 60 percent can be used for easements. A repooling date of April 1 is put in place to address potential high demand for a particular enrollment method. The Managers provide \$9.75 million each of fiscal years 2009 through 2012, in mandatory funding for the Program. The Managers adopted the changes in the Senate amendment regarding Indian tribes, to ensure tribes can participate in the Program. The Managers intend that tribal land enrolled in the program should be land held in private ownership by a tribe or an individual tribal member. Tribal lands held in trust or reserved by the U.S. government or restricted fee lands should be not enrolled in the program,

regardless of ownership. (Section 8205)

(11) Emergency forest restoration program

The House bill amends title VI of the Agricultural Credit Act (ACA) by authorizing the Secretary to provide financial and technical assistance to owners of nonindustrial private forest lands who have suffered a loss due to a number of events, including wildfires, hurricanes, drought, and windstorms, to assist with the development and implementation of plans that: (1) provide for the restoration and the rehabilitation of the nonindustrial private forest land; restores the land and its related natural resources; (2) uses best management practices on the forest land; and (3) incorporates good stewardship and conservation practices on the land.

The House bill provides for a cost share of up to 75 percent, and limits the amount that an owner of nonindustrial forest lands may receive to \$50,000 per year. Nonindustrial private landowners are eligible under the House bill if the Secretary determines that their lands are under an eminent threat of loss or damage by insect or disease and immediate action would help them avoid loss or damage.

The House bill defines nonindustrial private forest land to mean rural lands, as determined by the Secretary that: (1) have existing tree cover or had tree cover within the preceding 10 years; and (2) are owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity so long as the individual, group, association, corporation, tribe or entity has definitive decision-making authority over the lands.

The House bill requires the Secretary of Agriculture to issue regulations to carry out the section within one year of enactment. (Section 8102)

The Senate amendment establishes a new emergency landscape restoration program to rehabilitate cropland, grasslands, and private nonindustrial forest lands adversely affected by natural catastrophic events such as fire, drought, flood, excessive wind, ice, or other natural events. Entities eligible for assistance are community-based associations and city, county or regional governments, including watershed councils and conservation districts. Individuals eligible for assistance include producers, ranchers, operators, private nonindustrial forest landowners, and landlords on working agricultural land.

The Senate amendment: provides a source of financial assistance for restoring and protecting natural resources and preventing further impairment of land and water, allows the Secretary to purchase floodplain easements, prioritizes applications that protect human health and safety, and provides technical assistance and cost-share payments up to 75 percent of the cost of remedial activities to rehabilitate watersheds.

The Senate amendment defines “remedial activities” to include debris removal, stream bank stabilization, establishment of cover, restoration of fences, construction of conservation structures, providing livestock water in drought situations, restoring nonindustrial private forestland. Discretionary funding is authorized.

The Senate amendment provides for the temporary administration of current emergency programs until final regulations are formulated. (Section 2398)

The Conference substitute adopts the House provision with amendment. The amendment clarifies that Secretary is authorized to make payments to owners of nonindustrial private forest land to carry out specific emergency measures on their land

following natural disasters. To receive assistance owners will be required to demonstrate that their land had tree cover prior to the natural disaster. The amendment includes a separate authorization of appropriations, at such sums as necessary.

The Managers include a definition of natural disasters, with an allowance for Secretarial discretion in determining if other resource-impacting events other than those specifically mentioned, constitute a natural disaster. The Managers intend the discretion to be used to help forest owners recover from events such as catastrophic insect or disease infestations, if the Secretary determines that such events are far outside normal ranges and did not result from a lack of forest management. Infestations can include outbreaks of non native forest pests including Emerald Ash Borer, Hemlock Woolly Adelgid, and Sudden Oak Death. (Section 8203)

The Managers recognize that the Forest Service has significant experience in responding to natural disasters including assessment of resource damage and responding to a wide range of incidents and emergencies. The Managers encourage the Secretary of Agriculture to utilize this expertise in implementing this section, where appropriate.

(12) Office of International Forestry

The House bill maintains current law, and extends the authorization of appropriation to 2012. (Section 8103)

The Senate amendment is the same as the House bill. (Section 8203)

The Conference substitute adopts the House provision. (Section 8202)

(13) Rural revitalization technologies

The House bill maintains current law, and extends the authorization through 2012. (Section 8014)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 8201)

(14) Renewable Resources Extension Act

The House bill extends authorization through fiscal year 2012 and makes provisions of the Renewable Resources Extension Act effective through September 30, 2012. (Section 7507)

The Senate amendment is the same as the House bill. (Section 8201)

The Conference substitute adopts the House provision. (Section 7413)

(15) Definitions

The Senate amendment provides definitions for “Indian”, “Indian Tribe” and “National Forestry System” that will be used under Subtitle B of this bill – Tribal-Forest Service Cooperative Relations. (Section 8101)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(16) Indian Tribes participation in the Forest Legacy Program

The Senate amendment amends section 7(a) of the CF AA by including Indian tribes as direct participants in the Forest Legacy Program. Section 7(l) of the CFAA is amended to allow Indian tribes to receive grants from the Secretary to carry out the Forest Legacy Program. The Secretary is prohibited from providing grant for any project on land held in trust by the United States. Additionally, land acquired using grant funds cannot be converted to land held in trust by the United States on behalf of any Indian tribe. (Section 8111)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(17) Indian Tribes assistance

The Senate amendment authorizes the Secretary to provide financial, technical, educational and related assistance to Indian tribes for consultation and coordination with the U.S. Forest Service on issues relating to: (1) access to Forest Service land by members of a tribe for traditional, religious and cultural purposes; (2) coordinated or cooperative management of resources shared by the tribe and the Forest Service; (3) the provision of expertise or knowledge; (4) projects and activities for conservation education and awareness with respect to forestland and grassland that is eligible Indian land; and (5) technical assistance for forest resources planning, management, and conservation on eligible Indian land. Indian tribes are only allowed to participate in one approved activity that receives assistance under this section or the Forest Stewardship Program under section 5 of the CFAA. The Secretary is required to promulgate regulations relating to assistance under this section within 180 days of enactment, including rules for determining the distribution of assistance. The Secretary is also required to coordinate with the Secretary of the Interior to ensure that activities authorized under this section do not conflict with Indian tribal programs at the Department of the Interior and achieve the goals established by affected Indian tribes. (Section 8112)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(18) Purposes of Cultural and Heritage Cooperative Authorities

The Senate amendment: permits the reburial of human remains and cultural items, including items repatriated under the Native American Graves Protection and Repatriation Act, on National Forest System land; prevents the unauthorized disclosure of information regarding burial sites; authorizes the Secretary to allow Indians and Indian tribes to access National Forest System land for traditional and cultural purposes; and authorizes the Secretary to protect the confidentiality of certain information that is culturally sensitive to Indian tribes. (Section 8121)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8101)

(19) Definitions

The Senate amendment provides definitions for “adjacent site,” “cultural items,” “human remains,” “lineal descendant,” “reburial site,” and “traditional and cultural purpose.” (Section 8122)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8102)

(20) Authorization for reburial of human remains and cultural items on National Forest System Land

The Senate amendment provides that the Secretary may allow the use of National Forest System land for reburial of human remains or cultural items in possession of the Indian tribe or lineal descendant that have been disinterred from National Forest System land or adjacent site. The Senate amendment allows the Secretary to recover or rebury human remains and cultural items on National Forest System land at Federal expense when done with the consent of the affected Indian tribe or lineal descendant. It also allows the Secretary to authorize such uses on reburial sites, or the area immediately surrounding the reburial sites, as the Secretary determines necessary for management of the National Forest System land. The Secretary is required to avoid adverse impacts to cultural items and human remains to the maximum extent practicable. (Section 8123)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with minor changes. (Section 8103)

(21) Temporary closure of National Forest System Land for traditional and cultural purposes

The Senate amendment requires the Secretary to ensure, to the maximum extent practicable, that Indian tribes have access to National Forest System land for traditional and cultural purposes. It provides that the Secretary may temporarily close from public access specifically identified National Forest System land to protect the privacy of tribal activities for traditional and cultural purposes on the smallest practicable area for a minimal period of time. (Section 8124)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8104)

(22) Forest products for traditional and cultural purposes

The Senate amendment allows the Secretary to provide Indian tribes with forest products from National Forest System land if the forest products are for traditional and cultural purposes and are not used for commercial purposes. (Section 8125)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8105)

(23) Disclosure

The Senate prohibits the Secretary from disclosing information under the Freedom of Information Act relating to: human or cultural items reburied on National Forest System land or a site used for traditional and cultural purposes by an Indian tribe; and resources, cultural items, uses or activities that have a traditional and cultural purpose and are provided to the Secretary by an Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out by the Forest Service. The Secretary is not required to disclose information concerning the identity, use or specific location of a site or resource used for traditional and cultural purposes by an Indian tribe; or certain cultural items. The Secretary may disclose information about the location of human remains or cultural items if the Secretary consults with an affected Indian tribe or lineal descendant before disclosure and determines that the disclosure is necessary to protect human remains or cultural items from harm, theft, or destruction and mitigates any adverse impacts that may result from disclosure. The Secretary may disclose information regarding human remains or cultural items if the Secretary determines that disclosing the information to the public would not create an unreasonable risk of harm, theft or destruction of the resource, site or object; and would be consistent with other applicable laws. (Section 8126)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with minor changes. (Section 8106)

(24) Severability and savings provisions

The Senate amendment provides that if any provision in Subtitle B of the amendment is deemed invalid it will not affect the remainder of the subtitle. It also provides a savings clause that covers trust responsibility, agreements between the Forest Service and Indian tribes, rights of an Indian tribe, and rights relating to National Forest System land or other public land. (Section 8127)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment. (Section 8107)

(25) Hispanic-Serving Institution Agricultural Land National Resources Leadership Program

The House bill authorizes the Secretary to establish an undergraduate scholarship program to assist Hispanic-serving institutions in the retention, recruitment, and training of Hispanics and other under-represented groups in forestry and related fields. An appropriation of such sums as necessary is authorized for fiscal years 2008 through 2012 to carry out the program. (Section 8201)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 8402)

(26) Green Mountain boundary adjustment

The Senate amendment authorizes modification of the boundary of the Green Mountain National Forest in Vermont to include 13 designated expansion units depicted

on forest maps Green Mountain Expansion Area Map I and Green Mountain Expansion Area Map II, which is on file with the Chief of the Forest Service. (Section 8203)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8301)

(27) Illegal logging

The Senate amendment amends section 2(f) of the Lacey Act Amendments of 1981 to change the definition of “plant.” Section 2(j) of the Lacey Act is amended to define the terms taken and taking. Section 3(a)(2)(B) of the Lacey Act is amended to make it illegal for any plant: to be taken, possessed, transported or sold in violation of any State or foreign law that protects plants or regulates the theft of plants; to be taken from a park or forest reserve, or other officially protected area; and to be taken from an officially designated area or without, or contrary to, required authorization. The Senate amendment also makes it illegal to take, possess, transport or sell plants without the payment of royalties, taxes, or stumpage fees or in violation of any limitation under any State or any foreign law. Section 3(a)(3) of the Lacey Act is amended to make it illegal, within the special maritime and territorial jurisdiction of the United States, for any plant to be taken, possessed, transported or sold in violation of any state or foreign law that regulates the theft of plants. The taking of plants from a park or forest reserve, or other officially protected area and the taking of plants from an officially designated area or without, or contrary to, required authorization are also made illegal. Additionally, the amendment makes it illegal to take, possess, transport or sell plants without the payment of royalties, taxes, or stumpage fees or in violation of any limitation under any State or any foreign law, governing the export or transshipment of plants.

A new subsection (f) is created in the Lacey Act to require a plant declaration to be filed upon importation of a plant. The plant declaration must include the scientific name of any plant, a description of the value, quantity (including the unit of measure) of the plant, and the name of the country from where the plant was taken. If a plant species or country of origin cannot be determined, the plant declaration is to include a list of possible plant species that could be found in the product or a list of possible countries from which the plant originated. An exclusion is provided for plants used exclusively as packing material unless the packing materials are the items being brought in. The Secretary is required to review the plant declaration. The Secretary is also required to review the exclusion for wood and paper packing and to limit the scope of the exclusion if the Secretary determines that such a limitation in scope is warranted. The Secretary is required to issue a report with analyses and recommendations on the affects of these new requirements.

Section 4 of the Lacey Act is amended by making conforming technical changes to the penalties and sanctions section of the Act. The forfeiture provisions in Section 5 of the Lacey Act are amended by adding a new subsection (d) which reaffirms, as has been the case since 2002, that civil forfeitures under this section shall be governed by chapter 46 of title 18, United States Code. (Section 8204)

The House bill contains no comparable provision.

The Managers agree to include the Senate provision in the Conference substitute, with an amendment to modify the definition of plant, exclude recycled material from the

plant declaration, clarify the application of section 3 paragraph (B)(iii) of the Lacey Act to regulations or laws pertaining to the export or transshipment of plants, and to require the Secretaries of Agriculture and the Interior to develop regulations to further define the term “plant.”

The Managers understand illegal logging undermines responsible forest enterprises by distorting timber markets with unfair competition and price undercutting. Illegal logging also threatens the conservation of forest resources, wildlife, and biodiversity, by facilitating forest conversion to non-forest uses and depleting or completely eliminating certain forest ecosystems or the habitat of certain forest dependent wildlife. Finally, illegal logging results in a loss of revenue when taxes or royalties are not paid that could otherwise be invested in sustainable forest management or economic development.

There are several relevant multilateral and international agreements intended to address illegal logging and the illegal timber trade, ranging from voluntary to legally binding multilateral agreements that enable signatory governments to seize illegal products. Yet, despite these many efforts, the problems of illegal logging continue to persist, driven by the demand for products that are developed from illegally harvested wood and the lack of adequate regulatory mechanisms in both exporting and consumer countries.

According to the Department of Justice there is no legal mechanism that currently exists in U.S. law to preclude the importation of wood and wood products known to be illegally harvested in other countries. Currently under the Lacey Act, it is unlawful for any person to: (1) import, export, sell, acquire, or purchase any fish, wildlife or plants taken, possessed, transported, or sold in violation of U.S. law or regulation or in violation of any Indian tribal law; or (2) to import, export, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife, taken, possessed, transported, or sold in violation of State or foreign law or any plant taken, possessed, transported or sold in violation of any State law. There are misdemeanor felony criminal and civil penalties for violations of the Act, and strict liability is established for forfeiture of illegal fish, wildlife or plants.

Current law applies to all fish and wildlife and their parts, but is much narrower in its application of plants. The Lacey Act currently only applies to species of plants that are native to the United States and that are specifically protected either under State law or the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It currently does not apply to plants that are protected under foreign laws.

Because the Lacey Act does not extend to plants that are taken, transported, or sold in violation of foreign laws, the U.S. government is not able to use the criminal and civil penalties of the Act to preclude the importation of wood and wood products or other plants and plant products harvested in violation of the laws of foreign governments designed to protect such plants, or to seize such illegally harvested plants and products when they enter the United States. According to Justice Department enforcement officials, changes to the Lacey Act that would extend its coverage to plants taken in violation of foreign laws would allow law enforcement officers to initiate actions similar to those they now use for fish and wildlife taken in violation of foreign laws.

Section 8204 of the Senate amendment amends the prohibited acts section of the Lacey Act by making it unlawful to import any plant or plant product taken in violation

of foreign laws related to the harvest, taking and protection of plants or t fees or taxes applicable to the plants.

The Conference substitute amends the Senate amendment to clarify the definition of the term “plant.” This definition clarifies that “wild” members of the plant kingdom includes trees, whether they are naturally or artificially regenerated. The inclusion of trees, whether in natural or planted forest stands, is consistent with the longstanding interpretation of the Lacey Act to cover wild species whether the specimens are taken from the wild or captive bred.

The exclusions to the term “plant” in section 2 subsection (f)(2) of the Lacey Act are meant to maintain the exclusions in current law with respect to cultivars and food crops.

The exclusion to the definition of “plant” in the new subsection (f)(2)(C) of section 2 of the Lacey Act applies to plants (as that term is defined in new subsection (f)(1)) that are to remain planted or to be planted or replanted, and should include related or preparatory uses such as grafting or plant breeding. Thus, consistent with subsection (f)(1) of the Act, any member of the plant kingdom, including roots, seeds, germplasm, cuttings, parts, or products thereof, and including trees from either natural or planted forest stands, that is to remain planted or to be planted or replanted is covered under the exclusion.”

The Conference substitute adds a new Section 7(c) to the Lacey Act which authorizes the Secretaries of Agriculture and the Interior to promulgate regulations to define the terms used in section 2(f)(2)(A). The Managers added this new section to clarify the scope of what constitutes common cultivars and common food crops. The Managers are aware that some plant species produced in agricultural settings as cultivars or for food, food supplements, or medicines, also continue to be taken from the wild in volumes that threaten the conservation of these species. For example, the Court in *United States v. McCullough*, 891 F. Supp. 422 (N.D. Ohio 1995) read the current Lacey Act exclusion from the definition of plant for "common food crops and cultivars" as applying to American ginseng, a species that is artificially produced but also threatened in the wild by unsustainable exploitation. Therefore, the Managers added section 7(c) to the Act to help clarify the terms of this exclusion such that trade in cultivars and common food crops is not unduly burdened, while wild plant species threatened with extinction (which may also be artificially produced) are adequately protected from illegal and unsustainable exploitation.

The Managers are aware that the exclusion to the definition of “plant” in section 2, subsection (f)(2)(A), could capture some commonly cultivated trees, grown on very short rotation, in a farm or nursery and not in a forest stand, that are harvested (as compared with those that are replanted) but do not typically face problems with illegal logging. Such trees could include conifers grown and harvested for Christmas trees or trees not typically grown in forest stands grown and harvested for floral arrangements. It is the intention of the managers to allow the Secretaries of Agriculture and the Interior, through the promulgations of regulations as provided in section 7 (c), to clarify the application of this Act and minimize the burden on growers of Christmas trees and other flowering trees, for which the Secretaries have determined there is little risk of illegal harvesting.

It is the Manager's intention that in developing any regulations pursuant to this Act, the Secretaries of Agriculture and the Interior minimize the cost and regulatory burden placed on importers and consumers of plants and plant products covered by this Act. The Managers note in particular that the statutory language creating the requirement for a plant declaration does not include, or reference any authority to impose user fees to administer this provision. The Managers intend that the administration of the plant declaration requirement be carried out using appropriated funds and urge caution on the part of the Administration in seeking to interpret other laws to enable the taxation of importers of plants and plant products for this purpose. Additionally, the Managers urge the Secretaries of Agriculture and the Interior to develop a system to allow electronic filing of plant declarations required under this Act.

It is the Manager's intention that with regards to "plants," in this Act, term "Secretary," as clarified in paragraph (a) subparagraph (2), means primarily the Secretary of Agriculture. The addition of the term "also" is meant to ensure that the Secretary of Agriculture consults with the Secretary of the Interior and the Secretary of Commerce in the implementation of this Act. This modification should not be interpreted to remove the Secretary of Agriculture as the lead authority with respect to plants. (Section 8204)

(28) Green Mountain land exchange/sale

The Senate amendment authorizes the Secretary to sell or exchange a few specific parcels in the Green Mountain National Forest designated on the map entitles "Proposed Bromley Land Sale or Exchange dated April 7, 2004. Funds from the sale of this land are to be used to relocate small portions of the Appalachian Trail or purchase additional land within the boundary of the Green Mountain National Forest. (Section 8205)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 8303)

(29) Timber contracts

The Senate amendment authorizes the Secretary to cancel or re-determine rates of qualifying timber contracts if the rate at which a qualifying contract would be advertised on the date of enactment of this language is at least 50 percent less than the original purchased rate of the contract. The Secretary is also authorized to substitute the Producer Price Index for other authorized producer price indexes for a qualifying contract. The Secretary is authorized to extend re-determined contracts by one year. The provision is to have the effect of surrendering any claim by the United States against any timber purchaser that arose under a qualifying timber contract before the date of enactment of the provision. (Section 8301)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to allow the Secretary to adjust the terms of certain hardwood lumber contracts, if the Secretary does not substitute the Producer Price Index. The Secretary is also allowed to apply market-related contract term additions, consistent with regulations, to contracts awarded before January 1, 2007. (Section 8401)

The Managers appreciate the efforts of the Forest Service to provide certain contractual relief to timber sale purchasers within their legal abilities under the timber sale contract and through existing regulations during these times of difficult markets. In that context, the provisions within this section provide additional help to timber sale purchasers. The Forest Service is encouraged to implement this section as quickly as possible. Because the provision in paragraph (c) is limited in scope, i.e. contracts awarded prior to January 1, 2007, the Managers encourage the Forest Service to revise the existing regulations within 90 days of enactment of this Act to reflect provisions of this section for future market problems. The Forest Service should modify existing contracts upon the request of the purchaser to include these revised regulations so that purchasers will not have similar problems with Market Related Contract Term Adjustments in the future.

(30) Land Conveyances, New Mexico and Virginia

The Senate amendment authorizes the conveyance, without consideration, of certain lands in New Mexico, to the Chihuahuan Desert Nature Park. (Section 11075)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to authorize the conveyance, without consideration, of certain lands in the George Washington National Forest. (Section 8302)

TITLE IX—ENERGY

(1) Table of contents

The House bill provides a table of contents. (Section 9001)

The Senate amendment provides a substitute amendment to title IX of FSRIA of 2002. The amendment makes the new section 9001 the definitions section and includes definitions for: Administrator, Advisory Committee, advanced biofuel, biobased product, biofuel, biomass conversion facility, biorefinery, board, Indian Tribe, Institute of Higher Education, intermediate ingredient or feedstock, renewable biomass, renewable energy, rural area and Secretary. (Section 9001)

The Conference substitute adopts the Senate approach of amending title IX of the FSRIA of 2002 and accepts the Senate definitions with amendments. (Section 9001, new section 9001 of FSRIA)

The Managers intend that the term “advanced biofuel” includes home heating fuels and aviation and jet fuels made from cellulosic biomass.

(2) Federal procurement of biobased products

The House bill clarifies that products with at least 5 percent of intermediate ingredients and feedstocks, that are biobased, should be considered for a procurement preference. (Section 9002(a))

The Senate amendment changes the name of this section to Biobased Markets Program and clarifies that products to be considered for procurement preference should

be composed of at least 5 percent of biobased intermediate ingredients and feedstocks, or a lesser percentage that the Secretary determines to be appropriate. (Section 9001)

The Conference substitute deletes both of these provisions.

(3) Designation and information provided

The Senate amendment provides for designation of items for which there is only one product or manufacturer in the category and automatic designation of items composed of at least 50 percent biobased intermediate ingredients or feedstocks. It also specifies that information provided for a biobased intermediate ingredient or feedstock shall be considered to be provided for an item composed of that ingredient or feedstock. This subsection also specifies that the Secretary may not require more information from manufacturers or vendors of biobased products than is required from other vendors or manufacturers. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendments. (Section 9001, new Section 9002 of FSRIA)

The Managers recognize that USDA and its contractors have developed considerable capabilities in the designation of biobased products and have established an extensive network of biobased industry contacts. The Managers encourage USDA to continue to utilize those capabilities and resources in carrying out the biobased products procurement and labeling programs.

(4) State procurement models

The Senate amendment directs the Secretary to offer models for States for procurement of biobased products within 180 days of enactment. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision. The Managers encourage the Secretary to make models for the procurement of biobased products available to States upon request.

(5) Procurement guideline considerations

The House bill clarifies that the Secretary should consider life cycle costs only to the extent that information on life cycle costs is appropriate and available. (Section 9002(b))

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(6) Labeling requirement and revised deadline

The House bill requires the Secretary to issue new regulations for the program within 90 days of enactment with criteria for finished products and intermediate ingredients and feedstocks. It also requires the Secretary to consult with other Federal agencies and non-governmental groups with an interest in biobased products, including small and large producers of biobased materials and products, industry, trade organizations, academia, consumer organizations, and environmental organizations. (Section 9002(c))

The Senate amendment is the same as the House bill, except consultation is with the Administrator and representatives from small and large businesses, academia, other Federal agencies and such other persons as the Secretary considers appropriate. (Section 9001)

The Conference substitute adopts the Senate provision. (Section 9001, new Section 9002 of FSRIA)

(7) Biobased Markets Program--Establishment

The Senate amendment establishes a voluntary program under which the Secretary is directed to recognize agencies, contractors and persons that use significant amounts of biobased products. (Section 9002(b)(4))

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 9001, new Section 9002 of FSRIA)

(8) Biobased Markets Program--Applicability

The Senate amendment requires that Capitol Complex procurement shall comply with the biobased product mandate within 90 days of enactment. The Senate amendment also requires the secretary to sponsor or support a biobased products showcase annually. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute does not require that the Capitol Complex procurement comply with the biobased product mandate, but encourages the Capitol procurement agencies to consider products designated under this program when making their procurement decisions. (Section 9001, new Section 9002 of FSRIA)

The Managers also encourage the Secretary to continue outreach activities to the applicable agencies that may include an annual showcase of biobased products to meet the requirements of this section.

(9) Biobased Markets Program—Testing Centers

The Senate amendment permits the Secretary to establish one or more national testing centers for biobased products, giving preference to entities with established biobased testing capabilities. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute directs the Secretary to create a national registry of biobased product testing centers. (Section 9001 new Section 9002 of FSRIA)

The Managers intend that the registry should include entities with expertise in performance testing, verifying conformance with long-term performance standards, establishing biobased contents, evaluating uniformity of product quality, and other biobased product characteristics that producers may require. The Managers believe that the University of Northern Iowa is an example of an appropriate entity for listing in the national registry because of its biobased product testing activities.

(10) Biobased Markets Program—Education and Awareness

The Senate amendment establishes a new Education and Awareness campaign for bioenergy (other than biodiesel) and biobased products, which is to be carried out through competitive grants to eligible entities. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(11) Authorization of appropriations; Federal procurement

The House bill caps the currently unlimited authorization at \$1,000,000 annually for 2008-13 to implement the section (other than the labeling provisions). (Section 9002(d))

The Senate amendment provides for mandatory funding of \$3,000,000 annually for 2008 through 2012 to carry out mandatory testing and implement the bioenergy education and awareness campaign. Any additional sums, as necessary, are authorized. (Section 9001)

The Conference substitute provides for mandatory funding \$1,000,000 in fiscal year 2008 and \$2,000,000 annually for 2009 through 2012 to carry out mandatory testing and labeling. The Conference substitute authorizes an additional \$2,000,000 per year for fiscal year 2009 through fiscal year 2012. (Section 9001, new Section 9002 of FSRIA)

(12) Authorization of appropriations—Labeling

The House bill authorizes \$1,000,000 annually for 2008-2013 for labeling. (Section 9001)

The Senate bill contains no comparable provision.

The Conference substitute deletes the House provision.

(13) Report requirements—Report by agencies to administrator for Federal procurement policy

The House bill requires procurement agencies to assist the Administrator for Federal Procurement by submitting annual reports and requires the Secretary of Agriculture to submit a report to Congress on implementation 6 months after enactment and annually thereafter. (Section 9002 (e))

The Senate amendment provides that the Office of Federal Procurement Policy submit a report to Congress every 2 years describing implementation progress, including information provided by the Agencies with specific data related to the biobased procurement requirement. It requires the Secretary to report to Congress on program implementation within 180 days and each year thereafter. (Section 9001)

The Conference substitute adopts the Senate provision with amendments. The substitute requires a report on program implementation progress and program details once every 2 years, and deletes the requirement to report to Congress after the first 180 days. (Section 9001, new Section 9002 of FSRIA)

(14) Grants and loan guarantees for biorefineries and biofuel production plants.

The House bill provides for loan guarantees to help pay for development and construction of biorefineries and biofuel production plants and retrofitting of other facilities to demonstrate the commercial viability of converting biomass to fuels or chemicals. (Section 9003(3))

The Senate amendment renamed this section as the Biorefinery and Repowering Assistance Program. It establishes grants for pilot or demonstration scale biorefineries, for repowering projects, and for repowering feasibility studies. It establishes loan guarantees for commercial scale biorefineries and repowering projects. Biorefineries are limited to advanced biofuels production. Repowering projects replace fossil fuel energy systems with renewable energy systems for biorefineries (including corn ethanol plants), power plants, or manufacturing facilities. (Section 9001)

The Conference substitutes a provision entitled “Biorefinery Assistance,” which provides for grants and loan guarantees for construction and retrofitting of biorefineries for the production of advanced biofuels. The substitute provides for grants for constructing demonstration-scale biorefineries, and loan guarantees for the development and construction of commercial-scale biorefineries that use technologies that are either pre-commercial or commercially available. (Section 9001, new section 9003 of FSRIA)

The Managers believe that it is in the nation's interest to accelerate the commercialization of the production of advanced biofuels. The Managers also are aware that several commercial biorefinery projects are at the advanced planning stages and are ready for construction as soon as loan guarantees can become available through this program.

Therefore, the Managers expect the Secretary to implement this program as soon as possible in fiscal year 2009. The Managers have provided specific funding for this program for fiscal year 2009 to emphasize the need to implement this program as soon as possible. To enable expedited implementation of this program, the Managers expect that the Secretary consider issuing a Notice of Funds Availability (NOFA) to initiate the program as was done in the case of the section 9006 grants program after passage of the Farm Security and Rural Investment Act of 2002. The Managers expect that the NOFA will comply with, and be consistent with the spirit of, the provisions contained in section 9003 of this Act. At the same time of the release of the NOFA, the Managers expect the Secretary will issue an Advanced Notice of Proposed Rulemaking (ANPR) to offer the public an opportunity to provide comments regarding the development of an Interim Rule for this program. Specifically, the Managers expect the ANPR will solicit comments with respect to critical issues regarding the implementation of section 9003, such as whether the program loan guarantee will cover construction of the facility or be limited to post construction financing. It is expected that comments received will be included in the record of subsequent rulemaking regarding this program and will be considered by the Secretary during the development of such regulations. To further facilitate the rapid implementation of this program, the Managers expect that the Secretary consider using the processes and aspects developed for existing USDA loan guarantee programs including the Business and Industry Program and the Rural Energy for America Program (including its predecessor the section 9006 program), in the initial development of this

program, especially if the Secretary intends to initiate implementation through the use of a NOFA.

To ensure that proposals that are not yet in their final development stage can be considered, the Managers expect the Secretary to reserve funds for the second half of each fiscal year and reserve a portion of funds to be made available over the life of the Farm Bill.

The Managers also expect the Secretary to take steps to evaluate the credit worthiness and the technical merit of proposals to make decisions regarding the responsible use of funds.

It is the intent of the Managers that the Secretary use the approach for defining pre-commercial and commercially available technologies that were adopted in the regulations for Section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106) prior to the date of enactment of this Act.

It is the intent of the Managers that, to the maximum extent practicable, preference be given to applicants seeking assistance for development and construction of biorefineries planning to convert cellulosic biomass feedstocks into advanced biofuels. It is also the intent of the Managers that for the purpose of ranking applications under the Biorefinery Program, the level of financial participation by the applicant from non-federal sources could include direct financial support, technical support, and contributions of in-kind resources, including such kinds of support from state governments.

The Managers expect that demonstration or pilot-scale facilities will demonstrate the potential of a technology for commercial application at a biorefinery, including operational characteristics such as throughput rates and process yields.

It is the intent of the Managers that the Secretary use the approach for defining pre-commercial and commercially available technologies that were adopted in the regulations for Section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106) prior to the date of enactment of this Act.

The Managers understand that over the life of this Act, it is likely that mandatory funding provided for loan guarantees will be awarded to commercial projects that are first-of-a-kind. This may include the commercial application of a technology that is: expanded to new regions, modified to utilize different feedstocks, or substantially improved such that it represents a significant technological risk.

It is the intent of the Managers that existing facilities including wood products facilities and sugar mills seeking to retrofit the facility with technologies to produce advanced biofuels be eligible for assistance under this section.

The Conference substitute establishes a new section to support the repowering of existing biorefineries by making payments for the installation of new systems that use renewable biomass or for the new production of energy from renewable biomass. (Section 9001, new section 9004 of FSRIA)

It is the intent of the Managers that this repowering program should focus on biorefineries whose primary product is liquid transportation biofuels. The Managers encourage the Secretary to consider providing payments over time to help to ensure that repowering projects are operated as intended and produce the reduction in fossil fuels projected. The Managers also intend that new energy production need not come from a new energy system in order to be eligible for new production payments. The Managers

also intend that no support should be given for installation or operation of repowering facilities that use feed grains that receive Title I payments, such as corn, as their energy source.

(15) Grants—Limitations

The Senate amendment provides for grants for pilot or demonstration scale biorefineries limited to 50 percent of project costs, grants for repowering projects limited to 20 percent of project costs and grants for repowering feasibility studies limited to the lesser of 50 percent of study costs and \$150,000. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute authorizes grants for pilot or demonstration scale biorefineries for up to 30 percent of project costs. (Section 9001, new section 9003 of FSRIA)

(16) Loan Guarantees—Limitations

The House bill requires that loan guarantees not exceed 90 percent of the principal and interest due on the loan. It provides that the total amount of principal and interest guaranteed may not exceed \$1,000,000,000 for relatively small plants (up to \$100,000,000) and may not exceed \$1,000,000,000 for larger plants (\$100,000,000 - \$250,000,000). The Secretary determines the maximum loan term. (Section 9003(3))

The Senate amendment authorizes the Secretary to guarantee up to 100 percent of the principal and interest on such loans. The principal amount of a loan guaranteed for commercial biorefineries is limited to \$250,000,000. The principal amount of a loan guaranteed for repowering projects is limited to \$70,000,000. A loan guaranteed for a commercial biorefinery or repowering a biomass conversion facility shall not exceed 80 percent of project costs. (Section 9001)

The Conference substitute limits guarantees to 90 percent of the principal and interest on loans. The maximum principal amount of a loan guaranteed may not exceed \$250,000,000 or 80 percent of project costs. The substitute requires that the amount of the loan guaranteed by the Department be reduced by the amount of other direct Federal funding going toward the project. (Section 9001, new section 9003 of FSRIA)

(17) Loan guarantees (and grants)—Priority

The House bill provides selection criteria for loans which follow those for the existing grants program in section 9003 of FSRIA. Two new selection criteria are added to address the level of local ownership and the impact on other users of feedstocks. (Section 9003(4))

The Senate amendment's selection criteria for grants follow those for the existing grant program in Section 9003 of FSRIA. One new selection criterion is added: whether the distribution of funds would have minimal impact on existing manufacturing and other facilities that use similar feedstocks. Selection criteria for grants for repowering projects include the change in energy efficiency, the reduction in fossil fuel use, and the volume of biomass feedstock within a proximity to make local sourcing economically practicable. Preference for grants and loan guarantees is to be given to projects that receive financial support from the State in which they are located and priority is given to projects with significant local ownership. (Section 9001)

The Conference substitute requires a feasibility study conducted by a third party be submitted as part of any application. Ranking criteria for grants include: the potential market for the biofuel and by-products; the level of financial participation by the applicant including other non-Federal and private sources; whether the applicant is proposing to use a feedstock not previously used in advanced biofuel production; whether the applicant is proposing to work with producer associations or cooperatives; whether the process will have a positive impact on resource conservation, public health and the environment; the potential for rural economic development; whether the area where the proposed facility will be located has other similar facilities; whether the project can be replicated; and the scalability of the proposed technology to commercial production.

Ranking criteria for the loan guarantees include the same criteria as for the grants, with several changes and additions, including: whether the applicant has an established market for the biofuels and by-products; whether the applicant can establish that, if adopted, the biofuels production technology proposed in the application will not have any significant negative impacts on existing manufacturing and other facilities that use similar feedstocks; and the level of local ownership proposed in the application. The scalability of the project is not included in the loan guarantee criteria. (Section 9001, new section 9003 of FSRIA)

In considering the level of financial participation by the applicant from non-federal sources, it is the intent of the Managers that such support could include direct financial support, technical support, and contributions of in-kind resources, including such kinds of support from state governments.

(18) Loan guarantees (and grants) Condition of assistance

The House bill requires prevailing wages for workers on projects financed under the section. (Section 9003(5))

The Senate bill contains no comparable provision.

The Conference substitute adopts the House provision. (Section 9001, new section 9003 of FSRIA)

(19) Requirement for commitment

The Senate amendment states conditions for assistance in the form of a loan guarantee include a binding commitment to cover at least 20 percent of project costs from non-Federal funds, demonstration of technology readiness, and demonstration that investment opportunities have been offered to local investors. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(20) Loan guarantees (and grants) funding

The House bill extends the grant program in section 9003 of FSRIA through fiscal year 2012 and specifies mandatory funding levels for loan guarantees that total \$800,000,000 over the period fiscal year 2008 through fiscal year 2012. (Section 9003 (6)(7))

The Senate amendment provides mandatory funding of \$300,000,000 for fiscal year 2008 to remain available until expended. (Section 9001)

The Conference substitute provides mandatory funding of \$75,000,000 for fiscal year 2009 to remain available until expended and \$245 for fiscal year 2010 to remain available until expended for loan guarantees. It also authorizes \$150,000,000 annually for fiscal year 2009 through fiscal year 2012. (Section 9001, new section 9003 of FSRIA)

(21) Energy audit and renewable energy development program

The House bill extends the energy audit and renewable energy development program through 2012. (Section 9004)

The Senate amendment folds the energy audit program into the new REAP program. (Section 9001)

The Conference substitute adopts the Senate provision with amendments as presented below. (Section 9001, new Section 9007 of FSRIA)

(22) Rural Energy for America Program—Name

The House bill renames program under section 9006 the “Rural Energy for America Program.” (Section 9005(2)(3))

The Senate amendment is the same as the House bill, except that section 9006 is renumbered to become section 9007. (Section 9001)

The Conference substitute adopts the House provision. (Section 9001, new Section 9007 of FSRIA)

(23) Rural Energy for America Program--Eligible participants—Grants, loans and loan guarantees

The House bill expands program eligibility, which currently extends to farmers, ranchers, and rural small businesses, to also include “other agricultural producers”. (Section 9005(2)(3))

The Senate amendment provides for grants or loan guarantees for renewable energy systems and energy efficiency improvements for agricultural producers and rural small businesses. The Senate amendment excludes direct loans. (Section 9001)

The Conference substitute adopts the Senate provision. (Section 9001, new Section 9007 of FSRIA)

(24) Rural Energy for America Program—Eligible participants—Energy audit and renewable energy development assistance

The Senate amendment adds State agencies and public power entities to eligible participants in the Energy Audit and Renewable Energy Assistance Program. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendments to make units of State, tribal, or local governments eligible. (Section 9001, new section 9007 of FSRIA)

The Managers expect the definition for the term public power entity used in this section to be the same as the definition of state utility as defined in section 217 (a)(4) of the Federal Power Act (16 U.S.C. 824q(a)). The Committee intends that in carrying out subsection 9007(b), the Secretary may conduct a merit review process through the solicitation of input regarding applications from qualified experts either individually or collectively.

(25) Rural Energy for America Program--Eligible participants—Energy from animal manure

The Senate amendment specifies the following as eligible participants: agricultural producers; rural small businesses; rural cooperatives; and other similar entities. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision. It is the intent of the Managers that the Rural Energy for America Program continue to provide significant support for projects that convert animal manure to energy, including both on-farm and community projects.

(26) Rural Energy for America Program--Eligible activities—Grants, loans and loan guarantees

The House bill expands to include sale of electricity generated by new renewable energy systems. (Section 9005(2))

The Senate amendment adds production-based incentives for renewable energy to eligible activities, eliminates direct loans and renewable energy systems. (Section 9001)

The Conference substitute deletes both provisions.

(27) Rural Energy for America Program--Eligible activities—Energy from animal manure

The Senate amendment provides for grants and loan guarantees for facilities to convert animal manure to energy, including associated feedstock gathering systems and gas pipelines, as well as first-year operating costs. For new technologies, the first 2 years of operation are eligible. This section also directs extension of the Energy Star program to address equipment and facilities for the agricultural sector. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers encourage the Secretary to compile and submit a list of equipment commonly used by agricultural producers to the Environmental Protection Agency and the Department of Energy for consideration in the existing Energy Star program.

(28) Rural Energy for America Program--Criteria and preferences—grants, loans and loan guarantees

The award considerations in the Senate amendment for energy efficiency improvements and renewable energy systems (section 9007(c)(2)) include: the type of renewable energy system; estimated quantity of renewable energy to be produced; expected environmental benefits; quantity of energy savings expected; expected energy savings payback time; and expected system's energy efficiency. Preferences for grants and loan guarantees under section 9007 are to be given to projects that receive financial support from the state in which they are located. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate award considerations, but deletes the Senate provision that gives preference to projects receiving state funds. (Section 9001, new Section 9007 of FSRIA)

The Managers encourage the Secretary to continue funding animal manure digester projects. The Managers believe these projects have and will continue to be an important tool to produce renewable energy in rural areas, create value for agricultural producers, and address environmental concerns surrounding manure management.

It is the Managers' intent that funding under this section may be used for the construction of infrastructure for collection and transportation of feedstocks and biogas for manure digesters, including community digesters. The Managers also intend that bioenergy production and utilization projects that also produce useful byproducts, such as fertilizer or biochar to be used as a soil conditioner, are eligible for support under the Rural Energy for America program.

The Managers encourage the Secretary to use the references to energy efficiency and renewable energy sources in this section include geothermal heat pump systems using ground loops and that small hydroelectric systems (as determined by the Secretary) be considered renewable energy systems for the purpose of receiving financial assistance under this program.

(29) Rural Energy for America Program--Criteria and preferences—energy from animal manure

The Senate amendment states selection considerations for energy from animal manure projects include quality of energy produced, net energy conversion efficiency, environmental issues, net impact on greenhouse gas emissions, diversity factors, and proposed costs. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(30) Rural Energy for America Program-Cost sharing

The House bill increases the limit on the maximum amount of the combined loan and grant from 50 percent to 75 percent of the funded activity. It limits the maximum amount of loan guaranteed to 75 percent of the funded activity and not more than \$25,000,000. (Section 9005(4))

The Senate amendment states that for energy from animal manure projects: grants are limited to 50 percent of project costs for smaller systems costing less than \$500,000; for larger projects, grants are limited to the greater of \$250,000 or 25 percent of project costs, with a cap of \$2,000,000; loan guarantees are limited to loans not exceeding \$25,000,000 and 80 percent of developer's project costs. (Section 9001)

The Conference substitute adopts the House provision. (Section 9001, new section 9007 of FSRIA)

(31) Rural Energy for America Program-Feasibility studies

The House bill allows the Secretary to use up to 10 percent of funds available under the section to provide assistance to eligible participants to conduct feasibility studies for eligible projects, but provides that if such assistance is provided, the participant is ineligible for assistance under other law for such assistance. (Section 9005(6))

The Senate amendment is the same as the House provision. (Section 9001)

The Conference substitute adopts the House provision. (Section 9001, new section 9007 of FSRIA)

(32) Rural Energy for America Program-Reserve

The House bill reserves 15 percent of funds for projects costing \$50,000 or less. (Section 9005(6))

The Senate amendment directs the Secretary to develop a streamlined process for projects seeking less than \$20,000, and it directs that not less than 20 percent of the funds for this section be made available for such projects. (Section 9001)

The Conference substitute sets aside not less than 20 percent of the funds for this section for grants of less than \$20,000, with any remaining funds reverting to the general pool of funding on June 30 of each fiscal year. The substitute directs the Secretary to perform outreach at the State and local levels. This outreach should include local Rural Development, Farm Service Agency, Natural Resources Conservation Service and Extension offices. (Section 9001, new Section 9007 of FSRIA)

(33) Rural Energy for America Program-Funding

The House bill reauthorizes the program and provides mandatory funding of \$50,000,000 in fiscal year 2008; \$75,000,000 in fiscal year 2009; \$100,000,000 in fiscal year 2010; \$125,000,000 in fiscal year 2011; and \$150,000,000 in fiscal year 2012. (Section 9005(7))

The Senate amendment provides mandatory funding of \$230,000,000 in fiscal year 2008, to remain available until expended, for audits, loan guarantees and grants for energy efficiency improvements and renewable energy systems and loan guarantees and grants for animal manure facilities. It specifies that not less than 5 percent of the funding is to be used for Energy Audit and Renewable Energy Development Program and not less than 15 percent is to be used for animal manure facilities. It also authorizes additional funds as necessary to carry out this section from fiscal year 2008 through fiscal year 2012. (Section 9001)

The Conference substitute provides mandatory funding of \$50,000,000 in fiscal year 2009, \$60,000,000 in fiscal year 2010, and \$70,000,000 annually in fiscal year 2011 and fiscal year 2012. It also specifies that 4 percent is to be used for the Energy Audit and Renewable Energy Development Assistance portion of the program. The Conference substitute authorizes an additional \$25,000,000 annually from fiscal year 2009 through fiscal year 2012. (Section 9001, new section 9007 of FSRIA)

(34) Biomass Research and Development Act of 2000

The House bill modifies findings to include biodiesel. It increases the number of individuals affiliated with an environmental or conservation organization on the Advisory Committee from 1 to 2. It adds an individual with expertise in agronomy, crop science, or soil science to the Advisory Committee. The provision includes language to improve dried distillers grain quality and clarifies the role of commercial applications in the objectives of the Biomass Research and Development Initiative. It requires the Secretary to submit a management plan to Congress every five years evaluating the success of the Initiative. It also provides mandatory funding of \$35,000,000 for fiscal year 2008; \$60,000,000 for fiscal year 2009; \$75,000,000 for fiscal year 2010; \$100,000,000 for fiscal year 2011; and \$150,000,000 for fiscal year 2012. The House bill does not change the current law provision that authorizes an additional annual appropriation of \$200,000,000 through fiscal year 2015. It amends technical study areas to clarify that research areas include sugar processing and refining plants and self-processing crops that express enzymes capable of degrading cellulosic biomass. (Section 9006)

The Senate amendment removes findings from the language. It changes “biobased fuel” to “biofuel” and “biomass” to “renewable biomass” for consistency across the Title. It also adds an individual with expertise in plant biology and biomass feedstock development. The provision adds language to emphasize research on harvest, collection, transport and storage of renewable biomass feedstocks. It removes specific funding allocations to the different technical areas and instead requires that at least 15 percent of funds go to each technical area. The Senate language requires the Secretary to submit a management plan to Congress every five years evaluating the success of the Initiative. It provides mandatory funding of \$15,000,000 for fiscal year 2008; \$25,000,000 for fiscal year 2009; and \$35,000,000 for fiscal year 2010. The Senate amendment authorizes an additional annual appropriation of \$85,000,000 through fiscal year 2012. (Section 9001)

The Conference substitute moves the Initiative in statute to Title IX of the FSRIA of 2002. It removes findings from the language and changes “biobased fuel” to “biofuel” and “biomass” to “renewable biomass” for consistency across the Title. The substitute increases the number of individuals affiliated with an environmental or conservation organization on the Advisory Committee from 1 to 2, adds an individual with expertise in plant biology and biomass feedstock development and adds an individual with expertise in agronomy, crop science, or soil science to the Advisory Committee. The substitute reduces the number of technical areas from 6 to 3 and streamlines considerations for grant selection. The new technical areas include feedstock development, biofuels and biobased products development, and biofuels development analysis. At least 15 percent of the available funding is required to be allocated to each of the three technical areas. The substitute also increases the minimum cost-share requirements for demonstration projects from 20 percent to 50 percent and for research projects from 0 percent to 20 percent, with a provision that allows the Secretary to waive the matching requirement for research if a waiver is determined to be necessary and appropriate.

The substitute provides mandatory funding of \$20,000,000 in fiscal year 2009, \$28,000,000 in fiscal year 2010, \$30,000,000 in fiscal year 2011, and \$40,000,000 in

fiscal year 2012. It authorizes \$35,000,000 per year for fiscal year 2009 through fiscal year 2012. (Section 9001, new section 9008 of FSRIA)

The substitute replaced language that was included in the Energy Independence and Security Act of 2007 (P.L. 110-140) (EISA) that amended Section 307(d) of the Biomass Research and Development Act of 2000 (7 U.S.C. 8606(d)). In order to ensure the sustainable production of biofuels, the Managers want to clarify that an intention of Sec. 9008(e)(3)(C)(ii) is to improve and develop analytical tools to facilitate the analysis of life-cycle energy and greenhouse gas emissions, including emissions related to resource management, associated with all potential biofuel feedstocks and production processes.

The Managers encourage the Board to consider funding projects that address the critical need for integrated research and technology development in the area of biofuels. Funded projects should consider an integrated approach along the full biofuels and biobased products value chain and should serve as a platform for both technology transfer and workforce development. The Managers recognize that the New Century Farm project at Iowa State University specifically includes integrated research and development activities ranging from cropping practices and feedstock production, to biomass harvest and handling, and including biorefinery conversion processes. The Managers also are aware that Pennsylvania State University is working on all aspects of biofuels development from plant transformation to production, harvest, and storage; and from biomass pretreatment to fuel formulation and engine testing in collaboration with private industry and the government. The Managers are aware that Claflin University has been undertaking work in the area of biofuels and biobutanol and hope they can continue that work. The Managers recognize that these are viable models which can provide invaluable feedback and systematic improvement to development of a national biofuels infrastructure.

The Managers recognize the tremendous potential market that exists in this country for renewable aviation and jet fuel, and acknowledges that while much research and development has been directed toward the development of biofuels for ground transportation, the development of renewable aviation fuels has lagged far behind. For this reason, the Managers encourage the Secretary of Agriculture and the Secretary of Energy to give equal consideration to projects under this initiative that would perform innovative and beneficial research and commercial development of renewable aviation fuels.

The Managers are aware of the use of algae to create biodiesel fuels, and believe this technology will contribute to relieving the U.S. of its dependence on fossil fuels. The Managers understand that algal-based oil yields are 2-3 times that of the highest yielding land plants and that algae can be cultured on land unfit for traditional commercial crops. The Managers encourage the Department to support existing algaculture laboratories that have the ability to develop algal-based feedstocks for the biodiesel industry. The Managers request the Department to report back within 90 days, or as soon as practicable on the status of this effort.

The Managers hope that scientists and students at minority serving institutions, such as the nation's historically black colleges and universities and Hispanic-serving institutions will utilize this program and other research and development programs in this

title to continue the development of biofuels and biobased products in all regions of the country.

The Managers also believe that this program plays a critical role in bridging the funding gap that many promising technologies face after university basic research is completed and before becoming attractive to venture capitalists and commercialized in the market. The Managers believe that support between basic research and commercialization is important for quickly bringing new technologies to market, and the Managers urge the Secretary to make sufficient funds available to address this issue.

The Managers encourage consideration of collaborative research on corn and cellulosic genomics to support improved biofuels conversion processes.

The Managers recognize the need for research and development to convert forest biomass to advanced biofuels and encourage USDA and DOE, in implementing the authorities in this section, work in partnership with the Forest Service to develop new techniques, technologies and methods toward this goal. The Managers do not intend the additional authority in section 9012 to preclude these activities under this section.

(35) Adjustments to the bioenergy program—Eligibility

The House bill clarifies that the term “bioenergy” also includes the production of heat and power at a biofuels plant, biomass gasification, hydrogen made from cellulosic commodities for fuel cells, and renewable diesel. The provision excludes corn starch from the list of eligible feedstock under the program. (Section 9007)

The Senate amendment clarifies that this program is intended to support increased production of advanced biofuels, which includes fuels derived from renewable biomass excluding those derived from corn starch. (Section 9001)

The Conference substitute directs the Secretary to make payments to producers of advanced biofuels to support a stable and expanding production base. The payments are to be based on the quantity and duration of production, the net non-renewable energy content of the advanced biofuel, and other factors as determined by the Secretary. (Section 9001, new section 9005 of FSRIA)

It is the intent of the Managers that the Secretary support existing advanced biofuel production, as well as encourage new production.

The Managers recognize that, with respect to forest biomass, the feedstock for the production of advanced biofuels is often the same feedstock used by forest products facilities, include pulp and paper mills. The Managers encourage the Secretary to consider competing market outlets when establishing the payment rate for such feedstocks.

(36) Adjustments to the bioenergy program—Renewable diesel

The House bill defines renewable diesel. (Section 9007)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(37) Adjustments to the bioenergy program—Payment rate and priority

The House bill provides for a priority based on factors listed in section 9003(e)(2)(B) of FSRIA. (Section 9007(2))

The Senate amendment directs the Secretary to base payments on: level of production; price of feedstock; net nonrenewable energy content; and other appropriate factors. It restricts the payment to producers that do not receive the small producer tax credits and to production from facilities with capacity of less than 150,000,000 gallons per year. (Section 9001)

The Conference substitute directs the Secretary to base payments on the quantity and duration of production, the net non-renewable energy content of the advanced biofuel, and other appropriate factors as determined by the Secretary. (Section 9001, new Section 9005 of FSRIA)

(38) Adjustments to the bioenergy program—Project viability

The House bill requires Secretary to review project viability before renewing contracts. (Section 9007(2))

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(39) Adjustments to the bioenergy program—Funding

The House bill provides mandatory funds of \$225,000,000 for fiscal year 2008; \$250,000,000 for fiscal year 2009; \$275,000,000 for fiscal year 2010; \$300,000,000 for fiscal year 2011; and \$350,000,000 for fiscal year 2012. (Section 9007(3))

The Senate amendment provides mandatory funds of \$245,000,000 for fiscal year 2008 to remain available until expended. (Section 9001)

The Conference substitute provides mandatory funding of \$55,000,000 in fiscal year 2009, \$55,000,000 in fiscal year 2010, \$85,000,000 in fiscal year 2011, and \$105,000,000 in fiscal year 2012. It authorizes \$25,000,000 per year for fiscal year 2009 through fiscal year 2012. It stipulates that no more than 5 percent of each year's funding may be for production at facilities with a total refining capacity exceeding 150,000,000 gallons per year. (Section 9001)

(40) Research, extension and educational programs on biobased energy technologies and products

The House bill extends current authorization for appropriations at a level of \$75,000,000 through 2012. It provides a research focus for insular and Pacific areas. (Section 9008)

The Senate amendment provides for mandatory funding of \$5,000,000 for fiscal year 2008; and \$10,000,000 for fiscal year 2009 and fiscal year 2010 and provides for authorization for appropriations at an annual level of \$70,000,000 from fiscal year 2008 through fiscal year 2012. It provides for a 'subcenter' at the University of Hawaii with a research focus for insular and Pacific areas. (Section 9001)

The Conference substitute adopts the Senate provision with amendments and moves the provision in statute to the Research Title of this Act. No mandatory funding is provided. The Conference substitute authorizes \$75,000,000 per year for fiscal year 2008 through fiscal year 2010. (Section 7526)

(41) Regional biomass crop experiments

The Senate amendment establishes a program of regional biomass crop experiments at 10 geographically dispersed and competitively selected land-grant universities. Crop experiments are to include all appropriate biomass species, including perennials, annuals, and woody biomass species. Selection criteria include crop experiment capabilities and experience, species and cropping practices proposed, crop experiment plan, and commitment of adequate acreage and resources. The provision calls for coordination among participants, with the Biomass Research and Development Board and with the Sun Grant Centers, and the establishment of a “best practices” database on all aspects of biomass crop production. It provides mandatory funding of \$40,000,000 over the life of the bill, to be allocated as \$1,000,000, \$2,000,000, and \$1,000,000 per institution for years fiscal year 2008, fiscal year 2009, and fiscal year 2010, respectively. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers believe that the agricultural bioenergy feedstock and energy efficiency research and extension program included in section 7207 of the Research title will accomplish the purposes of this section.

(42) USDA Energy Council

The House bill creates an Energy Council in the Office of the Secretary at USDA to coordinate energy policy at the Department and consult with other agencies. (The existing Office of Energy Policy and New Uses will support the activities of the Council.) (Section 9009)

The Senate amendment directs the Secretary to assign coordination of projects and information, liaison work with other agencies and public outreach on USDA’s energy programs to one entity within the Department. (Section 9001)

The Conference substitute deletes both provisions.

It is the intent of the Managers that the Department should implement the actions outlined in the Senate bill using existing authorities. It is also the Managers’ intent that a single entity in the Department be responsible for coordinating energy policy activities in the Department and with other agencies.

(43) Farm energy production pilot program

The House bill establishes a pilot program to provide grants to farmers for the purpose of demonstrating the feasibility of making a farm energy neutral using existing technologies. It authorizes \$5,000,000 for fiscal years 2008 through 2012. (Section 9010)

The Senate amendment contains no comparable provisions.

The Conference substitute deletes the House provision.

The Managers believe that the purposes of this Section can be carried out through Section 7207 of the Research title.

(44) Rural energy self-sufficiency initiative and rural energy systems renewal

The House bill authorizes the Secretary to make cost-share grants to enable eligible rural communities develop renewable energy systems to increase their energy self-sufficiency. The provision authorizes appropriations of \$5,000,000 in fiscal year 2008 and such sums as necessary in fiscal year 2009 through fiscal year 2012. (Section 9011)

The Senate amendment: (1) establishes a program of competitive cost-shared grants for rural communities to assess their energy systems, and to formulate and implement strategies for improvements; (2) specifies appropriate activities; (3) requires a 50 percent cost share; (4) directs the USDA in consultation with DOE to provide technical assistance; and (5) authorizes \$5,000,000 per year for fiscal year 2008 through fiscal year 2012. (Section 9001)

The Conference substitute authorizes \$5,000,000 per year for fiscal year 2009 through fiscal year 2012 for a program of cost-shared grants to enable rural communities to assess their energy usage, formulate strategies for improvements and install and utilize integrated renewable energy systems. (Section 9001, new Section 9009 of FSRIA)

It is the intent of the Managers that energy assessments will include total energy usage by all members and activities of the community, including an assessment of energy used in community facilities, energy for heating, cooling, lighting, and energy for all other building and facility uses; energy used in transportation by community members; current sources and types of energy used; energy embedded in other materials and products; and the major impacts of the energy usage, including the impact on the quantity of oil imported, total costs, the environment, and greenhouse gas emissions.

Energy system improvement strategies are intended to reduce conventional energy usage and greenhouse gas emissions by the community through adoption or use of measures such as building insulation, automatic controls on lighting and electronics, zone energy usage, and building energy conservation practices; transportation alternatives, vehicle options, transit options, transportation conservation, and walk- and bike-to-school programs; community configuration alternatives to provide pedestrian access to regular services; and community options for alternative energy systems, including alternative fuels, photovoltaic electricity, wind energy, geothermal heat pump systems, and combined heat and power.

(45) Agricultural biofuels from biomass internship pilot program

The House bill authorizes an internship program to encourage students to pursue employment in renewable energy related jobs. (Section 9012)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(46) Feedstock flexibility program for bioenergy producers.

The House bill amends the energy title of FSRIA to require the Secretary to purchase of sugar to produce bioenergy if necessary to avoid forfeitures of sugar to the

Commodity Credit Corporation, and to ensure that the sugar loan program operates at no cost to the Federal government. (Section 9012)

The Senate amendment is the same as the House bill. (Section 1501(f))

The Conference substitute adopts the House provision with amendments. (Section 9001, new Section 9010 of FSRIA)

Since the Feedstock Flexibility Program is a new program involving many interests, the Managers expect the program to be implemented following a public notice and comment period, providing an opportunity for all parties affected by the program to have input into its operations.

(47) Biomass inventory report

The House bill requires the Secretary to conduct an inventory of biomass resources on a county by county basis and report to Congress within 1 year of enactment. (Section 9014)

The Senate amendment requires the Secretary to conduct an assessment of the growth potential for cellulosic material on a state-by-state basis, and to report to Congress within 18 months. (Section 9001)

The Conference substitute deletes both provisions.

The Managers believe that adequate biomass resource assessments are underway or planned. The Economic Research Service (ERS) in the Department is working on a biomass resource inventory and the Managers encourage the Secretary to continue this important work.

(48) Future farmsteads program

The House bill establishes a program to advance farm energy use efficiencies and on farm production of renewable energies. (Section 9015)

The Senate amendment is the same as the House bill. (Section 9001)

The Conference substitute deletes both provisions.

The Managers believe that the agricultural bioenergy feedstock and energy efficiency research and extension program included in section 7207 of the Research title will accomplish the purposes of this section.

(49) Sense of Congress on renewable energy

The House bill provides a sense of Congress on renewable energy. (Section 9016)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(50) Biodiesel fuel education program.

The House bill doubles funding to \$2,000,000 annually for fiscal year 2008 through fiscal year 2012. (Section 9017)

The Senate amendment is the same as the House bill except it adds oil refiners, automotive companies and owners and operators of watercraft fleets to the list of entities targeted for education about biodiesel. (Section 9001)

The Conference substitute adopts the House provision except that it funds the program at \$1,000,000 annually for fiscal year 2008 through fiscal year 2012. (Section 9001, new Section 9006)

(51) Biomass Energy Reserve

The House bill establishes a biomass energy reserve (BER) and provides financial and technical assistance to landowners and operators to produce energy crops and harvest, store, and transport cellulosic material. BER project areas must be within a 50 mile radius of an existing bioenergy facility.

Under the House provision, BER eligible crop land must have been tilled in the current or immediately preceding crop year, and does not include Federal land, certain forest land, or land enrolled in specified conservation programs (unless biomass harvest occurs in accordance with a conservation plan outside of nesting and rearing season, and payments under the conservation program are reduced—subsection (h)). (Forest land is covered in subsection (e), which provides \$5,000,000 for grants to help owners develop plans for sustainable management of biomass from forest land.)

Groups of owners and operators, energy and agricultural companies, and Agricultural Innovation Centers (AICs) are all “Eligible Applicants” that may submit proposals for BER project areas. AICs have dual role in the program, and may also serve as “Qualified Organizations”, which assist other Eligible Applicants in developing proposals for approval by USDA.

Under the House provision, the Secretary selects 10 qualified organizations across the country. Qualified organizations, which may also be colleges and universities, help eligible applicants structure projects that will advance the goal of sustainable production of dedicated energy crops. Specifically, a qualified organization will help eligible applicants to identify suitable land and crop mixtures and get a commitment from a bioenergy facility. Program crops and invasive or noxious species are ineligible. Qualified organizations then rate the various project area applications according to a ranking system established by the Secretary, based on criteria set out in subsection (d)(5). The Secretary selects at least one project area in each of the 10 qualified organizations, which are regionally dispersed.

Under the House provision, the Secretary enters into 5-year contracts with owners and operators (Eligible Participants) in the BER project area. Such contracts must comply with certain conservation requirements and provide for information sharing. The Secretary makes Establishment Payments to eligible participants to cover seeds, stock, and the cost of planting, and annual Rental Payments in an amount to be determined by the Secretary.

Under the House provision, the Secretary may also provide Matching Payments of not more than \$45 per ton for collecting, harvesting, storing, and transporting biomass. (Matching Payments are at a rate of \$1 for every \$1 per ton paid by the bioenergy facility for the biomass. The Secretary must reduce Rental Payments if making a Matching Payment to an eligible participant.) Forest land owners are eligible for this Matching Payment if acting under a forest stewardship plan. (Section 9018)

The Senate amendment establishes a Biomass Crop Transition Assistance Program (BCTAP) to provide transitional assistance (including grants) for the

establishment and production of eligible crops to be used in the production of advanced biofuels. The program includes assistance for the harvesting, transportation and storage of renewable biomass. Producers are not eligible to receive assistance for the establishment and production of crops eligible to receive benefits under Title I and that are invasive or noxious. Eligible land is defined as private agriculture or forest land planted or considered to be planted for at least 4 of the 6 years preceding enactment.

The Senate amendment provides that contract requirements include adherence to conservation compliance and implementation of a conservation plan approved by the local soil conservation district. The conservation plans should advance the goals and objectives of fish and wildlife conservation plans and initiatives and comply with mandatory environmental requirements for a producer under Federal, State and local law.

Eligible participants under the Senate amendment include individual agricultural producers, forest land owners or other individuals holding the right to collect or harvest the crop. Farmer-owned cooperatives, agricultural trade associations (or similar entities on behalf of producer members) may serve as aggregators and enter into contracts as eligible participants. The Secretary is directed to provide planning grants of up to \$50,000 (with a required 100 percent match) to assist in assessing the viability for, or assembling of, a regional supply.

Under the Senate amendment, the Secretary will enter into contracts for perennial crops, covering the cost of establishing the crop/s during the first year and each subsequent year the Secretary will make an incentive payment determined by the Secretary to encourage the participant to produce renewable biomass. All participants in this Section are required to keep records determined by the Secretary to allow for best practices to be studied and shared.

Assistance under the Senate amendment is restricted to crops for use in the production of advanced biofuels, other biobased products, heat or power from a biomass conversion facility. Participants must have a letter of intent or proof of financial commitment from a biomass conversion facility and the production operation must be located in proximity of a biomass conversion facility to make delivery to the location economically practicable. Eligibility is also conditioned on the impact on wildlife, air, soil and water quality and availability and the local and regional economic impacts/benefits.

The Senate amendment allows the Secretary to provide technical assistance and establishment cost-sharing for eligible participants planting annual biomass crops. The crop shall not be eligible for benefits under Title I and assistance is conditioned on adherence to conservation compliance requirements.

The Senate amendment also creates a program that provides fixed-rate payments to eligible participants for the estimated cost of collection, harvest, storage and transport of renewable biomass. It also provides for forest biomass planning grants to help forest landowners sustainably harvest woody biomass for heat, energy or biobased products for use in a biomass conversion facility.

The Senate amendment included \$130,000,000 in mandatory funding for fiscal year 2008, to remain available until expended, for transition assistance for biomass crops. Of this amount, no more than \$5,000,000 was to be used for biomass planning grants and no more than 5 percent expended for forest biomass planning grants. The payments for collection, harvest, storage and transportation were appropriated mandatory funding of

\$10,000,000 per year for each of fiscal year 2009, fiscal year 2010, and fiscal year 2011, to remain available until expended. (Section 9001)

The Conference substitute establishes a Biomass Crop Assistance Program (BCAP). Under this Section, the Secretary will select BCAP project areas from applications consisting of a group of producers willing to commit to biomass crop production or a biomass conversion facility.

Biomass crop producers within these BCAP project areas will enter into contracts directly with the Secretary which will enable producers to receive financial assistance for crop establishment costs as well as annual payments to support biomass production. Contracts include resource conservation requirements.

The Secretary is directed to reduce annual payments when the biomass crops are sold to the conversion facility, used for other allowed purposes or if the producer violates the BCAP contract. This section also authorizes cost-sharing support for biomass harvest, transport, storage, and delivery to biomass user facilities, both within BCAP project areas and elsewhere. The Conference substitute provides mandatory funding of such sums as necessary to carry out this section for each of fiscal year 2008 through fiscal year 2012. (Section 9001, new Section 9011 of FSRIA)

The Managers expect the Secretary to determine if a producer is within an economically practicable distance from a facility based on the expected cost of transporting a feedstock to the facility. The Managers understand that this distance may vary depending on several factors including the density of the feedstock and the producer's plan for preprocessing the biomass including chopping, pelletizing or other techniques that make the biomass more easily transportable.

The Managers intend that nonindustrial private forestland be included as 'eligible land' in a BCAP area and also be eligible for establishment and annual payments. Prior to entering into a contract with an owner of nonindustrial private forestland with existing tree cover, the Managers encourage the Secretary to consider the most suitable use of the land and encourage the maintenance of native forests and late successional forest stands and discourage conversion of native forests to non-forest use. The Managers understand that woody biomass feedstocks may require varying management practices including: establishment (natural or artificial regeneration), site preparation, and management of competing vegetation. The Managers recognize that in some cases, biomass from forests established or enhanced under this program may not be available for harvest within the timeframe of the contract, but may provide a long-term source of feedstock for a biomass conversion facility.

It is the intent of the Managers that in determining the amount of an annual payment, the Secretary shall consider the costs of the activity being funded and the need for the involved biomass conversion facility to bear some costs of producing the feedstock.

The Managers intend that the use of "soil, water and related resources" under this section includes wildlife-related concerns.

The Managers also intend that the primary focus of the BCAP will be promoting the cultivation of perennial bioenergy crops and annual bioenergy crops that show exceptional promise for producing highly energy-efficient bioenergy or biofuels, that preserve natural resources, and that are not primarily grown for food or animal feed. In making BCAP project area selections, the Managers expect that the Secretary will

consider the economic viability of the proposed biomass crop. The Managers do not intend that BCAP contract acreage provide all the feedstock necessary to supply a biomass conversion facility.

It is the Managers' intent that if the establishment or annual payment to a producer is reduced under this section, that the Secretary may vary the amount of payment reduction based on the reason for reducing the payment. It is also the intent of the Managers that establishment and annual payments are to be reduced by an appropriate amount in the case where a portion of an eligible crop is not sold or intended to be sold to the biomass conversion facility.

The Managers direct the Secretary to provide a report to Congress on how information gathered under this Section was disseminated. The Managers urge the Secretary to utilize the Best Practices database created in Section 7207 of this Act and to utilize the expertise of institutions of higher education and Agriculture Innovation Centers to collect such information.

(52) Forest biomass for energy

The House bill requires the Secretary of Agriculture, through the Forest Service, to conduct a competitive research and development program to encourage use of forest biomass for energy. The House bill provides \$15,000,000 per year for fiscal year 2008-2012 in mandatory funding. (Section 9019) *Note that there are 2 sections numbered 9019 in the House bill.*

The Senate amendment is similar to the House bill but does not provide mandatory funding for the program. (Section 9001)

The Conference substitute adopts the House provision with amendments. It authorizes \$15,000,000 per year for fiscal year 2009 through fiscal year 2012. (Section 9001, new Section 9012 of FSRIA)

As part of this program, the Managers encourage the Secretary to work closely with the Pine Genome Initiative (PGI), which would promote healthy forests and the development of new biofuels technology.

(53) Community wood energy program.

The House bill provides grants for community wood energy systems. (Section 9019) *Note that there are 2 sections numbered 9019 in the House bill.*

The Senate amendment is similar to the House provision. (Section 9001)

The Conference substitute adopts the Senate provision with amendments. It authorizes \$5,000,000 per year for fiscal year 2009 through fiscal year 2012. (Section 9001, new Section 9013)

(54) Supplementing corn as an ethanol feedstock

The House bill requires the Secretary of Agriculture to establish a program to make grants of not to exceed \$1,000,000 each to no more than 20 universities for a 3-year program of demonstration of supplementing corn as an ethanol feedstock with sweet sorghum and switchgrass. (Section 9020)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

The Managers believe that the agricultural bioenergy feedstock and energy efficiency research and extension program included in section 7207 of the Research title will accomplish the purposes of this section.

(55) New Century Farm Project

The Senate amendment authorizes support for the development and operation of an integrated and sustainable biomass, feedstock, and biofuels production system to serve as a model for a new century farm. It authorizes \$15,000,000 for fiscal year 2008 through fiscal year 2012, to remain available until expended. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers believe that the agricultural bioenergy feedstock and energy efficiency research and extension program included in section 7207 of the Research title will accomplish the purposes of this section.

(56) Biochar research, development and demonstration

The Senate amendment establishes a program of competitive grants for research and demonstration of the production and use of biochar in the agricultural sector. Activity areas include biochar production and use, agronomic effects, biochar characterization, soil carbon and greenhouse gas emission effects, integration with renewable energy systems, and economics. The provision authorizes \$3,000,000 for each year of fiscal year 2008 through fiscal year 2012. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision. Research on biochar production and use is included as a high-priority research and extension area in section 7203 of the Research title.

(57) Voluntary renewable biomass certification

The Senate amendment establishes a voluntary certification program for renewable biomass that is grown using sustainable practices, in consultation with EPA. Standards are to be designed to reduce greenhouse gases and improve soil carbon, protect wildlife habitat, and protect air, soil, and water quality. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(58) Biofuels infrastructure study

The Senate amendment directs USDA, in collaboration with the Secretaries of Energy and Transportation and the Administrator of the Environmental Protection Agency, to conduct a study of the infrastructure needs associated with a significant expansion in biofuel production and use. The amendment specifically includes dedicated

ethanol pipeline feasibility studies and examination of water resource needs. The provision requires a report to Congress including recommendations. It also authorizes \$1,000,000 in each of fiscal year 2008 and fiscal year 2009. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute directs USDA to jointly conduct a study with DOE, DOT and EPA on the infrastructure needs associated with significant expansion in biofuels production and use. (Section 9002)

It is the intent of the Managers that this study should include an assessment of appropriate planning and development timelines associated with infrastructure development. The Managers suggest that the Biomass Research and Development Board established under the Biomass Research and Development Initiative may be an appropriate entity for coordination and oversight of this multi-agency study. While this study is to use the information and results from the two related studies authorized in sections 243 and 245 of the Energy Independence and Security Act of 2007 (P.L.110-140), it is the intent of the Managers that the Secretary should not wait on the execution or completion of those related studies before undertaking this study.

(59) Nitrogen fertilizer study

The Senate amendment directs USDA to assess the feasibility of producing nitrogen fertilizer from renewable energy, including formulation of recommendations for an R&D program. It authorizes \$1,000,000 for fiscal year 2008. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendments. It authorizes \$1,000,000 in fiscal year 2009. (Section 9003)

(60) Study of life-cycle analysis of biofuels

The Senate amendment directs USDA in consultation with the Secretary of Energy and the Administrator of the EPA to conduct a study of methods for evaluating the life-cycle greenhouse gas emissions of conventional fuels and biofuels, and to provide recommendations for a streamlined, simplified method for evaluating the lifecycle greenhouse gas emissions of fuels. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(61) E-85 fuel program

The Senate amendment authorizes \$20,000,000 for the period fiscal year 2008 through fiscal year 2012 for the USDA to award grants to ethanol production facilities where a majority of ownership is comprised of agricultural producers, to install blending and retail fueling infrastructure. (Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(62) Research and development of renewable energy

The Senate amendment directs the Secretary to carry out a program of biomass and other renewable energy research in coordination with the Colorado Renewable Energy Collaboratory and authorizes funding to USDA and DOE for this purpose.

(Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision. The Managers believe that the agricultural bioenergy feedstock and energy efficiency research and extension program included in section 7207 of the Research title will accomplish the purposes of this section.

(63) Northeast Dairy Nutrient Management and Energy Development Program

The Senate amendment provides for nutrient management and research extension.

(Section 9001)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers believe that the nutrient management research and extension initiative included in section 7204 of the Research title will accomplish the purposes of this section.

(64) Sense of the Senate concerning higher levels of ethanol blended gasoline

The Senate amendment provides a Sense of the Senate encouraging the federal government to investigate and authorize the use of higher blends of ethanol in gasoline.

(Section 9002)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(65) Conforming amendments

The Senate amendment makes conforming amendments. (Section 9003)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(66) Sense of Senate concerning regional bioenergy consortia

The Senate amendment directs the Secretary to continue to allow and support regional consortia of public institutions to support the bioeconomy. (Section 9004)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers encourage the Secretary to continue to allow and support efforts of regional consortiums of public institutions, including land grant universities and State departments of agriculture, to jointly support the bio-economy through research, extension and education activities.

TITLE X—HORTICULTURE AND ORGANIC AGRICULTURE

(1) Annual report on response to honey bee colony collapse disorder

The House bill requires the Secretary to submit a report to Congress on the investigation of honey bee colony collapse and strategies to reduce colony loss. (Section 10001)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision. Language incorporating the goals and objectives of this provision appears in section 7203 of the research title.

(2) National Honey Board

The Senate amendment amends section 7(c) of the Honey research, Promotion and Consumer Information Act (& U.S.C. 4606(c)) to ensure that the Honey Board continues and that the Secretary cannot conduct any referendum on the continuation or termination of the order without first conducting a concurrent referendum for approval of orders to establish a successor marketing board. (Section 1854)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to discontinue the current Honey Board after the Secretary has conducted a referendum for honey producers or honey packers, importers and handlers. The Secretary is also required to act as a fiduciary in the conducting of referenda for new marketing boards to ensure that the rights and interests of producers, importers, packers, and handlers of honey are equitably protected in the transition to any 1 or more new successor marketing boards. (Section 10401)

(3) Identification of Honey

The Senate amendment amends section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) to require the grading mark, statement, inspection mark of the Department of Agriculture to be located in close proximity of the country of origin label on packaged honey. (Section 1855)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to specify that violations of the labeling requirements of this section, with respect to honey, may be deemed by the Secretary to be sufficient cause for debarment from the benefits of the Agricultural Marketing Act of 1946. (Section 10402)

(4) Tree assistance program

The House bill: (1) amends subtitle C of the Farm and Rural Investment Act of 2002, (2) makes nursery tree growers eligible under the Tree Assistance Program and future disaster assistance programs for which assistance is provided under that program,

(3) changes the \$75,000 limitation on assistance to \$150,000 per year, and (4) maintains current discretionary authorization. (Section 10101)

The Senate amendment: (1) amends the Trade Act of 1974 by creating a Tree Assistance Program to compensate eligible growers for losses suffered due to natural disasters, (2) makes nursery tree growers eligible under the Tree Assistance Program, (3) changes the \$75,000 limitation on assistance to \$100,000 per year, (4) adds reimbursement for 50 percent of the cost of pruning, removal and other costs to salvage existing trees or prepare the land to replant trees, and (5) provides necessary mandatory funding to carry out the program over the next five years. (Section 12101(e))

The Conference substitute adopts the Senate provision with amendments to modify the reimbursement of the cost of replanting trees lost due to a natural disaster; amend the Federal Crop Insurance Act with a provision identical to that which appears in the Trade Act of 1974; incorporate these changes into sections 12033 and 15101 of this Act; and to make other technical changes. (Section 12033; Section 15101)

The Managers wish to clarify that the insurance requirement for eligibility in the Tree Assistance Program applies only to insurance on crops and not on the underlying vines or trees.

(5) Specialty crop block grants

The House bill amends section 101 of the Specialty Crops Competitiveness Act by continuing the Specialty Crop Block Grant Program through 2012, and increasing the mandatory levels of funding to:

\$60,000,000 in FY'08

\$65,000,000 in FY'09

\$70,000,000 in FY'10

\$75,000,000 in FY'11

\$95,000,000 in FY'12.

The House provision changes the definition of "specialty crop" under the Specialty Crops Competitiveness Act of 2004 to include "horticulture," and the definition of "State" to include Guam, American Samoa, the U.S. Virgin Islands and the Northern Mariana Islands. (Section 10102)

The Senate amendment is the same as the House bill, except funding is discontinued after FY'11. The Senate definitions are the same as in the House bill, but also includes "turfgrass sod" and "herbal crops" in the definition of "specialty crop".

The Senate amendment modifies section 101(e) to require that states, to the maximum extent practicable and appropriate, develop plans that take into consideration the views of beginning and socially disadvantaged farmers and ranchers who produce specialty crops. It also changes the minimum grant amount from \$100,000 to one-half of one percent of the overall funding allocated to the program in a given fiscal year. (Section 1841)

The Conference substitute adopts the House provision with amendments to specify that any funds made available for a fiscal year under the program that are not expended by certain date, to be determined by the Secretary, will be reallocated to other States; change the minimum grant amount to \$100,000 or one-third of one percent of the

overall funding allocated to the program in a given fiscal year (whichever is higher); provide mandatory levels of funding in the amounts of:

\$10 million for fiscal year 2008;

\$49 million for fiscal year 2009; and

\$55 million for each of fiscal years 2010 through 2012. (Section 10109)

The Managers expect that the Secretary will encourage each state making applications for funding under the Specialty Crop Block Grant Program to provide a written plan detailing the affirmative steps it will take to perform outreach to specialty crop producers in the development of the State's overall grant plan, including outreach to socially disadvantaged and beginning farmers of specialty crops. The Managers also note that herbal crops fall within the statutory definition of eligible specialty crops under the Specialty Crop Block Grant Program, and direct the Agricultural Marketing Service to include a comprehensive list of specific categories of eligible specialty crops in all relevant promotional materials distributed in connection to the program. The Managers expect the Secretary to continue to consider the cultivation of turfgrass sod as horticulture, and therefore included as part of the definition of specialty crop under the Specialty Crop Competitiveness Act of 2004, and as a specialty crop for any other purposes in this or any other Act.

The Managers urge the Secretary to encourage state departments of agriculture to develop their grant plans through a competitive process in order to ensure maximum public input and benefit. The Managers expect the Secretary to ensure that States conduct extensive outreach to interested parties through a transparent process of receiving and considering public comment so that grant applications are developed with proven and justified public support, particularly when developing applications for multi-state projects. Further, the Managers expect the Secretary to carefully review requests that extend existing projects to ensure that support remains across the broad array of public-private partnerships unique to the structure of the specialty crop industry.

The Managers note that since 2006 many states have used specialty crop block grant funding for marketing programs, some of which promote state grown products. The Managers expect the Secretary to carefully monitor the use of funds under grant awards to ensure that funds are promoting specialty crops as defined under the Specialty Crop Competitiveness Act of 2004 and are not being used in generically cross-marketing other commodities which fall under state marketing programs but are outside the scope of the Act's definition.

The Managers recognize the ability of States to submit multi-state projects under current program regulations. The Managers also recognize the growing need for solutions to problems that cross state boundaries and may therefore be addressed more effectively by multi-state projects. These problems include addressing good agricultural practices, research on crop productivity or quality, enhancing access to federal nutrition programs, pest and disease management, or commodity-specific projects addressing common issues in multi-state regions. The Managers therefore request that the Secretary encourage state departments of agriculture to submit grant plans that include multi-state and regional project proposals. The Managers also request that the Secretary give strong consideration to multi-state projects when reallocating unobligated block grant funding.

(6) Additional section 32 funds for purchase of fruits, vegetables and nuts to support

domestic nutrition assistance programs

The House bill provides funding in addition to amounts available under section 32. Additional amounts of section 32 funds dedicated to fruit, vegetable and nut purchases are:

\$190,000,000 in FY'08

\$193,000,000 in FY'09

\$199,000,000 in FY'10

\$203,000,000 in FY'11

\$206,000,000 in FY 2012 and each FY thereafter.

The House provision expands the Secretary's purchase discretion to include value-added fruit, vegetable and nut products. (Section 10103)

The Senate amendment is the same as the House bill, with technical differences. (Section 4907)

The Conference substitute adopts the House provision with an amendment to require that, for each of fiscal years 2008 through 2012, the Secretary shall use not less than \$50,000,000 of the funds dedicated to fruit, vegetable and nut purchases under section 32 to purchase fresh fruits and vegetables for distribution to schools and service institutions in accordance with section 6(a) of the National School Lunch Act. This provision appears in section 4404 of this Act. (Section 4404)

(7) Additional section 32 funds to provide grants for the purchase and operation of urban gardens growing organic fruits and vegetables for the local population

The House bill provides grants to individuals or cooperatives composed of residents of urban neighborhoods where urban gardens or greenhouses are located to assist in purchasing and operating organic fruit and vegetable gardens and greenhouses. Provides that grants may not exceed \$25,000 per year; \$20,000,000 in discretionary funds are appropriated for fiscal year 2008 and each fiscal year thereafter. (Section 10103A)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

The Managers recognize the importance of urban gardens in providing opportunities for individuals and groups to produce food, beautify their neighborhoods, and educate themselves about food production systems. The Managers also recognize with the growing consumer awareness of organically produced food many communities may wish to operate organic gardens and greenhouses. The Managers further recognize the role of the Community Food Projects program in satisfying the need for these projects and strongly encourage the Secretary to increase the program's outreach to urban areas in order to increase the submission of grant applications for urban gardens and greenhouses.

(8) Independent evaluation of Department of Agriculture commodity purchase process

The House bill requires an independent evaluation of the commodity purchasing processes and the importance of increasing purchases of specialty crops. (Section 10104)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to require the Secretary to arrange to have performed an independent evaluation of the

purchasing processes used by the Department of Agriculture to implement the requirement that funds available under section 32 of the Act of August 24, 1935 be principally devoted to perishable agricultural commodities. (Section 10101)

(9) Quality requirement for clementines

The House bill amends section 8e(a) of the Agricultural Adjustment Act by adding clementines to the list of commodities. (Section 10105)

The Senate amendment is the same as the House bill. (Section 3207)

The Conference substitute adopts the Senate provision. (Section 10102)

(10) Implementation of food safety programs under marketing orders

The House bill amends section 8c of the Agricultural Adjustment Act by authorizing the implementation of quality-related food safety programs under specialty crop marketing orders. (Section 10106)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

The Managers are aware that the Secretary has issued marketing orders which include quality-related provisions intended to enhance the safety of the commodities to which they are applicable. Therefore, the managers recognize that statutory language is unnecessary. It is not the Manager's intention to alter the Secretary's authority to incorporate practices to improve the safety of commodities in marketing orders, but rather, to encourage the development of programs of quality-related good agricultural, manufacturing and handling practices with full industry and public participation and in consultation with the Food and Drug Administration.

(11) Inclusion of specialty crops in census of agriculture

The House bill amends section 2(a) of the Census of Agriculture Act to include a census of specialty crops as part of the general census of agriculture. (Section 10107)

The Senate amendment contains a freestanding provision which requires the Secretary to conduct a census of specialty crops not later than September 30, 2008 and each 5 years thereafter. It also allows the Secretary to include the census of specialty crops in the census on agriculture. (Section 1814)

The Conference substitute adopts the House provision. (Section 10103)

(12) Maturity requirements for Hass avocados

The House bill: (1) amends subtitle A of the Agricultural Marketing Act of 1946 by adding at the end of the title a new section, (2) requires the Secretary to issue regulations requiring all Hass avocados sold in the U.S. to meet a minimum maturity requirement, (3) allows for exceptions from this requirement for avocados intended for charities, relief agencies or processing, (4) uses existing inspectors that already inspect avocados under other orders, and allows the Secretary to collect fees to pay for inspection activities, (5) imposes civil penalties between \$50 and \$5,000 for each violation, (6) allows for the diversion of avocados that don't meet the maturity

requirements, and (7) authorizes appropriations for necessary sums. (Section 10108)

The Senate amendment contains a freestanding provision which authorizes an organization of domestic avocado producers to submit to the Secretary a proposal for a grades and standards marketing order for Hass avocados. Once that proposal is received, the Secretary is required to initiate established procedures under the normal marketing order process for the purpose of determining whether there is sufficient industry support for the proposal submitted by the organization. If the Secretary deems it appropriate to establish a marketing order, the language also requires the Secretary to complete that order within 15 months. (Section 1856)

The Conference substitute adopts the Senate provision. (Section 10108)

(13) Mushroom promotion research and consumer information

The House bill: (1) amends the Mushroom Promotion, Research and Consumer Information Act of 1990, (2) reflects the changed geographic distribution of mushroom growers and their productivity by combining the regions that are represented on the Board, and increasing the number of pounds required for representation in the region, and (3) allows the development of good agricultural practices and good handling practices under the mushroom research and promotion order. (Section 10109)

The Senate amendment is the same as the House bill, except also allows the development of food safety programs under the promotion order. (Section 1853)

The Conference substitute adopts the House provision with an amendment to clarify that the mushroom council may develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms. (Section 10104)

(14) Fresh produce education initiative

The House bill authorizes a program to educate persons involved in the fresh produce industry and the public about ways to reduce pathogens in fresh produce and sanitary handling practices. It authorizes necessary sums for each FY 2008 through 2012. (Section 10110)

The Senate amendment is the same as the House, except authorizes \$1,000,000 in discretionary funding to carry out the section. (Section 1813)

The Conference substitute adopts the Senate provision with an amendment to specify that there are authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2008 through 2012, to remain available until expended. (Section 10105)

(15) Pest and disease program

The House bill establishes a new program to conduct early pest detection and surveillance activities in coordination with state departments of agriculture, to prioritize and create action plans to address pest and disease threats to specialty crops, and to create an audit-based certification approach to protect against the spread of plant pests. It provides mandatory funding in the amount of:

- (1) \$10,000,000 in FY 2008;
- (2) \$25,000,000 in FY 2009;
- (3) \$40,000,000 in FY 2010;

- (4) \$55,000,000 in FY 2011; and
- (5) \$70,000,000 in FY 2012. (Section 10201)

The Senate amendment is the same as the House, except for technical differences and provides mandatory funds in the amounts of:

- (1) \$10,000,000 for FY 2008;
- (2) \$25,000,000 for FY 2009;
- (3) \$40,000,000 for FY 2010;
- (4) \$50,000,000 for FY 2011;
- (5) \$64,000,000 for FY 2012. (Section 12101(f))

The Conference substitute adopts the Senate provision with an amendment to: describe the application procedure for the program; prohibit the Department of Agriculture from considering the availability of nonfederal funds in determining whether to enter into a cooperative agreement with a State department of agriculture; direct the Secretary to consider various risk factors when considering an application for a cooperative agreement; express Congressional disapproval of a cost-sharing rule for animal and health emergency programs and; specify mandatory funding in the amounts of:

- (1) \$12,000,000 for fiscal year 2009;
- (2) \$45,000,000 for fiscal year 2010;
- (3) \$50,000,000 for fiscal year 2011; and
- (4) \$50,000,000 for fiscal year 2012. (Section 10201)

The Managers believe that the nursery plant pest risk management systems established under this section will provide the nursery industry with assistance and flexibility in developing programs that meet its needs to determine and manage plant pest and disease risks

The Managers note that the U.S. Department of Agriculture has taken specific steps to promote new methods of inspection and regulation based on new approaches to nursery pest risk management, sometimes referred to as the “systems approach.” These steps include a technical agreement under the auspices of the North American Plant Protection Organization (Regional Standards for Phytosanitary Measures Number 24), and the development of the U.S. Nursery Certification Program, a limited test-pilot program developed by Animal and Plant Health Inspection Service Plant Protection and Quarantine to promote U.S. nursery shipments to Canada.

The Managers are aware of the U.S. Department of Agriculture’s efforts to promote the systems approach for the nursery industry. The development of effective systems of pest risk management and the industry adoption of such systems will be hastened and made more effective through an initiative based on collaboration among key agencies, Departmental personnel, industry organizations, and research institutions. To implement the nursery plant pest risk management systems under this section, U.S. Department of Agriculture policies and regulations must have a sound foundation in research and experience through pilot programs of nursery plant pest risk management systems. In addition, there must be collaboration among industry and state and federal regulators to improve programs of inspection, certification and regulation using such systems.

The Managers recognize that systems of pest risk management developed by the nursery industry must satisfy prevailing regulatory requirements if they are to be useful

and effective. The Managers encourage the U.S. Department of Agriculture to provide guidance and technical assistance to the nursery industry, and to promote and coordinate related programs of research in the implementation of nursery plant pest risk management systems under this section.

(16) Multi-species fruit fly research and sterile fly production

The House bill authorizes the construction of a warehouse and irradiation containment facility for fruit fly rearing and sterilization in Waimanalo, Hawaii. It also authorizes the appropriation of \$15,000,000 for construction and \$1,000,000 for 2008 and each subsequent fiscal year for facility maintenance. (Section 10202)

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

The Managers recognize that fruit flies are among the most destructive pests of fruits and vegetables in the world and pose a significant risk to U.S. agriculture. Further, the Managers recognize the importance of the Animal and Plant Health Inspection Service's (APHIS) Fruit Fly Control Programs in controlling fruit flies. Given the need for a backup sterile fruit fly facility for Mediterranean, Melon, Oriental, and Solanaceous fruit flies, the Managers strongly encourage the Secretary to fully consider Waimanalo, Hawaii, when determining where such a multi-species facility will be located. In examining Waimanalo, Hawaii, and other locations, APHIS should consider whether the locations will support the establishment of the species of fruit flies being produced, existing researcher expertise and experience, whether the area is already infested with the species of fruit flies being produced, and cost effectiveness. The Managers strongly encourage APHIS to request appropriated funding as authorized by 7 U.S.C 428a to provide for the costs of building, maintaining, and operating a backup sterile multi-species fruit fly facility at the location deemed most suitable.

(17) National organic certification cost-share program

The House bill amends section 10606 of the Farm Security and Rural Investment Act to provide \$22,000,000 for the national organic certification cost-share program, to be available until expended. It provides that the federal share may not exceed 75 percent of the cost of certification, and the maximum amount a producer may receive is raised from \$500 to \$750. (Section 10301)

The Senate amendment amends section 10606 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523) to reauthorize the National Organic Certification Cost-Share program, which provides funds for the Secretary to assist producers and handlers of agricultural products in obtaining certification under the Organic Foods Production Act of 1990. Payments to producers or handlers are limited to \$750, and the federal share of the certification cost will be no more than 75 percent of the total certification cost incurred. The Senate provision adds language to require the Secretary to submit to Congress, reports that describes the expenditures for each state under the program during the previous fiscal year. It also provides \$22,000,000 in mandatory funding. (Section 1823)

The Conference substitute adopts the Senate provision with an amendment to delete the federal share requirements as well as the federal and state recordkeeping requirements, and to require the Secretary to submit to the House and Senate Agriculture Committees a report containing certain program information. (Section 10301)

The Managers encourage the Secretary to keep accurate and current records of requests by and disbursements to States under the program, and require accurate and consistent recordkeeping from each State and entity that receives program payments. The Managers also recognize the importance of distributing cost-share funds to the States in a timely manner, and request that the Secretary distribute such funds at the soonest date practicable following the deadline for submission of funding requests under the program. The Managers are aware that there have been discussions between the Department of Agriculture and the States regarding administrative fees for the program and encourage the Department to review administrative fees to ensure optimal performance in serving the needs of organic producers and handlers.

(18) Organic production and market data

The House bill: (1) amends section 7407 of the Farm Security and Rural Investment Act to add pricing of organic products as new data to be included in the ongoing collection of data on agriculture production and marketing, (2) provides that the data on organics under this section shall be collected to analyze crop loss risk of organic methods of production, (3) provides \$3,000,000 in mandatory funds to be available until expended, and (4) includes a free-standing provision that requires the Secretary of Agriculture to submit to Congress a report regarding the progress made in implementing this amendment. (Section 10302)

The Senate amendment amends section 2104 of the Organic Foods Production Act of 1990 (7 U.S.C. 6503) by granting the Secretary authority to segregate data as it relates to the organic industry by publishing organic production and marketing information and surveys. The language is intended to remedy the lack of price and yield information for organic producers.

Senate expands upon House language by requiring detailed data collection for: organic production and market data initiatives and surveys; expand, collect, and publish organic census data analysis, fund comprehensive reporting of prices relating to organically-produced agricultural products; conduct analysis relating to organic production, handling, distribution, retail, and trend studies; study and perform periodic updates on the effects of organic standards on consumer behavior; conduct analysis for organic agriculture using the national crop table.

The Senate provision provides \$5,000,000 in mandatory funding. (Section 1821)

The Conference substitute adopts the Senate provision with an amendment to clarify the data collection, analysis, and survey development requirements for the Secretary, as well as to further specify the contents of the report that the Secretary shall submit to the House and Senate Agriculture Committees. (Section 10302)

The Managers have provided \$5,000,000 in mandatory funding in an effort to jump-start organic data collection efforts at the Department of Agriculture, but recognize that remedying the unmet data collection needs of the organic sector will require further investment, and therefore, have provided an additional authorization of appropriations of

\$25,000,000 for the period of fiscal years 2008 through 2012 to carry out the program. The Managers intend that \$3.5 million of the funding provided for this section be allocated to the Agricultural Market Service to collect and distribute comprehensive reporting of prices relating to organically produced agricultural products. The Managers also note the critical importance of collecting data related to crop loss risk, and farm-gate prices, in order to determine appropriate products and premiums for crop insurance policies offered to organic producers. The Managers further intend that \$1.5 million of the funding provided for this section be used by the Economic Research Service and National Agricultural Statistics Service to carry out the specified requirements of the initiative that are appropriate to each agency.

(19) Organic conversion, technical and educational assistance

The House bill authorizes \$50,000,000 over five years to provide technical assistance and cost-sharing grants to farmers trying to transition to organic farming. (Section 10303)

The Senate amendment contains a comparable provision in the conservation title (EQIP).

The Conference substitute deletes the House provision. Language addressing the goal of providing technical assistance to farmers trying to transition to organic farming appears in section 2501 of the conservation title.

(20) Exemption of certified organic products from assessments

The Senate amendment amends section 501(e) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401 (e)) to allow farmers who have some or part of their farm certified organic to receive the exemption. Only producers that are USDA organically certified may receive the exemption for that portion of land they produce organically. (Section 1822)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(21) National organic program

The Senate amendment amends section 2123 of the Organic Foods Production Act of 1990 (7 U.S.C. 6522) to provide increased authorized incremental funding levels for the National Organic Program to ensure proper compliance and oversight of the National Organic Program. It also authorizes \$5,000,000 for fiscal year 2008; \$6,500,000 for fiscal year 2009; \$8,000,000 for fiscal year 2010; \$9,500,000 for fiscal year 2011; and \$11,000,000 for fiscal year 2012. (Section 1824)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to provide such additional sums as are necessary to carry out the program. (Section 10303)

The National Organic Program (NOP) is the first line of defense in assuring consumers that organic products certified under the program consistently meet the program's standards. The Managers are aware of concerns raised by numerous organic agriculture interests concerning the level of resources devoted to the NOP. While the program's funding level has increased over time, the Managers view the current level of

funding as inadequate to permit the NOP to properly address the world-wide scope of accreditation oversight and certifier training. The Managers strongly encourage the Secretary to prepare NOP budget requests at least equal to the appropriations levels authorized in this Act.

(22) Grant program to improve the movement of specialty crops

The House bill: (1) authorizes the Secretary to make grants to State and local governments, grower cooperatives, and producer and shipper organizations to improve the cost-effective movement of specialty crops, (2) provides that the grant recipient must match the amount of funds received under this program, and (3) authorizes appropriations for necessary sums to carry out the section. (Section 10401)

The Senate amendment is the same as the House bill, except Senate language amends title II of the Specialty Crops Competitiveness Act of 2004 (Public Law 108-465; 118 Stat. 3884), and clarifies that non-profit trucking associations and their research entities are eligible to receive grants. (Section 1842)

The Conference substitute adopts the House provision with an amendment to allow national, state, or regional organizations of producers, shippers or carriers to be eligible for grants under the program. (Section 10403)

(23) Authorization of appropriations for market news activities regarding specialty crops

The House bill authorizes necessary funds for each of fiscal years 2008 through 2012 to support market news activities regarding specialty crops. (Section 10402)

The Senate amendment authorizes \$9,000,000 for each of fiscal years 2008 through 2012, to remain available until expended for market news activities to provide timely price information on fruits and vegetables. (Section 1811)

The Conference substitute adopts the Senate provision with an amendment to specify that in addition to any other funds made available through annual appropriations for market news services, there is authorized to be appropriated \$9,000,000 for each of fiscal years 2008 through 2012, to remain available until expended. (Section 10107)

(24) Farmer marketing assistance program

The House bill: (1) amends section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 and provides findings, (2) renames the Farmers' Market Promotion Program the "Farmer Marketing Assistance Program", (3) specifies categories of farmer-to-consumer direct marketing activities eligible for funding under the program, (4) provides mandatory funds in the amounts of \$5,000,000 for fiscal years 2008 through 2010; and \$10,000,000 for fiscal years 2011 through 2012, and (5) provides that 10 percent of these funds shall be used to support the use of electronic benefit transfers at farmer's markets. (Section 10403)

The Senate amendment: (1) amends section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005) to reauthorize the Farmers Market Promotion Program, (2) adds language to include producer networks or associations, and (3) provides mandatory funds in the amounts of \$5,000,000 for each of fiscal years 2008 through 2011; and \$10,000,000 for fiscal year 2012. (Section 1812)

The Conference substitute adopts the Senate provision with an amendment to specify that 10 percent of the funds available to carry out the Farmers' Market Promotion

Program be used to implement electronic benefit transfer systems at farmers' markets; and to specify mandatory funding in the amounts of:

\$3,000,000 for fiscal year 2008;

\$5,000,000 for each of fiscal years 2009 and 2010;

\$10,000,000 for each of fiscal years 2011 and 2012. (Section 10106)

The Managers recognize that farmer-to-consumer direct marketing activities offer significant economic opportunities for farmers and ranchers seeking to increase profit retention. The Farmers' Market Promotion Program is intended to support the development and expansion of farmers' markets, and all other forms of direct marketing, through the provision of grants to assist in organizing, marketing, training, business plan development, community outreach and education, and other associated activities designed to establish or improve direct marketing opportunities for farmers and ranchers and the consumers they serve.

The Managers recognize that the growth of farmers' markets and other direct marketing ventures has been limited in some communities and regions, and therefore encourage the Department to determine the underlying reasons for this uneven distribution, with the goal of addressing this disparity through the support of meritorious projects in these locations.

The Managers are aware of the growing role that the more than 4,300 farmers markets and 1,200 community supported agriculture enterprises across the country play in providing access to fresh, healthy, and local foods, to all Americans, including those who participate in federal food assistance programs. As of 2006, the USDA estimated that only 6 percent of farmers' markets nationwide have electronic benefit transfer (EBT) systems in place to accept food stamp benefits. To increase the use of food stamp benefits at farmers' markets and community supported agriculture enterprises, the Managers have required a minimum of ten percent of the Farmers' Market Promotion Program funds be devoted to projects designed to implement EBT systems. The Managers also encourage the Secretary to examine and implement more systemic administrative approaches to increase the nationwide access of EBT technology suitable for farmers' markets and community supported agriculture enterprises, including possible ways to improve the administration of EBT service provider contracts to achieve this goal.

(25) National Clean Plant Network

The House bill creates a funding source for clean planting stock and authorizes the Secretary to enter into cooperative agreements to produce, maintain and distribute healthy planting stock. It authorizes the appropriation of necessary funds through 2012 in addition to \$20,000,000 in mandatory funds for the period of fiscal years 2008 through 2012. (Section 10404)

The Senate amendment is the same as the House bill, with technical differences. (Section 1851)

The Conference substitute adopts the Senate provision with an amendment to add NLGCA institutions to the list of entities the Secretary shall consult with in carrying out the program, and to specify mandatory funding in the amounts of \$5,000,000 for each of fiscal years 2009 through 2012. (Section 10202)

(26) Healthy food urban enterprise development program

The House bill: (1) provides competitive grants to eligible entities to conduct studies on improving access of underserved communities to affordable, locally produced food, (2) provides that the maximum grant amount shall not exceed \$250,000, and (3) authorizes the appropriation of necessary funds for each of fiscal years 2008 through 2012. (Section 10405)

The Senate amendment requires the Secretary of Agriculture to establish, through a competitive grant process, the Healthy Enterprise Development Center, the mission of which is to increase access to healthy, affordable foods to underserved communities. The Healthy Food Enterprise Development Center will be required to collect, develop, and provide technical assistance to agricultural producers, food wholesalers and retailers, schools, and other entities regarding best practices for aggregating, storing, processing, and marketing local agricultural products and increasing the availability of such products in underserved communities. The Healthy Food Enterprise Development Center is also provided with the authority to subgrant funds to carry out feasibility studies to carry out the purposes of the Center. The provision provides \$7,000,000 in mandatory money. (Section 1843)

The Conference substitute adopts the Senate provision with amendments to place language for the Healthy Urban Food Enterprise Development Center within the Community Food Projects statute; clarify that subgrants may be used to establish and facilitate enterprises that process, distribute, aggregate, store, and market healthy affordable foods; limit the amount allocated for administrative expenses; provide \$1,000,000 in funding for each of fiscal years 2009 through 2011; and authorize \$2,000,000 for fiscal year 2012. (Section 4402)

The Managers expect that sub-grants be provided for activities in underserved areas that assist appropriate institutions in modifying and upgrading facilities through the purchase of refrigeration units, coolers or other equipment appropriate to accommodate healthy and locally produced agricultural food products.

(27) Definitions

The Senate amendment sets out definitions to apply throughout subtitle F for the terms “specialty crop”, “state”, and “state department of agriculture.” (Section 1801)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to remove the definition of the term “State.” (Section 10001)

(28) Foreign market access study and strategy plan

The Senate amendment requires the Comptroller General of the United States to carry out a study regarding the extent to which United States specialty crops have or have not benefited from the reduction of foreign trade barriers under the Uruguay Round. (Section 1831)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(29) Consultations on sanitary and phytosanitary restrictions for fruits and vegetables

The Senate amendment requires the Secretary to consult with interested persons and conduct annual briefings on sanitary and phytosanitary trade issues, included the development of a strategic risk management framework and as appropriate implementation of a peer review for risk analysis. (Section 1833)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(30) Market loss assistance for asparagus producers

The Senate amendment establishes a program to pay those producers currently growing asparagus for revenue losses during the 2004-2007 crop years due to imports. The language provides \$15,000,000 in mandatory funding (\$7,500,000 for producers of fresh asparagus and \$7,500,000 for producers of processed or frozen asparagus). (Section 1852)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 10404)

TITLE XI—LIVESTOCK

(1) Livestock mandatory price reporting

The Senate amendment amends the Livestock Mandatory Reporting Act in subsection (a). It amends section 232(c)(3) to change the time of the afternoon swine report from 2:00 p.m. to 3:00 p.m. (Central Time). It also changes the time that USDA will publish the afternoon swine report from 3:00 p.m. to 4:00 p.m. (Central Time). Subsection (b) directs USDA to study the economic impacts of including wholesale pork product sales reporting on producers and consumers, including the effects of a confidentiality requirement on mandatory reporting. Upon completion of that study, USDA may establish mandatory packer reporting of wholesale pork product sales (such as pork cuts and retail-ready pork products), requiring each packer processing plant to report to USDA price and volume information at least twice each reporting day. Subsection (c) ensures that USDA continues to publish retail scanner data. (Section 10001)

The House bill contains no comparable provision.

The Conference substitute deletes subsection (a) of the Senate provision to amend the afternoon swine report. The conference substitute adopts subsection (b) of the Senate provision with an amendment to restrict the focus of the wholesale pork study to only pork cuts. Additionally, the Secretary of Agriculture will be provided 1 year to complete the study upon enactment of this Act. The substitute also clarifies that the Secretary is

only authorized to collect the data necessary to complete the study during the period preceding the completion of the report. An authorization of such sums as necessary is provided to complete the study. The Conference substitute deletes subsection (c) of the Senate provision.

The conference substitute also provides enhancements to improve readability and understanding of information published under the Livestock Mandatory Reporting Act through electronic reporting.

The Managers expect the website improvements to be presented in a user friendly format that can be readily understood by producers, packers and other market participants. The website should include charts and graphs that provide real time data, including comparable data from previous days so that producers and other industry participants can track market changes. (Section 11001)

(2) Grading and inspection

The Senate amendment amends section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) to provide USDA authority to establish a voluntary grading program at USDA for catfish. The provision requires USDA to provide inspection activities under the Federal Meat Inspection Act for farm raised catfish, by adding catfish to the list of “amenable species.” The Secretary, while establishing the grading and inspection program for catfish, is required to ensure that nothing duplicates, impedes, or undermines any of the food safety or product grading activities conducted by the Department of Commerce or the Food and Drug Administration. (Section 10002)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to authorize a voluntary fee-based grading program at USDA for catfish. Additional species of farm-raised fish or farm-raised shellfish may be added to the grading program through a petition process to the Secretary of Agriculture. The conference substitute also provides that catfish shall be an amenable species under the Federal Meat Inspection Act, and therefore will be subject to examination and inspection by USDA’s Food Safety and Inspection Service (FSIS) when processed for use as human food. In conducting such inspections, FSIS is authorized to take into account the conditions under which the catfish are raised and transported to a processing establishment. Additional species of fish and shellfish are not addressed in this amendment; however, the Managers note that the Secretary has underlying authority within the Federal Meat Inspection Act to amend the definition of amenable species as he considers necessary and appropriate.

Additionally, the conference substitute requires the Secretary, in promulgating regulations for inspection activities, to consult with the Commissioner of the Food and Drug Administration. Final regulations for grading and inspection activities shall be promulgated not later than 18 months after the date of enactment of this section. The Conference substitute also requires the Secretary of Agriculture to submit an estimate of the costs of implementing the program. (Section 11016)

It is the intent of Congress that catfish be subject to continuous inspection and that imported catfish inspection programs be found to be equivalent under USDA regulations before foreign catfish may be imported into the United States.

The Managers intend that nothing in this section be interpreted to reduce funding or the level of inspection for meat, poultry and egg products. The Managers expect the Secretary to budget accordingly each year for catfish inspection. The Managers expect the Secretary, in approving any petition for voluntary, fee-based grading services for any additional farm-raised fish or farm-raised shellfish species, to make any resulting service available only on a facility by facility basis.

(3) Country of origin labeling

The House bill amends the Agricultural Marketing Act of 1946 to provide new country of origin labeling requirements for beef, lamb, pork and goat. It amends the list of covered commodities to include goat meat. The provision specifies labeling requirements for products that are of United States country of origin, multiple countries of origin, imported for immediate slaughter, and from a foreign country of origin. To be eligible for U.S. country of origin, the product must be derived from an animal that was exclusively born, raised, and slaughtered in the U.S. (with a narrow exception for animals from Alaska or Hawaii and transported through Canada), or present in the U.S. on or before January 1, 2008. The House provision authorizes the Secretary to conduct audits to verify compliance with this section. It prohibits the Secretary from requiring a person or entity to maintain a record of the country of origin of covered commodities, other than those maintained in the course of the normal conduct of business of such person or entity. The House bill amends section 283 to clarify that a retailer or person engaged in the business of supplying a covered commodity to a retailer notified of a violation will be provided 30 days to come into compliance with the law. It provides that if such person does not make a good faith effort to comply, and continues to willfully violate the law, the Secretary may fine the person in an amount up to \$1,000 for each violation. (Section 11104)

The Senate amendment is similar to the House language but has several modifications. It amends the list of covered commodities to include goat meat, macadamia nuts and chicken. In addition to House language, Senate adds language to U.S. country of origin labeling category to require that animals present in the United States on or before January 1, 2008, and once present in the United States, must have remained continuously in the United States. In addition to House language regarding multiple countries of origin, Senate adds disclaimer under subsection (B) to clarify that labeling for multiple countries of origin is a mandatory requirement. (Section 10003)

The Conference substitute adopts the Senate provision with an amendment to add ginseng and pecans as covered commodities. Covered commodities, such as beef, lamb, pork, chicken, or goat present in the United States on or before July 15, 2008 will be labeled as product of the United States. The Managers reinstate current law regarding the labeling of processed wild fish to include locations such as aboard a vessel that is documented under chapter 121 of title 46, United States Code, or registered in the United States. (Section 11002)

(4) Definitions

The Senate amendment: (1) amends the definitions of terms provided for the purposes of the Agricultural Fair Practices Act of 1967, (2) expands the definition of “association of producers” to also include general livestock, poultry and farm groups, and (3) clarifies that a handler is not a producer, nor a person that provides custom feeding services. (Section 10101)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to define the term associations of producers to include organizations with a membership exclusively limited to agricultural producers and dedicated to promoting the common interest and general welfare of agricultural products. Additionally, the conference substitute deletes the Senate provision that excluded the term “producer” from the definition of “handler.” The conference substitute also removes the provision defining the Secretary of Agriculture under the Agricultural Fair Practices Act of 1967. (Section 11003)

It is the intent of the Managers that custom feeding services should be interpreted to mean a producer or business that feeds livestock for other producers, but does not own the livestock they are feeding and raising for those producers.

(5) Prohibited practices

The Senate amendment: (1) amends section 4 of the Agricultural Fair Practices Act to expand the list of prohibited practices, (2) amends the first category to add that it shall also be unlawful for any handler to knowingly engage or permit any employee or agent to coerce any producer in the exercise of his right to *form* an association of producers, and (3) adds that it shall be unlawful to “fail to bargain in good faith with an association of producers.” (Section 10102)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(6) Enforcement

The Senate amendment amends the enforcement provisions by striking section 5 and replacing it with a directive for the Secretary to conduct rulemaking to clarify what constitutes normal and fair dealing per section 10104. It also strikes section 6 of the current law to provide the Secretary of Agriculture the authority to bring a civil action in United States District Court by filing a complaint requesting preventative relief, including an application for a permanent or temporary injunction, restraining order or other order, against the handler. Under the Senate provision, handlers found to have violated the Act are liable for the amount of damages including the costs of litigation and reasonable attorneys’ fees. The Senate provision changes the statute of limitations from 2 years to 4 years and provides for an additional penalty of not more than \$1,000 per violation. (Section 10103)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(7) Rules and regulations

The House bill amends the Agricultural Fair Practices Act by adding provisions for the promulgation of new rules and regulations. It directs USDA to promulgate rules and regulations, including rules or regulations necessary to clarify what constitutes fair and normal dealing for purposes of the selection of customers by handlers. Please note section 5 (7 U.S.C. 2304) was struck pursuant to section 10103. (Section 10104)

The Senate amendment

The Conference substitute deletes the Senate provision.

(8) Special counsel for agricultural competition

The Senate amendment amends the Packers and Stockyards Act by adding a new subtitle that provides for the appointment of a special counsel at USDA to investigate and also prosecute violations of Packers and Stockyards Act and Agricultural Fair Practices Act. The Special Counsel will oversee the Office of Special Counsel and will have the responsibility for all duties and functions of the Packers and Stockyards programs at USDA. Employees within GIPSA's Packers and Stockyards programs will report to the Special Counsel. Grain inspection activities currently carried out by GIPSA would continue to report to the Administrator for GIPSA as a separate agency or as determined by the Secretary upon implementing this section. The Administrator for GIPSA would no longer oversee activities of the Packers and Stockyards programs. The Senate provision provides that the Special Counsel will report to the Secretary of Agriculture. The Special Counsel shall be free from the direction and control of any person in the Department of Agriculture other than the Secretary. The Special Counsel shall be appointed by the President with the advice and consent of the Senate. The Senate provision provides that the Special Counsel shall report twice each year to Congress that details the number of complaints received and closed, number of investigations and civil and administrative actions initiated, carried out and completed, number and type of decisions agreed to and number of stipulation agreements, the number of investigations and civil and administrative actions that the Secretary objected to or prohibited from being carried out, and the stated purpose of the Secretary for each objection or prohibition. The Special Counsel, prior to commencing, defending, or intervening in any civil action under the Packers and Stockyards Act or the Agricultural Fair Practices Act, shall give written notification to the Attorney General. Should the Attorney General fail to commence, defend, or intervene in the proposed action, the Special Counsel may commence, defend or intervene and supervise the litigation in the name of the Special Counsel. Nothing prevents the Attorney General from intervening on behalf of the United States in any civil action under the Packers and Stockyards Act or the Agricultural Fair Practices Act. (Section 10201)

The House bill contains no comparable provision.

The Conference substitute provides that the Secretary shall submit an annual report by the Grain Inspection, Packers and Stockyards Administration at the Department of Agriculture to detail the number of investigations into possible violations of the Packers and Stockyards Act, 1921. The annual report will detail the length of time that

investigations are pending with the Grain Inspection, Packers and Stockyards Administration, the General Counsel of the Department of Agriculture and the Department of Justice. The annual report requirement will expire with the expiration of this Act. (Section 11004)

It is the intent of the Managers that the annual report provide ranges into the length of time investigations may be pending with the Grain Inspection, Packers and Stockyards Administration, the Office of General Counsel, or the Department of Justice. The Managers have provided flexibility for the Secretary to conduct the report using various summary statistics such as range, maximum, minimum, mean and average times. However, at a minimum, the Managers request charts to be provided in the annual report denoting the ranges in 6 month intervals.

(9) Investigation of live poultry dealers

The Senate amendment: (1) amends section 2 of the Packers and Stockyards Act to remove the poultry slaughter requirement from the existing definitions, (2) amends title II of the Packers and Stockyards Act to give the USDA administrative enforcement authority over live poultry dealers under the Act, (3) defines “poultry grower” as any person engaged in the business of raising or caring for live poultry under a poultry growing arrangement, regardless of whether the poultry is owned by the person or by another person, (4) amends section 408 of the Packers and Stockyards Act to provide authority for the Secretary to request a temporary injunction or restraining order if a person subject to the Act fails to pay a poultry grower what is due the poultry grower for poultry care, (5) increases the penalty for violations under the Act from \$10,000 to \$22,000, and (6) repeals sections regarding poultry enforcement under sections 411, 412, and 413. (Section 10202)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(10) Definition of capital investment

The Senate amendment amends title I of the Packers and Stockyards Act to add the definition of a capital investment. Capital investment is defined as an investment in a structure, such as a building or manure storage structure; or machinery or equipment associated with producing livestock or poultry that has a useful life of more than 1 year. (Section 10203(a))

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(11) Definition of contractor

The Senate amendment amends title I of the Packers and Stockyards Act to add the definition of a contractor. Contractor is defined as a person that obtains livestock or poultry from a contract producer in accordance with a production contract. (Section 10203(a))

The House bill contains no comparable provision.
The Conference substitute deletes the Senate provision.

(12) Definition of contract producer

The Senate amendment amends title I of the Packers and Stockyards Act to add the definition of a contract producer. Contract producer is defined as a producer that produces livestock or poultry under a production contract. (Section 10203(a))

The House bill contains no comparable provision.
The Conference substitute deletes the Senate provision.

(13) Definition of investment requirement

The Senate amendment amends title I of the Packers and Stockyards Act to add the definition of an investment requirement. Investment requirement is defined as an investment that requires a contract producer to make a capital investment that, but for the production contract, the producer would not have made; or a representation by a contractor that results in the contract producer making a capital investment. (Section 10203(a))

The House bill contains no comparable provision.
The Conference substitute deletes the Senate provision.

(14) Definition of production contract

The Senate amendment amends title I of the Packers and Stockyards Act to add the definition of a production contract. A production contract is defined as a written agreement that provides for the production of livestock or poultry by a contract producer or the provision of a management service relating to the production of livestock or poultry by a contract producer. (Section 10203(a))

The House bill contains no comparable provision.
The Conference substitute deletes the Senate provision.

(15) Right to cancel production contracts

The Senate amendment amends title II of the Packers and Stockyards Act to add a new section (section 208) governing production contracts. It allows contract producers to cancel a production contract within three business days after the contract execution date. The contract shall disclose the right of the producer to cancel a production contract and the method by which the contract producer may cancel the production contract, including the deadline for canceling the production contract. (Section 10203(b))

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to provide that poultry growers and swine production contract growers may cancel their contract up to three business days after the date on which the contract was signed. (Section 11005)

(16) Production contracts requiring large capital investments

The Senate amendment amends title II of the Packers and Stockyards Act to add a new section (section 208) governing production contracts that require large capital investments. The provision allows contract producers who have made an investment of \$100,000 or more for purposes of securing the production contract with a packer, live poultry dealer, or swine contractor, to be given at least 90 days to correct an alleged breach before a contractor can terminate a contract. The contractor may terminate or cancel a production contract without notice for voluntary abandonment by the contract producer, conviction of the contract producer an offense or fraud or theft committed against the contractor, the natural end of the production contract, or the well-being of the livestock or poultry would be in jeopardy once under the care of the contract producer. If not later than 90 days, a producer remedies the cause of breach under the contract, the contractor may not terminate or cancel a production contract. (Section 10203(b))

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

In Section 11006 of the conference substitute, the Managers require the Secretary to promulgate rules regarding what constitutes a reasonable period of time for a live poultry dealer or swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract.

(17) Additional capital investments

The Senate amendment amends title II of the Packers and Stockyards Act to add a new section (section 208) to prohibit a contractor from requiring additional investments of the contract producer during the term of the contract unless the additional investments are offset by reasonable additional consideration, including compensation or a modification of the terms of the contract; and the contract producer agrees in writing that there is acceptable and satisfactory consideration for the additional capital investment; or without the additional capital investments the well-being of the livestock or poultry subject to the contract are in jeopardy. (Section 10203(b))

The House bill contains no comparable provision.

The Conference substitute provides that a poultry growing arrangement or swine production contract contain a conspicuous statement that additional large capital investments may be required of the poultry grower or swine production contract grower during the term of the poultry growing arrangement or swine production contract. The provision will apply to any poultry growing arrangement or swine production contract entered into, amended, altered, modified, renewed, or extended after the date of enactment of this section. (Section 11005)

(18) Choice of law, jurisdiction and venue

The Senate amendment: (1) amends title II of the Packers and Stockyards Act to add a new section (section 209) governing the settlement of disputes arising under

production or marketing contracts governed by the Packers and Stockyards Act, (2) provides that any provision of a livestock or poultry contract shall be subject to the jurisdiction, venue of the state in which the production occurs, and (3) designates that the choice of law, jurisdiction and venue requirements shall apply to any production or marketing contract entered into, amended, altered, modified, renewed, or extended after the date of enactment. (Section 10203)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to require that the forum for resolving any dispute among the parties to a poultry growing arrangement or swine production or marketing contract shall be the Federal judicial district in which the principle part of the performance takes place under the arrangement or contract. A poultry growing arrangement or swine production or marketing contract may specify which State's law is to apply to issues governed by State law in any dispute arising out of the arrangement or contract, except to the extent that doing so is prohibited by the law of the State in which the principal part of the performance takes place under the arrangement or contract. (Section 11005)

(19) Arbitration of livestock and poultry contracts

The Senate amendment amends title II of the Packers and Stockyards Act to add a new section (section 210) governing the settlement of disputes arising under contracts governed by the Packers and Stockyards Act. The Senate provision provides that arbitration may be used to settle a controversy arising from a livestock or poultry contract only if, after the controversy arises, both parties consent in writing to use arbitration to settle the controversy. (Section 10203(b))

The House bill amended the Packers and Stockyards Act to instruct the Secretary to promulgate regulations to establish standards related to arbitration provisions in livestock and poultry contracts. The provision directs the Secretary to promulgate regulations addressing venue, costs, number and appointment of arbitrators, and other elements of arbitration, as necessary. The provision requires that any person appointed as arbitrator disclose any circumstances that could raise doubt as to impartiality.

The Conference substitute provides a producer or grower the ability to decline arbitration prior to entering the contract. Any livestock or poultry contract that contains a provision requiring the use of arbitration shall conspicuously disclose the right of the contract producer or grower, prior to entering the contract, to decline the requirement to use arbitration to resolve any controversy that may arise under the livestock or poultry contract. Any contract producer or grower that declines arbitration prior to entering the contract has the right to still seek the use of arbitration after a controversy arises, if both parties consent in writing to use arbitration to settle the controversy. The conference substitute provides that it shall be an unlawful practice under the Packers and Stockyards Act for a packer, swine contractor, or live poultry dealer to violate this section including any action that has the intent or effect of limiting the ability of a producer or grower to freely make a choice to decline the use of arbitration. The Secretary is also required to promulgate regulations to establish criteria to be used in determining whether the arbitration process provided in a contract provides a meaningful opportunity for the grower or producer to participate fully in the arbitration process. (Section 11005)

When used in this section, the Managers intend that the term “contract” means at a minimum, poultry growing arrangements, livestock production, marketing and forward contracts.

The Managers expect that this section be implemented in such a manner that producers and growers have a choice and the ability to decline arbitration prior to entering the contract. Additionally, it is the intent of the Managers that the Secretary of Agriculture develop regulations which provide producers and growers a reasonable period of time in which to decide whether or not to decline arbitration prior to entering the contract.

(20) Right to discuss terms of contracts

The Senate amendment amends section 10503 of the Farm Security and Rural Investment Act of 2002 to add to the list in current law. It would allow contract growers to also discuss contract terms with business associates, neighbors, and other producers. (Section 10204)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(21) Attorneys' fees

The Senate amendment amends section 308 to allow producers to attempt to recover the costs of the litigation, including reasonable attorneys' fees, (in addition to damages) in an action arising under the Packers and Stockyards Act. (Section 10205)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(22) Appointment of outside counsel

The Senate amendment amends section 407 to provide the Secretary with the authority to obtain the services of attorneys who are not federal employees to aid in investigations and civil cases. (Section 10206)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(23) Prohibition on packers owning, feeding, or controlling livestock

The Senate amendment amends section 202 of the Packers and Stockyards Act (7 U.S.C. 192) to add to the list of prohibited practices. It prohibits most major packers from owning, feeding, or controlling livestock directly, or through a subsidiary, or through an arrangement that gives the packer operational, managerial, or supervisory control over livestock or over the farming operation that produces the livestock, to such an extent that the producer is no longer materially participating in the management of the livestock operation. The prohibition does not apply to: packers who enter into

arrangements within 14 days before slaughter; cooperatives where the majority of ownership interest is held by active cooperative members; packers not required to report to USDA under section 212 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635a); or a packer that only owns one livestock processing plant. The provision provides that a packer of swine would be in violation of this provision if it owns, feeds or controls swine later than 18 months after the enactment of this Act. It provides that a packer of livestock, other than swine, would be in violation of this provision if it owns, feeds or controls livestock later than 180 days after enactment of this Act. (Section 10207)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(24) Regulations

The Senate amendment directs USDA to promulgate rules and regulations, including regulations dealing with discrimination against smaller volume producers. It provides that regulations shall also be promulgated to require that live poultry dealers provide written notice to poultry growers if the live poultry dealer imposes an extended layout period in excess of 30 days prior to removal of the previous flock. (Section 10208)

The House bill contains no comparable provision.

The Conference substitute provides for the promulgation of regulations under the Packers and Stockyards Act, 1921 not later than two years after enactment, to establish criteria that the Secretary of Agriculture will consider when developing the regulations enumerated in this section (Section 11006)

(25) Sense of Congress regarding pseudorabies eradication program

The House bill expresses the sense of Congress that the eradication of pseudorabies is a high priority that should be carried out under the authorities of the Animal Health Protection Act. (Section 11101)

The Senate amendment is similar to House provision but expands upon the House language to recognize the threat that feral swine pose to not only swine, but also the entire livestock industry. Senate language also details the importance of pseudorabies surveillance funding to assist the swine industry in monitoring, surveillance, and eradication of pseudorabies, including the monitoring and surveillance of other diseases effecting swine production and trade. (Section 10301)

The Conference substitute adopts the House provision with an amendment to recognize the threat that feral swine pose to not only the domestic swine population but also the entire livestock industry. (Section 11007)

(26) Sense of Congress regarding the cattle fever tick eradication program

The House bill expresses the sense of Congress that implementing a national strategic plan for the cattle fever tick eradication program is a high priority in order to

identify and procure the necessary tools to prevent and eradicate fever ticks in the United States. (Section 11106)

The Senate amendment is the same as the House bill. (Section 10302)

The Conference substitute adopts the House provision.
(Section 11008)

(27) National Sheep and Goat Industry Improvement Center

The House bill amends section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j) by eliminating the requirement that the National Sheep Industry Improvement Center privatize its revolving fund. An authorization of appropriations of \$10 million is authorized for each of the fiscal years 2008 through 2012. (Section 6015)

The Senate amendment: (1) amends section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j) by eliminating the requirement that the National Sheep Industry Improvement Center privatize its revolving fund, (2) renames the Center as the National Sheep and Goat Industry Improvement Center, and (3) provides for new mandatory funding of \$1,000,000 for FY2008, to be available until expended, and authorizes \$10,000,000 for each FY2008-2012. (Section 10303)

The Conference substitute adopts the Senate provision with an amendment to delete the renaming of the Center. (Section 11009)

(28) Trichinae certification program

The Senate amendment amends section 10409 of the Animal Health Protection Act, to direct the USDA to establish and implement a trichinae certification program to certify farm operations that are trichinae free to be eligible for export or other market opportunities. It authorizes appropriations of \$1.25 million for each of fiscal years 2008 through 2012. (Section 10304)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to require the Secretary of Agriculture to provide an explanation should the final rule not be promulgated within 90 days of enactment of this Act. Subject to appropriation of funds, the Secretary is authorized to use \$6,200,000 to carry out the certification program (Section 11010)

(29) Protection of information in the animal identification program

The Senate amendment directs the Secretary of Agriculture to promulgate regulations consistent with the Freedom of Information Act regarding the disclosure of information submitted by farmers and ranchers who participate in the national animal identification system. The regulations promulgated are subject to public comment and should address the protection of trade secrets and other proprietary and or confidential business information. (Section 10305)

The House bill contains no comparable provision.
The Conference substitute deletes the Senate provision.

(30) Sense of Congress regarding the voluntary control program for low pathogenic avian influenza

The House bill expresses the sense of Congress that the voluntary control program for low pathogenic avian influenza is a critical component of the animal health protection system, and that the Secretary should continue to provide 100 percent compensation for eligible costs to owners of poultry and cooperating States. (Section 11105)

The Senate amendment amends section 10407(d)(2) of the Animal Health Protection Act. It defines “eligible costs” for the purpose of low pathogenic avian influenza indemnification as “costs determined eligible for indemnity under part 56 of title 9, Code of Federal Regulations, as in effect on the date of enactment of this clause.” The Senate provision also provides that, subject to subparagraphs (B) and (D), with respect to compensation provided to an owner of an animal required to be destroyed under section 10407 of the Animal Health Protection Act, the compensation to any owner or contract grower of poultry participating in the voluntary control program for low pathogenic avian influenza under the National Poultry Improvement Plan, and payments to cooperating State agencies, shall be made in an amount equal to 100 percent of the eligible costs. (Section 10306)

The Conference substitute provides that the Secretary compensate industry participants and States that cooperate with the Secretary in conducting livestock pest or disease detection, control or eradication measures for 100 percent of eligible costs. .

It is the intent of the Managers that compensation under this section go to any owner or contract grower of poultry participating in the voluntary control program for low pathogenic avian influenza under the National Poultry Improvement Plan, and payments to cooperating state agencies in an amount equal to 100 percent of the eligible costs. Eligible costs are defined in accordance with part 56 of title 9, Code of Federal Regulations, as in effect on the date of enactment of this section. (Section 11011)

Chronic Wasting Disease

The Managers expect the Secretary to promulgate, as soon as practicable, a final rule to establish a herd certification program to combat chronic wasting disease in farmed and captive deer, elk and moose. The Managers expect the rule to include appropriate certification procedures to allow for the interstate movement of participating deer, elk, and moose.

(31) Study on bioenergy operations

The Senate amendment directs USDA to submit to the House and Senate Agriculture Committees a report describing the potential economic issues (including potential costs) associated with animal manure used in normal agricultural operations and as a feedstock in bioenergy production. (Section 10307)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to

require the study to evaluate the extent to which animal manure is utilized as fertilizer in agricultural operations, the potential impact on consumers and on agricultural operations resulting from limitations being placed on the utilization of animal manure as a fertilizer, and the effects on agriculture production contributable to the increased competition for animal manure use due to bioenergy production, including as a feedstock or a replacement for fossil fuels. The study is to be submitted to the respective House and Senate Committees within 1 year of enactment of this Act. (Section 11014)

(32) Sense of the Senate on indemnification of livestock producers

The Senate amendment expresses the sense of the Senate that the USDA should “partner with the private insurance industry to implement an approach for expediting the indemnification of livestock producers in the case of catastrophic disease outbreaks.” (Section 10308)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(33) State-inspected meat and poultry

The House bill requires the Secretary to submit a report to Congress with the results of a review of each State meat and/or poultry inspection program in section 11103(a). Such review will include a determination of the effectiveness of the program, and an identification of the changes necessary for the program to meet and enforce Federal inspection standards. Subsections (b) and (c) of section 11103 amend the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), respectively, with regard to State inspection programs. Authorizes the Secretary to approve a State to ship product inspected under such State’s inspection program in interstate commerce, if such State inspection program has implemented identical requirements to those contained in the FMIA and/or PPIA and Federal regulations under such statutes. The House bill provides requirements for new State inspection programs, including that the Secretary shall review all new State inspection programs within one year after such State inspection program was approved. Upon such review, the State inspection program must implement all recommendations from the review. The provision provides that a State inspection program will operate subject to a cooperative agreement with the Secretary, and establishes the terms of such cooperative agreement, including: State must adopt requirements identical to Federal inspection requirements; State mark of inspection will be deemed an official mark; State will comply with labeling requirements issued by the Secretary; Secretary will have authority to detain and seize products under the State program; Secretary will have access to facilities and records of State program; and other provisions as determined by the Secretary. The provision also provides that the Secretary shall reimburse a State for not more than 50 percent of the State’s costs for the State meat inspection program, and not more than 60 percent of the State’s costs for the State poultry inspection program. The House bill requires the Secretary to take action if the Secretary determines that a State inspection program is not in compliance with the cooperative agreement, including suspending or revoking the approval of the State inspection program. Authorizes the Secretary to institute Federal

inspection at a State-inspected plant if the Secretary determines that such State plant is not operating in accordance with the cooperative agreement and requirements herein. It also requires the Secretary to conduct annual review of each State inspection program. It provides that no State may prohibit or restrict the movement or sale of meat or poultry products that have been inspected and passed in accordance with this section. (Section 11103)

The Senate amendment amends the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) to create an option for state inspected plants that are 25 employees or less to ship in interstate commerce. This will not replace the existing state inspection programs. Plants that are selected by the Secretary to ship in interstate commerce using this option must follow the Federal Meat Inspection Act and Poultry Products Inspection Act in the same manner as expected of a federally inspected establishment. Establishments that are larger than 25 employees but less than 35 employees are eligible for this option, but must transition to a federal establishment three years after promulgation of the final rule. Establishments that are currently under Federal inspection are not eligible for this option. The Secretary shall reimburse a state for costs related to the inspection of selected establishments in the state at an amount not less than 60 percent of eligible state costs. The Secretary may also reimburse a state for 100 percent of the eligible state costs if the selected establishment provides additional verification microbiological testing in excess of typical Federal establishments. The Secretary shall designate a Federal employee as a state coordinator for each state agency that has a state inspection program. The state coordinator will be under direct supervision of the Secretary. The state coordinator will visit selected establishments with a frequency appropriate to ensure that these establishments are operating in a manner consistent with the Federal Meat Inspection Act and Poultry Products Inspection Act. The state coordinator shall provide on a quarterly basis a report that describes the status of each selected state establishment in regard to compliance with the Federal Meat Inspection Act and Poultry Products Inspection Act. If a state coordinator finds any selected establishment in violation of the Federal Meat Inspection Act or Poultry Products Inspection Act, the state coordinator shall notify the Secretary of the violation and deselect the selected establishment or suspend inspection. The Senate provision requires USDA's Inspector General not later than two years after the effective date of enactment, and not less than every two years, conduct an audit of each activity taken by the Secretary to determine compliance of this program with the law. The Government Accountability Office shall also conduct an audit of the implementation of this program. It also authorizes the Secretary of Agriculture to establish within the Food Safety Inspection Service (FSIS) at USDA an inspection training division to coordinate outreach, education, training and technical assistance of very small and certain small establishments. The Senate language allows the Secretary to provide grants to appropriate state agencies to help establishments covered by intrastate inspection under title III of the Federal Meat Inspection Act to transition to the new program under title V. (Section 11067)

The Conference substitute adopts the Senate provision with an amendment to strike section (c) (2) of the Senate amendment regarding microbiological verification testing. Periodic audits required of the Inspector General under Senate section (e)(1) was changed from two years to not less often than every three years. (Section 11015)

(34) Food Safety Commission

The Senate amendment establishes a Congressional Bipartisan Food Safety Commission to review the food safety system of the United States and to prepare a report that makes recommendations on ways to: modernize the U.S. food safety system; harmonize and update food safety statutes; improve Federal, State, local, and interagency coordination of food safety personnel, activities, budgets, and leadership; allocate scarce resources according to risk; ensure that regulations directives, guidance, and other standards and requirements are based on best-available science and technology; emphasize preventative strategies; provide to Federal agencies funding mechanisms necessary to effectively carry out food safety responsibilities; and to draft specific statutory language that would implement recommendations of the Commission. The Commission is required to review and consider statutes, studies and reports as listed in legislative language to understand the U.S. food safety system. The initial meeting is required to take place 30 days after the final Commission member is appointed. One year after its initial meeting, the Commission is required to publish a report on its findings, upon which the Commission will dissolve. The members of the Commission will be appointed 60 days after the enactment of this legislation. Members are required to have training, education or experience in food safety research, food safety law and policy, or program design and implementation. Members must consist of the Secretary of Agriculture (or a designee), the Secretary of Health and Human Services (or a designee), one Member of the House of Representatives, one Member of the Senate, and 15 members that represent consumer organizations, agricultural and livestock production, public health professionals, State regulators, Federal employees, and the livestock and food manufacturing and processing industry. Two members of the Commission are appointed by the President, 13 are appointed by Congress. The Commission is required to hold at least five stakeholder meetings, and can hold hearings and secure information from Federal agencies to carry out its work. Commission members who are not officers or employees of the Federal government can be compensated for serving on the Commission. Commission members are allowed travel expenses while away from home or place of business. The Chairperson of the Commission can appoint an executive director and additional personnel to carry out the work of the commission. Federal Government employees can be detailed to the Commission without reimbursement. This provision authorizes appropriations to carry out this section. (Section 11060)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(35) Action by President and Congress based on report

The Senate amendment states: (1) the President is required to review the report from the Congressional Bipartisan Food Safety Commission established by the Senate amendment, and is required to submit to Congress proposed legislation based on the recommendations for statutory language contained in the Commission's report and proposed legislation, and (2) Congress may hold hearings and other activities for consideration of the statutory language from the Commission and the President. It also

contains a Sense of the Senate expressing: the need for additional resources and direction for the food safety agencies of the Federal Government; the need for additional food safety inspectors; the need for food safety agreements between the United States and its trading partners; the need for Congress to work on comprehensive food safety legislation. (Section 11072)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(36) Food safety improvement

The Senate amendment modifies the FMIA and PPIA to create a reporting requirement for establishments regulated by USDA-FSIS to provide information to the Secretary upon determining that a meat and/or poultry product it manufactured had entered the stream of commerce and was reasonably likely to cause serious adverse health events or death (the Class I recall standard). Reports are not required if products are under the control of the establishment and corrective actions are taken to ensure that the product is no longer adulterated, or if the product never enters into the stream of commerce. Upon receipt of a report, the Secretary would be able to use existing authority to request additional information related to the incident, issue a public health alert, and work with the establishment to notify relevant members of the supply chain and pursue a corrective action plan. The language encourages USDA to coordinate such efforts with State and local public health officials. The provision: (1) requires all establishments regulated by USDA-FSIS to have in place a recall plan per USDA Directive 8080.1, Revision 4, (2) requires all beef establishments regulated by USDA-FSIS to have in place an *E. coli* reassessment as described in 67 Federal Register 62325 (October 7, 2002), (3) directs the Secretaries of Agriculture and HHS to promulgate sanitary food transportation regulations, as described in section 416(b) of the Federal Food, Drug, and Cosmetics Act, and (4) directs USDA, HHS, and DOT to enter into a Memorandum of Understanding related to sanitary food transportation. (Section 11087)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to add a new section 12 to the Federal Meat Inspection Act (21 U.S.C. 611) to require immediate notification of the Secretary if an establishment believes or has reason to believe that an adulterated or misbranded meat or meat food product has entered commerce; add a new section 13 to the Federal Meat Inspection Act (21 U.S.C. 611) to require establishments to prepare and maintain, in writing, a recall plan and any reassessments of their hazard analysis and critical control point plans, and to have those plans and reassessments available to USDA inspectors. Identical changes were made to the Poultry Products Inspection Act (21 U.S.C. 459) by modifying section 10 of the PPIA. (Section 11017)

(37) Oversight of national aquatic animal health plan

The Senate amendment establishes a General advisory Committee for Oversight of National Aquatic Animal Health (composed of not more than 20 members). The advisory committee is to make recommendations to the Secretary on:

- the establishment and membership of appropriate experts to efficiently implement the national aquatic animal health plan developed by the National Aquatic Animal Health Task Force
- disease and species-specific best management practices related to activities carried out under the national aquatic animal health plan developed by the National Aquatic Animal Health Task Force
- the establishment and administration of an indemnification fund (see below)

The Senate amendment requires the Secretary to promulgate regulations establishing the national aquatic animal health improvement program, in accordance with the Animal Health Protection Act. The provision allows for participation by State and Tribal Governments and the Private Sector who upon election to participate will enter into agreements with the Secretary to assume responsibility for a portion of the non-Federal share of the costs of carrying out the national aquatic animal health plan developed by the National Aquatic Animal Health Task Force. It establishes an indemnification fund to compensate aquatic farmers for specified purposes. It also requires a report not later than 2 years after the date of enactment to describe:

- activities carried out under the national aquatic animal health plan developed by the National Aquatic Animal Health Task Force
- activities carried out by the advisory committee
- recommendations for subsequent years' funding

The Senate amendment authorizes appropriations of \$15,000,000 for fiscal years 2008 and 2009, of which not less than 50 percent is to be deposited into the indemnification fund and not more than 50 percent shall be used to carry out the national aquatic animal health plan developed by the National Aquatic Animal Health Task Force. (Section 11086)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment. (Section 11013)

The Managers are conscious of the need for an aquatic animal health plan. The United States is facing a seafood trade deficit of over \$9 billion, and faces loss of export markets in Europe, partially due to the lack of a coordinated industry health program. Without an effective control program in place, the United States faces difficulty in safeguarding against pest and disease incursions. The Managers therefore encourage the Animal and Plant Health Inspection Service to implement a National Aquatic Animal Health Plan (NAAHP) within 18 months of enactment of this Act. It is further expected that NAAHP should be based on the existing plan developed by the National Aquatic Animal Health Task Force, and to be refined with extensive consultation of cooperators, including state agencies, tribal governments, industry, and fish health professionals.

The Managers note the potential benefits of an advisory board to ensure the success of such a Plan; such a board should have a balanced representation of state and tribal governments and commercial aquaculture interests. The Managers likewise recognize the potential benefits of an appropriate number of representative expert committees. Such expert committees would be charged with recommending disease- and species- specific plans, taking into account any existing aquaculture-related projects undertaken under the aegis of the Plan as of the date of enactment of this legislation.

TITLE XII—CROP INSURANCE

(1) Premiums and reinsurance requirements

(a) Premium Adjustments (Section 508(a) of the Federal Crop Insurance Act)

The House bill: prohibits paying premiums, offering rebates for premiums, or making other inducements to purchase crop insurance or after crop insurance has been purchased, except for administrative fees pursuant to section 508(b)(5)(B) of the Federal Crop Insurance Act or performance-based discounts under section 508(d)(3) of the same Act. (Section 11001(a))

The Conference substitute adopts the House provision, with the following modification—the rebating rules are modified so as to permit certain cooperatives that were authorized to offer payments in accordance with section (b)(5)(B) as in effect the day before the date of enactment by the Risk Management Agency (RMA) in the 2005, 2006, and 2007 reinsurance years to continue to do so (Section 12004).

The Managers' intent in including clause (9)(B)(iii) is to “grandfather in” entities that have previously been approved by the Federal Crop Insurance Corporation (Corporation) to make payments in accordance with subsection (b)(5)(B) as in effect on the day before the date of enactment. These entities must provide payments or patronage dividends in a consistent manner with the payment plan previously approved in accordance with such subsection for the entity by the Corporation. The Managers expect the Corporation to notify, in writing and on an annual basis, entities covered under the grandfather clause as well as 508(b)(5)(B) as amended of their ability to provide such payments and the scope of providing such payments. The Managers expect the Corporation to exercise strict oversight to ensure that these entities are operating consistent with federal and state law and the payment plan submitted and approved. The Managers understand through discussions with RMA that the parties covered by the grandfather clause represent the universe of parties engaged in this activity. The Managers also understand from RMA that, while two submissions are still under review, no further requests are pending or expected from additional parties seeking to engage in the activities of those parties covered by the grandfather clause.

(b) Administrative Fee (Section 508(b) of the Federal Crop Insurance Act)

Section 11001(b) of the House bill amends the Federal Crop Insurance Act to limit the ability of an insurance provider, cooperative association, or trade association to pay for only catastrophic risk protection administrative fees on behalf of a producer. The Senate amendment clarifies language that permits cooperatives or trade associations to pay premiums on behalf of farmer-members to make it clear that the provision applies only to fees for catastrophic coverage. It also strikes clause (ii) which requires that licensing fees in connection with the issuance of catastrophic risk protection or additional coverage to be paid to cooperatives or trade associations from insurance providers shall be subject to laws regarding rebates in the various states in which the fee or other payment is made. (Section 1905)

The Conference substitute adopts the Senate provision (Section 12006).

(c) Time for Payment (Section 508(d) of the Federal Crop Insurance Act)

Section 11001(c) of the House bill requires that beginning with the 2012 reinsurance year, the Corporation must establish August 1 as the billing date for crop insurance premiums.

Paragraph (1) of section 1906 of the Senate amendment establishes the date when policyholder premiums must be paid, beginning in the 2012 reinsurance year, to no later than September 30. (Section 1906)

The Conference substitute adopts the House provision, with a date change to August 15. (Section 12007)

(d) Reimbursement rate (Section 508(k) of the Federal Crop Insurance Act)

Paragraph (1) of Section 11001(d) of the House bill amends section 508(k)(4)(A) of the Federal Crop Insurance Act to provide that beginning with the 2009 reinsurance year, the Corporation shall reimburse insurance providers and agents for administrative and operating (A&O) expenses at a rate 2.9 percentage points below the rates in effect on the day of enactment of this Act.

Section 1912 of the Senate amendment reduces the reimbursement rate for existing plans of insurance by 2 percentage points below the rates in effect at the time of enactment of this Act, except that the reduction shall not be applied in any reinsurance year for a state in which the loss ratio exceeds 1.2, beginning in the 2009 reinsurance year. It also reduces the reimbursement rate for area policies (such as Group Risk Plan (GRP) and Group Risk Income Protection (GRIP)) to 17 percent of premiums because delivery costs are not as high relative to delivery costs for other products. (Section 1912)

The Conference substitute adopts the Senate provision, with the following modification—it provides for a 2.3 percentage point reduction from current levels for the overall A&O reduction, with a snapback that restores one half of the reduction to states in years in which their overall loss ratio exceeds 1.2. In addition, it includes the reduction to the reimbursement rate for area policies from the Senate provision, with the rate lowered to 12 percent of total premiums. (Section 12016)

The Managers intend for the limitation in paragraph (F) to apply only to plans of insurance that are established and widely available at the time of enactment, and not apply to area plans such as the Pasture, Rangeland, and Forage program that have higher delivery costs than policies such as GRIP and GRP.

(e) Renegotiation of the Standard Reinsurance Agreement (Section 508(k) of the Federal Crop Insurance Act)

Paragraph (2) of Section 11001(d) of the House bill provides that during the year following the reinsurance year ending June 30, 2012, the Corporation may renegotiate the financial terms of the Standard Reinsurance Agreement (SRA), and subsequently conduct such renegotiations once during each period of five reinsurance years thereafter and stipulates that changes in Federal law that require the Corporation to revise the financial terms of the SRA will not be considered to be a renegotiation of the agreement. It also provides that approved insurance providers may confer with each other during the renegotiation process.

The Senate amendment allows the Federal Crop Insurance Corporation to renegotiate the SRA, which contains the contractual obligations and financial terms of the relationship between RMA and the crop insurance companies, every five years, the first occurring not sooner than the end of the 2012 reinsurance year. It provides an exception to allow the SRA to be renegotiated more frequently if necessary to address unexpected

adverse circumstances experienced by the companies. The Secretary is required to notify the relevant Congressional Committees before invoking this exception. This section also allows crop insurance companies to confer with each other in the course of the renegotiation process, as well as collectively with RMA. (Section 1913)

The Conference substitute adopts the Senate provision with modifications, incorporating the House language on treatment of changes in the SRA due to changes in Federal law. It moves up the time when the next SRA can be negotiated, to be effective for the 2011 reinsurance year. It also requires the RMA to consider certain alternative mechanisms for compensating companies for delivery expenses, when negotiating the SRA. (Section 12017)

(f) Time for Reimbursement (Section 508(k) of the Federal Crop Insurance Act)

Section 11001(e) of the House bill requires that beginning with the 2012 reinsurance year, the Corporation make administrative and operating expense payments during October 2012, and every October thereafter.

Paragraph (2) of section 1906 of the Senate amendment establishes the date when the Federal Crop Insurance Corporation makes payments to crop insurance companies to reimburse them for administrative and operating expenses, beginning in the 2012 reinsurance year, allowing payments to be made as soon as practicable after October 1 of the year following the reinsurance year, but not later than October 30.

The Conference substitute adopts the Senate provision. (Section 12015)

(g) Premium Reduction Authority (Section 508(e) of the Federal Crop Insurance Act)

Paragraph (1) of Section 11001(f) of the House bill strikes the authority for the Premium Reduction Plan (PRP) and the Premium Rate Reduction Pilot. The Senate amendment repeals the authority for the Premium Reduction Plan (PRP) and requires RMA to commission an independent study of the feasibility of offering a discount to farmers in the Federal crop insurance program. This study is to be completed within 18 months of enactment of the farm bill. (Section 1908)

The Conference substitute adopts the House provision, but drops the elimination of the Premium Rate Reduction Pilot language. (Section 12010)

The Managers repeal the authority for the Premium Reduction Plan. The Managers believe it would serve a useful purpose for the Risk Management Agency to evaluate the process that led to the promulgation of the regulations under which PRP has been operated, to try to determine where mistakes might have been made, in either concept or execution.

(2) Catastrophic risk protection administrative fee

The House bill amends section 508(b)(5)(A) of the Federal Crop Insurance Act to provide for a \$200 catastrophic risk protection administrative fee. (Section 11002)

The Senate amendment increases the fee for catastrophic risk protection coverage from its current \$100 per crop per county to \$200 per crop per county, and strikes language allowing a higher fee to be charged as a function of imputed premium. (Section 1905(a))

The Conference substitute adopts the Senate provision, with modifications—it increases the fee to \$300 per crop per county, and repeals an annual appropriations rider barring charges fees based on imputed premium levels. (Section 12006)

(3) Funding for reimbursement, contracting, risk management education, and information technology

The House bill amends section 516 of the Federal Crop Insurance Act to provide that the Corporation use not more than \$30 million in each fiscal year for costs associated with: research and development and partnerships for risk management in section 522 of such Act; education and information programs in section 524 of such Act; and information technology. Further, it provides that the Corporation use no more than \$5 million to carry out contracting for research and development for underserved states, pursuant to section 522(c)(1)(A) of such Act. It also prohibits the Corporation from conducting research and development for any new policy for a commodity under this title. (Section 11003)

The Senate amendment reduces mandatory funding available to reimburse research and development of new crop insurance products from its current \$15 million annually to \$7.5 million annually in paragraph (1). Paragraph (2) reduces mandatory funding availability for contracting and partnerships from its current \$25 million annually to \$12.5 million annually. Paragraph (3) permits the Corporation to use up to \$5 million of otherwise unused funds available for reimbursement, contracting, or partnership payments to strengthen crop insurance compliance oversight activities, including information technology and data mining. (Section 1919)

The Conference substitute adopts the Senate provision. (Section 12024)

(4) Reimbursement of research and development costs related to new crop insurance products

The House bill authorizes the Corporation to reimburse an applicant for research and development costs related to a policy that is submitted pursuant to a Federal Crop Insurance Corporation (FCIC) Reimbursement Grant or is submitted to the FCIC Board and approved in section 11004(a).

Section 11004(b) authorizes the Corporation to provide FCIC Reimbursement Grants to persons proposing to prepare crop insurance policies for submission to the Board, and who have applied and been approved for such grants. The provision stipulates the required materials for a grant application, including: a concept paper; an explanation of the need for the product, including the product's marketability, the projected impact of the product, and that no similar product is offered by the private sector; and an identification of the risks the product will cover and that the risks are insurable under the Federal Crop Insurance Act. Approval of a grant is by majority vote of the Board, and the Board shall approve an application only if: the proposal establishes the need for the policy; the applicant has the qualifications to successfully complete the project; the proposal can reasonably be expected to be actuarially appropriate; the Board has sufficient funding; and the proposed budget and timeline are reasonable.

The provision requires payment for work performed under this section to be based on rates determined by the Corporation. Either the Corporation or applicant may terminate any grant for just cause. (Section 11004)

The Senate amendment authorizes the reimbursement of development costs related to a policy through a Federal Crop Insurance Reimbursement Grant or is submitted to the FCIC Board and is approved in subsection (a). Subsection (b) provides an alternative process for policy development, by establishing a grant-making mechanism (called FCIC Reimbursement Grants). This mechanism permits eligible applicants to submit a concept proposal, to be reviewed by crop insurance experts, for consideration by the Board of the Federal Crop Insurance Corporation. If the grant request is approved, the development work is ensured of funding and when completed, submitted to the Board for approval. The Board can require an interim feasibility study before allowing development work to proceed. Rates for work performed shall be based on rates determined by the Corporation for products submitted under section 508(h) or research contracted for under section 522(c). The grant can be terminated at any time for just cause. Subsection (c) eliminates language in section 523(b)(10) of the FCIA that provides an exception for research and development costs in livestock program funding caps. (Section 1918)

The Conference substitute adopts the House provision, with significant modifications. The provision as adopted provides an opportunity for applicants with approved concept papers to receive up to 50 percent of their estimated expenses in advance. If their proposed crop insurance product is subsequently approved by the Board, they then are reimbursed for the remainder of their expenses. If they submit a proposed product to the Board and it is rejected, they receive no additional funds but are not required to repay the advance. Only if they fail to submit a completed submission without just cause would they be required to repay the advance. Applicants with poor track records on submissions may be prohibited from receiving advance payments, but would still be eligible to develop crop insurance products under 508(h) procedures in current law. (Section 12022)

The Managers intend for the Corporation to develop the procedures to implement this section as soon as practicable so that the Corporation may start accepting applications for advanced reimbursement of research and development costs 180 days after this section's enactment. Since under current law, crop insurance products approved under 508(h) procedures are eligible, at the Corporation's discretion under appropriate circumstances, for reimbursement at U.S. General Services Administration competitive rates, the Managers intend for reimbursements made under this section to be equally eligible for such rates, still subject to the Corporation's discretion.

(5) Research and development contract for organic production coverage improvements

The House bill mandates that the Corporation enter into one or more contracts for the development of improvements in Federal crop insurance policies for organically raised crops. Any such contracts must review the underwriting, risk, and loss experience of organic crops in order for the Corporation to determine variation in loss history between organic and non-organic production. The Corporation shall eliminate or reduce the premium surcharge for coverage of organic crops, unless the Corporation's review documents significant, consistent, and systemic variations in loss history between organic and non-organic crops. The House provision provides that a contract include the development of a procedure to offer producers of organic crops an additional price

election reflecting actual retail or wholesale prices received by organic producers, and requires that the Corporation submit an annual report to Congress on the progress made in developing and improving Federal crop insurance for organic crops. (Section 11005)

The Senate amendment adds a new paragraph (12) which requires the Federal Crop Insurance Corporation to offer to enter into one or more contracts to improve crop insurance coverage for organic crops. New paragraph (10) requires the Federal Crop Insurance Corporation to offer to enter into one or more contracts to develop policies to insure dedicated energy crops such as switchgrass. New paragraph (11) requires the Federal Crop Insurance Corporation to offer to enter into one or more contracts to develop policies to insure aquaculture operations. New paragraph (13) requires the Federal Crop Insurance Corporation to offer to enter into a contract to study how to incorporate the use of skiprow cropping practices to grow corn and sorghum in the Central Great Plains into existing policies and plans of insurance offered in the Federal crop insurance program. (Section 1917)

Section 1907 prohibits the Federal Crop Insurance Corporation from charging a surcharge on premiums paid to insure organic crops. It allows surcharges to be required only when consistent evidence of greater loss variability is validated on a crop by crop basis. (Section 1907)

The Conference substitute adopts the House provision, with the inclusion of Senate provisions requiring contracts regarding dedicated energy crops, aquaculture, skiprow cropping practices, and the following additions: the Corporation is also required to offer to enter into contracts for developing a poultry policy, a policy for bee-keepers, and a study on what modifications might be need for Adjusted Gross Revenue policies to make them more useful for beginning farmers. In the subsection addressing development of aquaculture policies, more details are provided about what species should be considered. (Section 12023)

The Managers are concerned that producers in the Central Great Plains seeking to utilize skip row planting patterns are being offered crop insurance coverage for less than 100% of the planted fields despite ongoing research showing that skip row planting results in no loss in overall yields. In including this provision in paragraph (16), the Managers are seeking to have RMA review existing and soon-to-be completed skip row research and production histories, develop crop insurance rules and policies that adequately reflect this research, and thus better capture the actual productive capability of skip row planting patterns.

The Managers are also concerned how recent natural disasters in the Southeastern United States have revealed that existing crop insurance products and programs are not well-tailored to the unique horticultural practices of the nursery industry across the country. The Managers urge the Risk Management Agency (RMA) to work with the nursery industry on crop insurance policies specifically designed for nursery growers and encourage the Administrator of RMA, under his existing authority, to consider initiating a pilot program or programs with nursery growers in affected regions to ensure that crop insurance programs avoid in the future the issues that arose in the aftermath of these natural disasters.

(6) Targeting risk management education for beginning farmers and ranchers and certain other farmers and ranchers

The House bill requires the Secretary to include a special emphasis on risk management strategies and education and outreach to beginning farmers and ranchers, immigrant farmers and ranchers attempting to become established producers in the United States, socially disadvantaged farmers and ranchers, farmers and ranchers who are preparing to retire and are trying to help new farmers and ranchers get started, and farmers and ranchers who are converting production and marketing systems to new markets. (Section 11006)

The Senate amendment requires the Secretary to place special emphasis in utilizing funds available to address the needs of farmers in underserved states to assist in risk management strategies of beginning farmers and ranchers, immigrant farmers and ranchers, socially disadvantaged farmers and ranchers, farmers and ranchers preparing to retire and engaged in transition strategies to help beginning farmers get established, and established farmers and ranchers seeking to shift practices and marketing to pursue new markets. (Section 1922)

The Conference substitute adopts the Senate provision, with one minor language change. (Section 12026)

(7) Crop insurance ineligibility related to crop production on noncropland

The House bill defines “noncropland” as native grassland and pasture the Secretary determines has never been used for crop production. It also provides that noncropland acreage planted with an agricultural commodity for which insurance is available under this title is not eligible for crop insurance under this title for the first four years of planting. In the fifth year of planting, the producer may purchase crop insurance for the commodity. The yield for such insurance shall be determined by using actual production history for the farm and, for years without actual production history, using the average actual production history for the commodity in the county. (Section 11007)

The Senate amendment denies crop insurance and noninsured crop disaster assistance program benefits (NAP) on lands converted from native sod after passage of this farm bill. In section 2608(a)(1), native sod is defined as land on which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and which has never been used for production of an agricultural commodity. Section 2608(a)(2)(B) establishes de minimus exception of 5 acres. Section 2608(c) directs the Secretary to provide a report to Congress on the extent of conversion of noncropland to cropland since 1995 within 180 days of the passage of the Farm Bill, and to provide annual updates by January 1st of each year. (Section 2608)

The Conference substitute adopts the House bill with modification. At the election of the Governor of a State in the Prairie Pothole Region National Priority Area, native sod acreage that is tilled for the production of an annual crop will be ineligible for crop insurance and noninsured crop disaster assistance benefits during the first 5 crop years of planting. Native sod is defined as land on which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and that has not been tilled for the production of an annual crop at the date of enactment. The Secretary may exempt conversions of 5 acres or less from the terms of the provision. (Section 12020).

The Managers adopted this modification in recognition of the significant interest in conserving native tall-, mixed-, and short-grass prairie in the Prairie Pothole Region (PPR). Several recent reports have analyzed grassland conversion and potential drivers in certain areas of the PPR over the past two decades. The analysis by the Government Accountability Office (GAO) found that crop insurance program payments may serve as an incentive for conversion, but that many other factors such as crop prices and new farming technologies also play a role in producer decisions. GAO also identified a general lack of current and comprehensive data on land conversions, precluding reliable trend analysis. Correspondingly, GAO's final recommendations were that USDA should: 1) track annual conversion and provide current data to policymakers, and 2) conduct a study of the relationship between farm program payments and land conversion and report findings to Congress.

The Managers determined that existing information is insufficient to apply a broad-sweeping national policy to address what may be a localized concern. However, where states determine that grassland conversion is a present threat and want to create disincentives for conversion, the Managers are making a "sodsaver" program option available at the request of the State. The Managers further expect USDA to address the GAO recommendations in order to inform future policy decisions on this issue. In addition, the Managers reauthorized a number of conservation programs, such as the grassland reserve program and the environmental quality incentives program, which provide incentives for grassland protection and conservation. The Managers encourage States to leverage these programs to provide further incentives to their grassland protection objectives.

The Managers intend for the Secretary to undertake a study on the influence of the crop insurance program on the conversion of native sod to crop production. The study should consider as part of the review, added land provisions, yield plugs, written agreements, and county T yields. The study should also consider the sufficiency of grazing coverage available through crop insurance or the non-insurance assistance program as compared to the economics of crops planted on converted grazing land. The managers expect the Secretary to address specific actions that may be taken by the Department or recommended to Congress to mitigate any identified conversion influences of the crop insurance program. The managers expect the Secretary to present the results of the study to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in early 2009.

(8) Funds for data mining

The House bill authorizes the Corporation to use not more than \$11 million during fiscal year 2008, and not more than \$7 million during fiscal year 2009 and each subsequent fiscal year, for crop insurance program compliance and integrity, including data mining, for a total of \$73 million in outlays over ten years. (Section 11008)

The Senate amendment allows RMA to charge a fee to crop insurance companies for access to company-relevant results of data-mining analysis, and would require that these funds are used for improvements in the crop insurance data mining system. If RMA were to require companies to access the data-mining results for purposes of compliance, including quality assurance requirements under the terms of the SRA, they could not be charged a fee under those circumstances. (Section 1915)

The Conference substitute adopts the House provision, except it provides a total of \$36 million over ten years for this purpose, and it requires periodic competition for these funds. A new subsection provides \$60 million for upgrading computer technology at the Risk Management Agency. (Section 12021)

(9) Noninsured crop assistance program

The House bill amends the Agricultural Market Transition Act to provide that service fees producers must pay for the Noninsured Crop Insurance Program shall be \$200 per crop per county; or \$600 per producer per county, with a limit of \$1,800 per producer. (Section 11009)

The Senate amendment doubles the service fee charged for participation in the NAP program from its current \$100 to \$200, or \$600 per producer per county, with a limit of \$1,500 per producer. (Section 1926)

The Senate amendment also clarifies that losses from aquacultural activities resulting from drought should be indemnified if the farmer has NAP coverage for that production. (Section 1925)

The conference substitute adopts the Senate language from Section 1925, changing the new fee to \$250 per crop per county, or \$750 per producer per county, with a limit of \$1,875 per producer. (Section 12028).

The Conference substitute also adopts the Senate provision on eligibility for indemnification for drought losses for aquaculture. (Section 12027)

(10) Change in due date for corporation payments for underwriting gains

The House bill directs the Corporation to make payments for underwriting gains on October 1, 2012, and for each subsequent reinsurance year, on October 1 of the next calendar year, beginning with the 2011 reinsurance year. (Section 11010)

The Senate amendment establishes the date as October 1 that the Federal Crop Insurance Corporation makes payments for underwriting gains to crop insurance companies, beginning in the 2011 reinsurance year. (Section 1914)

The Conference substitute adopts the Senate provision. (Section 12018)

(11) Sesame Insurance Pilot Program

The House bill requires the Secretary to establish a pilot program under which sesame producers in the State of Texas may obtain crop insurance. Under the pilot program, producers obtaining the insurance shall pay premiums and administrative fees. (Section 11011)

The Senate amendment is the same as the House bill. (Section 1921)

The Conference substitute adopts the Senate provision with an amendment to strike the end date, and adds the camelina pilot program from Senate Section 1920 and adds a new pilot program for grass seed. (Section 12025)

(12) National Drought Council and drought preparedness plans

The House bill establishes a National Drought Council within the office of the Secretary of Agriculture that will develop a National Drought Policy Action Plan for integrating and coordinating drought activities of the Federal government and States, including drought preparedness, mitigation, risk management and emergency relief. Additional Council duties include reviewing and evaluating existing drought programs, making recommendations to the President and Congress, and developing public awareness activities on drought.

The House bill establishes the Drought Assistance Fund within the Department of Agriculture to, in part, pay the costs of providing technical and financial assistance to States, Indian Tribes, local governments and other groups for the development and implementation of drought preparedness plans, and for the cost of mitigating the risk and impact of droughts. The language provides requirements for the guidelines associated with the distribution of funds from the Drought Assistance Fund, including requiring that States and/or Indian tribes developing plans for interstate watersheds coordinate with other States and/or Indian tribes in the development of said plans.

The House bill requires the Secretary, with concurrence of the Council, to develop guidelines for administering a national program to provide assistance to States, Indian tribes, local governments and others for the development, maintenance, and implementation of drought preparedness plans. The provision requires the Secretary to develop Federal drought preparedness plans, which will integrate with drought plans of State, tribal, local government, and others. The provision stipulates the elements for such drought preparedness plans.

The House bill authorizes appropriations of \$2 million for fiscal year 2008 and each of the subsequent seven fiscal years for the Council; authorizes the appropriation of such sums as necessary to carry out the Drought Assistance Fund. (Section 11012)

The Senate amendment contains no comparable provision.

The Conference substitute drops the House provision.

(13) Payment of portion of premium for area revenue plans

The House bill establishes the premium subsidy amount for area revenue insurance plans, based on (1) the percentage of the recorded county yield indemnified, and (2) the sum of a percentage of the premium established for additional catastrophic risk protection and the amount determined to cover operating and administrative expenses for additional catastrophic risk protection.

The House bill establishes the premium subsidy amount for area yield insurance plans, based on (1) the percentage of the recorded country yield indemnified, and (2) the sum of a percentage of premium established for additional catastrophic risk protection and the amount determined to cover operating and administrative expenses for additional catastrophic risk protection. (Section 11013)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Section 12012)

(14) Share of risk

The House bill amends the Federal Crop Insurance Act to require that companies that are being reinsured by the Corporation share the risk of loss, such that the underwriting gain or loss and the associated premium and losses ceded to the Corporation under any reinsurance agreement be not less than 12.5 percent. The provision further requires the Corporation to pay a ceding commission to such companies of 2 percent of the premium used to define the loss ratio for the approved insurance provider's book of business. (Section 11014)

The Senate amendment contains no comparable provision.

The Conference substitute drops the House provision.

(15) Livestock assistance

The House bill stipulates that the purchase of a Non-insured Assistance Program policy is not a requirement to receive any Federal livestock disaster assistance. (Section 11015)

The Senate amendment contains no comparable provision.

The Conference substitute drops the House provision.

(16) Determination of certain sweet potato production

The House bill excludes Risk Management Agency Pilot Program data for determining the 2005-2006 Farm Service Agency Crop Disaster Program for sweet potatoes. (Section 11016)

The Senate amendment amends section 9001 of the U.S. Troop Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (P.L. 100-28, 121 Stat. 211). It prohibits the Farm Service Agency from utilizing yield data collected from a sweet potato crop insurance pilot program to determine losses for the crop disaster assistance program recently enacted for the 2005 and 2006 crop years. If sign-up for that program is completed before the 2007 farm bill is enacted, then the sign-up period would have to be re-opened for producers of sweet potatoes. (Section 1927)

The Conference substitute adopts the Senate provision. (Section 12029)

(16A) Report on funds; Rate of Federal crop insurance

The House bill gives the Secretary of the Interior the authority to further cut the expense reimbursement rate for crop insurance companies if the actual revenue from offshore oil leases fails to meet projections beginning in 2012. (Section 13011)

The Senate amendment contains no comparable provision.

The Conference substitute drops the House provision.

(17) Definition of organic crop

The Senate amendment defines organic crops for the purposes of the Federal crop insurance program. (Section 1901)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12001)

(18) General powers

The Senate amendment clarifies in subsection (a)(1) that the provision added in the Agricultural Risk Protection Act of 2000 (section 508(j)(2)(A)), which allows farmers to sue the Corporation over a denied claim only in the U.S. District Court for the district where the insured farm is located, takes precedent over the more general provision in section 506(d).

Subsection (a)(2) of the Senate amendment strikes subsection (n) of the Federal Crop Insurance Act (7 U.S.C. 1506), in order to clarify that it is superseded by Section 515(h) added in the Agricultural Risk Protection Act which specifically establishes sanctions for producers, agents, and loss adjusters for program noncompliance and fraud. (Section 1902)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12002)

(19) Reduction in loss ratio

The Senate amendment reduces the statutory national loss ratio for the Federal crop insurance program to 1.0. (Section 1903)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12003)

(20) Controlled business insurance

The Senate amendment prohibits farmers from collecting commissions as crop insurance agents on policies in which they or members of their immediate family have a substantial beneficial interest if more than 30 percent of their total commissions are derived from policies sold on operations that they or their immediate family have beneficial interest in. This prohibition is applied on a calendar year basis. (Section 1904)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, with modifications to the definitions of immediate family and compensation to clarify the intent of Congress. (Section 12005)

For individuals meeting the tests in clauses (B)(i) and (B)(ii), the Managers' intent is to prohibit compensation on policies or plans of insurance in which they or members of their immediate family have a substantial beneficial interest, rather than all policies or plans of insurance that they service.

The Managers expect the Risk Management Agency (RMA) to enforce this section through an effective system of statistical sampling and spot checks rather than through the imposition of blanket new reporting requirements on agents, subagents, or approved insurance providers. The Managers further expect that the RMA will enforce this section in a manner that does not affect bona fide customer service representatives or other such employees of an agent who work in a capacity other than as an agent or

subagent and whose employment with an agent is not intended to merely circumvent the prohibitions under this section.

(21) Enterprise and whole farm unit pilot program

The Senate amendment establishes a pilot program to allow farmers to convert the value of their crop insurance coverage under optional and basic units to higher levels of coverage for enterprise or whole farm units. (Section 1909)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, with modifications, so as to allow any farmer to participate in this pilot, whether or not they had purchased coverage with optional or basic units in previous crop years. It also requires that the farmer-paid share of premium under this program be no less than 20 percent. (Section 12011)

(22) Denial of claims

The Senate amendment clarifies that approved insurance providers are only liable for lawsuits in Federal District courts for denial of claims if that claim is denied at the behest of the Federal Crop Insurance Corporation, not if they deny such claims themselves. (Section 1910)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12013)

(23) Measurement of farm-stored commodities

The Senate amendment allows farmers the option to elect to have the Farm Service Agency measure the quantity of crops stored on farms for the purpose of providing evidence on their level of losses, at their own expense. (Section 1911)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, with modifications. It allows farmers basing their crop insurance loss claim on measurement of farm-stored commodities to defer settlement of that claim for up to 4 months to allow stored grain to settle in the bin. (Section 12014)

(24) Malting barley

The Senate amendment allows RMA to modify the quality endorsement for malting barley to take into account changing market conditions. (Section 1929)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12019)

(25) Producer eligibility

The Senate amendment makes producers who raise livestock under contract eligible to purchase coverage, as long as those livestock are not covered by other policies reinsured under the Federal crop insurance program. (Section 1916)

The House bill contains no comparable provision.

The Conference substitute drops the Senate provision, but includes a requirement that the Risk Management Agency offer to enter into a contract to develop an insurance policy for poultry production elsewhere in the title.

(26) Camelina pilot program

The Senate amendment requires the Federal Crop Insurance Corporation to develop a pilot program under which producers or processors of camelina (an oilseed suitable for use as a feedstock for biodiesel) may propose for approval by the Board policies or plans of insurance in accordance with existing procedures under Section 508(h). Camelina producers would be made eligible for the Noninsured Crop Assistance Program (NAP) until a crop insurance policy is made available. (Section 1920)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with slight modification to simply list camelina as a NAP eligible crop. (Section 12025)

(27) Agricultural management assistance

The Senate amendment permits the Secretary to utilize funds available for agricultural management assistance to provide matching funds to states providing additional discounts on farmer-paid premiums in underserved states. (Section 1923)

The House bill contains no comparable provision.

The Conference substitute drops the Senate provision.

(28) Crop insurance mediation

The Senate amendment allows producers involved in a dispute over a crop insurance claim to utilize both informal agency review and mediation to reach a resolution, so the producer would not necessarily have to choose between the two paths. (Section 1924)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12032)

(29) Perennial crop report

The Senate amendment requires the Secretary to submit a report within 180 days of enactment to the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture that addresses issues relating to declining yields in producers= actual production histories (APH), and declining and variable yields for perennial crops, including pecans. (Section 1928)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, with a title change. (Section 12030)

The Managers recognize risk management challenges faced by producers, especially with respect to declining yields in light of increases in premiums. The Managers also understand that there are unique issues with yield variability for perennial crops, such as pecans. The Managers are interested in the Department of Agriculture's activities to address these issues and options that the Department has to address these issues administratively.

(30) Definition of basic unit

The Senate amendment maintains definition of basic unit in crop insurance for producers of tobacco. (Section 1930)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12031)

Subtitle B

(31) Short Title and Definitions (12051 and 12052)

(32) Disaster Loans to Nonprofits

The Senate amendment provides the Small Business Administration (SBA) Administrator with the discretion to make loans to non-profit organizations located or operating in a declared disaster area, and to provide services to persons evacuated from any disaster area. (Section 11121)

The House bill contains no comparable provision.

The Conference substitute amends the Senate provision and renames the provision "Economic Injury Disaster Loans to Nonprofits", with alternate language that will permit private nonprofit organizations to qualify for disaster assistance within the disaster area. (Section 12061)

The Managers do not, however, intend for this amendment to extend SBA disaster assistance to private nonprofit organizations located outside designated disaster areas.

The Conference substitute also adds a section titled "Applicants That Have Become a Major Source of Employment Due to Changed Economic Circumstances". This provision permits small businesses that were not a major source of employment prior to the disaster, but which subsequently are a major source of employment following the disaster, to qualify for disaster loans beyond the current statutory limit. (Section 12077)

The Managers intend for this provision to authorize the SBA to administer the disaster loan program with reference to the borrower's circumstances relative to the local

area's economic conditions when the loan application is made and not rely solely upon the loan applicant's status as a major source of employment prior to the disaster.

(33) Disaster Loan Amounts

The Senate amendment raises the maximum outstanding loan amounts available to borrowers from the current level of \$1,500,000, capping it at \$2,000,000 subject to the discretion of the SBA based upon the economic conditions in the affected disaster region. (Section 11122)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment. (Section 12078)

The Conference substitute adds a provision titled, "Increased Deferment Period", which will provide disaster victims with an option of receiving a four year deferment period for disaster loans. (Section 12068)

The Managers intend for this provision to provide the SBA with authority to provide disaster victims with a deferment beyond the current two-year deferment authority so that they may rebuild homes and businesses and reestablish income streams before beginning repayment of their SBA disaster loan. The Managers intend for extended deferment periods to be implemented at the discretion of the Administrator. Additionally, while the Managers do not intend for loan repayments to occur during deferments, interest should continue to accrue on loans during the deferment period.

The Conference substitute also adds a provision titled, "Net Earnings Clauses Prohibited", which will preclude the imposition of loan terms that require supplemental repayment amounts on disaster assistance loans during the first five years of repayment. (Section 12070)

The Managers believe that this provision will benefit capital-intensive businesses that receive SBA disaster assistance loans and require earnings for reinvestment in the business to remain profitable. The Managers do not, however, intend for this provision to completely prohibit the SBA from imposing a net earnings clause, it simply precludes imposing these terms within the first five years of loan repayment.

And the Conference substitute adds a provision called, "Gulf Coast Disaster Loan Refinancing Program", which enables the SBA, at their discretion, to institute a program to refinance Gulf Coast disaster loans resulting from Hurricanes Katrina, Rita, or Wilma up to an amount no greater than the original loan. (Section 12086)

(34) Small Business Development Center Portability Grants

The Senate amendment grants the SBA the ability to make an award to a Small Business Development Center (SBDC) greater than \$100,000 due to extraordinary circumstances after a catastrophic disaster. (Section 11123)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(35) Assistance to Out-of-State Businesses

The Senate amendment authorizes SBDCs outside of the geographic region of a disaster area to provide assistance to small businesses located within a declared disaster area at the discretion of the Administrator. (Section 11124)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(36) Outreach Programs

The Senate amendment establishes a procurement outreach and technical assistance program at the discretion of the Administrator following a disaster declaration. (Section 11125)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(37) Small Business Bonding Threshold

The Senate permits the Administrator to guarantee any surety against loss on a bid bond, payment bond, or performance bond that does not exceed \$5,000,000.

Additionally, the provision would authorize the Administrator to guarantee bonds related to reconstruction efforts following a major disaster in amounts of up to \$10,000,000 upon the request by the head of any Federal Agency involved in reconstruction efforts (Section 11126)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment but requires that these initiatives only be carried out with amounts appropriated in advance specifically for their purpose. (Section 12079)

(38) Termination of Program

The Senate amendment terminates the Small Business Competitive Demonstration Program Act of 1988. (Section 11127)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(39) Increasing Collateral Requirements

The Senate amendment increases the loan amount under which collateral is not required from \$10,000 to \$14,000 (or higher as deemed appropriate by the Administrator). (Section 11128)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12065)

(40) Public Awareness of Disaster Declaration and Application Periods

The Senate amendment enhances coordination between the SBA and Federal Emergency Management Agency (FEMA) disaster assistance application periods, and outlines a Congressional reporting requirement on information relating to SBA and FEMA disaster assistance applications. The provision also requires that the SBA communicate information on disaster assistance availability to the public through all available channels of communication. The section also requires that the SBA create a marketing and outreach plan to convey disaster assistance eligibility and application requirements. (Section 11129)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision (Section 12063).

The Conference substitute adds a provision titled, “Coordination of Disaster Assistance Programs with FEMA” that will require the SBA to establish uniform guidelines in consultation with the director of the FEMA to provide for the coordination of their assistance programs. Specifically, the provision requires the SBA to establish regulations to ensure that applications for disaster assistance are submitted to the appropriate agency as quickly as is practicable.

The Managers intend for these regulations to remedy problems that arise when the SBA’s disaster loan program is used as a screening mechanism for FEMA’s disaster assistance grants. Additionally, the Managers intend for these regulations to limit the need for the SBA to first consider disaster loan applications from victims who are patently ineligible for SBA assistance as a precondition to consideration for FEMA assistance. (Section 12062)

The Conference substitute also adds a provision titled, “Information Tracking and Follow-up System”, which will require the SBA to develop, implement, or maintain a centralized information system to track all communications (written, e-mail and phone) between disaster victims and SBA personnel concerning the status of their application. At a minimum, this system must record the method and date of communication and the identity of the SBA employee involved and a summary of the communication. It also requires the SBA to provide follow-up communications to disaster victims as their disaster loan proceeds through critical stages of the origination, approval and disbursement process.

The Managers intend for this section to address deficiencies in the SBA’s current systems for tracking and organizing information that result in lost documentation, repeated status updates from applicants, and misinformed SBA personnel. (Section 12067)

The Conference substitute also adds a provision titled, “Economic Injury Disaster Loans in Cases of Ice Storms and Blizzards”, which will add ice storms and blizzards to the list of enumerated disasters for which a small business disaster may be declared. (Section 12071)

(41) Consistency Between Administration Regulations and Standard Operating Procedures

The Senate amendment contains a provision requiring the SBA to conduct a study of whether the standard operating procedures for administering disaster loan assistance are consistent with the Administration’s regulations for administering the disaster loan program. (Section 11130)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12064)

(42) Processing Disaster Loans

The Senate amendment authorizes the SBA to enter into agreements to pay qualified private contractors a fee for processing SBA disaster loan applications during any major disaster declaration. This provision would also authorize the Administrator to enter into agreements to pay qualified lenders or loss verification professionals a fee for performing loan loss verification services. Additionally, this section would require the SBA Administrator and the Internal Revenue Service Commissioner to ensure that all

relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner upon request by the Administrator.

The Managers do not intend for this provision to authorize the SBA to delegate all their disaster loan disbursement or servicing functions with private contractors. Nor do the Managers intend for this provision to abrogate the SBA's authority to approve or disapprove disaster loan applications. (Section 11131)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 12066)

The Conference substitute adds a provision titled, "Disaster Processing Redundancy", which will require the SBA to maintain a backup disaster processing operation in a separate geographic location from the primary processing operation. The backup facility must be capable of taking over all disaster loan processing from the SBA's primary facility within two days following a disaster, which renders the primary facility inoperable. (Section 12069)

The Managers intend for this provision to mitigate the risk associated with the practice of maintaining a single primary disaster processing facility.

The Conference substitute also adds a provision titled, "Plans to Secure Additional Office Space", which requires the SBA to develop long-term plans to secure sufficient space to accommodate an expanded workforce in times of disaster. (Section 12076)

(43) Development and Implementation of Major Disaster Response Plan

The Senate amendment contains a provision that would require the SBA to amend the 2006 Atlantic Hurricane Season Disaster Response Plan to apply to all major disasters, and report to Congress on its progress. Additionally, this provision would require the SBA to develop and execute simulation exercises within six months of submitting its report to Congress to demonstrate the effectiveness of the updated response plan. (Section 11132)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment and requires the SBA to conduct a disaster simulation exercise at least once every two fiscal years that includes, at a minimum, the participation of not less than half of the agency's disaster reserve corps. Additionally, the biennial disaster simulation exercise should include stress-testing of the agency's vital information technology and telecommunications system, including various aspects of the SBA's current loan processing and call support systems, the DCMS system, the core application functions, and additional components such as loss verification and scanning systems. This stress-testing should simulate an increased number of concurrent users to determine whether the complete system, operating at maximum capacity will meet the agency's needs for effective and accurate operations in a major disaster. Additionally, the biennial disaster simulation exercise should be based upon the most serious disaster scenarios that the agency has identified in the comprehensive disaster response plan and the agency should change the disaster scenario and the geographic region upon which each disaster simulation is predicated. (Section 12072)

The Conference substitute adds a provision titled "Comprehensive Disaster Response Plan", which requires the SBA to develop, implement, or maintain a

comprehensive written disaster response plan. The plan should include a risk-based assessment of the various types of disasters likely to occur in each of the agency's 10 districts. Each assessment should include an analysis of the SBA's needs for an effective response to each disaster scenario, with emphasis on strategies to meet rapidly expanding demand for information technology, telecommunications, human resources, and office space needs. Additionally, the comprehensive plan should include appropriate guidelines for coordination with other federal agencies as well as with State and local authorities to effectively respond to each disaster and best utilize agency resources. In developing the comprehensive plan, the SBA should integrate the results of disaster simulation exercises and catastrophe modeling programs to generate its disaster risk assessments and estimate the demand on agency resources. Additionally, the agency must include a report on the status of the disaster plan, highlighting any changes and developments from previous years, in its annual report to Congress as required by this Act. (Section 12075)

(44) Disaster Planning Responsibilities

The Senate amendment requires the SBA to assign disaster planning responsibilities to a qualified employee who is not an employee of the Office of Disaster Assistance. (Section 11133)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with changes. The SBA must create a new position within the agency that is solely and exclusively dedicated to the function of disaster planning and readiness. The individual appointed to this position will be appointed by the Administrator and will report directly and solely to the Administrator. The individual must have substantial expertise in the field of disaster readiness and emergency response and should have proven management ability. (Section 12073)

The Managers intend for this individual to serve as a high-level administration official who operates independently from all of the agency's existing offices and who has exclusive authority over the disaster planning function. Additionally, this provision mandates that the Administrator ensure that the individual assigned the disaster planning function has adequate resources to carry out their enumerated duties.

(45) Additional Authority for the District Offices of the Administration

The Senate amendment gives the SBA the ability to grant district offices permission to process disaster loans and requires the SBA to designate an employee in each district office to act as a disaster loan liaison between the processing center and the applicants. (Section 11134)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(46) Assignment of Employees of the Office of Disaster Assistance and Disaster Cadre

The Senate amendment requires that the Administrator may, where practicable, ensure that the number of full-time equivalent employees be maintained at 800 for the Office of Disaster Assistance and at 750 for the SBA's Disaster Cadre. If the staffing level for either of those offices falls below the statutorily mandated limit, the

Administrator is required to submit a report to Congress and request additional funds if necessary. (Section 11135)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision, but raises the minimum staffing levels for the Disaster Cadre to 1,000. (Section 12074)

(47) Small Business Act Catastrophic National Disaster Declaration

The Senate amendment establishes a new Presidential disaster declaration that would have existed solely within the Small Business Act known as a “Small Business Act Catastrophic National Disaster Declaration.” The Senate amendment would also give the Administrator the authority to make economic injury disaster to loans to businesses located outside the designated disaster area. (Section 11141)

The House bill contains no comparable provision.

The Conference substitute amends the Catastrophic Disaster Declaration and entitles it “Eligibility for Additional Disaster Assistance,” which authorizes the Administrator to declare eligibility for additional disaster assistance following a Presidential major disaster declaration that rises to the level of a catastrophic incident. The Managers do not intend for every major disaster to give rise to a declaration of eligibility for additional disaster assistance, but intend that the SBA authorize this additional disaster assistance only in the most extraordinary and devastating of catastrophic incidents that render the SBA’s conventional disaster assistance programs inadequate or ineffective. The Managers intend that, when determining whether additional disaster assistance is to be made available, the SBA should ensure that the eligible disaster must be similar in size or scope to the terrorist attacks that occurred on September 11, 2001 or hurricanes “Katrina” or “Rita” that struck the U.S. Gulf Coast in 2005. (Section 12081)

The Conference substitute adopts a portion of this Senate provision and adds a section titled, “Additional Economic Injury Disaster Loan Assistance,” which authorizes the Administrator to make economic injury disaster loans to small businesses located outside the disaster area that have suffered identifiable economic injury as a direct result of a major disaster for which the Administrator has declared eligibility for additional disaster assistance.

The Managers intend that businesses receiving assistance under this provision have suffered damage that was proximately caused by the disaster. Additionally, the Managers do not intend for this provision to displace the timely processing and disbursement of disaster assistance applications for businesses that are actually located within the designated disaster area. This provision further details eligibility requirements for affected businesses and provides for the suspension of the program if it has a significant negative impact on normal SBA loan processing times. (Section 12082)

(48) Private Disaster Loans

The Senate amendment provides definitions of key terms and defines the parameters for authorization and use of Private Disaster Loans. The provision allows the SBA to guarantee timely payment of principal and interest on private loans issued to eligible small businesses and homeowners within an eligible disaster area, and the provision establishes an online application. The SBA may guarantee no more than 85

percent of a loan, worth a maximum amount of \$2 million. Within one year the SBA must issue permanent regulations and criteria. The SBA is also given the authority to reduce the interest rate on any loan. (Section 11142)

The House bill contains no comparable provision.

The Conference substitute adopts a portion of the Senate provision and further requires the SBA to implement a Private Disaster Assistance program, whereby the SBA may guarantee timely payment of principal and interest of up to 85 percent of disaster loans made to eligible small businesses and homeowners within an eligible disaster area following a major disaster for which the Administrator declares eligibility for additional assistance. The SBA is also given authority to establish an online application process for private disaster loans and may permit lenders to use their own documentation. Loans administered under the program, however, must carry the same interest rate and be made on the same terms and conditions as SBA disaster loans made under the existing 7(b) disaster assistance program, and the SBA may use funds appropriated to the 7(b) program to fulfill this requirement. Private disaster loans for homeowners, however, may only be made by lenders who participate in the SBA's Preferred Lender Program. By contrast, loans for small businesses may be made by any lender who meets the agency's qualification requirements, or by a Preferred Lender who also makes loans to homeowners. (Section 12083)

(49) Technical and Conforming Amendments
(Section 11143)

(50) Expedited Disaster Assistance Loan Program

The Senate amendment requires the Administrator to set up an Expedited Disaster Assistance Loan program in consultation with Congress, appropriate lenders and creditors, SBDC's, and appropriate offices within the Small Business Administration. The loans, made to borrowers otherwise eligible for loans under the Small Business Act, shall not exceed \$150,000, exceed 180 days in length, and be more than one percent over the prime rate. (Section 11144)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment and requires that the loans only be made by private institutions and the Administrator may guarantee timely payments of principal and interest. (Section 12085)

The Conference substitute also adds a provision titled "Immediate Disaster Assistance Program," which will establish an SBA disaster loan program to provide small businesses with immediate, small-dollar loans administered through private sector lenders after any disaster. Loans made under the program would carry an 85 percent guarantee on amounts up to \$25,000. Loans made under this program would also be contingent upon the business applying for and meeting basic criteria for a subsequent SBA disaster loan, and the outstanding loan balance must be repaid with the proceeds of the conventional SBA loan. (Section 12084)

The Managers intend for both the Immediate Disaster Assistance Program and the Expedited Disaster program to function as bridge financing programs for businesses that are awaiting approval or disbursement of funds under the SBA's conventional disaster loan program. The Immediate Disaster assistance program is intended to provide eligible

small business concerns with emergency, small-dollar financing within 36 hours following a disaster pending the victim's receipt of a conventional disaster loan. This contrasts the SBA's current loan program which has a target approval timeframe of 21 days and is intended to provide the disaster victim with long-term, low-interest assistance. The Expedited Disaster program is intended to provide bridge loans to disaster victims eligible for the 7(b) program who need a greater amount of funding. The loans are also intended to be disbursed more quickly than a standard SBA disaster loan.

(51) HUBZones

The Senate amendment makes any area designated as a Catastrophic National Disaster Area a HUBZone, as well as all disaster areas designated as a result of Hurricane Katrina or Rita. This designation shall persist for the two-year period beginning on the date of the designation of the area as a Small Business catastrophic national disaster area, or longer at the discretion of the SBA. (Section 11145)

The House bill contains no comparable provision.

The Conference substitute adopts the House provision.

(52) Congressional Oversight

The Senate amendment requires the submission of monthly reports on disaster loan programs to Congress detailing lending volume and activity, as well as a daily updates during a Presidential disaster declaration. The SBA would also be required to submit a report to Congress every six months (for up to 18 months after the President declares a major disaster), detailing the numbers of contracts awarded to various types of small businesses in the area, as well as a report that details how the SBA can improve the processing of applications under the Disaster Loan Program. (Section 11161)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment and requires the SBA to submit to Congress a report on the Disaster Assistance Program performance during the previous fiscal year. This report will cover changes in staffing, technology, and a review of challenges encountered and overall results. Additionally, during any period for which the Administrator has declared eligibility for additional assistance, the SBA is required to make monthly reports to Congress with basic information on their disaster response. During a Presidential disaster declaration period, the SBA must submit weekly updates to Congress, as opposed to daily updates in the original Senate amendment. The Conference substitute changes the name to "Reports on Disaster Assistance" (Section 12091)

TITLE XIII—AMENDMENTS TO COMMODITY EXCHANGE ACT

(1) Short title

The Senate amendment cites this title as the "CFTC Reauthorization Act of 2008". (Section 13001)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 13001)

(2) *Commission authority over off-exchange retail foreign currency transactions*

The Senate amendment amends section 2(c)(2) of the Commodity Exchange Act (CEA) (7 U.S.C. 2(c)(2)) by clarifying that the Commodity Futures Trading Commission's (Commission) anti-fraud authority applies to retail off-exchange foreign currency (forex) transactions that are: (i) offered to, or entered into with, a person that is not an eligible contract participant (*i.e.*, a retail customer); and (ii) offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty, on a similar basis.

If the test in new section 2(c)(2)(C) is met, courts will no longer have to decide whether forex transactions that meet these requirements are futures contracts in order to permit the Commission to pursue an action for fraud. But since CEA section 4b remains limited by its terms to futures, a new provision (section 2(c)(2)(C)(iv)) is added to ensure that section 4b applies to all covered forex transactions (*e.g.*, "rolling spot" or other futures look-alike products) "as if" they were futures contracts. Under this provision, the Commission need not prove that such transactions are futures in order to establish a fraud violation. However, this provision is not intended to suggest, nor does it create a negative inference, that such contracts are not futures contracts.

The phrase "leveraged or margined basis" is not limited to the same type of leverage or margin that exists for trading in on-exchange markets. The fact that off-exchange transactions are at issue means that they are likely to operate differently from exchange-traded instruments in this regard.

Excluded from new section 2(c)(2)(C) are: (i) transactions offered or entered into by certain otherwise-regulated entities, such as financial institutions, broker-dealers, and insurance companies; (ii) securities that are not security futures products; and (iii) transactions that create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business. The term "line of business" in new section 2(c)(2)(C)(i)(II)(bb)(BB) refers to any legitimate line of business, not just a foreign exchange business. The reference to "an enforceable obligation to deliver" in connection with a "line of business" emphasizes the commercial nature of this exclusion.

The Senate amendment explicitly reserves CEA sections 2(a)(1)(B) (principal-agent liability); 4(b) (foreign markets); 4o (fraud by commodity pool operators and commodity trading advisors); 13(a) (aiding and abetting liability); and 13(b) (controlling person liability) with respect to fraudulent forex activities.

While the secondary liability provisions of principal-agent, aiding-abetting, and controlling-person liability were implied in the Commodity Futures Modernization Act of 2000 (CFMA), these amendments make that reservation of Commission anti-fraud authority explicit. The amendments are not intended to suggest, nor do they create a negative inference, that these secondary liability provisions are not available in actions brought under other sections of the CEA where Commission anti-fraud or anti-manipulation authority is reserved, such as CEA sections 2(h)(2), 2(h)(4), and 5d(c).

The Senate amendment also provides authority to the Commission to issue rules proscribing fraud in connection with any agreement, contract or transaction in an exempt or agricultural commodity that is (i) offered to, or entered into with, a person that is not an eligible contract participant (*i.e.*, a retail customer); and (ii) offered or entered into on

a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty, on a similar basis. (Section 13101)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment.

With the amendment, the managers intend to address several additional problems currently resulting in consumers being the victims of fraud related to off-exchange foreign currency transactions. The CFMA permitted registered Futures Commission Merchants (FCM) to offer foreign currency trading to the public without requiring that they be substantially or primarily engaged in the business of exchange-traded futures.

Since passage of the CFMA, the Managers note that an inordinate number of fraudulent schemes are currently implemented through shell FCMs and their unregistered affiliates. These shell FCMs meet minimal requirements for FCMs and typically conduct little, if any, traditional on-exchange business of an FCM. Their purpose instead is to serve as the parent company for their unregistered affiliates. It is the unregistered affiliates that will typically conduct the retail sale of foreign currency contracts. Unregistered affiliates of a shell FCM are subject to little if any regulatory oversight, making them harbors for fraudulent schemes.

The amendment addresses the problem of shell FCMs and unregistered affiliates by providing that only FCMs that are primarily or substantially or primarily engaged in the buying and/or selling of futures contracts on a Designated Contract Market or Derivatives Transaction Execution Facility, or a material affiliate of such an FCM are lawful FCM or FCM-affiliate counterparties for a retail transaction in foreign currency.

The Managers intend that the Commission will utilize the rulemaking authority provided in this section to define when a registered futures commission merchant is primarily or substantially engaged in the buying and/or selling of futures contracts as described in CEA section 1a(20) for the purposes of new provisions 2(c)(2)(B)(i)(II)(cc)(AA) and (BB).

A material affiliate is an affiliate for which an FCM is required to keep records relating to an affiliate's futures and financial activities under CEA section 4f(c)(2)(B). The amendment provides that FCMs and FCM-affiliates must maintain minimum net capital of \$20 million to be a lawful counterparty. This capital requirement is phased in over a period of one year.

The amendment provides for a new category of dealer known as a "retail foreign exchange dealer" (RFED). The amendment provides that RFEDs also must maintain a minimum of \$20 million in net capital to be a lawful counter party for a retail off-exchange foreign transaction. This capital requirement is phased in over a period of one year.

The purpose of imposing a \$20 million minimum capital requirement on FCMs, FCM-affiliates, and RFEDs is to ensure that forex dealers utilizing these classifications to conduct retail foreign currency business are sufficiently capitalized to ensure their financial soundness—especially given that many entities in this area run what are essentially off-exchange, retail forex markets.

In addition, to maintaining a minimum of \$20 million in adjusted net capital, the managers expect the Commission to use the rulemaking authority provided under this section to promulgate any other requirements necessary to ensure the financial soundness of RFEDs.

The rules and regulations issued under this section should appropriately address the level of financial risk posed by RFEDs and their operations. To the extent their risk profiles are similar, the managers intend for FCMs and RFEDs to be regulated substantially equivalently in terms of their off-exchange retail foreign currency business. The managers do not intend for the Commission to provide either FCMs or RFEDs with a more favorable regulatory environment over the other or create two significantly different regulatory regimes for similar business models--to the extent the financial risks posed by such operations are similar.

In addition to regulatory authority over FCMs and RFEDs, the amendment provides the Commission with greater authority over participants in the off-exchange foreign currency trading industry who are not the actual counterparty to the transaction to ensure that the Commission has authority needed over these industry participants to take action to address fraudulent or deceptive practices.

The amendment strikes the Senate provision to provide authority to the Commission to issue rules proscribing fraud in connection with any agreement, contract or transaction in an exempt or agricultural commodity that is (i) offered to, or entered into with, a person that is not an eligible contract participant (*i.e.*, a retail customer); and (ii) offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty, on a similar basis. (Section 13101)

(3) Liaison with Department of Justice

The Senate amendment requires the Attorney General to designate a liaison between the Department of Justice and the Commission to coordinate civil and criminal investigations and prosecutions of violations of the CEA. (Section 13102)

The House bill contains no comparable provision.

The Senate recesses.

(4) Anti-fraud authority over principal-to-principal transactions

The Senate amendment amends section 4b of the CEA (7 U.S.C. section 6b) to clarify that the CEA gives the Commission the authority to bring fraud actions in off-exchange “principal-to-principal” futures transactions. Subsection 4b(a)(2) is amended by adding the words “or with” to address principal-to-principal transactions on the new markets and trading venues permitted under the CFMA. This new language clarifies that the Commission has the authority to bring anti-fraud actions in off-exchange principal-to-principal futures transactions, including exempt commodity transactions in energy under section 2(h), as well as transactions conducted on derivatives transaction execution facilities. The prohibitions in subparagraphs (A) through (D) of the new section 4b(a) would apply to all transactions covered by paragraphs (1) and (2).

Derivatives clearing organizations are not subject to fraud actions under section 4b in connection with their clearing activities.

The amendments to CEA section 4b(a) regarding transactions currently prohibited under subparagraph (iv) (found in new subparagraph (D)) are not intended to affect in any way the Commission's historical ability to prosecute cases of indirect bucketing of

orders executed on designated contract markets. (See, e.g., *Reddy v. CFTC*, 191 F.3d 109 (2nd Cir. 1999); *In re DeFrancesco, et al.*, CFTC Docket No. 02-09 (CFTC May 22, 2003) (Order Making Findings and Imposing Remedial Sanctions as to Respondent Brian Thornton)).

These amendments should not be interpreted or understood as calling into question the Commission's historical use of section 4b to address principal-to-principal trading in the retail context on regulated futures exchanges. (Section 13103)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 13102)

(5) Criminal and civil penalties

The Senate amendment amends the CEA to double the civil and criminal penalties available for certain violations of the CEA such as manipulation, attempted manipulation, and false reporting. The increased civil monetary penalties in the Reauthorization Act are intended to render the CEA's penalty provisions comparable to the penalty provisions that Congress enacted in the Energy Policy Act of 2005 for manipulation cases brought by the Federal Energy Regulatory Commission with respect to physical energy markets.

(Section 13104)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment. The amendment addresses technical drafting issues. (Section 103103)

(6) Authorization of appropriations

The Senate amendment authorizes such sums as may be necessary to carry out the Act for fiscal years 2008 through 2013. (Section 13105)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. (Section 13104)

(7) Technical and conforming amendments

The Senate amendment contains various amendments to correct statutory errors and other conforming changes. (Section 13106)

The House bill contains no comparable provision.

The Conference substitute Adopts the Senate provision with amendment. The amendment makes additional technical and conforming changes to the CEA.

The amendment amends section 1(a)(33) of the CEA (7 U.S.C. 1). The definition of "trading facility" under the CEA is a key criterion for defining a number of categories of regulated markets (e.g., designated contract markets, derivatives transaction execution facilities), exempt markets (e.g., exempt commercial markets, exempt boards of trade) and excluded markets (e.g., CEA section 2(d)(2)). By amending the definition of trading facility, the Managers address a concern where the Commission's jurisdiction could be compromised if novel auction systems which aggregate the market sentiments of multiple participants to derive a market price according to a pre-determined algorithm were to fall outside the agency's regulatory ambit. The definition of "trading facility" has been

amended to anticipate and include, prospectively, markets which utilize automated trade matching and execution algorithms.

Section 4a(e) of the CEA provides, among other things, that it is a violation of the CEA, for any person to violate a speculative limit rule of a designated contract market, derivatives transaction execution facility, or other board of trade if that rule has been approved by the Commission. section 5c(c) of the CEA, though, permits exchanges to certify such rules rather than submit them for prior Commission approval. The Managers amend section 4a(e) to bring it into harmony with the CEA provisions regarding certification of exchange rules. Specifically, the Managers amend section 4a(e) to provide that it is a violation of the CEA, for which the Commission may bring an enforcement action, for any person to violate a speculative limit rule that has been certified by a registered entity.

The Managers are concerned that complainants seeking to enforce an award received through the Commission's reparations process are facing difficulties in obtaining relief from Federal District courts. Accordingly, the Managers include language in this amendment amending section 14(d) of the Commodity Exchange Act (7 U.S.C. 18) to provide that Commission reparations awards are directly enforceable in Federal District courts as if they were local judgments pursuant to 29 U.S.C. 1963. The Managers also provide that the amendment shall operate retroactively. (Section 13105)

(8) Portfolio margining and security index issues

Following enactment of the CFMA, the Commission and Securities and Exchange Commission (SEC) jointly promulgated rules relating to the margining of security futures products (SFP). Under those rules, SFPs have been subject to the same fixed-rate strategy-based margining scheme applicable to security options customer accounts, rather than the risk-based portfolio margining system typical in the futures industry. Many have argued that this has contributed to the low volume of trading in SFPs which, by contrast, have been successful in Europe. The Senate amendment directs the Commission and SEC to use their existing authorities by September 30, 2008, to allow customers to benefit from the use of a risk-based portfolio margining system for both security options and SFPs.

The detailed statutory test of a narrow-based security index was tailored to fit the U.S. equity markets, which are by far the largest, deepest and most liquid securities markets in the world. The amendment provides clarity in this area by requiring the Commission and the SEC to take action under their existing authorities to promulgate, by June 30, 2008, final rules providing criteria that will exclude broad-based indexes on foreign equities from the definition of narrow-based security index as appropriate. (Section 13107)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to extend the deadlines to September 30, 2009 for implementing portfolio margining and June 30, 2009 for promulgating criteria for excluding broad-based indexes on foreign equities from the definition of narrow-based security index as appropriate. (Section 13106)

(9) Significant price discovery contracts

The Senate amendment provided for greater regulation of contracts traded on exempt commercial markets (ECM) that fulfill a price discovery function. It sets forth criteria for the Commission to consider in determining whether an ECM contract qualifies as a significant price discovery contract (SPDC). These criteria include: (i) price linkage; (ii) arbitrage; (iii) material price reference; and (iv) material liquidity and other such material factors as the Commission specifies by rule.

The amendment applies core principles to ECM contracts that are determined to perform a significant price discovery function by the Commission. These Core Principles are derived from selected DCM core principles and designation criteria set forth in CEA section 5. These core principles include those relating to: contracts not being readily susceptible to manipulation, monitoring of trading, the ability of the Commission to obtain information, position limitations or accountability limitations, emergency authority, daily publication of trading information, compliance with rules, and conflict of interest.

The amendment gives the electronic trading facility the explicit discretion to take into account differences between cleared and uncleared SPDCs only in applying the emergency authority and the position limits or accountability core principles and directs the Commission to take such differences into consideration when reviewing implementation of such principles by the electronic trading facility in (7)(D);

The amendment requires an electronic trading facility to notify the Commission whenever it has reason to believe that an agreement, contract or transaction conducted in reliance on the exemption provided in 2(h)(3) displays any of the factors relating to a significant price discovery function described in subparagraph (7)(B); and directs the Commission to conduct an evaluation at least once a year to determine whether any agreement, contract or transaction conducted on an electronic trading facility in reliance on the exemption in 2(h)(3) performs a significant price discovery function in (7)(E). (Section 13201)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment. With the amendment the Managers make several changes to the Senate provision.

The Managers provide that the Commission shall promulgate rules and regulations to implement the authorities provided by this Act regarding significant price discovery contracts. The Senate provision had originally made such promulgation discretionary. The Managers also allow the Commission to consider the potential for arbitrage between a potential SPDC and an existing SPDC in making a determination whether a contract is a SPDC.

The Managers amend the Senate provision to make clear that an electronic trading facility shall have reasonable discretion to account for differences between cleared and uncleared contracts in complying with all the core principles applicable under this Act to SPDCs.

The Managers amend the Senate provision to make clear that in determining appropriate position limits or position accountability limits under this Act, an electronic trading facility shall consider cleared swaps transactions that are treated by a derivatives clearing organization as fungible with significant price discovery contracts. The Managers also amend the Senate language to apply the conflict of interest and antitrust

considerations core principles to electronic trading facilities only with respect to SPDCs traded on such facilities.

Not all the listed factors must be present to make a determination that a contract performs a significant price discovery function. However, the Managers intend that the Commission should not make a determination that an agreement, contract or transaction performs a significant price discovery function on the basis of the price linkage factor unless the agreement, contract or transaction has sufficient volume to impact other regulated contracts or to become an independent price reference or benchmark that is regularly utilized by the public.

The core principles that apply to SPDCs are derived from selected DCM core principles and designation criteria set forth in CEA section 5, and the Managers intend that they will be construed in like manner as the DCM core principles.

The Managers do not intend that the Commission conduct an exhaustive annual examination of every contract traded on an electronic trading facility pursuant to the section 2(h)(3) exemption, but instead to concentrate on those contracts that are most likely to meet the criteria for performing a significant price discovery function.

The Managers further intend that the Commission should conduct such examinations in the course of its normal monitoring of ECM contracts and surveillance of designated contract market and derivatives transaction execution facility contracts when considering the potential for arbitrage or price linkage as the basis for an SPDC determination.

(Section 13201)

(10) Large trader reporting

The Senate amendment amends CEA section 4g to require reporting and recordkeeping of every person registered with the Commission regarding the transactions and positions of such person in any SPDC traded or executed on an electronic trading facility. It also amends CEA section 4i to make any person buying or selling SPDCs on an electronic trading facility subject to reporting requirements set by the Commission and to require such person to report and keep records on transactions or positions equal to or in excess of any reporting threshold the Commission has set. (Section 13202)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate Provision with amendment. The amendment provides that large trader reporting requirements imposed by this Act for SPDCs shall include contracts, transactions, or agreements that are treated by a derivatives clearing organization as fungible with SPDCs.

(Section 13202)

(11) Conforming amendments

The Senate amendment provides various amendments to conform other areas of current law based on changes made in sections 13201 and 13202. The amendment provides that an electronic trading facility shall be considered as a registered entity for the purposes of the CEA and provides that the Commission shall have exclusive jurisdiction over significant price discovery contracts.

(Section 13203)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment.

The amendment included by the managers clarifies that the CEA's grant of exclusive jurisdiction to the Commission in CEA section 2(a)(1)(A) applies to significant price discovery contracts traded on ECMs. The amendment further clarifies that the provisions of the CEA made applicable to SPDCs traded on ECMs by this Act are not precluded by CEA section 2(h)(3).

The Managers note that in creating the new authorities contained in this Act, it is the intent of the Managers to enhance the Commission's authority over (2)(h)(3) markets under the CEA. It is the Managers' intent that this provision not affect FERC authority over the activities of regional transmission organizations or independent system operators because such activities are not conducted in reliance on section 2(h)(3).

(Section 13203)

(12) Effective date

The Senate amendment: (1) provides that this subtitle shall become effective on the date of enactment of this Act, (2) requires the Commission to issue a proposed rule regarding the significant price discovery standards in section 13201(b) within 180 days of the date of enactment of this Act and a final rule within 270 days, and (3) requires the Commission to complete a review of the agreements, contracts and transactions of any electronic trading facility operating on the effective date of the final rule described in 13204(b) within 180 days after that effective date to determine whether such agreement, contract or transaction performs a significant price discovery function. (Section 13204)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment.

The amendment directs the Commission to conduct a rulemaking to implement a process for determining whether ECM contracts are SPDCs.

The managers note that although status as a registered entity would attach to an ECM upon the Commission's determination that a particular ECM contract serves a significant price discovery function, the managers intend that the Commission rulemaking include a grace period after a significant price discovery determination to enable the ECM to come into compliance with its newly-applicable core principles. Such a grace period, which need only be made available to ECMs that have been determined to have a SPDC for the first time, should ensure that such ECMs have sufficient time to implement the necessary regulatory requirements and operations. (Section 13204)

TITLE XIV—MISCELLANEOUS

** For items 1 through 52 of the House bill and Senate amendment, see title XII—Crop Insurance.*

** For items 53 through 79 and item 120 of the House bill and Senate amendment, see title XI—Livestock.*

(1) Prohibition on use of live animals for marketing of medical devices; Fines under the Animal Welfare Act

The House bill amends the Animal Welfare Act to prohibit using a live animal to demonstrate a medical device or product for marketing purposes or to train a sales representative to use such product. The prohibition does not apply to the training of medical personnel for a purpose other than marketing. The House language amends the Animal Welfare Act to set a cap for violations at not more than \$10,000 for each violation. It specifies that each violation, each day that a violation continues, and each animal that is subject to each violation, shall be a separate offense. The House language also amends the Animal Welfare Act to require that the report to Congress also identify all research facilities, intermediate handlers, carriers, and exhibitors registered under section 6 of the Act. It strikes the provision requiring information and recommendations related to the Horse Protection Act. (Section 11316)

The Senate amendment contains no comparable provision.

The Conference substitute provides that fines under the Animal Welfare Act are increased from \$2500 to \$10,000. (Section 14214)

(2) Protection of pets

The House bill amends the Animal Welfare Act by replacing section 7. The new section provides a definition for person to be used only in this section. Person includes any individual, partnership, firm, joint stock company, corporation, association, trust, estate, pound, shelter, or other legal entity. This section prohibits research facilities or Federal research facilities from using a cat or dog for educational or research purposes if it was obtained from a permissible source. Also, no person may donate, sell, or offer a dog or cat to any research facility or Federal research facility unless it came from a permissible source. A permissible source is defined to mean a dealer licensed under AWA; a publicly owned pound registered with the Secretary and in compliance with the protection of pet standards outlines in the Act and has obtained the cat or dog from a legal owner, other than a pound or shelter; or a person that is donating the dog or cat that bred and raised it and owned it for not less than one year preceding donation; a research facility or Federal research facility licensed by the Secretary. In addition to existing penalties for violating the Animal Welfare Act this provision establishes an additional fine of \$1,000 for each violation of this section. Nothing in this section requires a pound or shelter to donate, sell, or offer a dog or cat to a research facility. (Section 11317)

The Senate amendment is the same as the House bill. It adds a provision that would phase out the use of random source dogs and cats from class B dealers within five years after enactment of this act. (Section 11079)

The Conference substitute adopts the House provision with an amendment that defines Class B dogs and cats and requires the Secretary to review any independent

reviews and recommendations by a nationally recognized panel on the use of Class B dogs and cats in federal research.

The Managers are aware of the concerns relating to the use of random source animals from Class-B dealers for medical research. As part of the Consolidated Appropriations Act, 2008 (P.L. 110-161), Congress requested an independent review by a nationally recognized panel of experts of the use of Class B dogs and cats in federally supported research. The National Academy of Science is in the process of conducting this review. Results from the review are expected to be finalized in the spring of 2009. The results of this study will help provide Congress information regarding the value of Class B dogs and cats in medical research. It is the Managers view upon completion of the review the House Committee on Agriculture and United States Senate Committee on Agriculture, Nutrition and Forestry should address whether to continue Class B dealers as a legitimate vendor of random source animals for medical research.

The Managers are also aware of concerns relating to how Class B dealers acquire random source animals. Under 9 CFR 2.132(d) dealers are prohibited from obtaining a dog or cat from any person who is not licensed (other than a pound or shelter), unless they obtain a certification (source record) that the animals were born and raised on that person's premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year. The Animal and Plant Health Inspection Service (APHIS) conducts four unannounced inspections of each Class B dealer on an annual basis. During these inspections, APHIS conducts random trace back of source records. In addition, every 2 to 3 years APHIS does 100 percent trace back of every source record of all Class B dealers. APHIS data indicates a 95 percent trace back of these records. Understanding concerns raised about the validity of these source records, the Managers intend to ask the Government Accountability Office to review APHIS regulations to ensure they are sufficiently assuring the source of random source animals.

The Managers are also concerned with the humane handling and treatment of all animals. In section 14114, fines for violating the Animal Welfare Act are increased for the first time since 1985. (Section 14216)

(3) Sense of the Senate on the U.S. Department of Agriculture's wildlife services competing against private industry for nuisance bird control work

The Senate amendment contains a Sense of the Senate that USDA Wildlife Services should not compete nor condone competition with the private sector for business regarding the management of nuisance wildlife problems in urban areas where private sector services are available. Wildlife Services should inform cooperators of the availability of and their right to acquire services from private service providers prior to entering into any cooperative agreement for wildlife damage management activities. The Secretary of Agriculture should ensure that Wildlife Services does not aggressively compete with private pest management industry for European starling, house sparrow,

and pigeon control work in urban areas where private sector services are available. The Secretary of Agriculture should rely on the scientific and widely excepted definitions to define the term urban rodent in order to clarify the express restrictions in law on Wildlife Services activities. Finally, the Secretary should direct Wildlife Service to work with private industry, through a Memorandum of Understanding, to delineate common areas of cooperation so that issue of competition are addresses, taking into account the interests of the wildlife resources and the need to manage damage caused by that resource. (Section 11085)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers expect the Secretary to continue and strictly enforce the current Wildlife Service Directive 3.101, "Interfacing with Business and Establishing Cooperatives Programs," dated May 25, 2005. The Managers intend that the Secretary, consistent with this Directive, shall inform service requesters of the availability of other private service providers and their right to choose. The Managers strongly encourage the Secretary to ensure that Wildlife Services does not compete with professional pest management companies which manage nuisance birds such as European starlings, house sparrows, and pigeons in urban areas. The Managers strongly encourage the Secretary to enter into a Memorandum of Understanding with industry to address issues of competition for service, taking into account the ability of private entities to respond to requests for wildlife damage management and the common goal of both the Department and the private sector to meet the increasing need of managing damages caused by pests in urban areas.

(4) Prohibitions on dog fighting ventures

The Senate amendment amends section 26 of the Animal Welfare Act to strengthen penalties for dog fighting. Section 26(a)(1) of the AWA is amended to make it unlawful to knowingly sponsor or exhibit an animal in a dog fighting venture as defined later in this section. Section 26(b) of the AWA is amended to add it is illegal to knowingly sell, buy, possess, train, transport, deliver or receive any dog, other animal or offspring of the dog or other animal for the purpose of having them participate in a dog fighting venture. Section 26(f) of the AWA is amended to allow costs incurred for the care of animals seized or forfeited under this section to be recoverable from the owner. Subsection (g) is amended to include a definition for a dog fighting venture to mean any event that involves a fight between at least two animals, one being a dog, which is conducted for purposes of sport, wagering, or entertainment. An exclusion for hunting is also added. Section 49 of title 18, United States Code, is also amended to increase the penalty for violations of section 26 of the Animal Welfare Act to not more than five years imprisonment. (Section 11076)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with a minor amendment. (Section 14207)

(5) Domestic pet turtle market access; Review, report and action on the sale of baby turtles

The Senate amendment requires the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, to determine the prevalence of salmonella in each species of reptile and amphibian sold legally in the United States to determine whether or not the prevalence of salmonella in these animals is not more than 10 percent less than the percentage of salmonella in pet turtles. If the prevalence is not more than 10 percent less than the percentage of salmonella in pet turtles the Secretary of Agriculture shall conduct a study of how pet turtles can be sold safely as pets in the United States. In conducting the study the Secretary shall consult with all relevant stakeholders. (Sections 11101, 11102, and 11103)

If the prevalence of salmonella in other amphibians and reptiles is greater than that of salmonella in pet turtles the Secretary shall prohibit the sale of those amphibians and reptiles.

The House bill contains no comparable provision.

The Conference substitute strikes this provision.

(6) Importation of live dogs

The Senate amendment adds a new section to the Animal Welfare Act (7 U.S.C. 2147) to restrict the importation of certain dogs for resale. This provision defines “importer” as any person who, for purposes of resale, transports into the United States puppies from a foreign country. Resale is defined to mean any transfer of ownership or control of an imported dog of less than 6 months of age to another person, for more than de minimis consideration. No dog shall be imported into the United States for purposes of resale unless the Secretary of Agriculture determines the dog is in good health; has received all necessary vaccinations; and is at least 6 months of age, if imported for resale. Exemptions are provided for dogs imported for research purposes or veterinary treatment. The Secretaries of Agriculture, Health and Human Services, Commerce, and Homeland Security will promulgate regulations necessary to implement this section. Failure to comply by an importer will result in the importer being subject to fines under section 19 of the Animal Welfare Act and providing for the care, forfeiture, and adoption of each applicable dog at the expense of the importer. (Section 3205)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment. The Managers recognize that Hawaii may have a unique situation arising out of Hawaii’s current quarantine regulations. In the case of Hawaii, so long as the state continues to quarantine dogs imported from the mainland United States, the Secretary may permit an exception to allow the import of dogs under the age of 6 months from jurisdictions currently exempt from the Hawaii quarantine (i.e. Guam, Australia, New Zealand, and the British Isles) for resale in Hawaii, provided all other regulations of the Secretary, and of the State of Hawaii, are complied with. Any dogs imported into Hawaii pursuant to this exception shall not be shipped to any other jurisdiction within the United States for resale at less than 6 months of age

The Managers do not intend for the exception for veterinary treatment to be used for routine veterinary care. This exemption is in place for emergency situations where the dogs in question are in need of immediate veterinary treatment and may not have the required vaccinations. Congress expects that such dogs would also be properly quarantined until the dogs are determined to be in good health as defined by regulations promulgated by the Secretary. Further, it is not the intent of Managers to prevent organizations from importing dogs under the age of 6 months in the event of an emergency, and transferring ownership or control of such dogs under the age of 6 months, provided such organization does not receive more than de minimus consideration for such adopted or transferred dogs. . (Section 14210)

(7) Outreach and technical assistance for socially disadvantaged farmers and ranchers and limited resource farmers and ranchers

The House bill amends section 2501 of the Food, Agriculture, Conservation, and Trade Act (FACT Act) to specify that the 2501 Technical and Outreach Assistance Program is to be used to enhance the coordination, outreach, technical assistance, and education efforts authorized under USDA programs.

The House bill authorizes agencies within USDA to make grants and enter into contracts and cooperative agreements with a community-based organization in order to utilize the community-based organization to provide outreach and technical assistance. It requires the Secretary to submit to the House and Senate Agriculture Committees an annual report that includes the following: the recipients of funds made available under the 2501 Outreach and Technical Assistance Program; the activities undertaken and services provided; the number of producers served and the outcomes of such service; and the problems and barriers identified by entities in trying to increase participation by socially disadvantaged farmers and ranchers.

Section 11201(1)(C) provides mandatory funding in the amount of \$15 million for each of the fiscal years 2008 through 2012. No more than 5 percent of the funds made available in each fiscal year are to be used for administrative expenses related to administering the 2501 Program.

Eligible entities are defined as any community-based organizations, networks, or coalition of community based organizations that have demonstrated experience in providing agricultural education or other agriculturally related services to and on behalf of socially disadvantaged farmers and ranchers and have provided to the Secretary documentary evidence of work with socially disadvantaged farmers and ranchers.. (Section 11201)

The Senate amendment amends section 2501 of the Food, Agriculture, .Conservation, and Trade Act (FACT Act) to specify that the 2501 Technical and Outreach Assistance Program is to be used to enhance the coordination, outreach, technical assistance, and education efforts authorized under USDA programs. The 2501 Program is to assist the Secretary in reaching socially disadvantaged farmers and ranchers and prospective socially disadvantaged farmers and ranchers, and improving the participation of those farmers and ranchers in USDA programs. The Secretary is required

to submit and make publicly available a report that describes: (A) the accomplishments of the 2501 program, and (B) any gaps or problems in program service delivery, as reported by program grantees. Appropriations of up to \$50,000,000 annually are authorized for fiscal years 2008-2012. No more than 5 percent of the funds made available in each fiscal year are to be used for administrative expenses related to administering The 2501 Outreach and Technical Assistance Program. The provision changes eligibility guidelines for potential grantees by extending from 2 to 3 years the period of time for which documentary evidence of work with socially-disadvantaged farmers must be provided. The Secretary is authorized to provide for the renewal of a grant, contract, or other agreement under this section to an entity that: (A) has previously received 2501 funding; (B) has demonstrated an ability to reach socially disadvantaged farmers and increase the participation of such farmers in USDA programs; and (C) demonstrates to the satisfaction of the Secretary that an entity will continue to fulfill the purposes of the 2501 Program. This section requires the Secretary to promulgate regulations establishing criteria for grants under this program. This section requires the Secretary, following consultation with entities eligible for the 2501 Program to co-locate the 2501 Program and the Office of Outreach within 18 months of enactment. (Section 11052)

The Conference substitute adopts the Senate amendment with modifications to delete language from the Senate amendment pertaining to renewal of contracts, review of proposals, and coordination with the Office of Outreach of the Department of Agriculture, which is now addressed in Section 14013, Office of Advocacy and Outreach. The Conference substitute also provides \$75 million in mandatory funding for the 2501 Program. (Section 14004)

(8) Improved program delivery by Department of Agriculture on Indian reservations

The House bill amends section 2501(g) of the FACT Act by authorizing the Secretary to require the Agricultural Stabilization and Conservation Service, the Soil Conservation Service, the Farmers Home Administration offices, and any such offices and functions that the Secretary chooses to include, establish a consolidated suboffice at tribal headquarters on Indian reservations, where there is a demonstrated need. (Section 11202)

The Senate amendment is the same as the House bill, with technical differences. (Section 11054)

The Conference substitute adopts the House provision with a technical change to correct the agency names in the statute. (Section 14001)

(9) Transparency and accountability for socially disadvantaged farmers and ranchers

The House bill amends section 2501A of the FACT Act by requiring the Secretary to annually compile, for each county and State in the United States, program application and participation rate data regarding socially disadvantaged farmers or ranchers by computing for each USDA program that serves agricultural producers and

landowners: (A) raw numbers of applicants and participants by race, ethnicity, and gender; and (B) the application and participation rate by race, ethnicity, and gender, as a percentage of the total participation rate of all agricultural producers and landowners.

The Secretary, using the technologies and systems of the National Agricultural Statistics Service, is authorized to compile and present application and participation rate data regarding socially disadvantaged farmers or ranchers in a manner that includes the raw numbers and participation rates for: the entire United States; each State; and, each county in each State. The Secretary is required to make the data (i.e., report) available to the public, via a website and otherwise in electronic and paper form. (Section 11203)

The Senate amendment amends section 2501A of the FACT Act by requiring the Secretary to annually compile, for each county and State in the United States, program application and participation rate data regarding socially disadvantaged farmers and ranchers by computing for each USDA program that serves agricultural producers and landowners: (A) raw numbers of applicants and participants by race, ethnicity, and gender; and (B) the application and participation rate by race, ethnicity, and gender, as a percentage of the total participation rate of all agricultural producers and landowners.

The Secretary, using the technologies and systems of the National Agricultural Statistics Service, is authorized to compile and present application and participation rate data regarding socially disadvantaged farmers or ranchers in a manner that includes the raw numbers and participation rates for: the entire United States; each State; and, each county in each State. (Section 11056)

The Conference substitute adopts the House provision. (Section 14006)

(10) Beginning farmer and rancher development program

The House bill provides that mandatory funding in the amount of \$15 million is to be provided for each of the fiscal years 2008 through 2012 to carry out the program. (Section 11204)

The Senate amendment incorporates energy conservation efficiency and transition to organic farming into the programs and services eligible to receive competitive grants under this program. It limits grants under this program to \$250,000. The provision adds a set of evaluation criteria the Secretary shall consider when awarding grants under this program. The Secretary is also required to ensure, to the maximum extent practicable, geographic diversity of grantees under this program. Organizations that work with refugee or immigrant beginning farmers or ranchers are added to be eligible to receive grants. This provision authorizes \$30,000,000 in annual appropriations for the BFRDP. (Section 7309)

The Conference substitute adopts the Senate provision with an amendment to move the program into the research title of this Act, to delete the incorporation of energy conservation efficiency and transition to organic farming into the program, to delete the clarification on organizations that work with refugee or immigrant beginning farmers, and to add \$15,000,000 in mandatory funding for each fiscal year from 2009 and \$20 million for each of fiscal years 2010 through 2012.

The Managers encourage the Secretary to include asset-based farming opportunity strategies in the grant categories of the Beginning Farmer and Rancher Development

Program (BFRDP) in order to aid with the overall purposes of the program, which include financial management training, the acquisition and management of agricultural credit, and innovative farm and ranch transfer strategies.

The Managers expect the panels that will review the grant applications through the BFRDP to include a broad range of individuals with appropriate expertise and experience in delivering beginning farmer and rancher programs.

The Managers intend for the BFRDP to include immigrant beginning farmers and ranchers in the funding set-aside for socially disadvantaged and limited resource farmers and ranchers.

The Managers are aware of and fully support the goals of the National Young Farmers Education Association National Forum on Identifying Issues and Enhancing Success for America's Young and Beginning Agricultural Producers. To the extent practicable, the Managers encourage the Secretary to provide support to this important forum. (Section 7410)

(11) Provision of receipt for service or denial of service

The House bill authorizes the Secretary to provide a receipt for service to a producer or landowner, or prospective producer or landowner, in any case where the producer or landowner, or prospective producer or landowner, requests any benefit or service offered by USDA to agricultural producers or landowners. The receipt for service is to be issued on the date the request is made and must contain the date, place, and subject of the request, as well as the action taken, not taken, or recommendations made in response to the request. (Section 11205)

The Senate amendment differs from the House version in that it: (1) specifies that Farm Service Agency and Natural Resources Conservation Service are the agencies subject to this provision, and (2) requires the receipt upon request. Section 11057 amends Section 2501A of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C.2279-1)(as amended by section 11056). This section requires the Secretary of Agriculture to issue to farmers and ranchers seeking a benefit or service offered by the Farm Service Agency or the Natural Resources Conservation Services of USDA, a receipt upon request that contains the date, place, and subject of the request as well as the action taken, not taken, or recommended to the farmer or rancher. (Section 11057)

The Conference substitute adopts the Senate amendment but modifies the language to include “current or prospective producer or landowner” and adds Rural Development to the agencies that are subject to the provision. (Section 14003)

(12) Tracking of socially disadvantaged farmers or ranchers and limited resource farmers or ranchers in Census of Agriculture and certain studies

The House bill requires the Secretary to ensure, to the maximum extent possible, that the Census of Agriculture accurately documents the number, location, and economic contributions of socially disadvantaged and limited resource farmers or ranchers. (Section 11206)

The Senate amendment amends section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C.2279). The Secretary is required to ensure, to the maximum extent possible, that the Census of Agriculture accurately documents the number, location, and economic contributions of socially disadvantaged and limited resource farmers or ranchers. (Section 11055)

The Conference substitute adopts the Senate amendment (Section 14005)

(13) Farmworker coordinator

The House bill authorizes the Secretary to establish the position of Farmworker Coordinator, to be located in USDA's Office of Outreach. The Farmworker Coordinator is to have a number of duties, including: serving as a liaison to community-based, non-profit organizations that represent low-income migrant and seasonal farmworkers; coordinating with USDA and State and local governments to assure that farmworker needs are met during declared disasters and emergencies; and assuring that farmworkers have access to services and support that will assist them in entering agriculture as producers. An appropriation of such sums as necessary is authorized for fiscal years 2008 through 2012. (Section 11207)

The Senate amendment is the same as the House bill, with technical differences. The Senate provision amends section 296(b) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 7014(b)). (Section 11059)

The Conference substitute adopts the Senate provision with an amendment to specify that the Farmworker Coordinator shall have responsibility for assisting farmworkers in becoming agricultural producers or landowners, and to make other technical changes. The Farmworker Coordinator has been relocated into the Office of Advocacy and Outreach as described in (93) of this document. (Section 14013)

(14) Office of Outreach relocation

The House bill authorizes the Secretary to develop a proposal to relocate USDA's Office of Outreach. The Office of Outreach is to be responsible for the 2501 Outreach and Technical Assistance Program and the Beginning Farmer and Rancher Development Program. (Section 11208)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House amendment with modification. The substitute establishes a new Office of Advocacy and Outreach, the purpose of which is to improve the viability and profitability of small farms and ranches, beginning farmers or ranchers, and socially disadvantaged farmers or ranchers, as well as to improve access to programs of the Department of Agriculture.

The Office of Advocacy and Outreach is to be overseen by a director appointed by the Secretary from among the competitive service and to have two distinct groups, a Socially Disadvantaged Farmer Group and a Small Farms and Beginning Farmers and Ranchers Group. The Socially Disadvantaged Farmers Group is to carry out the 2501 Program, oversee the Minority Farmer Advisory Committee, oversee the Farmworker Coordinator, and carry out the functions of the Office of Outreach and Diversity

previously carried out by the Office of the Assistant Secretary for Civil Rights. The Small Farms and Beginning Farmers and Ranchers Group is to oversee the Office of Small Farms Coordination, consult with the National Institute for Food and Agriculture on the administration of the Beginning Farmer and Rancher Development Program, coordinate with the Advisory Committee for Beginning Farmers and Ranchers, and carry out other such duties as determined appropriate by the Secretary of Agriculture. (Section 14013)

(15) Minority farmer advisory committee

The House bill authorizes the Secretary to establish a minority advisory committee, to be overseen by USDA's Office of Outreach. The committee is to have a number of duties, including: reviewing civil rights cases to ensure that they are processed in a timely manner; reporting quarterly to the Secretary on civil rights enforcement and outreach; recommending to the Secretary corrective actions to prevent civil rights violations; and reviewing the operations of the 2501 Outreach and Technical Assistance Program.

The Committee is to be composed of the following:

- (A) 3 members appointed by the Secretary;
- (B) 2 members appointed by the chairman of the Committee on Agriculture, Nutrition, and Forestry, of the Senate—in consultation with the ranking member;
- (C) 2 members appointed by the chairman of the House Agriculture Committee—in consultation with the Ranking member;
- (D) a civil rights professional;
- (E) a socially disadvantaged farmer or rancher; and
- (F) such other persons or professionals that the Secretary determines to be appropriate. (Section 11209)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with amendment. The substitute specifies that the duty of the committee is to provide advice to the Secretary on implementation of the 2501 Program, methods of maximizing the participation of minority farmers and ranchers in Department of Agriculture programs, and civil rights activities at the Department of Agriculture. The substitute deletes components of the House bill pertaining to review of civil rights cases, the processing of civil rights cases, quarterly reporting to the Secretary on civil rights enforcement, annual reporting to the Secretary on civil rights compliance, recommendations to the Secretary regarding corrective actions to prevent civil rights violations, review of operations of the 2501 Program, and review of outreach efforts in the agencies and programs of the Department.

The substitute also revises the membership of the committee, specifying not less than four socially disadvantaged farmers and ranchers, not less than two representatives of nonprofit organizations, not less than two civil rights professionals, not less than two representatives of higher education, and other such persons as deemed appropriate by the Secretary. The substitute also provides the Secretary of Agriculture with authority to appoint employees of the Department of Agriculture as ex-officio members. (Section

14008)

(16) Coordinator for chronically underserved rural areas

The House bill authorizes the Secretary to establish a Coordinator for Chronically Underserved Rural Areas, to be located in USDA's Office of Outreach. The mission of the Coordinator is to direct USDA's resources to high need, high poverty rural areas. The Coordinator's duties are to include consulting with other USDA offices in directing technical assistance, strategic planning, at the State and local level, for developing rural economic development that leverages the resources of State and local governments and non-profit and community development organizations. An appropriation of such sums as necessary is authorized for each of the fiscal years 2008 through 2012. (Section 11210)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to locate the Coordinator in Rural Development instead of the Office of Outreach. (Section 14118)

(17) Foreclosure

The Senate amendment states that currently there is a USDA guidance that prohibits loan foreclosures when there is a pending claim of racial discrimination against the Department. This provision amends section 307 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927) to put into law what is already in place in a guidance at USDA.

Subsection (a) Moratorium. This section mandates a moratorium on all loan acceleration and foreclosure proceedings where there is a pending claim of discrimination against the Department related to a loan acceleration or foreclosure. This section also waives any interest and offsets that might accrue on all loans under this title for which loan and foreclosure proceedings have been instituted for the period of the moratorium. If a farmer or rancher does not prevail on his claim of discrimination, then the farmer or rancher will be liable for any interest and offsets that accrued during the period that the loan was in abeyance. The moratorium will terminate on either the date the Secretary resolves the discrimination claim or the court renders a final decision on the claim, whichever is earlier.

Subsection (b) Report. This section requires the Inspector General of USDA to determine whether loan foreclosure proceedings of socially disadvantaged farmers have been implemented according to applicable laws and regulations. The Inspector General shall submit a report of its determination to the Senate and House Committees on Agriculture not later than a year after this legislation's enactment. (Section 11051)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with an amendment that the farmer or rancher is required to have a program discrimination claim and that the Department makes a procedural determination to accept the claim as a valid one. The determination to accept the claim by the Department is intended to be procedural and not

a statement as to the merits of the claim. The Conference substitute amends Section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) and specifies that the provision applies to farmer program loans made under subtitle A, B, or C. (Section 14002)

(18) Additional contracting authority

The Senate amendment amends section 2501(a)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)(3)). This section clarifies that the agencies and programs of the Department of Agriculture are authorized to enter into contracts and cooperative agreements with community-based organizations to provide service to socially-disadvantaged farmers and ranchers, clarifies that the Secretary is not required to require matching funds for such agreements, and allows federal agencies to contribute to grants or cooperative agreements made under the 2501 Program as the agency determines that contributing funds for such purpose will further the authorized programs of the contributing agency. (Section 11053)

The House bill contains a similar provision in section 11201.

The Conference substitute deletes both House and Senate provisions.

(19) Emergency grants to assist low-income migrant and seasonal farmworkers

The Senate amendment amends Section 2281 of the Food, Agriculture, Conservation and Trade Act of 1990 (42 U.S.C. 5177a). This section requires the Secretary to maintain a disaster fund of \$2,000,000, and authorizes discretionary funding to maintain it. This section further requires that public or private entities eligible to receive funding under this section must have at least five years demonstrated experience in representing and providing emergency services to low-income migrant or seasonal farmworkers. Types of allowable assistance are specified, in addition to such other priorities that the Secretary determines to be appropriate. (Section 11061)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate amendment.

(20) National appeals division

The Senate amendment amends section 280 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 7000). This section establishes a reporting requirement that states the head of each agency shall report to the House and Senate Agriculture Committees, and post on the Department's website information that includes a description of all cases returned to the agency by the National Appeals Division, the status of implementation of each final determination and if the final determination has not been implemented then the reason and the projected date of implementation. The reporting requirement to Congress should be every 180 days and the website should be updated not less than monthly. (Section 11058)

The House bill contains no comparable provision.
The Conference substitute adopts the Senate amendment. (Section 14009)

(21) Oversight and compliance

The Senate amendment requires the Secretary of Agriculture to use the reports required under section 2501 of the FACT Act in the conduct of program oversight regarding the participation of socially disadvantaged farmers in USDA programs as well as in the evaluation of civil rights performance. (Section 11064)

The House bill contains no comparable provision.
The Conference substitute adopts the Senate amendment. (Section 14007)

(22) Report of civil rights complaints, resolutions, and actions

The Senate amendment requires the Secretary of Agriculture to issue an annual report on program and employment civil rights complaints, including the number of complaints filed, the length of time required to process complaints, the number of complaints resolved with a finding of discrimination, and the personnel actions taken by the agency following resolution of civil rights complaints. (Section 11065)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment. The Managers intend that if the Secretary, in compiling determines the aggregate data does not accurately reflect the scope of complaints, then the Secretary may note in the report that multiple complaints came from a single individual, in order to provide clear picture of the scope of the complaints. (Section 14010)

(23) Grants to improve supply, stability, safety, and training of agricultural labor force

The Senate amendment directs the Secretary to make grants to nonprofit organizations to assist agricultural employers and farmworkers with services that help improve the quality of the agricultural labor force through job training, short-term housing, workplace literacy and ESL training, and health and safety instruction, among other purposes. Discretionary funding is authorized to carry out this section. (Section 11066)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendments to clarify the eligible services that may be provided with grant funds through the program; to specify that assistance may be provided to farmworkers who are citizens or otherwise legally present in the United States; and to establish a 15 percent limit on administrative expenses for the program. (Section 14204)

(24) Office of small farms and beginning farmers and ranchers

The Senate amendment establishes an office at USDA to be known as the Office of Small Farms and Beginning Farmers and Ranchers. Section (b) outlines the purposes of the office including ensuring coordination across all agencies; ensure small, beginning, and socially disadvantaged farmers and ranchers access to all USDA programs; ensure the number and economic contributions of small, limited resource, beginning and socially disadvantaged farmers and ranchers are accurately reflected in the Census of Agriculture; and to assess and enhance the effectiveness of outreach programs at the department. Subsection (c) establishes the office should be headed by a director. Subsection (d) outlines the duties of the office including to establish cross cutting and strategic departmental goals and objectives for small, beginning, and socially disadvantaged farmer and rancher programs. Subsection (e) requires the office to maintain a website to share information with interested producers and to collect and respond to comments from small and beginning farmers and ranchers. Subsection (f) requires the Secretary to provide the office human and capital resources sufficient to allow the office to carry out its duties using funds made available to the Secretary through appropriations acts. Subsection (g) requires an annual report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry in the Senate. (Section 11088)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that Section 14013 subsumes this office into the Office of Advocacy and Outreach. (Section 14013)

(25) Designation of separate cotton-producing States under Cotton Research and Promotion Act

The House bill amends the definition of “cotton-producing State” in the Cotton Research and Promotion Act to include Kansas, Virginia, and Florida as each being considered separate cotton producing States under the Act, beginning with the 2008 crop of cotton. (Section 11301)

The Senate amendment designates Kansas, Virginia, and Florida as each being considered separate cotton-producing states effective beginning with the 2008 crop of cotton for purposes of the Cotton Research and Promotion Act. (Section 1713)

The Conference substitute adopts the Senate provision. (Section 14202)

(26) Cotton classification services

The House bill extends the authority of the Secretary to make cotton classification services available to producers of cotton and to collect classification fees from participating producers through FY 2012. The provision authorizes the Secretary to enter into long-term lease agreements that exceed five years or take title to property in order to obtain offices used for the classification of cotton. (Section 11302)

The Senate amendment authorizes cotton classing services without any fiscal year restrictions. Similar to the House bill, the Senate amendment authorizes the Secretary to enter into long-term lease agreements that exceed five years or take title to property in order to obtain offices used for the classification of cotton. The provision requires the Secretary to consult with the cotton industry in establishing the fees. It ensures that the Federal Advisory Committee Act requirements do not apply to consultations with the US Cotton industry. It also provides greater discretion to the Secretary in establishing the fees. (Section 1712)

The Conference substitute adopts the Senate provision with an amendment to ensure that the Secretary announces the classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies.

The Managers expect the cotton classification fee to be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform per bale fee as determined necessary to maintain cost-effective cotton classification service. In consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee. (Section 14201).

(27) Availability of excess and surplus computers in rural areas

The House bill provides that the Secretary may make surplus USDA computers or technical equipment available to any city or town in a rural area. (Section 11303)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to ensure that the activities authorized under this section are in addition to, and would not replace, activities conducted under other existing authorities of the Secretary with regard to property disposal.

The Managers expect the Secretary to use this authority to continue to make available excess or surplus computers to city or towns located in rural areas through organizations that are able to refurbish such equipment and supply it to rural schools, libraries, and city halls in need.

The intent of the conferees is that local governments include independent school districts. (Section 14220)

(28) Permanent debarment from participation in Department of Agriculture programs for fraud

The House bill authorizes the Secretary to permanently debar an individual or entity convicted of knowingly defrauding the United States in connection with any program administered by the Department of Agriculture from any subsequent participation in such programs. (Section 11304)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment. The amendment provides the Secretary the authority to limit the debarment to not less than ten years. The amendment further provides that debarment shall not have any effect on

the receipt of domestic food assistance. (Section 14211)

(29) No discrimination against use of registered pesticide products or classes of pesticide products

The House bill prohibits the Secretary from discriminating against the use of specified registered pesticide products or classes of pesticide products in establishing priorities and evaluation criteria for approval of plants, contracts and agreements under the conservation title of this Act. (Section 11305)

The Senate amendment contains no comparable provision.

The Conference substitute strikes this provision. Insomuch as the underlying House provision was a restatement of long-standing policy of the Natural Resources Conservation Service (NRCS), the managers recognize that statutory language is unnecessary.

The House provision referred to pesticides registered by the Environmental Protection Agency (EPA) in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Food Quality Protection Act (FQPA). A FIFRA registration implies that uses of pesticides have been deemed by EPA to have met established standards of safety to human health and the environment when used in accordance with the label.

Under various conservation programs authorized in Title II, the managers have directed the Secretary to establish priorities and evaluation criteria to ensure the efficient and effective use of resources.

However, it is not the intent of the managers to undermine the regulatory framework for the legal use of registered pesticides while implementing various conservation programs in this Title.

Therefore, in establishing priorities and evaluation criteria for the approval of plans, contracts and agreements under Title II of this Act, it is the expectation of the managers that the NRCS shall neither prohibit the use of specific registered pesticides or classes of pesticides, nor advocate for the use of alternatives to registered pesticides or classes of pesticides.

The managers intend for NRCS to assist farmers wishing to adopt new technologies and specific pest management strategies that contribute to agricultural production and environmental quality. For example, programs that assist farmers in developing risk mitigation measures regarding pesticide use are entirely consistent with the current regulatory program administered by EPA and would not be in conflict with Congressional intent.

(30) Prohibition on closure or relocation of county offices for the Farm Service Agency, Rural Development Agency, and Natural Resources Conservation Service

The House bill prohibits the Secretary from closing or relocating a county or field office of the Farm Service Agency, Rural Development Agency, or Natural Resources Conservation Service for one year following the date of enactment of this Act. (Section 11306)

The Senate amendment defines “critical access county FSA office” in subsection (a) as an office of the Farm Service Agency proposed to be closed during the period beginning on November 10, 2005 and ending on December 31, 2007; proposed to be closed with the closing delayed until after January 1, 2008; or included on a list of critical access county FSA offices. FSA offices that are located not more than 20 miles from another FSA office or that employ no full-time equivalent employees are excepted from the definition of critical access county FSA office. Subsection (b) prohibits the Secretary from using any funds to pay the salaries or expenses of any USDA officer or employee to close any critical access county FSA office during the period from the date of enactment through September 30, 2012. The Secretary is required to maintain a staff of not less than 3 full-time equivalent employees in each critical access county FSA office although the staff may be located in any other county office of the FSA in that State. However, a critical access county FSA office must have at least 1 full-time equivalent employee.

Subsection (c) allows the Secretary to close a critical access county FSA office only on concurrence by Congress and the applicable State Farm Service Agency committee. (Section 11071)

The Conference substitute adopts the House provision with an amendment.

The Managers have provided the exception paragraph to allow the Secretary to review offices meeting the criteria and close those offices if justified; the language in the exception paragraph does not require the Secretary to close offices meeting the criteria. The Managers expect that the Department will communicate with Congressional delegations about proposed closures and respond to concerns about such closures. (Section 14212)

(31) Regulation of exports of plants, plant products, biological control organisms, and noxious weeds

The House bill amends the Agricultural Risk Protection Act of 2000 to require the Secretary to coordinate fruit and vegetable market analyses with the private sector and Foreign Agricultural Service. Further requires the Secretary to list on an Internet website the status of export petitions, an explanation of associated sanitary or phytosanitary issues, and information on the import requirements of foreign countries for fruits and vegetables. (Section 11307)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to strike the original language and insert a provision in the Technical Assistance for Specialty Crops program requiring the Secretary to submit an annual report on sanitary and phytosanitary trade barriers. (Section 3203)

(32) Grants to reduce production of methamphetamines from anhydrous ammonia

The House bill authorizes the Secretary to make grants to eligible entities to enable such entities to obtain and add to an anhydrous ammonia fertilizer nurse tank a substance that will reduce the amount of methamphetamine that can be produced from such tank. It provides that the grant amount be between \$40 and \$60, multiplied by the number of nurse tanks for each eligible entity. The provision also authorizes appropriations of not more than \$15 million for each of fiscal years 2008 through 2012. (Section 11308)

The Senate amendment is the same as the House bill, except it provides that a grant can be used either for a physical lock or a chemical substance. (Section 11062)

The Conference substitute adopts the Senate amendment. (Section 14203)

(33) USDA Graduate School

The House bill amends the Federal Agriculture Improvement and Reform Act of 1996 to prohibit the Department of Agriculture from establishing, maintaining, or operating a non-appropriated fund instrumentality of the United States to develop, administer, or provide educational training and professional development activities, including educational activities for Federal agencies, Federal employees and other entities, effective October 1, 2008. (Section 11309)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment. The modification keeps the House language but extends the deadline for the General Administrative Board of the Graduate School to transition the Graduate School into a non-governmental nonappropriated fund instrumentality to October 1, 2009. It further authorizes the Secretary to use available appropriated funds and other resources to assist in the Graduate School's transition. Effective immediately, the Graduate School shall be subject to Federal procurement procedures in the same manner and subject to the same requirements as a commercial entity. (Section 14213)

(34) Prevention and investigation of payment and fraud and error

The House bill amends the Right to Financial Privacy Act of 1978 to allow financial institutions to disclose an individual's financial records to any Government entity that certifies, disburses or collects payments, when such disclosure is necessary for the proper administration of programs. The provision expands the permitted use of the disclosed financial information to include the verification of the identity of any person in connection with Federal payment or collection of funds, or the investigation or recovery of improper Federal payments, improperly collected funds, or an improperly negotiated Treasury check. (Section 11310)

The Senate amendment is the same as the House bill except:

- (1) The provision does not change paragraph (k)(1) of the existing exception in the Right to Financial Privacy Act of 1978, which allows disclosure of the name and address of any financial institution customer if the disclosure is necessary for the proper administration of

section 1441 of Title 26, title II of the Social Security Act, or the Railroad Retirement Act.

- (2) New paragraph (2) allows disclosure of a customer's financial records, rather than just a customer's name and address as permitted under paragraph (1), to reflect the fact that electronic payments are not directed to customers by means of a name and address, in contrast to paper checks.
- (3) Information may be disclosed under the new paragraph (2)(A) not only to the extent that the information is necessary to verify the identity of any person making or receiving a Federal payment, but also to verify the proper routing and delivery of funds.
- (4) New paragraph (3) applies to a request authorized by paragraph (k)(1) or (2). Similar to the House version, the provision does not allow for the disclosure by a financial institution of the customer's financial records in their entirety, but only the information contained in the records that are relevant to the purpose of the request. (Section 11068)

The Conference substitute adopts the Senate provision. (Section 14205)

(35) Sense of Congress regarding food deserts, geographically isolated neighborhoods and communities with limited or no access to major chain grocery stores

The House bill expresses the sense of Congress that the Secretary of Agriculture, in conjunction with the National Institutes of Health, Centers for Disease Control and Prevention, Institute of Medicine, and faith-based organizations, should assess "food deserts" in the United States (geographically isolated neighborhoods and communities with limited or no access to major-chain grocery stores), and develop recommendations for eliminating them. (Section 11311)

The Senate amendment requires the Secretary to study and report on areas in the United States with limited access to affordable and nutritious food, with a focus on predominantly lower-income neighborhoods and communities. (Section 7504)

The Conference substitute adopts the Senate provision with an amendment to move this provision to the Research Title of this Act, to include and define the term "food desert," and to include an authorization of appropriations for the study. (Section 7527)

(36) Pigford claims

The House bill provides that Pigford claimants who have not had their cases determined on the merits may, in a civil action, obtain such a determination. Payments or debt relief are to be exclusively made from mandatory funds provided to carry out this section. The total amount of payments and debt relief are prohibited from exceeding \$100 million; additionally, payments and debt relief provided under this section are not to be made from Judgment Fund established by 31 U.S.C. 1304. The intent of Congress is to have this section liberally construed. Not later than 60 days after the Secretary receives notice that a Pigford claimant desires to have a determination made on the merits of a claim, the Secretary is to provide the claimant with a report on farm credit loans made within the claimant's county, or adjacent county, by USDA for a period beginning on

Jan. 1 of the year or years covered by the complaint and ending on Dec. 31 of the following year or years.

The report is to contain information on all person whose loans were accepted, including:

- (a) the race of the applicant;
- (b) the date of the application;
- (c) the date of the loan decision;
- (d) the location of the office making the loan decision; and
- (e) all data relevant to the process of deciding the loan.

The reports provided by USDA are not to contain identifying information regarding the person that applied for a USDA loan. Claimants who allege discrimination in the application for, or making or servicing of, a farm loan are permitted to seek liquidated damages of \$50,000, or a discharge of the debt that was incurred under, or affected by, the alleged discrimination that is the subject of the complaint, and a tax payment in an amount of the liquidated damages and loan principal discharged only if:

- (1) the claimant is able to prove his or her case by substantial evidence; and
- (2) the court decides the case based on documents, submitted by the claimant, that are relevant to the issue of liability and damages.

The Secretary is prohibited from beginning acceleration on or foreclosure of a loan if the borrower is a Pigford claimant and, during an administrative proceeding, the claimant makes a prima facie case that the foreclosure is related to a Pigford claim. A "Pigford claimant" is defined as an individual who previously submitted a late-filing request under section 5(f) of the Pigford consent decree, in the case of Pigford v. Glickman, approved by the U.S. District Court for DC on April 14, 1999. A "Pigford claim" is defined as a discrimination complaint, as defined by section 1(h) of the Pigford consent decree and documented under section 5(b) of the decree.

Mandatory funding of \$100 million is to be made for fiscal year 2008. The funding is to remain available until it has been expended for payments and debt relief in satisfaction of claims against the U.S, with respect to a Pigford claimants who have their claims determined on the merits, and for any actions made related to the prohibition regarding foreclosures related to Pigford claims. (Section 11312)

The Senate amendment is the same as the House bill except:

- (1) Subsection (a)(1) requires all claimants to file in United States District Court for the District of Columbia.
- (2) Subsection (a)(2) connects the definition of "substantial evidence to the one used in the original consent decree.
- (3) Authorizes appropriate funds as necessary beyond the \$100 million in mandatory funding. (Section 5402)

The Conference substitute adopts the Senate amendment with modifications. The Secretary will have 120 days to provide the claimant a report, or may petition the court for an extension. The modification requires the Secretary to retrieve data from within the claimant's county, or, if no documents are found then within an adjacent county as determined by the claimant.

The modification provides for those who are filing a claim for discrimination involving a noncredit benefit to be able to obtain a report from the Secretary. It also

provides for those claimants to receive a maximum of \$3,000 irrespective of the number of noncredit claims on which the claimant prevails.

The modification provides for those filers who chose not to go through the expedited resolutions process, to be entitled to actual damages if the claimant prevails.

The modification also provides a requirement for the Secretary to report once every six months to both the House and Senate Committees on the Judiciary the status of available funds and the number of pending claims under the expedited resolutions process. It further requires the Secretary to notify those Committees once 75% of the funds have been depleted. It further provides for a 2-year statute of limitations to file a claim under this section.

(Section 14012)

(37) Sense of Congress relating to claims brought by socially disadvantaged farmers or ranchers

The Senate amendment contains a sense of Congress that the Secretary should resolve all claims and class actions brought against the United States Department of Agriculture by socially disadvantaged farmers or ranchers including Native Americans, Hispanics, and female farmers regarding discrimination in farm loan program participation. (Section 5403)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate amendment with a modification that all pending claims should be resolved expeditiously. (Section 14011)

(38) Comptroller general study of wastewater infrastructure near United States-Mexico border

The House bill mandates that the Comptroller General study wastewater infrastructure in rural communities within 150 miles of the United States-Mexico border to determine how the Government can assist these communities in updating the wastewater infrastructure. (Section 11313)

The Senate amendment contains no comparable provision.

The Conference substitute deletes this provision.

(39) Elimination of statute of limitations applicable to collection of debt by administrative offset

The House bill amends 31 U.S.C. 3716(e) to eliminate the statute of limitations within which a government agency can initiate the collection of an outstanding claim by administrative offset. (Section 11314)

The Senate amendment is the same as the House bill. (Section 11069)

The Conference substitute adopts the House provision. (Section 14219)

(40) Pollinator protection

The House bill cites this section as the “Pollinator Protection Act of 2007”. It

states Congress' findings regarding the importance of bee pollination to agriculture and the concerns related to colony collapse disorder in the bee population. The provision authorizes appropriations, as follows:

- For the Agricultural Research Service at USDA – \$3 million for each of fiscal years 2008 through 2012 for new personnel, facilities improvement, and additional research at the USDA Bee Research Laboratories; \$2.5 million for each of fiscal years 2008 and 2009 for research on honey and native bee physiology, and other research; and \$1.75 million for each of fiscal years 2008 through 2010 for an area-wide research program to identify causes and solutions for colony collapse disorder.
- For the Cooperative State Research, Education, and Extension Service – \$10 million to fund grants to investigate honey bee biology, immunology, ecology, genomics, bioinformatics, crop pollination and habitat conservation, the effects of insecticides, herbicides and fungicides, and other research.
- For the Animal and Plant Health Inspection Service – \$2.25 million for each of fiscal years 2008 through 2012 to conduct a honey bee pest and pathogen surveillance program.

The House bill requires the Secretary to submit a report to Congress on the status and progress of bee research projects. It amends the Food Security Act of 1985 to require the Secretary, when carrying out a conservation program other than the farmland protection program, to establish a priority and provide incentives for increasing habitat for pollinators and to establish practices to protect native and managed pollinators. (Section 11315)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment to move the research-related items of this provision to the research title of this Act to amend section 1672 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925), and to move the conservation-related item of this provision to the conservation title of this Act. (Section 7204)

(41) Exemption from AQI user fees

The Senate amendment exempts commercial trucks from payment of agricultural quarantine and inspection user fees if it originates in Alaska and reenters the United States directly from Canada or if it originates in the United States and transits through Canada before entering Alaska. Commercial trucks exempt from user fees are required to remain sealed during transit through Canada. (Section 11080)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(42) *Regulations to improve management and oversight of certain regulated articles*

The Senate amendment requires the Secretary to promulgate regulations for improved management and oversight of articles regulated under the Plant Protection Act. (Section 11077)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to change the timeframe for the promulgation of regulations and to make technical changes. This provision can be found in the horticulture and organic agriculture title. (Section 10204)

(43) Invasive pest and disease emergency response funding clarification

The Senate amendment clarifies that the Secretary may provide emergency funding to States to combat invasive pest and disease outbreaks for any appropriate period after initial detection of the pest or disease, as determined by the Secretary. (Section 11078)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(44) Invasive species management, Hawaii

The Senate amendment requires cooperation among the federal agencies involved in preventing the introduction of and controlling invasive species in the State of Hawaii; requires the development of collaborative federal and state procedures to minimize the introduction of invasive species into Hawaii, and requires a report to Congress on the development of those procedures; establishes a process for Hawaii to seek approval from the federal government to impose restrictions on the introduction or movement of invasive species or disease into the State that are in addition to federal restrictions; in the event of an emergency or imminent invasive species threat, allows Hawaii to impose restrictions of up to 2 years to prevent introduction of the threat upon approval by the federal government. (Section 11063)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision. The Managers remain concerned about the serious and growing invasive species problem in the State of Hawaii. The Managers are aware of the threats that invasive species present to Hawaii's unique ecosystem, which is highly susceptible to invasive species because of the combination of isolation of the Hawaiian islands and high passenger, baggage and cargo traffic to the islands. The Managers encourage the Secretaries of the Department of Agriculture, Interior and Homeland Security to work together in close cooperation with the State of Hawaii to effectively reduce the number of invasive species in Hawaii. The Managers emphasize this collaboration is critical at Hawaiian ports of entry.

(45) Invasive species revolving loan fund

The Senate amendment establishes an invasive species revolving loan fund. This loan fund allows eligible units of local government to finance purchases of authorized equipment to monitor, remove, dispose of, and replace infested trees on land under the jurisdiction of the eligible local government and within the borders of a quarantine area infested by an invasive pest. These loans can be no more than \$5,000,000 and shall have an interest rate of two percent. An eligible unit of local government shall work with the Secretary to establish a loan repayment schedule. This schedule requires that not later than one year after the eligible unit of local government received a loan they must repay

the loan. The payments can be scheduled semiannually after. (Section 11090)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to move this provision to the horticulture and organic title of this Act, to replace all references to “invasive species” with the term “pest and disease,” and to strike the provision allowing the unit of local government to use the financing of contracts with individuals and entities as part of the matching requirement in this program.

(Section 10205)

(46) Cooperative agreements relating to invasive species prevention activities

The Senate amendment allows States to provide cost-sharing assistance or financing mechanism to a unit of local of the State through any cooperative agreement entered into between the Secretary and a State relating to the prevention of invasive species infestation. (Section 11091)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to move this section to the horticulture and organic title of this Act, to amend section 431 of the Plant Protection Act (7 U.S.C. 7751), and to make technical changes.

(Section 10206)

(47) Report relating to the ending of childhood hunger in the United States

The Senate amendment includes a sense of Congress regarding childhood hunger in the United States. This section specifies that, not later than one year after the date of enactment of the Act, the Secretary shall submit to Congress a report that describes the best and most cost-effective manner by which the federal government could allocate funds to achieve the goal of abolishing childhood hunger and food insecurity by 2013.

(Section 11082)

The House bill contains no comparable provision.

The Conference substitute deletes this provision.

(48) GAO report on access to health care for farmers

The Senate amendment provides that the GAO shall provide a report on rural Americans access to health care with a focus on farmers by November 30, 2008.

(Section 11074)

The House bill contains no comparable provision.

The Conference substitute deletes this provision.

(49) Conveyance of land to Chihuahuan Desert Natural Park

The Senate amendment conveys 935.62 acres of land in Dona Ana County New Mexico to the Chihuahuan Desert Nature Park, Inc a non-profit organization in New Mexico. The land is to be conveyed within one year after enactment of this Act. Subsection (c) outlines the conditions for the land conveyance. The United States

reserves all mineral and subsurface rights of the land. The Chihuahuan Desert Nature Board must pay any costs associated relating to the conveyance. Also this subsection requires the land to be used for only educational or scientific purposes. Subsection (d) states if the land is not used for educational or scientific purposes the land may revert to the United States. If the land is environmentally contaminated, the Chihuahuan Desert Nature Park, Inc. or successor is responsible for the contamination and shall be required to remediate the contamination. (Section 11075)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to authorize the conveyance, without consideration, of certain lands in the George Washington National Forest. (Section 8302)

(50) Department of Agriculture Conference Transparency

The Senate amendment requires the Secretary to quarterly report to the Inspector General costs and contracting procedures relating to conferences held by USDA for which the cost to the Federal Government was over \$10,000. Subsection (c) requires the Secretary to annually report to the Senate and House Agriculture Committees a detailed report about each conference where the USDA paid travel expenses. (Section 11081)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment. The modification provides reporting guidelines for conferences that are held by the Department or attended by employees of the Department. For conferences held by the Department, the Secretary will have to include a description of the contracting procedures related to the conference. The provision is not intended to apply to any training program for employees of the Department, or to conferences held outside the United States and attended by the Secretary or a designee as an official representative of the U.S. government. Travel under (c)(1)(d) does not apply to local travel for conferences. (Section 14208)

(51) National emergency grant to address effects of Greensburg, Kansas tornado

The Senate amendment states the Department of Labor awarded Greensburg, KS a \$20 million grant to assist with cleanup from a F5 tornado that hit the town in May of 2007. The language allows the planning process to begin and allow federal funds that have already been awarded to flow more smoothly and efficiently. (Section 11083)

The House bill contains no comparable provision.

The Conference substitute deletes this provision.

(52) Report on program results

The Senate amendment requires the Secretary to report information regarding programs that have received a Program Assessment Rating Tool score of “results not demonstrated” and for each program provide reasons that the program has not been able to demonstrate results, steps taken to demonstrate results and what might be necessary to facilitate the demonstration of results. (Section 11084)

The House bill contains no comparable provision.

The Conference substitute deletes this section. The Managers recognize that the reporting requirements in the Senate amendment may duplicate actions already taken by the Secretary in regards to the Program Assessment Rating Tool and that information on Program Assessment Rating Tool scores is publicly available. However, in order to raise greater awareness about such evaluation, the Managers encourage the Secretary to provide progress reports to Congress on the programs that have received a Program Assessment Rating Tool of “results not demonstrated.

(53) Study of impacts of local food systems and commerce

The Senate amendment requires the Secretary of Agriculture to evaluate the potential community, economic, health and nutrition, environmental, food safety, and food security impacts of advancing local food systems and commerce, the challenges that prevent local foods from comprising a larger share of the per capita food consumption in the United States, and existing and potential strategies, policies, and programs to address those challenges. (Section 11089)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate amendment.

USDA’s Economic Research Service (ERS) has indicated that the Agency is in the process of conducting a study of local food systems, thereby mitigating the need for a statutory mandate in this conference agreement. The ERS study will address issues raised in the Senate amendment including an evaluation of the effects of local food systems on economic activity, nutrition, and environmental resources. ERS has likewise indicated that the study will consider possible reasons for government policies to support local food markets and reduce barriers to growth of that sector.

The Managers are aware of the budgetary constraints ERS is operating under. In order to minimize costs and maximize the utility of the study being undertaken, the Managers encourage ERS to leverage available resources through collaboration with other appropriate Federal agencies, farm operators serving local markets, institutions of higher education, non-governmental organizations, and state and local agencies. To the extent resources and data are available, the Managers also encourage ERS to examine regional market trends and production, processing and distribution needs and evaluate the role and successes of relevant Federal, State, and local policies in areas where the production, processing and consumption of locally grown produce, meat, dairy, and other agricultural products is above normative levels.

(54) Disclosure of country of harvest for ginseng

The Senate amendment amends the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) It requires persons that sell ginseng at retail to provide the country of harvest by means of a label, stamp, mark, placard, or other easily legible and visible sign on the ginseng or on the package, display, holding unit, or bin containing the ginseng. The Secretary may levy fines for not more than \$1,000 for willful violations of this provision. (Section 10004)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

The Managers have included ginseng in section 11002 of the Livestock Title.

(55) Definitions

The Senate amendment defines the following terms used in the subtitle: agent; agricultural biosecurity; agricultural countermeasure; agricultural disease; agriculture; agroterrorist act; animal; department; development; plant; and qualified agricultural countermeasure. (Section 11011)

The House has no comparable provision.

The Conference substitute adopts the Senate provision with technical amendments to the definitions and incorporates this provision into the Agricultural Security Improvement Act of 2008. (Section 14102)

The Managers have serious concerns regarding the efforts of the Department of Homeland Security (DHS) to absorb the critical agricultural security functions of the USDA, and DHS' ability to successfully incorporate and manage functions previously housed within the USDA. The USDA is best equipped to handle routine agricultural disease emergencies and emergency response activities in the agricultural sector. While the Managers fully appreciate the vital importance of the broad DHS mandate, DHS has ignored critical expertise within USDA and of the agriculture sector in managing agricultural disease response activities. In doing so, DHS has ignored and failed to incorporate the concerns of the agriculture sector. For example, independent investigations carried out by the House Committee on Agriculture and the Government Accountability Office, as well as a joint audit by the Inspector's General of USDA and DHS, have revealed numerous deficiencies in the agricultural port inspection program. Under DHS leadership, this program has suffered a marked decline in its capability to prevent and detect the movement of agricultural pests and diseases into the United States. This decline in mission capabilities is primarily due to an exodus of experienced staff after the transfer of agricultural inspections from USDA to DHS, declining morale and resources, and the lack of importance placed on the program's mission by DHS management. The Managers believe if this trend continues unabated, the security of the U.S. agriculture sector will be seriously, perhaps irreversibly, jeopardized. In addition, DHS is currently increasing their role in routine agricultural disease response activities and has claimed Federal jurisdiction as the lead agency for these activities traditionally managed by the USDA. Rather than attempt to duplicate the existing functions and capacities of USDA in this critical area, DHS would be better served, and scarce financial resources could be better allocated, if USDA and DHS effectively partnered in securing the Nation's agriculture sector. The Department of Agriculture has over 146 years of valuable experience in preventing the introduction of agricultural pests and diseases and effectively managing agricultural disease outbreaks when they occur. To ignore this history is to do a disservice to the agriculture sector, and the Nation at large.

The Managers are concerned about efforts to reorganize USDA in an attempt to heighten the Department's response and management capabilities regarding threats to agricultural biosecurity. The Managers recognize that the existing structure at USDA to address such threats is adequate, and will continue to successfully prevent, control, and eradicate agricultural diseases. However, the Managers have codified the Office of Homeland Security at USDA in this Act in response to the concerns of other Committees.

All homeland security-related activities at USDA will be coordinated by this office, ensuring that USDA will maintain its long tradition of protecting the U.S. agriculture sector from foreign and domestic agricultural pests and diseases. In addition, the Director of the Office of Homeland Security will serve as the primary liaison with other Federal agencies on homeland security coordination efforts, providing USDA with a unified voice on agricultural security matters of Federal concern.

The Managers expect the Secretary, in establishing the Agricultural Biosecurity Communications Center, to use, to the maximum extent practicable, the existing resources and infrastructure of the Emergency Operations Center of the Animal and Plant Health Inspection Service located in Riverdale, Maryland. In addition, the Managers expect the Secretary to share and coordinate the dissemination of information with the National Operations Center, the National Biosurveillance Integration Center, the National Response Coordination Center, and the National Infrastructure Coordination Center of DHS, as appropriate. The Managers recognize that existing communication activities at DHS will not be hampered by the creation of the Agricultural Biosecurity Communications Center. However, the Managers also recognize the critical need for USDA to maintain and govern its own communication system given the subject matter expertise of USDA officials and their close ties to the domestic agriculture sector and international trading partners who trust their guidance and input.

The Managers understand that any successful agricultural disease interdiction, prevention, or mitigation effort is largely dependent on local response capabilities. State and regional entities play a critical role in any agricultural disease emergency; however, the Federal government must provide them with the necessary expertise and information to establish successful local programs. The Managers recognize that no Federal agency is better equipped to assist in this endeavor than the Department of Agriculture. USDA enjoys an established network of local veterinarians, plant health professionals, producers, farmers and ranchers who view the Department as a partner in agricultural disease response activities. These long-established relationships will be buttressed by the Agricultural Biosecurity Task Force and will strengthen the Nation's disease response capabilities at the local and regional level. The Managers encourage the Secretary to collaborate with DHS in the provision of agricultural biosecurity best practices to State and tribal regulatory authorities. In doing so, DHS will be afforded the opportunity to benefit from the expertise of USDA in this area of national security.

The Managers are especially concerned with the degradation of the AQI program following its transfer from USDA to DHS in 2002, and are aware that the agriculture sector continues to raise serious concerns about the ability and willingness of DHS to prioritize agricultural quarantine and inspection activities at ports of entry. In light of the broad mandate given to DHS, the Managers understand that limiting the introduction of agricultural pests and diseases into the United States is not a top priority for DHS. While some observers have concluded that the scientific nature of the AQI program does not fit well with the police function of the Customs and Border Protection Program, the Managers have nevertheless chosen to maintain the program within the Department of Homeland Security. As such, the Managers encourage the Secretary to increase USDA's oversight regarding this vitally important program to ensure that the concerns of the agricultural sector are given a priority status commensurate with the threat that these diseases pose to the U.S. economy. To do so, the Managers encourage the Secretary to

establish a comprehensive activity reporting mechanism detailing how DHS uses funds transferred by USDA to carry out the AQI program. In order to keep Congress and the public informed about the use of these funds, the Managers encourage the Secretary to provide a detailed accounting to the Senate and House Agriculture Committees on how DHS uses these funds. The Managers strongly encourage the Secretary of Agriculture and the Secretary of Homeland Security to revise the transfer agreement mandated under section 421(e) of the Homeland Security Act of 2002 so that the financial information requested is provided in a timely manner. The Managers intend that any information provided to the Secretary on the use of funds by DHS be scrutinized not only by Congress, but also by the senior leadership of the USDA and DHS to ensure expedient and comprehensive improvements in this program.

The Managers also encourage the Secretary to seek detailed information to track the promotion of CBP field officers, import specialists, and agricultural specialists into supervisorial and managerial grades since the transfer of function in 2003. The information provided should break out, by fiscal year and by series, the number of employees who have been permanently promoted into supervisor, chief, program manager, assistant port director, and port director positions at ports of entry throughout the country. The information provided should also cite whether the affected employees were legacy customs, immigration, or agriculture personnel.

(56) National plant disease recovery system and national veterinary stockpile

The Senate amendment establishes the National Plant Disease Recovery System (NPDRS) in subsection (a). The NPDRS will include agricultural countermeasures, available within a single growing season, to respond to an outbreak of plant disease that poses a significant biosecurity threat. Subsection (b) establishes the National Veterinary Stockpile (NVS). The NVS will include agricultural countermeasures, available to any State veterinarian not later than 24 hours after an official request, to leverage the infrastructure of the strategic national stockpile. (Section 11012)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(57) Research and development of agricultural countermeasures

The Senate amendment establishes a competitive grant program at USDA to stimulate research and development activity for qualified agricultural countermeasures. It provides for a waiver of the competitive grant process in the case of emergencies and permits the use of foreign animal and plant diseases in research and development activities. USDA will provide information to DHS on each grant funded through this authorization. The provision authorizes appropriations of \$50,000,000 for each fiscal year from 2008 through 2012. (Section 11013)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to make technical changes. (Section 14121)

(58) Veterinary workforce grant program

The Senate amendment establishes a veterinary workforce grant program at USDA to increase the number of veterinarians trained in biosecurity. It authorizes such sums as necessary for each fiscal year from 2008 through 2012. (Section 11014)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to establish a program of competitive grants to veterinarians and food science professionals to increase agricultural biosecurity capacity. (Section 14122)

(59) Assistance to build local capacity in biosecurity planning, preparedness, and response

The Senate amendment requires USDA to provide grants to support the development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians. The Section also requires USDA to provide grant and low-interest loan assistance to States for use in assessing agricultural disease response capability for food science and veterinary biosecurity planning. (Section 11015)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision and incorporates this section into the Agricultural Security Improvement Act of 2008 (Section 14113).

(60) Plant protection

The Senate amendment modifies penalties in the Plant Protection Act (PPA) as follows: \$500,000 for each violation adjudicated in a single proceeding; \$1,000,000 for each violation adjudicated in a single proceeding involving a genetically modified organism. The provision requires an action, suit or proceeding regarding a violation of the PPA to be considered no later than 5 years after the date the violation is initially discovered by the Secretary. (Section 11017)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to strike the change to the statute of limitations, to expand the penalties to cover any willful violation of the PPA, and to clarify subpoena authorities of the Department under the PPA. The Conference substitute also modifies the ability of the executive branch to delay the provision of compensation for economic losses under this section. This provision can be found in the horticulture and organic agriculture title of this Act. (Section 10203) Identical amendments were made to the Animal Health Protection Act, and this provision can be found in the livestock title of this Act. (Section 11012)

The Managers intend for the Secretary or the Secretary's designee to continue to possess the ability to review actions of officers, employees, and agents of the Secretary with regards to the payment of compensation under the Plant Protection Act.

Further, the Managers expect the additional subpoena authority provided in this section to be used to assist the Secretary in compiling such information, assembling such evidence, and conducting such investigations as the Secretary determines is necessary and proper for the administration and enforcement of this Title.

(61) Report on stored quantities of propane

The Senate amendment requires the Secretary of Homeland Security to submit to Congress a report of the effects DHS interim or final regulations regarding possession of quantities of propane that exceed the screening threshold set by the DHS rules. The provision includes number of agricultural facilities and total number of facilities affected, numbers of facilities filing security assessments, alternative security programs, and appeals, as well as costs of compliance. (Section 11070)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment to limit the report to the Committees on Agriculture of the House and Senate, and to strike the subparagraph on the use of the Food and Agricultural Sector Coordinating Council. (Section 14206)

TITLE XV
HEARTLAND, HABITAT, HARVEST, AND HORTICULTURE ACT OF 2008

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I. DISASTER ASSISTANCE TRUST FUND¹
(sec. 12101 of the Senate amendment, sec. 901 of the Trade Act of 1974
and sec. 15101 of the conference agreement)

Present Law

The Farm Service Agency (“FSA”) of the United States Department of Agriculture (“USDA”) offers various ongoing programs for agricultural producers to facilitate recovery from losses caused by natural events. Ongoing programs include the Emergency Conservation Program (“ECP”), the Noninsured Crop Disaster Assistance Program (“NAP”), the Disaster Debt Set-Aside Program (“DSA”), and the Emergency Loan Program (“EM”).

ECP is a discretionary program funded through annual appropriations that provides funding for farmers and ranchers to rehabilitate farmland damaged by natural disaster and for carrying out emergency water conservation measures during severe drought. The natural disaster must create new conservation problems that if untreated would 1) impair or endanger the land; 2) materially affect the productive capacity of the land; 3) represent unusual damage which, except for wind erosion, is not the type likely to recur frequently in the same area; and 4) be so costly to repair that federal assistance is, or will be required, to return the land to productive agricultural use.

NAP provides a low level of insurance to producers who grow otherwise noninsurable crops. NAP provides coverage for crop losses and planting prevented by disasters. Landowners, tenants, or sharecroppers who share in the risk of producing an eligible crop may qualify for this program. Before payments can be issued, applications must first be received and approved, generally before the crop is planted, and the crop must have suffered a minimum of 50 percent loss in yield. Payments are 55 percent of the commodities’ average market price on crop losses beyond 50 percent. Eligible crops include commercial crops and other agricultural commodities produced for food, including livestock feed or fiber for which the catastrophic level of crop insurance is unavailable. Also eligible for NAP coverage are controlled-environment crops (mushroom and floriculture), specialty crops (honey and maple sap), and value loss crops (aquaculture, Christmas trees, ginseng, ornamental nursery, and turfgrass sod).

DSA is available to those producers who are borrowers from the Farm Service Agency in primary or contiguous counties that have been declared by the President or designated by the Secretary of Agriculture (“Secretary”) as a disaster area. When borrowers affected by natural disasters are unable to make their scheduled payments on any debt, FSA is authorized to consider the set-aside of some payments to allow the farming operation to continue. After a disaster designation is made, FSA will notify borrowers of the availability of the DSA. Borrowers who are notified have eight months from the date of designation to apply. FSA borrowers may also request a release of income proceeds to meet current operating and family living expenses or

¹ The statement of managers does not contain descriptions of the provisions in the House bill and Senate amendment that were not agreed to by the conferees.

may request special servicing provisions from their local FSA county offices to explore other options.

EM provides emergency loans to help producers recover from production and physical losses due to drought, flooding, other natural disasters, or quarantine. Emergency loans may be made to farmers and ranchers who own or operate land located in a county declared by the President as a disaster area or designated by the Secretary as a disaster area or quarantine area (for physical losses only, the FSA administrator may authorize emergency loan assistance). EM funds may be used to: 1) restore or replace essential property; 2) pay all or part of production costs associated with the disaster year; 3) pay essential family expenses; 4) reorganize the farming operation; and 5) refinance certain debts.

House Bill

No provision.

Senate Amendment

In general

The provision amends the Trade Act of 1974 to create a permanent Agriculture Disaster Relief Trust Fund (“PADTF”) that would provide payments to farmers and ranchers who suffer losses in areas that are declared disaster areas by the USDA. The trust fund will be funded by an amount equal to 3.34 percent of the amounts received in the general fund of the Treasury that are attributable to the duties collected on articles entered, or withdrawn from warehouse, for consumption under the Harmonized Tariff Schedule. The PADTF could make payments under four new disaster assistance programs: the permanent crop disaster assistance program, the permanent livestock indemnity program, the tree assistance program, and the emergency assistance program for livestock, honey bees, and farm raised fish. In addition, the PADTF will also fund a new pest and disease management and disaster prevention program. Amounts not required to meet current withdrawals may be invested in U.S. Treasury obligations with interest credited to the PADTF. The PADTF may also borrow, with interest, as repayable advances sums necessary to carry out the purposes of the fund.

Permanent Crop Disaster Assistance Program (“PCDP”)

Generally, PCDP payments will be paid to producers located in disaster counties on 52 percent of the difference between the disaster program guarantee and the sum of total farm revenue. Disaster counties include counties receiving disaster declarations by the Secretary due to production losses resulting directly or indirectly from adverse weather, counties contiguous to such counties, and any farm whose production due to weather was less than 50 percent of normal production. To be eligible for PCDP payments, the producer must have purchased or enrolled in both crop insurance for insurable crops at a minimum of 50 percent of yield at 55 percent of price and NAP for uninsurable crops. The Secretary may waive this requirement under certain conditions.

The disaster program guarantee for insurable crops is equal to the product of a measure of crop yield, the percentage of crop insurance yield guarantee, the percentage of crop insurance

price elected by the producer, the crop insurance price, and 115 percent. The disaster program guarantee for noninsured crops is equal to the product of the yield as determined by NAP for each crop, 100 percent of the NAP established price, and 115 percent. The disaster program guarantee is the sum of the disaster program guarantee for insurable and noninsured crops.

Total farm revenue includes the sum of the estimated value of crops and grazing, crop insurance and NAP indemnities accruing to the farm, the value of prevented planting payments, the amount of other natural disaster assistance payments provided by the federal government to a farm for the same loss, and an amount equal to 20 percent of any direct payments made to the producer under section 1103 of the Farm Security and Rural Investment Act of 2002. The estimated value of crops is generally the product of actual crop acreage grazed or harvested, estimated actual yields of grazing land or crop production, and the average market price during the first five months of the marketing year in which a farm or portion of a farm is located.

Permanent Livestock Indemnity Program

The PADTF may also make payments under the permanent livestock indemnity program to eligible producers on farms that have incurred livestock death losses in excess of normal mortality rates during the calendar year due to adverse weather, as determined by the Secretary. Indemnity payments are made at a rate of 75 percent of the fair market value of the livestock on the day before the date of death of the livestock as determined by the Secretary.

Tree Assistance Program

The Secretary shall make payments to eligible orchardists as follows. Assistance is in the form of 1) 75 percent reimbursement for the cost of replanting trees lost due to a natural disaster if tree mortality is in excess of 15 percent, adjusted for normal mortality, or sufficient seedlings to reestablish a stand; and 2) 50 percent reimbursement of the cost of pruning, removal, and other costs incurred to salvage existing trees or to prepare land to replant trees lost due to a natural disaster in excess of 15 percent damage and/or mortality adjusted for normal tree damage and/or mortality.

Buy-up NAP Coverage

Under NAP, FSA compensates eligible producers for losses of noninsurable crops exceeding 50 percent of the expected yield based on 55 percent of the average market price of the commodity. This provision permits producers to buy additional NAP coverage. Producers could purchase additional coverage guarantee up to 60 or 65 percent, as elected by the producers, of expected yield, and up to 100 percent of the average market price of the commodity. Fees would be established and collected by the Secretary to fully offset the cost of supplemental NAP coverage.

Emergency Assistance for livestock, honey bees, and farm-raised fish

The Secretary shall use up to \$35,000,000 annually from the trust fund to provide emergency relief to producers of livestock (including horses), honey bees, and farm-raised fish due to losses from adverse weather or other environmental conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered under the authority of the

Secretary to make qualifying natural disaster declarations. For purposes of the provision, farm-raised fish includes the propagation and rearing of aquatic species (including any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant) in controlled or semi-controlled environments.

Limitations

No eligible producer may receive more than \$100,000 annually in total disaster assistance under this Act. A producer is not eligible for benefits under the provision if, as determined by the Secretary, such producer's adjusted gross income (as defined in section 1001D(a) of the Food Security Act of 1985 or any successor provision) exceeds \$2.5 million, unless not less than 75 percent of the average adjusted gross income of such producer is derived from farming, ranching or forestry operations.

Pest and Disease Management and Disaster Prevention

The provision also establishes a new program under which USDA will conduct early pest detection and surveillance activities in coordination with State departments of agriculture, will prioritize and create action plans to address pest and disease threats to specialty crops, and will create an audit-based certification approach to protect against the spread of plant pests.

Sunset of provision

The authority provided by the provision expires at the same time as the 2007 Farm Bill.

Conference Agreement

Supplemental Agricultural Disaster Assistance Program Description and Provisions

(For crop years 2008-2011)

The provision amends the Trade Act of 1974 to create a Supplemental Agricultural Disaster Assistance trust fund ("Trust Fund") that would provide payments to farmers and ranchers who suffer losses in areas that are designated disaster areas by the USDA. The Trust Fund could make payments under five new disaster assistance programs: the Supplemental Revenue Program ("SURE"), the Livestock Forage Disaster Program ("LFP"), the Livestock Indemnity Program ("LIP"), the Tree Assistance Program ("TAP"), and the Emergency Assistance Program for Livestock, Honey bees, and Farm raised fish.

Supplemental Revenue Assistance Payments (SURE)

Section 901(b) SURE Assistance will be available to eligible producers on farms in disaster determined and contiguous counties that have incurred crop production losses and/or crop quality losses.

901(a)(5) For purposes of the supplemental revenue assistance program, disaster counties are counties that received Secretarial Disaster declarations due to production losses resulting directly or indirectly from adverse weather. However, Secretarial designations are waived for farms with greater than 50% production losses.

901(b)(2)(A) SURE Assistance payments will be issued on 60% of the difference between the disaster assistance program guarantee AND total farm revenue (as defined).

The conferees expect that when payments are calculated, USDA will not discount any final payments for any activity that has already been deducted as an adjustment to a crop insurance indemnity or noninsured assistance payment such as harvest costs, packing, or transportation.

901(b)(3) The SURE Assistance Program Guarantee is the sum obtained by adding:

For each insurable commodity, the product obtained by multiplying: the higher of the Adjusted APH yield, or the counter-cyclical program payment yield the percentage of crop insurance yield guarantee, the crop insurance price election, the acres planted or prevented from being planted, and 115%, AND for each non-insurable commodity on the farm, the product obtained by multiplying: the higher of the adjusted noninsured assistance program yield guarantee or the counter-cyclical program payment yield, 100% of the NAP established price, the acres planted or prevented from being planted, and 120%.

The conferees intend the price election for revenue products to be the price the crop insurance indemnity would be calculated for the plan of insurance obtained by the producer.

901(a)(2) The Adjusted APH Yield and Section 901(a)(3) the Adjusted Noninsured Crop Disaster Assistance Yield are determined by dropping replacement yields for producers with at least four years of actual production history. For producers with four years or less, one replacement yield may be dropped from the calculation.

The SURE Assistance guarantee will be adjusted in the following manners. 901(b)(2)(B) The guarantee may not exceed 90% of the expected revenue for the whole farm.

901(b)(3)(B)&(C) Where crop insurance or the NAP makes adjustments for prevented planting or un-harvested production, the adjusted guarantee will be the basis for calculating the SURE Assistance guarantee.

901(b)(3)(D) The Secretary is also charged with the responsibility to establish equitable treatment for non-standard crop insurance products like AgriLite.

901(b)(4) The total Farm Revenue for the farm shall be equal to the sum obtained by adding: the estimated actual value of the production for each crop produced by multiplying the actual crop acreage harvested; the estimated actual yield; the national average market price for the marketing year for each commodity, as determined by the Secretary; the crop insurance or NAP indemnities accruing to the farm; the value of any other natural disaster assistance payments provided by the federal government on a farm for the same loss; 15% of direct payments accruing to the farm; all marketing loan proceeds (including certificate gains); and all counter-cyclical or average crop revenue payments

The conferees encourage the Secretary to accept Loss Adjustment yields to determine estimated actual yield when available with the understanding that all of the units for the crop on the farm would need to be adjusted to arrive at total farm production.

When loss adjusted yields are not available, the conferees expect the Secretary to obtain APH certified yields submitted to the Risk Management Agency through participating crop insurance companies.

901(b)(4)(B) The Secretary shall adjust the average market price received to reflect average quality discounts applied to the local or regional market price of the crop during the year of production. The Secretary shall also account for crop value reduced due to excess moisture resulting from a disaster related condition.

The conferees expect the Secretary, assisted by Farm Service Agency State and County committees, will determine local or regional discounts for the marketing year in a manner similar to what has been used to administer recent ad hoc quality loss programs.

The conferees encourage the Secretary to consider salvage values when quality factors prevent the commodity from being marketed for its originally intended purpose.

901(b)(5) Expected crop revenue is used to calculate the 90% limit of the SURE Assistance Guarantee and is equal to the sum obtained by adding:

For each insured commodity, the product obtained by multiplying: the higher of the Actual Production History (APH) yield, the Adjusted APH yield, or the counter-cyclical program payment yield; the acreage planted or prevented from being planted; and the insurance price guarantee, AND for each noninsured crop, the product obtained by multiplying: the adjusted non-insurable assistance program (NAP) yield, the adjusted Actual Production History (APH) NAP yield; the acreage planted or prevented from being planted; and 100% of the NAP protection price.

The entire farm constitutes unit structure for this program including all crops in all counties in the farming operation and shared production.

Livestock Indemnity Program (LIP)

901(c)(1) The Trust Fund may also make payments under the Livestock Indemnity program (LIP) to eligible producers on farms that have incurred livestock death losses in excess of normal mortality rates during the calendar year due to adverse weather, as determined by the Secretary.

901(c)(2) Indemnity payments are made at a rate of 75 percent of the fair market value of the livestock on the day before the date of death of the livestock as determined by the Secretary.

It is the intent of the conferees that the Secretary shall make LIP payments based upon individual producers' eligible losses. No state, county, or other trigger shall be used by the Secretary to define an eligible LIP area.

It is expected that the Secretary, through the State Farm Service Agency Committee will obtain recommendations from applicable state livestock organizations, state Cooperative Extension Service, and other knowledgeable and credible sources to establish the normal mortality rate for each type of livestock on a state-by-state basis.

When determining the market value of applicable livestock in order to determine payment rates for LIP, the Secretary shall establish market values for each type of livestock from credible livestock markets. Credible livestock markets include sale barns, local sales as well as terminal market centers or slaughtering facilities.

Livestock Forage Disaster Program (LFP)

901(d) The Livestock Forage Program provides ranchers assistance for forage losses due to drought. Ranchers in counties with droughts designated by the Drought Monitor as severe, extreme or exceptional qualify for assistance. Producers in a severe drought will receive one month's payment. Producers experiencing extreme drought will get two month's payment and producers in a county with an exceptional drought will receive three month's payment. The payment is 60 percent of either 1) the monthly feed cost for the total number of livestock covered or, 2) the monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land, whichever is smaller.

901(d)(4) LFP also covers losses to ranchers whose livestock utilize federal grazing permits. Payments are available to eligible livestock producers whose livestock are prohibited by a Federal agency from grazing due to fire. Payments will be made for the time period beginning on the date the Federal Agency excludes the eligible livestock producer and ending on the last day of the eligible producer's the Federal lease. The payment rate is 50 percent of the monthly feed costs for the total number of livestock covered by the Federal lease.

The conferees intend this section to also apply to trust property and range units managed under the authority of the Department of Interior through the Bureau of Indian Affairs.

901(d)(1)(D) In order to disallow excessive payments to livestock producers who overgraze pasture and grazing lands the Secretary shall calculate the normal carrying capacity of the eligible livestock producer's grazing and pasture land and issue payments based on the lesser of the actual number of the livestock producer's eligible livestock or the maximum carrying capacity of the eligible livestock producer's pasture and grazing land for the type and weight of the eligible producer's livestock.

901(d)(5) One of the eligibility requirements for the LFP is that a livestock producer shall have timely applied for and obtained, if available, either crop insurance, including pilot programs implemented by the Risk Management Agency such as the Pastureland Rangeland Forage Program; or coverage under the NAP on the pasture or grazing land which suffered an eligible loss. Producers are not required to purchase any pilot program if they purchase NAP.

901(d)(5)(C) For the 2008 crop year only, if a livestock producer had not timely obtained either crop insurance or NAP coverage, if it was available, the Secretary shall waive this requirement if the livestock producer pays any fee that would have been required to enroll in either crop insurance or NAP.

901(d)(5)(D) For any year after 2008, the Secretary may on a case-by-case basis provide equitable relief for producers who the county Farm Service Agency Committee determines unintentionally failed to obtain crop insurance or NAP coverage on applicable grazing and pasture land.

The conferees recommend that for LFP applications for which payment would be less than \$25,000, the State Farm Service Agency Committee may provide equitable relief; and that for LFP applications for which payments exceed \$25,000 the Secretary or designee shall review a recommendation from the county and state Farm Service Agency committees and determine whether equitable relief applies.

Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish

901(e)(1) The Secretary shall use up to \$50,000,000 annually from the Trust Fund to provide emergency relief to producers of livestock (including horses), honey bees, and farm-raised fish due to losses from adverse weather or other conditions, such as blizzards and wildfires, as determined by the Secretary.

The conferees wish to clarify that program is intended to cover disasters that are not adequately covered by any other disaster program.

Tree Assistance Program (TAP)

901(f) The Secretary shall make payments to eligible orchardists and nursery tree growers as follows. Assistance is in the form of 1) 70 percent reimbursement for the cost of replanting trees lost due to a natural disaster if tree mortality is in excess of 15 percent, adjusted for normal mortality, or sufficient seedlings to reestablish a stand; and 2) 50 percent reimbursement of the cost of pruning, removal, and other costs incurred to salvage existing trees or to prepare land to replant trees lost due to a natural disaster in excess of 15 percent damage and/or mortality adjusted for normal tree damage and/or mortality.

The conferees wish to clarify that the insurance requirement for TAP eligibility refers to insurance on the crop and not on the underlying vines or trees.

Risk Management Purchase Requirements

901(g) To be eligible for SURE Assistance, the producer must have purchased or be enrolled in (at a minimum) the Catastrophic crop insurance (CAT) for insurable crops and the Noninsured Assistance Program (NAP) for uninsurable crops.

901(g)(4) For the 2008 crop year, the Secretary will waive the purchase requirement if producers pay a fee equal to the administrative fees for CAT and NAP on crops for which no coverage has been purchased within 90 days after the enactment of this subtitle.

The conferees intend that participation in pilot crop insurance programs may establish linkage, but pilot participation would not be necessary to establish linkage if CAT or NAP coverage is secured.

901(g)(5) The Secretary may provide equitable relief to producers who unintentionally fail to meet the crop insurance or NAP purchase requirements for one or more crops on a farm on a case-by-case basis. For 2008, the Secretary will have additional authority for producers who failed purchase requirements of this subtitle.

The conferees that the Secretary will use equitable relief provisions in circumstances where severe weather events result in revised planting intentions for crops for which the producer had not obtained a minimum CAT or NAP coverage.

901(g)(3) The Secretary may waive the crop insurance purchase requirement for limited resource, minority and/or beginning farmers and provide disaster assistance benefits at a level deemed appropriate by the Secretary.

The conferees do not expect the Secretary to conduct an annual signup to participate in the SURE Assistance program. The conferees anticipate an effective public information effort will be conducted by USDA with the cooperation of the Farm Service Agency, the Natural Resources Conservation Service, the Risk Management Agency (including crop insurance companies), the Cooperative State Research, Education, and Extension Service, and State Departments of Agriculture.

Limitations

901(h) No eligible producer may receive more than \$100,000 annually in total disaster assistance under this section, excluding subsection 901(f). A producer is not eligible for benefits under the provision if, as determined by the Secretary, such producer's adjusted gross income (as defined in section 1001D(a) of the Food Security Act of 1985 or any successor provision) . Direct attribution of benefits as described in subsection (e) and (f) of Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) or any successor provision shall apply.

The conferees anticipate that the AGI limit would be consistent with limitations for the noninsured assistance program.

The conferees note that the Tree Assistance Program (TAP) has a separate \$100,000 annual limitation.

Period of Effectiveness

Section 901(i) states that the Supplemental Agricultural Disaster Assistance program shall cover disaster related losses occurring on or before September 30, 2011.

The conferees expect the Secretary to cover all losses for which disaster conditions were evident on or before September 30, 2011.

Duplicate Payments

Section 901(j) instructs the Secretary to prevent duplicative payments.

The conferees expect Emergency Conservation Programs (ECP), or any other similar program not directed to production or revenue losses of the farm, are not intended to be covered by this section.

Agricultural Disaster Relief Trust Fund (Trust Fund)

902(b) The Trust Fund will be funded by an amount equal to 3.08 percent of the amounts received in the general fund of the Treasury that are attributable to the duties collected on articles entered, or withdrawn from warehouse, for consumption under the Harmonized Tariff Schedule. Amounts not required to meet current withdrawals may be invested in U.S. Treasury obligations with interest credited to the trust fund. The Trust Fund may also borrow, with interest, as repayable advances sums necessary to carry out the purposes of the fund.

902(b)(3) Funds will not be appropriated to the Trust Fund if any changes are made to the operation of the programs within the Trust Fund that are not permitted by the Trust Fund.

Jurisdiction

Section 903 requires legislation in the Senate of the United States that amends section 901 or section 902 be referred to the Committee on Finance of the Senate.

II. REVENUE PROVISIONS FOR AGRICULTURE PROGRAMS

A. Extension of Custom User Fees (sec. 15201 of the conference agreement)

Present Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) (“COBRA”) authorizes the Secretary of the Treasury to collect certain customs services fees. Section 412 of the Homeland Security Act of 2002 authorizes the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Customs user fees include passenger and conveyance processing fees (e.g., fees for processing air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, cargo, and Customs broker permits) and merchandise processing fees. Congress has authorized collection of the passenger and conveyance processing fees through December 27, 2014. The current authorization for the collection of the merchandise processing fees is through December 27, 2014.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement amends Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to extend the passenger and conveyance processing fees through September 30, 2017, and extend the merchandise processing fees through November 14, 2017. The conference agreement would require remittance, by no later than September 25, 2017, of passenger and conveyance fees for the period July 1, 2017 through September 20, 2017. It would also require an estimated prepayment of the merchandise processing fees no later than September 25, 2017 for merchandise entered on or after October 1, 2017 and before November 15, 2017. The estimated prepayment will be based on the amount paid in the equivalent period of the previous year, as determined by the Secretary of the Treasury. The conference agreement also holds service users harmless for overpayments or underpayments of merchandise processing fees by requiring the Secretary of Treasury to reconcile the fees paid with the actual fees incurred for services rendered. The Secretary of Treasury must then refund any overpayments with interest, and make adjustments for any underpayments of such merchandise processing fees.

Effective Date

The provision is effective on the date of enactment.

**B. Modifications to Corporate Estimated Tax Payments
(sec. 15202 of the conference agreement)**

Present Law

In general

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Tax Increase Prevention and Reconciliation Act of 2005 (“TIPRA”)

TIPRA provided the following special rules:

In case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Subsequent legislation

Several public laws have been enacted since TIPRA which further increase the percentage of payments due under each of the two special rules enacted by TIPRA described above.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision makes a modification to the corporate estimated tax payment rules.

In case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September, 2012, are increased by 7 3/4 percentage points of the payment otherwise due and the next required payment shall be reduced accordingly.

Effective Date

The provision is effective on the date of enactment.

III. TAX PROVISIONS

A. Conservation

1. Exclusion of Conservation Reserve Program Payments from SECA tax for individuals receiving Social Security retirement or disability payments (sec. 12202 of the Senate amendment, sec. 15301 of the conference agreement and sec. 1402(a) of the Code)

Present Law

Generally, the Self-Employment Contributions Act (“SECA”) tax is imposed on an individual’s net earnings from self-employment income within the Social Security wage base. Net earnings from self-employment generally mean gross income (including the individual’s net distributive share of partnership income) derived by an individual from any trade or business carried on by the individual less applicable deductions.²

House Bill

No provision.

Senate Amendment

The provision excludes conservation reserve program payments from self-employment income for purposes of the SECA tax in the case of individuals who are receiving Social Security retirement or disability benefits. The treatment of conservation reserve program payments received by other taxpayers is not changed.

Effective date.—The provision is effective for payments made after December 31, 2007.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Make permanent the special rule encouraging contributions of capital gain real property for conservation purposes (sec. 12203 of the Senate amendment, sec. 15302 of the conference agreement and sec. 170 of the Code)

Present Law

Charitable contributions generally

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. The amount of deduction generally equals the fair market value of the contributed

² Sec. 1402.

property on the date of the contribution. Charitable deductions are provided for income, estate, and gift tax purposes.³

In general, in any taxable year, charitable contributions by a corporation are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation's taxable income computed without regard to net operating or capital loss carrybacks. For individuals, the amount deductible is a percentage of the taxpayer's contribution base, (i.e., taxpayer's adjusted gross income computed without regard to any net operating loss carryback). The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. Cash contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base. Cash contributions to private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity while also either retaining an interest in that property or transferring an interest in that property to a noncharity for less than full and adequate consideration. Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property, and qualified conservation contributions.

Capital gain property

Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property to a qualified charity are deductible at fair market value within certain limitations. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private non-operating foundations) are deductible up to 20 percent of the taxpayer's contribution base.

For purposes of determining whether a taxpayer's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property

³ Secs. 170, 2055, and 2522, respectively. Unless otherwise provided, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

are taken into account after other charitable contributions. Contributions of capital gain property that exceed the percentage limitation may be carried forward for five years.

Qualified conservation contributions

Qualified conservation contributions are not subject to the “partial interest” rule, which generally bars deductions for charitable contributions of partial interests in property. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property. Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Qualified conservation contributions of capital gain property are subject to the same limitations and carryover rules of other charitable contributions of capital gain property.

Special rule regarding contributions of capital gain real property for conservation purposes

In general

Under a temporary provision that is effective for contributions made in taxable years beginning after December 31, 2005,⁴ the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions (as defined under present law). Instead, individuals may deduct the fair market value of any qualified conservation contribution to an organization described in section 170(b)(1)(A) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions.

Individuals are allowed to carryover any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years.

For example, assume an individual with a contribution base of \$100 makes a qualified conservation contribution of property with a fair market value of \$80 and makes other charitable contributions subject to the 50-percent limitation of \$60. The individual is allowed a deduction

⁴ Sec. 170(b)(1)(E).

of \$50 in the current taxable year for the non-conservation contributions (50 percent of the \$100 contribution base) and is allowed to carryover the excess \$10 for up to 5 years. No current deduction is allowed for the qualified conservation contribution, but the entire \$80 qualified conservation contribution may be carried forward for up to 15 years.

Farmers and ranchers

In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the above example, if the individual is a qualified farmer or rancher, in addition to the \$50 deduction for non-conservation contributions, an additional \$50 for the qualified conservation contribution is allowed and \$30 may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.⁵

As an additional condition of eligibility for the 100 percent limitation, with respect to any contribution of property in agriculture or livestock production, or that is available for such production, by a qualified farmer or rancher, the qualified real property interest must include a restriction that the property remain generally available for such production. (There is no requirement as to any specific use in agriculture or farming, or necessarily that the property be used for such purposes, merely that the property remain available for such purposes.) Such additional condition does not apply to contributions made on or before August 17, 2006.

A qualified farmer or rancher means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

Termination

The special rule regarding contributions of capital gain real property for conservation purposes does not apply to contributions made in taxable years beginning after December 31, 2007.

⁵ Sec. 170(b)(2)(B).

House Bill

No provision.

Senate Amendment

The Senate amendment makes permanent the special rule regarding contributions of capital gain real property for conservation purposes.

Effective date.—The provision is effective for contributions made in taxable years beginning after December 31, 2007.

Conference Agreement

The conference agreement follows the Senate amendment by extending the special rule regarding contributions of capital gain real property for conservation purposes. However, under the conference agreement, the special rule does not apply for contributions made in taxable years beginning after December 31, 2009.

3. Deduction for endangered species recovery expenditures (sec. 12205 of the Senate amendment, sec. 15303 of the conference agreement and sec. 175 of the Code)

Present Law

Under present law, a taxpayer engaged in the business of farming may treat expenditures that are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion loss of land used in farming, as expenses that are not chargeable to capital account. Such expenditures are allowed as a deduction, not to exceed 25 percent of the gross income derived from farming during the taxable year.⁶ Any excess above such percentage is deductible for succeeding taxable years, not to exceed 25 percent of the gross income derived from farming during such succeeding taxable year.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that expenditures paid or incurred by a taxpayer engaged in the business of farming for the purpose of achieving site-specific management actions pursuant to the Endangered Species Act of 1973⁷ are to be treated the same as expenditures for the purpose of soil or water conservation in respect of land used in farming, or

⁶ Sec. 175.

⁷ 16 U.S.C. 1533(f)(B).

for the prevention of erosion of land used in farming, i.e., such expenditures are treated as not chargeable to capital account and are deductible subject to the limitation that the deduction may not exceed 25 percent of the farmer's gross income derived from farming during the taxable year.

Effective date.—The provision is effective for expenditures paid or incurred after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except that the conference agreement provision is effective for expenditures paid or incurred after December 31, 2008.

4. Temporary reduction in corporate tax rate for qualified timber gain; timber REIT provisions (secs. 12212-12217 of the Senate amendment, secs. 15311-15315 of the conference agreement and secs. 856, 857, and 1201 of the Code)

Present Law

Treatment of certain timber gain

Under present law, if a taxpayer cuts standing timber, the taxpayer may elect to treat the cutting as a sale or exchange eligible for capital gains treatment (sec. 631(a)). The fair market value of the timber on the first day of the taxable year in which the timber is cut is used to determine the gain attributable to such cutting. Such fair market value is also considered the taxpayer's cost of the cut timber for all purposes, such as to determine the taxpayer's income from later sales of the timber or timber products. Also, if a taxpayer disposes of the timber with a retained economic interest or makes an outright sale of the timber, the gain is eligible for capital gain treatment (sec. 631(b)). This treatment under either section 631(a) or (b) requires that the taxpayer has owned the timber or held the contract right for a period of more than one year.

Under present law, for taxable years beginning before January 1, 2011, the maximum rate of tax on long term capital gain ("net capital gain")⁸ of an individual, estate, or trust is 15 percent. Any net capital gain that otherwise would be taxed at a 10- or 15-percent rate is taxed at a zero-percent rate. These rates apply for purposes of both the regular tax and the alternative minimum tax.⁹

⁸ Net capital gain is defined as the excess of net long-term capital gain over net short-term capital gain for the taxable year. Sec. 1222(11).

⁹ Because the entire amount of the capital gain is included in alternative minimum taxable income ("AMTI"), for taxpayers subject to the alternative minimum tax with AMTI in excess of \$112,500 (\$150,000 in the case of a joint return), the gain may cause a reduction in the minimum tax exemption amount and thus effectively tax the gain at rates of 21.5 or 22 percent. Also the gain may cause the phase-out of certain benefits in computing the regular tax.

For taxable years beginning after December 31, 2010, the maximum rate of tax on the net capital gain of an individual is 20 percent. Any net capital gain that otherwise would be taxed at a 10- or 15-percent rate is taxed at a 10-percent rate. In addition, any gain from the sale or exchange of property held more than five years that would otherwise have been taxed at the 10-percent rate is taxed at an eight-percent rate. Any gain from the sale or exchange of property held more than five years and the holding period for which began after December 31, 2000, which would otherwise have been taxed at a 20-percent rate, is taxed at an 18-percent rate.

The net capital gain of a corporation is taxed at the same rates as ordinary income, up to a maximum rate of 35 percent.¹⁰

Real estate investment trusts (“REITs”) are subject to a special taxation regime. Under this regime, a REIT is allowed a deduction for dividends paid to its shareholders.¹¹ As a result, REITs generally do not pay tax on distributed income, but the income is taxed to the REIT shareholders. A REIT that has long-term capital gain can declare a dividend that shareholders are entitled to treat as long-term capital gain.

REITs generally are required to distribute 90 percent of their taxable income (other than net capital gain). A REIT generally must pay tax at regular corporate rates on any undistributed income. However, a REIT that has net capital gain can retain that gain without distributing it, and the shareholders can report the net capital gain as if it were distributed to them. In that case the REIT pays a C corporation tax on the retained gain, but the shareholders who report the income are entitled to a credit or refund for the difference between the tax that would be due if the income had been distributed and the 35-percent rate paid by the REIT.¹² In effect, net capital gain of a REIT (including but not limited to timber gain) can be taxed as net capital gain of the shareholders, whether or not the gain is distributed.

Other REIT provisions

A REIT is also subject to a four-percent excise tax to the extent it does not distribute specified percentages of its income within any calendar year. The required distributed percentage is 85 percent in the case of the REIT ordinary income, and 95 percent in the case of

¹⁰ Secs. 11 and 1201.

¹¹ A distribution to a corporate shareholder out of current or accumulated earnings and profits of the corporation is a dividend, unless the distribution is a redemption that terminates the shareholder’s stock interest or reduces the shareholder’s interest in the distributing corporation to an extent considered to result in treatment as a sale or exchange of the shareholder’s stock. Secs. 301 and 302. A distribution in excess of corporate earnings and profits is treated by shareholders as first a recovery of their stock basis and then, to the extent the distribution exceeds a shareholder’s stock basis, as a sale or exchange of the stock. Sec. 301. These rules generally apply to REITs.

¹² Sec. 857(b)(3)(D). The shareholders also obtain a basis increase in their REIT stock for the gross amount of the deemed distribution that is included in their income less the amount of corporate tax deemed paid by them that was paid by the REIT on the retained gain. Sec. 857(b)(3)(D)(iii).

the REIT capital gain net income (as defined).¹³ The amount of the excess of the required distribution over the actual distribution is subject to the 4-percent tax.

A REIT generally is restricted to earning certain types of passive income. Among other requirements, at least 75 percent of the gross income of a REIT in a taxable year must consist of certain types of real estate related income, including rents from real property, income from the sale or exchange of real property (including interests in real property) that is not stock in trade, inventory, or held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and interest on mortgages secured by real property or interests in real property.¹⁴ Interests in real property are specifically defined to exclude mineral, oil, or gas royalty interests.¹⁵ A REIT will not qualify as a REIT, and will be taxable as a C corporation, for any taxable year if it does not meet this income test.

Some REITs have been formed to hold land on which trees are grown. Upon maturity of the trees, the standing trees are sold by the REIT. The Internal Revenue Service has issued private letter rulings in particular instances stating that the income from the sale of the trees under section 631(b) can qualify as REIT real property income because the uncut timber and the timberland on which the timber grew is considered real property and the sale of uncut trees can qualify as capital gain derived from the sale of real property.¹⁶

A REIT is subject to a 100-percent excise tax on gain from any sale that is a “prohibited transaction,” defined as a sale of property that is stock in trade, inventory, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.¹⁷ This determination is based on facts and circumstances. However, a safe-harbor provides that no excise tax is imposed if certain requirements are met. In the case of timber property, the safe harbor is met, regardless of the number of sales that occur during the taxable year, if (i) the REIT has held the property for not less than four years in connection with the trade or business of producing timber; (ii) the aggregate adjusted bases of the property sold (other than foreclosure property) during the taxable year does not exceed 10 percent of the aggregate bases of all the assets of the REIT as of the beginning of the taxable year, and if certain other requirements are met. These include requirements that limit the amount of expenditures the REIT can make during

¹³ Section 4981. The definition is the excess of gains from sales or exchanges of capital assets over losses from such sales or exchanges for the calendar year, reduced by any net ordinary loss.

¹⁴ Section 856(c) and section 1221(a). Income from sales that are not prohibited transactions solely by virtue of section 857(b)(6) is also qualified REIT income.

¹⁵ Section 856(c)(5)(C).

¹⁶ Timber income under section 631(b) has also been held to be qualified real estate income even if the one year holding period is not met. *See, e.g.*, PLR 200052021, *see also* PLR 199945055, PLR 199927021, PLR 8838016. A private letter ruling may be relied upon only by the taxpayer to which the ruling is issued. However, such rulings provide an indication of administrative practice.

¹⁷ Sections 857(b)(6) and 1221(a)(1). There is an exception for certain foreclosure property.

the 4-year period prior to the sale that are includible in the adjusted basis of the property,¹⁸ that require marketing to be done by an independent contractor, and that forbid a sales price that is based on the income or profits of any person.¹⁹ There is a similar but separate safe harbor for sales of non-timber property, with similar rules, including a 4-year holding period requirement and a limit on the percentage of the aggregate adjusted basis of property that can be sold in one taxable year.²⁰

A REIT is not generally permitted to hold securities representing more than 10 percent of the voting power or value of the securities of any one issuer; nor may more than 5 percent of the fair market value of REIT assets be securities of any one issuer.²¹ However, under an exception, a REIT may hold any amount of securities of one or more “taxable REIT subsidiary” (TRS) corporations, provided that such TRS securities do not represent more than 20 percent of the fair market value of REIT assets at the end of any quarter. A TRS is a C corporation that is subject to regular corporate tax on its income and that meets certain other requirements. A taxable REIT subsidiary may conduct activities that would produce disqualified non-passive or non-real estate income that could disqualify the REIT if conducted by a REIT itself. Such business could include business relating to processing timber, or holding timber products or other assets for sale to customers in the ordinary course of business. Such income would be subject to regular corporate rates of tax as income of the TRS.²²

House Bill

No provision.

¹⁸ Aggregate expenditures (other than timberland acquisition expenditures) during such period made by the REIT or a partner of the REIT, which are includible in basis, may not exceed 30 percent of the net selling price in the case of expenditures that are directly related to operation of the property for the production of timber or the preservation of the property for use as timberland, and may not exceed 5 percent of the net selling price in the case of expenditures that are not directly related to those purposes.

¹⁹ Section 857(b)(6)(D).

²⁰ Section 857(b)(6)(C).

²¹ Section 856(c)(4)(B)(ii) and (iii). Certain interests are not treated as “securities” for purposes of the rule forbidding the REIT to hold securities representing more than 10 percent of the value of securities of any one issuer. Sec. 856(m).

²² A 100-percent excise tax is imposed on the amount of certain transactions involving a TRS and a REIT, to the extent such amount would exceed an arm’s length amount under section 482. Sec. 857(b)(7).

Senate Amendment

Elective deduction for 60 percent of qualified timber gain

The Senate amendment allows a taxpayer to elect to deduct an amount equal to 60 percent of the taxpayer's qualified timber gain (or, if less, the net capital gain) for a taxable year. In the case of an individual, the deduction reduces adjusted gross income. Qualified timber gain means the net gain described in section 631(a) and (b) for the taxable year.

The deduction is allowed in computing the regular tax and the alternative minimum tax (including the adjusted current earnings of a corporation).

If a taxpayer elects the deduction, the 40 percent of the gain subject to tax is taxed at ordinary income tax rates.²³

In the case of a pass-thru entity other than a REIT, the election may be made separately by each taxpayer subject to tax on the gain. The Treasury Department may prescribe rules appropriate to apply this provision to gain taken into account by a pass-thru entity.

In the case of a REIT, the election to take the 60-percent deduction is made by the REIT. If a REIT makes the election, then the timber gain is excluded from the computation of capital gain or loss of the REIT and can no longer be designated as a capital gain dividend to shareholders. Instead, the gain is treated as ordinary income for purposes of applying the REIT income distribution requirements, but for this purpose 60-percent of the amount of the gain is deductible by the REIT in computing its income. REIT earnings and profits also exclude the portion of the timber gain that is deductible. Thus, 40 percent of the gain is subject to the REIT distribution requirements,²⁴ and 40 percent of the gain increases REIT earnings and profits. Accordingly, because REIT earnings and profits have been increased by the 40-percent amount, there is sufficient earnings and profits that a distribution of that 40-percent amount that otherwise qualifies as a dividend would be treated as an ordinary dividend distribution to shareholders. Since this dividend is from a REIT and is not derived from an entity that was taxed as a C corporation, it would not qualify for the current 15-percent qualified dividend rates and would be taxed at the ordinary income rates of the shareholders.

REIT shareholders obtain an upward basis adjustment in their REIT interests, equal to the 60 percent of the timber gain that is deductible by the electing REIT. Because the 60 percent of timber gain that was deductible by the REIT does not increase REIT earnings and profits, a distribution of such 60 percent to the shareholder generally will not be treated as a dividend (in the absence of other retained earnings) but as a return of basis under the general rules of section

²³ Under the provision, because only 40 percent of the gain is included in adjusted gross income and AMTI, only that amount of gain would result in the phase-out of tax benefits.

²⁴ For purposes of the section 4981 excise tax on undistributed REIT income, the amount treated as subject to the 95 percent distribution requirement is the 40 percent of timber gain income that remains after allowing the deduction.

301(c). Because the shareholders' basis has been increased by this 60 percent, this distribution would not exceed the shareholders' basis and thus would be nontaxable return of basis, rather than capital gain in excess of basis. However, if a REIT shareholder has obtained such an upward basis adjustment for a REIT interest and disposes of the interest before having held the interest for at least 6 months, then any loss on disposition of the interest is disallowed to the extent of such upward basis adjustment.

Additional REIT provisions

Timber gain qualified REIT income without regard to 1 year holding period

The Senate amendment specifically includes timber gain under section 631(a) as a category of statutorily recognized qualified real estate income of a REIT if the cutting is provided by a taxable REIT subsidiary, and also includes gain recognized under section 631(b). For purposes of such qualified income treatment under those provisions, the requirement of a one-year holding period is removed. Thus, for example, a REIT can acquire timber property and harvest the timber on the property within one year of the acquisition, with the resulting income being qualified real estate income for REIT qualification purposes, even though such income is not eligible for long-term capital gain treatment under sections 631(a) or (b). The provision specifically provides, however, that for all purposes of the Code, such income shall not be considered to be gain described in section 1221(a)(1), that is, it shall not be treated as income from the sale of stock in trade, inventory, or property held by the REIT primarily for sale to customers in the ordinary course of the REIT's trade or business.

For purposes of determining REIT income, if the cutting is done by a taxable REIT subsidiary, the cut timber is deemed sold on the first day of the taxable year to the taxable REIT subsidiary (with subsequent gain, if any, attributable to the taxable REIT subsidiary).

REIT prohibited transaction safe harbor for timber property

For sales to a qualified organization for conservation purposes, as defined in section 170(h), the provision reduces to two years the present law four-year holding period requirement under section 857(b)(6)(D), which provides a safe harbor from "prohibited transaction" treatment for certain timber property sales. Also, in the case of such sales, the safe-harbor limitations on how much may be added, within the four-year period prior to the date of sale, to the aggregate adjusted basis of the property, are changed to refer to the two-year period prior to the date of sale.

The Senate amendment also removes the safe-harbor requirement that marketing of the property must be done by an independent contractor, and permits a taxable REIT subsidiary of the REIT to perform the marketing.

The Senate amendment states that any gain that is eligible for the timber property safe harbor is considered for all purposes of the Code not to be described in section 1221(a)(1), that is, it shall not be treated as income from the sale of stock in trade, inventory, or property held by the REIT primarily for sale to customers in the ordinary course of the REIT's trade or business.

Special rules for Timber REITs

The Senate amendment contains several provisions applicable only to a “timber REIT,” defined as a REIT in which more than 50 percent of the value of its total assets consists of real property held in connection with the trade or business of producing timber.

First, mineral royalty income from real property owned by a timber REIT and held, or once held, in connection with the trade or business of producing timber by such REIT, is included as qualifying real estate income for purposes of the REIT income tests.

Second, a timber REIT is permitted to hold TRS securities with a value up to 25 percent, (rather than 20 percent) of the value of the total assets of the REIT.

Effective Date

The provision applies to taxable years beginning after the date of enactment, but does not apply after the last day of the first taxable year beginning after the date of enactment.

Conference Agreement

Corporate rate reduction for qualified timber gain

The conference agreement provides a 15-percent alternative tax rate for corporations on the portion of a corporation’s taxable income that consists of qualified timber gain (or, if less, the net capital gain) for a taxable year.²⁵

The alternative 15-percent tax rate applies to both the regular tax and the alternative minimum tax.

Qualified timber gain means the net gain described in section 631(a) and (b) for the taxable year, determined by taking into account only trees held more than 15 years.

Effective date.—The provision applies to taxable years ending after the date of enactment and beginning on or before the date which is one year after the date of enactment. In the case of a taxable year that includes the date of enactment, qualified timber gain may not exceed the qualified timber gain properly taken into account for the portion of the year after that date. In the case of a taxable year that includes the date that is one year after the date of enactment, qualified timber gain may not exceed the qualified timber gain properly taken into account for the portion of the year on or before that date.

²⁵ The conference agreement does not contain the 60 percent deduction for qualified timber income that was contained in the Senate amendment, nor does it make any change to section 4981.

Additional REIT provisions

The conference agreement follows the additional REIT provisions in the Senate amendment.

Effective date.—The additional REIT provisions apply only for the first taxable year of the REIT that begins after the date of enactment and before the date that is one year after the date of enactment. The provisions terminate after that time.

5. Qualified forestry conservation bonds (sec. 12808 of the Senate amendment, and sec. 15316 of the conference agreement and new secs. 54A and 54B of the Code)

Present Law

Tax-exempt bonds

In general

Subject to certain Code restrictions, interest on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term “nongovernmental person” generally includes the Federal Government and all other individuals and entities other than States or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified private activity bonds”) and other Code requirements are met.

Private activity bond tests

Present law provides two tests for determining whether a State or local bond is in substance a private activity bond, the private business test and the private loan test.²⁶

Private business tests

Private business use and private payments result in State and local bonds being private activity bonds if both parts of the two-part private business test are satisfied—

1. More than 10 percent of the bond proceeds is to be used (directly or indirectly) by a private business (the “private business use test”); and

²⁶ Sec. 141(b) and (c).

2. More than 10 percent of the debt service on the bonds is secured by an interest in property to be used in a private business use or to be derived from payments in respect of such property (the “private payment test”).²⁷

Private business use generally includes any use by a business entity (including the Federal government), which occurs pursuant to terms not generally available to the general public. For example, if bond-financed property is leased to a private business (other than pursuant to certain short-term leases for which safe harbors are provided under Treasury regulations), bond proceeds used to finance the property are treated as used in a private business use, and rental payments are treated as securing the payment of the bonds. Private business use also can arise when a governmental entity contracts for the operation of a governmental facility by a private business under a management contract that does not satisfy Treasury regulatory safe harbors regarding the types of payments made to the private operator and the length of the contract.²⁸

Private loan test

The second standard for determining whether a State or local bond is a private activity bond is whether an amount exceeding the lesser of (1) five percent of the bond proceeds or (2) \$5 million is used (directly or indirectly) to finance loans to private persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test. Present law provides that the substance of a transaction governs in determining whether the transaction gives rise to a private loan. In general, any transaction which transfers tax ownership of property to a private person is treated as a loan.

Qualified private activity bonds

As stated, interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans’ mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)). The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain

²⁷ The 10-percent private business use and payment threshold is reduced to five percent for private business uses that are unrelated to a governmental purpose also being financed with proceeds of the bond issue. In addition, as described more fully below, the 10-percent private business use and private payment thresholds are phased-down for larger bond issues for the financing of certain “output” facilities. The term output facility includes electric generation, transmission, and distribution facilities.

²⁸ See Treas. Reg. sec. 1.141-3(b)(4) and Rev. Proc. 97-13, 1997-1 C.B. 632.

private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2007, the State volume cap, which is indexed for inflation, equals \$85 per resident of the State, or \$256.24 million, if greater.

Arbitrage restrictions

The tax exemption for State and local bonds also does not apply to any arbitrage bond.²⁹ An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.³⁰ In general, arbitrage profits may be earned only during specified periods (e.g., defined “temporary periods”) before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., “reasonably required reserve or replacement funds”). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Indian tribal governments

Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.³¹ Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. However, bonds issued by tribal governments are subject to limitations not imposed on State and local government issuers. Tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions or certain manufacturing facilities.³²

Clean renewable energy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds (“CREBs”). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. “Qualified projects” are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements

²⁹ Sec. 103(a) and (b)(2).

³⁰ Sec. 148.

³¹ Sec. 7871.

³² Sec. 7871(c).

of that section.³³ The term “qualified issuers” includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term “qualified borrower” includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond’s credit rate by the face amount on the holder’s bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem any “nonqualified bonds.” The five-year spending period may be extended by the Secretary upon the qualified issuer’s request demonstrating that the failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of \$1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is \$750 million. CREBs must be issued before January 1, 2009.

³³ In addition, Notice 2006-7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in section 45(d)(1) through (d)(9) and owned by such qualified borrower.

House Bill

No provision

Senate Amendment

The Senate amendment creates a new category of tax-credit bonds, qualified forestry conservation bonds. Qualified forestry conservation bonds are bonds issued by qualified issuers to finance qualified forestry conservation projects. The term “qualified issuer” means a State or a section 501(c)(3) organization. The term “qualified forestry conservation project” means the acquisition by a State or section 501(c)(3) organization from an unrelated person of forest and forest land that meets the following qualifications: (1) some portion of the land acquired must be adjacent to United States Forest Service Land; (2) at least half of the land acquired must be transferred to the United States Forest Service at no net cost and not more than half of the land acquired may either remain with or be donated to a State; (3) all of the land must be subject to a habitat conservation plan for native fish approved by the United States Fish and Wildlife Service; and (4) the amount of acreage acquired must be at least 40,000 acres.

There is a national limitation on qualified forestry conservation bonds of \$500 million. Allocations of qualified forestry conservation bonds are among qualified forestry conservation projects in the manner the Secretary determines appropriate so as to ensure that all of such limitation is allocated before the date that is 24 months after the date of enactment. The Senate amendment also requires the Secretary to solicit applications for allocations of qualified forestry conservation bonds no later than 90 days after the date of enactment.

The Senate amendment requires 100 percent of the available project proceeds of qualified forestry conservation bonds to be used within the three-year period that begins on the date of issuance. The Senate amendment defines available project proceeds as proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified forestry conservation purposes during the three-year spending period, bonds will continue to qualify as qualified forestry conservation bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer’s request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified forestry conservation bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (2) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified forestry conservation bonds are issued.

The maturity of qualified forestry conservation bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified forestry conservation bonds are issued.

As with present-law tax credit bonds, the taxpayer holding qualified forestry conservation bonds on a credit allowance date is entitled to a tax credit. The credit rate is set by the Secretary at 70 percent of the rate that would permit issuance of qualified forestry conservation bonds without discount and interest cost to the issuer. The amount of the tax credit to the holder is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits in one year may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of qualified forestry conservation bonds are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of such bonds. The Senate amendment authorizes the Secretary to impose additional financial reporting requirements by regulation.

Effective date.—The provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement includes the Senate amendment with modifications. Under the conference agreement, the credit rate on qualified forestry conservation bonds is determined by the Secretary at the rate that permits issuance of such bonds without discount and interest cost to the qualified issuer.

The conference agreement also provides that a qualified issuer receiving an allocation to issue qualified forestry conservation bonds may, in lieu of issuing bonds, elect to treat such allocation as a deemed payment of tax (regardless of whether the issuer is subject to tax under chapter 1 of the Code) that is equal to 50 percent of the amount of such allocation. An election to treat an allocation of qualified forestry conservation bonds as a deemed payment is not valid unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer will be used exclusively for one or more qualified forestry conservation purposes. The deemed tax payment may not be used as an offset or credit against any other tax and shall not accrue interest. In addition, if the qualified issuer fails to use any portion of the overpayment for qualified forestry conservation purposes, the issuer shall be liable to the United States in an amount equal to such portion, plus interest, for the period from the date such portion was refunded to the date such amount is paid.

Effective date.—The provision is effective for bonds issued after the date of enactment.

B. Energy Provisions

1. Credit for production of cellulosic biofuel (sec. 12312 of the Senate amendment, sec. 15321 of the conference agreement and sec. 40 of the Code)

Present Law

In the case of ethanol, the Code provides a separate 10-cents-per-gallon credit for up to 15 million gallons per year for small producers, defined generally as persons whose production capacity does not exceed 60 million gallons per year. The ethanol must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified alcohol fuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c). A cooperative may pass through the small ethanol producer credit to its patrons. The credit is includible in income and is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The alcohol fuels tax credit, of which the small producer credit is a part, is scheduled to expire after December 31, 2010.

Under the Renewable Fuels Standard Program all renewable fuel produced or imported on or after September 1, 2007 must have a renewable identification number (RIN) associated with it. Producers and importers must generate RINs to represent all the renewable fuel they produce or import and provide those RINs to the EPA. For cellulosic ethanol, 2.5 RINs are generated for every gallon produced.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an income tax credit for each gallon of qualified cellulosic fuel production of the producer for the taxable year. The amount of the credit per gallon is \$1.25 less the credit amount for alcohol fuel and the credit amount for small ethanol producers as of the date the cellulosic biofuel fuel is produced. This credit is in addition to any credit that may be available under section 40 of the Code.

Qualified cellulosic biofuel production is any cellulosic biofuel which is produced by the taxpayer and which is sold by such producer to another person (a) for use by such other person in the production of a qualified biofuel fuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such biofuel at retail to another person and places such biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c).

Cellulosic biofuel means any alcohol, ether, ester, or hydrocarbon that is produced in the United States and is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. However, it does not include any alcohol with a proof of less

than 150. Examples of lignocellulosic or hemicellulosic matter that is available of a renewable or recurring basis include dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste. A qualified cellulosic biofuel mixture is a mixture of cellulosic biofuel and any petroleum fuel product which is sold by the person producing such mixture to any person for use as a fuel, or is used as a fuel by the person producing such mixture.

The credit terminates on April 1, 2015.

The Senate amendment waives the 15 million gallon limitation of the small ethanol producer credit for cellulosic biofuel that is ethanol.

Effective date.—The provision is effective for fuel produced after December 31, 2007.

Conference Agreement

The conference agreement adds a new component to section 40 of the Code, the “cellulosic biofuel producer credit.” This credit is a nonrefundable income tax credit for each gallon of qualified cellulosic fuel production of the producer for the taxable year. The amount of the credit per gallon is \$1.01, except in the case of cellulosic biofuel that is alcohol. In the case of cellulosic biofuel that is alcohol, the \$1.01 credit amount is reduced by (1) the credit amount applicable for such alcohol under the alcohol mixture credit as in effect at the time cellulosic biofuel is produced and (2) in the case of cellulosic biofuel that is ethanol, the credit amount for small ethanol producers as in effect at the time the cellulosic biofuel fuel is produced. The reduction applies regardless of whether the producer claims the alcohol mixture credit or small ethanol producer credit with respect to the cellulosic alcohol. When the alcohol mixture credit and small ethanol producer credit expire after December 31, 2010, cellulosic biofuel will receive the \$1.01 without reduction.

“Qualified cellulosic biofuel production” is any cellulosic biofuel which is produced by the taxpayer and which is sold by the taxpayer to another person (a) for use by such other person in the production of a qualified biofuel fuel mixture in such person’s trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such biofuel at retail to another person and places such biofuel in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c).

“Cellulosic biofuel” means any liquid fuel that (1) is produced in the United States and used as fuel in the United States,³⁴ (2) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis and (3) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. Thus, to qualify for the credit the fuel must be approved by the Environmental Protection Agency. Cellulosic biofuel does not include any alcohol with a proof of less than 150. Examples of lignocellulosic or hemicellulosic matter that is available of a renewable or recurring basis include dedicated energy crops and trees, wood and wood

³⁴ For this purpose, “United States” includes any possession of the United States.

residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste.

A “qualified cellulosic biofuel mixture” is a mixture of cellulosic biofuel and a special fuel or of cellulosic biofuel and gasoline, which is sold by the person producing such mixture to any person for use as a fuel, or is used as a fuel by the person producing such mixture. The term “special fuel” includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

The cellulosic biofuel producer credit terminates on December 31, 2012. The conference agreement requires cellulosic biofuel producers to be registered with the IRS. The cellulosic biofuel producer credit cannot be claimed unless the taxpayer is registered with the IRS as a producer of cellulosic biofuel.

With respect to the small ethanol producer credit, the conference agreement also waives the 15 million gallon limitation for cellulosic biofuel that is ethanol. Thus the small ethanol producer credit may be claimed for cellulosic ethanol in excess of 15 million gallons. The other requirements for the small ethanol producer credit continue to apply for ethanol other than cellulosic ethanol, including the 15 million gallon limitation.

Under the conference agreement, cellulosic biofuel and alcohols cannot qualify as biodiesel, renewable diesel, or alternative fuel for purposes of the credit and payment provisions relating to those fuels.

Effective date.—The provision is effective for fuel produced after December 31, 2008.

2. Comprehensive study of biofuels (sec. 15322 of the conference agreement)

Present Law

The National Academy of Sciences serves to investigate, examine, experiment and report upon any subject of science whenever called upon to do so by any department of the government. The National Research Council is part of the National Academies. The National Research Council was organized by the National Academy of Sciences in 1916 and is its principal operating agency for conducting science policy and technical work.

House Bill

No provision.³⁵

Senate Amendment

No provision.

³⁵ A provision requiring a comprehensive study on biofuels was included in section 402 of H.R. 5351, passed by the House on February 27, 2008.

Conference Agreement

The conference agreement requires the Secretary, in consultation with the Department of Energy and the Department of Agriculture and the Environmental Protection Agency, to enter into an agreement with the National Academy of Sciences to produce an analysis of current scientific findings to determine:

1. Current biofuels production, as well as projections for future production;
2. The maximum amount of biofuels production capable on U.S. forests and farmlands, including the current quantities and character of the feedstocks and including such information as regional forest inventories that are commercially available, used in the production of biofuels;
3. The domestic effects of a increase in biofuels production on, for example, (a) the price of fuel, (b) the price of land in rural and suburban communities, (c) crop acreage and other land use, (d) the environment, due to changes in crop acreage, fertilizer use, runoff, water use, emissions from vehicles utilizing biofuels, and other factors, (e) the price of feed, (f) the selling price of grain crops, and forest products, (g) exports and imports of grains and forest products, (h) taxpayers, through cost or savings to commodity crop payments, and (i) the expansion of refinery capacity;
4. The ability to convert corn ethanol plants for other uses, such as cellulosic ethanol or biodiesel;
5. A comparative analysis of corn ethanol versus other biofuels and renewable energy sources, considering cost, energy output, and ease of implementation;
6. The impact of the credit for production of cellulosic biofuel (as established by this Act) on the regional agricultural and silvicultural capabilities of commercially available forest inventories; and
7. The need for additional scientific inquiry, and specific areas of interest for future research.

The Secretary shall submit an initial report of the findings to the Congress not later than six months after the date of enactment, and a final report not later than 12 months after the date of enactment. In the case of information relating to the impact of the tax credits established by the Act on the regional agricultural and silvicultural capabilities of commercially available forest inventories, the initial report is due 36 months after the date of enactment and the final report is due 42 months after the date of enactment.

Effective date.—The provision is effective on the date of enactment.

3. Modification of alcohol credit (sec. 12315 of the Senate amendment, and sec. 15331 of the conference agreement and secs. 40 and 6426 of the Code)

Present Law

Income tax credit

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2010.³⁶

Taxpayers are eligible for an income tax credit of 51 cents per gallon of ethanol (60 cents in the case of alcohol other than ethanol) used in the production of a qualified mixture (the “alcohol mixture credit”). A “qualified mixture” means a mixture of alcohol and gasoline, (or of alcohol and a special fuel) sold by the taxpayer as fuel, or used as fuel by the taxpayer producing such mixture. The term “alcohol” includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150.

Taxpayers may reduce their income taxes by 51 cents for each gallon of ethanol, which is not in a mixture with gasoline or other special fuel, that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business (“the alcohol credit”). For alcohol other than ethanol, the rate is 60 cents per gallon.³⁷

In the case of ethanol, the Code provides an additional 10-cents-per-gallon credit for up to 15 million gallons per year for small producers. Small producer is defined generally as persons whose production capacity does not exceed 60 million gallons per year. The ethanol must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified alcohol fuel mixture in such person’s trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c). A cooperative may pass through the small ethanol producer credit to its patrons.

The alcohol fuels credit is includible in income and is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The credit is allowable against the alternative minimum tax.

³⁶ The alcohol fuels credit is unavailable when, for any period before January 1, 2011, the tax rates for gasoline and diesel fuels drop to 4.3 cents per gallon.

³⁷ In the case of any alcohol (other than ethanol) with a proof that is at least 150 but less than 190, the credit is 45 cents per gallon (the “low-proof blender amount”). For ethanol with a proof that is at least 150 but less than 190, the low-proof blender amount is 37.78 cents.

Excise tax credit and payment provision for alcohol fuel mixtures

The Code also provides an excise tax credit and payment provision for alcohol fuel mixtures. Like the income tax credit, the amount of the credit is 60 cents per gallon of alcohol used as part of a qualified mixture (51 cents in the case of ethanol). For purposes of the excise tax credit and payment provisions, alcohol includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 190. Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from alcohol. In lieu of a tax credit, a person making a qualified mixture eligible for the credit may seek a payment from the Secretary in the amount of the credit. The payment provisions and credits are coordinated such that the incentive is not claimed more than once for each gallon of alcohol used as part of qualified mixture.

Renewable Fuels Standard Program

Under the Renewable Fuels Standard Program all renewable fuel produced or imported on or after September 1, 2007 must have a renewable identification number (RIN) associated with it. Producers and importers must generate RINs to represent all the renewable fuel they produce or import and provide those RINs to the Environmental Protection Agency. For cellulosic ethanol, 2.5 RINs are generated for every gallon produced.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the 51-cent-per-gallon incentive for ethanol is adjusted to 46 cents per gallon beginning with the first calendar year after the year in which 7.5 billion gallons of ethanol (including cellulosic ethanol) have been produced in or imported into the United States after the date of enactment, as certified by the Secretary in consultation with the Administrator of the Environmental Protection Agency.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

Under the conference agreement, the 51-cent-per-gallon incentive for ethanol is adjusted to 45 cents per gallon for the calendar year 2009 and thereafter.³⁸ If the Secretary makes a determination, in consultation with the Administrator of the Environmental Protection Agency, that 7,500,000,000 gallons of ethanol (including cellulosic ethanol) were not produced in or imported into the United States in 2008, the reduction in the credit amount will be delayed. If a determination is made that the threshold was not reached in 2008, the reduction for 2010 also will be delayed if the Secretary determines 7,500,000,000 gallons were not produced or imported

³⁸ The low-proof blender amount is adjusted accordingly to 33.33 cents.

in 2009. In the absence of a determination, the reduction remains in effect. In the event the determination is made subsequent to the start of a calendar year, those persons claiming the reduced amount prior to the Secretary's determination will be entitled to the difference between the correct credit amount for that year and the credit amount claimed, e.g. between 51 cents per gallon and 45 cents per gallon.

Effective date.—The provision is effective on the date of enactment.

4. Calculation of volume of alcohol for fuel credits (sec. 12316 of the Senate amendment, and sec. 15332 of the conference agreement and sec. 40 of the Code)

Present Law

The Code provides a per-gallon credit for the volume of alcohol used as a fuel or in a qualified mixture. For purposes of determining the number of gallons of alcohol with respect to which the credit is allowable, the volume of alcohol includes any denaturant, including gasoline.³⁹ The denaturant must be added under a formula approved by the Secretary and the denaturant cannot exceed five percent of the volume of such alcohol (including denaturants).

House Bill

No provision.

Senate Amendment

The Senate amendment reduces the amount of allowable denaturants to two percent of the volume of the alcohol.

Effective date.—The provision is effective for fuel sold or used after December 31, 2007.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective for fuel sold or used after December 31, 2008.

5. Ethanol tariff extension (sec. 12317 of the Senate amendment and sec. 15333 of the conference agreement)

Present Law

Heading 9901.00.50 of the Harmonized Tariff Schedule of the United States imposes a cumulative general duty of 14.27 cents per liter (approximately 54 cents per gallon) to imports of ethyl alcohol, and any mixture containing ethyl alcohol, if used as a fuel or in producing a mixture to be used as a fuel, that are entered into the United States prior to January 1, 2009.

³⁹ Sec. 40(d)(4).

Taxpayers who blend ethanol with gasoline are eligible to claim an alcohol fuels tax credit of 51 cents per gallon, irrespective of whether the ethanol used is produced domestically or imported. Heading 9901.00.50 applies a temporary duty to ethanol imports that offsets the benefit of the alcohol fuels tax credit to imported ethanol.

Heading 9901.00.52 of the Harmonized Tariff Schedule of the United States imposes a general duty of 5.99 cents per liter to imports of ethyl tertiary-butyl ether, and any mixture containing ethyl tertiary-butyl ether, that are entered into the United States prior to January 1, 2009.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the existing effective period for ethyl alcohol as classified under heading 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States from before January 1, 2009 to before January 1, 2011.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective on the date of enactment.

6. Limitations on duty drawback on certain imported ethanol (sec. 12318 of the Senate amendment and sec. 15334 of the conference agreement)

Present Law

Subheading 9901.00.50 of the Harmonized Tariff Schedule of the United States (“HTSUS”), imposes an additional duty on ethanol that is used as fuel or used to make fuel. Subsection (b) of Section 313 of the Tariff Act of 1930 permits the refund of duty if the duty-paid good, or a substitute good, is used to make an article that is exported. Subsection (j)(2) of Section 313 permits the refund of duty if the duty-paid good, or a substitute good, is exported. Subsection (p) of section 313 permits the substitution on exportation for drawback eligibility of one motor fuel for another motor fuel. A person who manufactures or acquires gasoline with ethanol subject to the duty imposed by subheading 9901.00.50, HTSUS, can export jet fuel (which does not involve the use of ethanol) and obtain a refund of the duty paid under subheading 9901.00.50, HTSUS.

House Bill

No provision.

Senate Amendment

The Senate amendment eliminates the ability to obtain a refund of the duty imposed by subheading 9901.00.50, HTSUS, by substitution of ethanol not subject to the duty under 9901.00.50 of the HTSUS for ethanol subject to the duty imposed under subheading 9901.00.50, HTSUS, for drawback purposes. Also, under the provision, an exported article that does not contain ethyl alcohol or a mixture of ethyl alcohol shall not be treated as the same kind and quality as a qualified article that does contain ethyl alcohol or a mixture of ethyl alcohol, for substitution duty drawback purposes under section 313(p) of the Tariff Act of 1930. In particular, this eliminates the ability to export jet fuel as a substitute for motor fuel made with imports of ethyl alcohol or a mixture of ethyl alcohol, and receive duty drawback based upon the import duty paid under subheading 9901.00.50, HTSUS.

Effective date.—Effective for articles exported on or after the date that is 15 days after the date of enactment.

Conference Agreement

Under the conference agreement, any duty paid under subheading 9901.00.50, HTSUS, on imports of ethyl alcohol or a mixture of ethyl alcohol may not be refunded if the exported article upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol. In particular, the provision eliminates the ability to export jet fuel as a substitute for motor fuel made with imports of ethyl alcohol or a mixture of ethyl alcohol, and then receive duty drawback based upon the import duty paid on the ethyl alcohol or the mixture of ethyl alcohol under subheading 9901.00.50, HTSUS.

Effective date.— The provision applies to imports of ethyl alcohol or a mixture of ethyl alcohol entered for consumption, or withdrawn from warehouse for consumption, on or after October 1, 2008. With respect to claims for substitution duty drawback that are based upon imports of ethyl alcohol or a mixture of ethyl alcohol entered for consumption, or withdrawn from warehouse for consumption, before October 1, 2008, such claims must be filed not later than September 30, 2010; otherwise, such claims are disallowed.

C. Agricultural Provisions

1. Qualified small issue bonds for farming (sec. 12401 of the Senate amendment, sec. 15341 of the conference agreement and sec. 144 of the Code)

Present Law

Qualified small issue bonds are tax-exempt bonds issued by State and local governments to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain first-time farmers. A first-time farmer means any individual who has not at any time had any direct ownership interest in substantial farmland in the operation of which such individual materially participated. In addition, an individual does not qualify as a first-time farmer if such individual has received more than \$250,000 in qualified small issue bond financing. Substantial farmland means any parcel of land unless (1) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located and (2) the fair market value of the land does not at any time while held by the individual exceed \$125,000.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the maximum amount of qualified small issue bond proceeds available to first-time farmers to \$450,000 and indexes this amount for inflation. The provision also eliminates the fair market value test from the definition of substantial farmland.

Effective date.—The provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Allowance of section 1031 for exchanges involving certain mutual ditch, reservoir, or irrigation company stock (sec. 12403 of the Senate amendment, sec. 15342 of the conference agreement and sec. 1031 of the Code)

Present Law

An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged for property of a “like-kind” which is to be held for productive use in a trade or business or for investment.⁴⁰ If section 1031 applies to an exchange of properties, the basis of

⁴⁰ Sec. 1031(a)(1).

the property received in the exchange is equal to the basis of the property transferred, decreased by any money received by the taxpayer, and further adjusted for any gain or loss recognized on the exchange. In general, section 1031 does not apply to any exchange of stock in trade or other property held primarily for sale; stocks, bonds or notes; other securities or evidences of indebtedness or interest; interests in a partnership; certificates of trust or beneficial interests; or choses in action.⁴¹

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the general exclusion from section 1031 treatment for stocks shall not apply to shares in a mutual ditch, reservoir, or irrigation company, if at the time of the exchange: (1) the company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses); and (2) the shares in the company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.

Effective date.—The provision is effective for transfers after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Agricultural chemicals security tax credit (sec. 12405 of the Senate amendment, sec. 15343 of the conference agreement and new sec. 450 of the Code)

Present Law

Present law does not provide a credit for agricultural chemicals security.

House Bill

No provision.

⁴¹ Sec. 1031(a)(2).

Senate Amendment

The Senate amendment establishes a 30 percent credit for qualified chemical security expenditures for the taxable year with respect to eligible agricultural businesses. The credit is a component of the general business credit.⁴²

The credit is limited to \$100,000 per facility, this amount is reduced by the aggregate amount of the credits allowed for the facility in the prior five years. In addition, each taxpayer's annual credit is limited to \$2,000,000.⁴³ The credit only applies to expenditures paid or incurred before December 31, 2012. The taxpayer's deductible expense is reduced by the amount of the credit claimed.

Qualified chemical security expenditures are amounts paid for: 1) employee security training and background checks; (2) limitation and prevention of access to controls of specific agricultural chemicals stored at a facility; (3) tagging, locking tank valves, and chemical additives to prevent the theft of specific agricultural chemicals or to render such chemicals unfit for illegal use; (4) protection of the perimeter of areas where specified agricultural chemicals are stored; (5) installation of security lighting, cameras, recording equipment and intrusion detection sensors (6) implementation of measures to increase computer or computer network security; (7) conducting security vulnerability assessments; (8) implementing a site security plan; and (9) other measures provided for by regulation. Amounts described in the preceding sentences are only eligible to the extent they are incurred by an eligible agricultural business for protecting specified agricultural chemicals.

Eligible agricultural businesses are businesses that: (1) sell agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers; or (2) manufacture, formulate, distribute, or aerially apply specified agricultural chemicals.

Specified agricultural chemicals means: (1) fertilizer commonly used in agricultural operations which is listed under section 302(a)(2) of the Emergency Planning and Community Right-to know Act of 1986, section 101 or part 172 of title 49, Code of Federal Regulations, or part 126, 127 or 154 of title 33, Code of Federal Regulations; and (2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act) including all active and inert ingredients which are used on crops grown for food, feed or fiber.

Effective date.—The provision is effective for expenses paid or incurred after date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

⁴² Sec. 38(b)(1).

⁴³ The term taxpayer includes controlled groups under rules similar to the rules set out in section 41(f)(1) and (2).

4. Three-year depreciation for all race horses (sec. 12509(a) of the Senate amendment, and sec. 15344 of the conference agreement and sec. 168 of the Code)

Present Law

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (“MACRS”).⁴⁴ The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.⁴⁵ Any race horse that is more than two years old at the time it is placed in service is assigned a three-year recovery period.⁴⁶ A seven year recovery period is assigned to any race horse that is two years old or younger at the time it is placed in service.⁴⁷

House Bill

No provision.

Senate Amendment

The Senate amendment provides a three year recovery period for any race horse.

Effective date.—The provision applies to property placed in service on or after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except that the provision applies to any race horse that is two years old or younger at the time that it is placed in service after December 31, 2008 and before January 1, 2014.

⁴⁴ Sec. 168.

⁴⁵ 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

⁴⁶ Sec. 168(e)(3)(A)(i).

⁴⁷ Rev. Proc. 87-56, 1987-2 C.B. 674, asset class 01.225.

5. Temporary relief for Kiowa County, Kansas and surrounding area⁴⁸

(a) Suspension of certain limitations on personal casualty losses (sec.12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400S(b) of the Code)

Present Law

Under present law, a taxpayer may generally claim a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise (sec. 165). For individual taxpayers, deductible losses must be incurred in a trade or business or other profit-seeking activity or consist of property losses arising from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty or theft losses are deductible only if they exceed \$100 per casualty or theft (the “\$100 limitation”) (sec. 165(h)). In addition, aggregate net casualty and theft losses are deductible only to the extent they exceed 10 percent of an individual taxpayer’s adjusted gross income (the “AGI limitation”) (sec. 165(h)).

House Bill

No provision.

Senate Amendment

The Senate amendment removes two limitations on personal casualty or theft losses to the extent those losses arose from such events in the Kansas disaster area after May 4, 2007, and are attributable to the disaster occurring at that time. For purposes of the provisions of this Act, the term “Kansas disaster area” means an area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (FEMA-1699-DR, as in effect on the date of enactment of this Act) by reason of severe storms and tornados beginning on May 4, 2007, and determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributable to storms and tornados. These personal casualty or theft losses are deductible without regard to either the \$100 limitation or the AGI limitation. For purposes of applying the AGI limitation to other personal casualty or theft losses, losses deductible under this provision are disregarded. Thus, the provision has the effect of treating personal casualty or theft losses from the disaster separate from all other casualty losses.

Effective date.—The provision is effective for losses arising on or after May 4, 2007.

Conference Agreement

The conference agreement follows the Senate amendment.

⁴⁸ The provisions of this Act generally provide tax relief similar to certain other disaster areas. They do not modify the otherwise applicable tax relief to those other disaster areas.

(b) Extension of replacement period for nonrecognition of gain (sec. 12701 of the Senate amendment, and sec. 15345 of the conference agreement)

Present Law

Generally, a taxpayer realizes gain to the extent the sales price (and any other consideration received) exceeds the taxpayer's basis in the property. The realized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

Under section 1033, gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within the applicable period. The taxpayer's basis in the replacement property generally is the cost of such property, reduced by the amount of gain not recognized.

The applicable period for the taxpayer to replace the converted property begins with the date of the disposition of the converted property (or if earlier, the earliest date of the threat or imminence of requisition or condemnation of the converted property) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized (the "replacement period").

Special rules extend the replacement period for certain real property⁴⁹ and principal residences damaged by a Presidentially declared disaster⁵⁰ to three years and four years, respectively, after the close of the first taxable year in which gain is realized. Similarly, the replacement period for livestock sold on account of drought, flood, or other weather-related conditions is extended from two years to four years after the close of the first taxable year in which any part of the gain on conversion is realized.⁵¹

House Bill

No provision.

Senate Amendment

The Senate amendment extends from two to five years the replacement period in which a taxpayer may replace converted property, in the case of property that is in the Kansas disaster area and that is compulsorily or involuntarily converted on or after May 4, 2007, by reason of the May 4, 2007, storms and tornados. Substantially all of the use of the replacement property must be in this area.

⁴⁹ Sec. 1033(g)(4).

⁵⁰ Sec. 1033(h)(1)(B).

⁵¹ Sec. 1033(e)(2).

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

(c) Employee retention credit (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400R(a) of the Code)

Present Law

For employers affected by Hurricanes Katrina, Rita, or Wilma, section 1400R provides a credit of 40 percent of the qualified wages (up to a maximum of \$6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

Hurricane Katrina

An eligible employer is any employer (1) that conducted an active trade or business on August 28, 2005, in the GO Zone and (2) with respect to which the trade or business described in (1) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the GO Zone. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51 with respect to the employee for the period.

Qualified wages are wages (as defined in section 51(c)(1) of the Code, but without regard to section 3306(b)(2)(B) of the Code) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and (2) ending on the date on which such trade or business has resumed significant operations at such principal place of employment. Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

The credit is a part of the current year business credit under section 38(b) and therefore is subject to the tax liability limitations of section 38(c). Rules similar to sections 51(i)(1) and 52 apply to the credit.

Hurricane Rita and Wilma

The credit for employers affected by Hurricanes Rita and Wilma is subject to the same rules as Katrina, except the reference dates for affected employers, comparable to the August 28, 2005 date for Katrina, are September 23, 2005, and October 23, 2005, respectively.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the retention credit, as modified to include an employer size limitation, for employers affected by the Kansas storms and tornados. The reference dates for these employers, comparable to the August 28, 2005 and January 1, 2006 dates of present law for employers affected by Hurricane Katrina, are May 4, 2007, and January 1, 2008, respectively.

The retention credit for employers affected by the Kansas storms and tornados includes an employer size limitation. The credit only applies to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before May 4, 2007.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

(d) Special depreciation allowance (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(d) of the Code)

Present Law

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (“MACRS”).⁵² Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 20 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

For qualified Gulf Opportunity Zone property, the Code provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis.⁵³ In order to qualify, property generally must be placed in service on or before December 31, 2007 (December 31, 2008 in the case of nonresidential real property and residential rental property).

⁵² Sec. 168.

⁵³ Sec. 1400N(d).

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or section 263A. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, the provision provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be property to which the general rules of the Modified Accelerated Cost Recovery System ("MACRS") apply with (1) an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property (as defined in section 168(e)(5)), (4) certain leasehold improvement property, or (5) certain nonresidential real property and residential rental property. Second, substantially all of the use of such property must be in the Gulf Opportunity Zone and in the active conduct of a trade or business by the taxpayer in the Gulf Opportunity Zone. Third, the original use of the property in the Gulf Opportunity Zone must commence with the taxpayer on or after August 28, 2005.⁵⁴ Finally, the property must be acquired by purchase (as defined under section 179(d)) by the taxpayer on or after August 28, 2005 and placed in service on or before December 31, 2007 (December 31, 2008, for qualifying nonresidential real property and residential rental property). Property does not qualify if a binding written contract for the acquisition of such property was in effect before August 28, 2005. However, property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to August 28, 2005.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies if the taxpayer begins the manufacture, construction, or production of the property after August 27, 2005, and before January 1, 2008, and the property is placed in service on or before December 31, 2007 (and all other requirements are met). In the case of qualified nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2008. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

⁵⁴ Used property may constitute qualified property so long as it has not previously been used within the Gulf Opportunity Zone. In addition, it is intended that additional capital expenditures incurred to recondition or rebuild property the original use of which in the Gulf Opportunity Zone began with the taxpayer would satisfy the "original use" requirement. See Treasury Regulation sec. 1.48-2, Example 5.

The special allowance for Gulf Opportunity Zone property was extended for certain nonresidential real property and residential rental property, and certain personal property if substantially all of the use of such property is in such building,⁵⁵ placed in service in specified portions of the GO Zone by the taxpayer on or before December 31, 2010.⁵⁶ The extension only applies to nonresidential real property and residential rental property to the extent of the adjusted basis attributable to manufacture, construction, or production before January 1, 2010.⁵⁷

House Bill

No provision.

Senate Amendment

The Senate amendment provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis for qualified Recovery Assistance property. In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements: (1) The property must be property to which the general rules of the MACRS apply with (a) an applicable recovery period of 20 years or less, (b) computer software other than computer software covered by section 197, (c) water utility property (as defined in section 168(e)(5)), (d) certain leasehold improvement property, or (e) certain nonresidential real property and residential rental property; (2) substantially all of the use of such property must be in the Kansas Disaster Zone and in the active conduct of a trade or business by the taxpayer in the Kansas Disaster Zone. Third, the original use of the property in the Kansas Disaster Zone must commence with the taxpayer on or after May 5, 2007.⁵⁸ Finally, the property must be acquired by purchase (as defined under section 179(d)) by the taxpayer on or after May 5, 2007 and placed in service on or before December 31, 2008 (December 31, 2009, for qualifying nonresidential real property and residential rental property). Property does not qualify if a binding written contract for the acquisition of such property was in effect before May 5, 2007. However, property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to May 5, 2007.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies if the taxpayer begins the manufacture, construction, or production of the

⁵⁵ Such personal property must be placed in service by the taxpayer not later than 90 days after such building is placed in service.

⁵⁶ Sec. 1400N(d)(6).

⁵⁷ Sec. 1400N(d)(6)(D).

⁵⁸ Used property may constitute qualified property so long as it has not previously been used within the Kansas Disaster Zone. In addition, it is intended that additional capital expenditures incurred to recondition or rebuild property the original use of which in the Kansas Disaster Zone began with the taxpayer would satisfy the “original use” requirement. See Treasury Regulation sec. 1.48-2, Example 5.

property after May 4, 2007, and before January 1, 2009, and the property is placed in service on or before December 31, 2008 (and all other requirements are met). In the case of qualified nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

(e) Increase in expensing under section 179 (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(e) of the Code)

Present Law

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or “expense”) such costs under section 179. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2007 through 2010, is \$125,000 of the cost of qualifying property placed in service for the taxable year.⁵⁹ In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property. The \$125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$500,000. The \$125,000 and \$500,000 amounts are indexed for inflation in taxable years beginning after 2007 and before 2011.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.⁶⁰

⁵⁹ Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A), a renewal community (sec. 1400J), or the Gulf Opportunity Zone (sec. 1400N(e)).

⁶⁰ Sec. 179(c)(1). Under Treas. Reg. sec. 1.179-5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that

For taxable years beginning in 2011 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to \$25,000 of the cost of qualifying property placed in service for the taxable year. The \$25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$200,000. The \$25,000 and \$200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.⁶¹

For qualified section 179 Gulf Opportunity Zone property, the maximum amount that a taxpayer may elect to deduct is increased by the lesser of \$100,000 or the cost of qualified section 179 Gulf Opportunity Zone property for the taxable year.⁶² The provision applies with respect to qualified section 179 Gulf Opportunity Zone property acquired on or after August 28, 2005, and placed in service on or before December 31, 2007. This placed in service date was extended to December 31, 2008 for property substantially all of the use of which is in one or more specified portions of the GO Zone. The threshold for reducing the amount expensed is computed by increasing the \$500,000 present-law amount by the lesser of (1) \$600,000, or (2) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year. Neither the \$100,000 nor \$600,000 amounts are indexed for inflation.

Qualified section 179 Gulf Opportunity Zone property means section 179 property (as defined in section 179(d)) that also meets the following requirements: (1) The property must be property to which the general rules of the MACRS apply with (a) an applicable recovery period of 20 years or less, (b) computer software other than computer software covered by section 197, (c) water utility property (as defined in section 168(e)(5)), (d) certain leasehold improvement property; (2) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in that Zone; (3) the original use of which commences with the taxpayer on or after August 28, 2005; (4) which is acquired by the taxpayer by purchase on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005; and (5) which is placed in service by the taxpayer on or before December 31, 2007.

House Bill

No provision.

taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

⁶¹ Sec. 179(c)(2).

⁶² Sec. 1400N(e).

Senate Amendment

The Senate amendment increases the amount that a taxpayer may elect for qualified section 179 Recovery Assistance property. The maximum amount that a taxpayer may elect to deduct under section 179 is increased by the lesser of \$100,000 or the cost of qualified section 179 Recovery Assistance property for the taxable year. The provision applies with respect to qualified section 179 Recovery Assistance property acquired on or after May 5, 2007, and placed in service on or before December 31, 2008. The threshold for reducing the amount expensed is computed by increasing the \$500,000 present-law amount by the lesser of (1) \$600,000, or (2) the cost of qualified section 179 Recovery Assistance property placed in service during the taxable year. Neither the \$100,000 nor \$600,000 amounts are indexed for inflation.

Qualified section 179 Recovery Assistance property means section 179 property (as defined in section 179(d)) that also meets the following requirements: (1) The property must be property to which the general rules of the MACRS apply with (a) an applicable recovery period of 20 years or less, (b) computer software other than computer software covered by section 197, (c) water utility property (as defined in section 168(e)(5)), or (d) certain leasehold improvement property; (2) substantially all of the use of which is in the Kansas Disaster Zone and is in the active conduct of a trade or business by the taxpayer in that Zone; (3) the original use of which commences with the taxpayer on or after May 5, 2007; (4) which is acquired by the taxpayer by purchase on or after May 5, 2007, but only if no written binding contract for the acquisition was in effect before May 5, 2007; and (5) which is placed in service by the taxpayer on or before December 31, 2008.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

- (f) Expensing for certain demolition and clean-up costs (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(f) of the Code)**

Present Law

Under present law, the cost of demolition of a structure is capitalized into the taxpayer's basis in the land on which the structure is located.⁶³ Land is not subject to an allowance for depreciation or amortization.

The treatment of the cost of debris removal depends on the nature of the costs incurred. For example, the cost of debris removal after a storm may in some cases constitute an ordinary and necessary business expense which is deductible in the year paid or incurred. In other cases, debris removal costs may be in the nature of replacement of part of the property that was damaged. In such cases, the costs are capitalized and added to the taxpayer's basis in the

⁶³ Sec. 280B.

property. For example, Revenue Ruling 71-161⁶⁴ permits the use of clean-up costs as a measure of casualty loss but requires that such costs be added to the post-casualty basis of the property.

Under section 1400N(f), a taxpayer is permitted a deduction for 50 percent of any qualified Gulf Opportunity Zone clean-up cost paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2007. The remaining 50 percent is capitalized and treated as described above. A qualified Gulf Opportunity Zone clean-up cost is an amount paid or incurred for the removal of debris from, or the demolition of structures on, real property located in the Gulf Opportunity Zone to the extent that the amount would otherwise be capitalized. In order to qualify, the property must be held for use in a trade or business, for the production of income, or as inventory.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a taxpayer is permitted a deduction for 50 percent of any qualified Recovery Assistance clean-up cost paid or incurred during the period beginning on May 4, 2007, and ending on December 31, 2009. The remaining 50 percent is treated as under present law. A qualified Recovery Assistance clean-up cost is an amount paid or incurred for the removal of debris from, or the demolition of structures on, real property located in the Kansas disaster area to the extent that the amount would otherwise be capitalized. In order to qualify, the property must be held for use in a trade or business, for the production of income, or as inventory.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

(g) Treatment of public utility property disaster losses (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(o) of the Code)

Present Law

Under section 165(i), certain losses attributable to a disaster occurring in a Presidentially declared disaster area may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

⁶⁴ 1971-1 C.B. 76.

Section 6411 provides a procedure under which taxpayers may apply for tentative carryback and refund adjustments with respect to net operating losses, net capital losses, and unused business credits.

Section 1400N(o) provides an election for taxpayers who incurred casualty losses attributable to Hurricane Katrina with respect to public utility property located in the Gulf Opportunity Zone. Under the election, such losses may be taken into account in the fifth taxable year (rather than the 1st taxable year) immediately preceding the taxable year in which the loss occurred. If the application of this provision results in the creation or increase of a net operating loss for the year in which the casualty loss is taken into account, the net operating loss may be carried back or carried over as under present law applicable to net operating losses for such year.

For purposes of section 1400N(o), public utility property is property used predominantly in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962; or transportation of gas or steam by pipeline. Such property is eligible regardless of whether the taxpayer's rates are established or approved by any regulatory body.

A taxpayer making the election under the provision is eligible to file an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the election. As under present law with respect to tentative carryback and refund adjustments, the IRS generally has 90 days to act on the refund claim. Under the provision, the statute of limitations with respect to such a claim can not expire earlier than one year after the date of enactment. Also, a taxpayer making the election with respect to a loss is not entitled to interest with respect to any overpayment attributable to the loss.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an election for taxpayers who incurred casualty losses attributable to the Kansas storms and tornados with respect to public utility property located in the Kansas Disaster Zone. Under the election, such losses may be taken into account in the fifth taxable year (rather than the 1st taxable year) immediately preceding the taxable year in which the loss occurred. If the application of this provision results in the creation or increase of a net operating loss for the year in which the casualty loss is taken into account, the net operating loss may be carried back or carried over as under present law applicable to net operating losses for such year. The other definitions and rules that apply under section 1400N(o) shall apply to the losses claimed in the Kansas Disaster Zone.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

(h) Treatment of net operating losses attributable to storm losses (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(k) of the Code)

Present Law

Under present law, a net operating loss (“NOL”) is, generally, the amount by which a taxpayer’s business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years.⁶⁵ NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.⁶⁶

Different rules apply with respect to NOLs arising in certain circumstances. A three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback applies to NOLs (1) arising from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area), or (2) certain amounts related to Hurricane Katrina and the Gulf Opportunity Zone. Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10-year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction). Additionally, a special rule applies to certain electric utility companies.

House Bill

No provision.

Senate Amendment

The Senate amendment provides rules in connection with certain net operating losses similar to the rules provided for Gulf Opportunity Zone losses under section 1400N(k). The rules, as applied to qualified Recovery Assistance losses, are as follows:

In general

The provision provides a special five-year carryback period for NOLs to the extent of certain specified amounts related to the Kansas storms and tornados. The amount of the NOL which is eligible for the five year carryback (“eligible NOL”) is limited to the aggregate amount of the following deductions: (i) qualified Recovery Assistance casualty losses; (ii) certain moving expenses; (iii) certain temporary housing expenses; (iv) depreciation deductions with

⁶⁵ Sec. 172(b)(1)(A).

⁶⁶ Sec. 172(b)(2).

respect to qualified Recovery Assistance property for the taxable year the property is placed in service; and (v) deductions for certain repair expenses resulting from the Kansas storms and tornados. The provision applies for losses paid or incurred after May 3, 2007, and before January 1, 2010; however, an irrevocable election not to apply the five-year carryback under the provision may be made with respect to any taxable year.

Qualified Recovery Assistance casualty losses

The amount of qualified Gulf Opportunity Zone casualty losses which may be included in the eligible NOL is the amount of the taxpayer's casualty losses with respect to (1) property used in a trade or business, and (2) capital assets held for more than one year in connection with either a trade or business or a transaction entered into for profit. In order for a casualty loss to qualify, the property must be located in the Kansas Disaster Zone and the loss must be attributable to Kansas storms or tornados. As under present law, the amount of any casualty loss includes only the amount not compensated for by insurance or otherwise. In addition, the total amount of the casualty loss which may be included in the eligible NOL is reduced by the amount of any gain recognized by the taxpayer from involuntary conversions of property located in the Kansas Disaster Zone caused by the Kansas storms or tornados.

To the extent that a casualty loss is included in the eligible NOL and carried back under the provision, the taxpayer is not eligible to also treat the loss as having occurred in the prior taxable year under section 165(i). Similarly, the five year carryback under the provision does not apply to any loss taken into account for purposes of the ten-year carryback of public utility casualty losses which is provided under another provision in the Act.

Moving expenses

Certain employee moving expenses of an employer may be included in the eligible NOL. In order to qualify, an amount must be paid or incurred after May 3, 2007, and before January 1, 2010 with respect to an employee who (i) lived in the Kansas Disaster Zone before May 4, 2007, (ii) was displaced from their home either temporarily or permanently as a result of the Kansas storms or tornados, and (iii) is employed in the Kansas Disaster Zone by the taxpayer after the expense is paid or incurred.

For this purpose, moving expenses are defined as under present law to include only the reasonable expenses of moving household goods and personal effects from the former residence to the new residence, and of traveling (including lodging) from the former residence to the new place of residence. However, for purposes of the provision, the former residence and the new residence may be the same residence if the employee initially vacated the residence as a result of the Kansas storms or tornados. It is not necessary for the individual with respect to whom the moving expenses are incurred to have been an employee of the taxpayer at the time the expenses were incurred. Thus, assuming the other requirements are met, a taxpayer who pays the moving expenses of a prospective employee and subsequently employs the individual in the Kansas Disaster Zone may include such expenses in the eligible NOL.

Temporary housing expenses

Any deduction for expenses of an employer to temporarily house employees who are employed in the Kansas Disaster Zone may be included in the eligible NOL. It is not necessary for the temporary housing to be located in the Kansas Disaster Zone in order for such expenses to be included in the eligible NOL; however, the employee's principal place of employment with the taxpayer must be in the Kansas Disaster Zone. So, for example, if a taxpayer temporarily houses an employee at a location outside of the Kansas Disaster Zone, and the employee commutes into the Kansas Disaster Zone to the employee's principal place of employment, such temporary housing costs will be included in the eligible NOL (assuming all other requirements are met).

Depreciation of Gulf Opportunity Zone property

The eligible NOL includes the depreciation deduction (or amortization deduction in lieu of depreciation) with respect to qualified Recovery Assistance property placed in service during the year. The special carryback period applies to the entire allowable depreciation deduction for such property for the year in which it is placed in service, including both the regular depreciation deduction and the additional first-year depreciation deduction, if any. An election out of the additional first-year depreciation deduction for qualified Recovery Assistance property does not preclude eligibility for the five-year carryback.

Repair expenses

The eligible NOL includes deductions for repair expenses (including the cost of removal of debris) with respect to damage caused by the Kansas storms or tornados. In order to qualify, the amount must be paid or incurred after May 3, 2007 and before January 1, 2010, and the property must be located in the Kansas Disaster Zone.

Other rules

The amount of the NOL to which the five-year carryback period applies is limited to the amount of the corporation's overall NOL for the taxable year. Any remaining portion of the taxpayer's NOL is subject to the general two-year carryback period. Ordering rules similar to those for specified liability losses apply to losses carried back under the provision.

In addition, the general rule which limits a taxpayer's NOL deduction to 90 percent of AMTI does not apply to any NOL to which the five-year carryback period applies under the provision. Instead, a taxpayer may apply such NOL carrybacks to offset up to 100 percent of AMTI.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

- (i) **Representations regarding income eligibility for purposes of qualified residential rental project requirements (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400N(n) of the Code)**

Present Law

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified private activity bonds”).

Qualified private activity bonds

The definition of a qualified private activity bond includes an exempt facility bond, or qualified mortgage, veterans’ mortgage, small issue, redevelopment, 501(c)(3), or student loan bond. The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities.

Subject to certain requirements, qualified private activity bonds may be issued to finance residential rental property or owner-occupied housing. Residential rental property may be financed with exempt facility bonds if the financed project is a “qualified residential rental project.” A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the “20-50 test”). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the “40-60 test”). The issuer must elect to apply either the 20-50 test or the 40-60 test. Operators of qualified residential rental projects must annually certify that such project meets the requirements for qualification, including meeting the 20-50 test or the 40-60 test.

House Bill

No provision

Senate Amendment

Under the provision, the operator of a qualified residential rental project may rely on the representations of prospective tenants displaced by reason of the severe storms and tornados in the Kansas disaster area beginning on May 4, 2007 for purposes of determining whether such individual satisfies the income limitations for qualified residential rental projects and, thus, the project is in compliance with the 20-50 test or the 40-60 test. This rule only applies if the individual's tenancy begins during the six-month period beginning on the date when such individual was displaced.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement includes the Senate amendment provision.

- (j) Use of retirement funds from retirement plans relating to the Kansas Disaster Zone (sec. 12701 of the Senate amendment, sec. 15345 of the conference agreement and sec. 1400Q of the Code)**

Present Law

In general

Withdrawals from retirement plans

Under present law, a distribution from a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-sheltered annuity under section 403(b) (a "403(b) annuity"), an eligible deferred compensation plan maintained by a State or local government under section 457 (a "governmental 457 plan"), or an individual retirement arrangement under section 408 (an "IRA") generally is included in income for the year distributed (secs. 402(a), 403(a), 403(b), 408(d), and 457(a)). (These plans are referred to collectively as "eligible retirement plans".) In addition, a distribution from a qualified retirement or annuity plan, a 403(b) annuity, or an IRA received before age 59-½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception applies (sec. 72(t)).

An eligible rollover distribution from a qualified retirement or annuity plan, a 403(b) annuity, or a governmental 457 plan, or a distribution from an IRA, generally can be rolled over within 60 days to another plan, annuity, or IRA. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual. Any amount rolled over is not includible in income (and thus also not subject to the 10-percent early withdrawal tax).

Distributions from a qualified retirement or annuity plan, 403(b) annuity, a governmental 457 plan, or an IRA are generally subject to income tax withholding unless the recipient elects otherwise. An eligible rollover distribution from a qualified retirement or annuity plan, 403(b)

annuity, or governmental 457 plan is subject to income tax withholding at a 20-percent rate unless the distribution is rolled over to another plan, annuity or IRA by means of a direct transfer. Any distribution is an eligible rollover distribution unless specifically excepted. Exceptions include a distribution that is part of a series of substantially equal periodic payments made at least annually for the life of the employee

Certain amounts held in a qualified retirement plan that includes a qualified cash-or-deferred arrangement (a “401(k) plan”) or in a 403(b) annuity may not be distributed before severance from employment, age 59-½, death, disability, or financial hardship of the employee. Amounts deferred under a governmental 457 plan may not be distributed before severance from employment, age 70-½, or an unforeseeable emergency of the employee.

Loans from retirement plans

An individual is permitted to borrow from a qualified plan in which the individual participates (and to use his or her accrued benefit as security for the loan) provided the loan bears a reasonable rate of interest, is adequately secured, provides a reasonable repayment schedule, and is not made available on a basis that discriminates in favor of employees who are officers, shareholders, or highly compensated.

Subject to certain exceptions, a loan from a qualified employer plan to a plan participant is treated as a taxable distribution of plan benefits. A qualified employer plan includes a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-deferred annuity under section 403(b), and any plan that was (or was determined to be) a qualified employer plan or a governmental plan.

An exception to this general rule of income inclusion is provided to the extent that the loan (when added to the outstanding balance of all other loans to the participant from all plans maintained by the employer) does not exceed the lesser of (1) \$50,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or (2) the greater of \$10,000 or one half of the participant’s accrued benefit under the plan (sec. 72(p)). This exception applies only if the loan is required, by its terms, to be repaid within five years. An extended repayment period is permitted for the purchase of the principal residence of the participant. Plan loan repayments (principal and interest) must be amortized in level payments and made not less frequently than quarterly, over the term of the loan.

Plan amendments

Present law provides a remedial amendment period during which, under certain circumstances, a plan may be amended retroactively in order to comply with the qualification requirements (sec. 401(b)). In general, plan amendments required to reflect changes in the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer’s taxable year in which the change in law occurs. The Secretary of the Treasury may extend the time by which plan amendments need to be made.

Use of retirement funds related to disaster relief for Hurricanes Katrina, Rita, and Wilma

In general

Section 1400Q provides exceptions to certain rules regarding distributions from retirement plans, for loans from retirement plans, and for plan amendments to retirement plans.⁶⁷

Tax favored withdrawals from retirement plans

Section 1400Q(a) provides an exception to the 10-percent early withdrawal tax in the case of a qualified hurricane distribution from a qualified retirement or annuity plan, a 403(b) annuity, or an IRA. In addition, as discussed more fully below, income attributable to a qualified hurricane distribution may be included in income ratably over three years, and the amount of a qualified hurricane distribution may be recontributed to an eligible retirement plan within three years.

A qualified hurricane distribution includes certain distributions from an eligible retirement plan related to Hurricanes Katrina, Wilma, and Rita. Specifically, qualified hurricane distributions include the following distributions from an eligible retirement plan: any distribution made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina; any distribution made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita; and any distribution made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

The total amount of qualified hurricane distributions that an individual can receive from all plans, annuities, or IRAs is \$100,000. Thus, any distributions in excess of \$100,000 during the applicable periods are not qualified hurricane distributions.

Any amount required to be included in income as a result of a qualified hurricane distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply.

Any portion of a qualified hurricane distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income. For example, if

⁶⁷ The relief with respect to Hurricane Katrina was initially provided in the Katrina Emergency Relief Act of 2005 (Pub. L. No. 109-73). The IRS provided guidance on those relief provisions in Notice 2005-92, 2005-2 CB 1165. The relief was codified in section 1400Q and was expanded to the Hurricanes Rita and Wilma Disaster areas in the Gulf Opportunity Zone Act of 2005 (Pub. L. No. 109-135)

an individual receives a qualified hurricane distribution in 2005, that amount is included in income, generally ratably over the year of the distribution and the following two years, but is not subject to the 10-percent early withdrawal tax. If, in 2007, the amount of the qualified hurricane distribution is recontributed to an eligible retirement plan, the individual may file an amended return (or returns) to claim a refund of the tax attributable to the amount previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

A qualified hurricane distribution is a permissible distribution from a 401(k) plan, 403(b) annuity, or governmental 457 plan, regardless of whether a distribution would otherwise be permissible. A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified hurricane distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer's controlled group does not exceed \$100,000. A plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of \$100,000, taking into account distributions from plans of other employers or IRAs.

Qualified hurricane distributions are subject to the income tax withholding rules applicable to distributions other than eligible rollover distributions. Thus, 20-percent mandatory withholding does not apply.

Recontributions of withdrawals for home purchases

Section 1400Q(b) generally provides that a distribution received from a 401(k) plan, 403(b) annuity, or IRA in order to purchase a home in the Hurricane Katrina, Rita, or Wilma disaster areas may be recontributed to such a plan, annuity, or IRA in certain circumstances.

The ability to recontribute applies to an individual who receives a qualified distribution. A qualified distribution is a hardship distribution from a 401(k) plan or 403(b) annuity, or a qualified first-time homebuyer distribution from an IRA, that is a qualified Katrina distribution, a qualified Rita distribution, or a qualified Wilma distribution.

A qualified Katrina distribution is a distribution: (1) that is received after February 28, 2005, and before August 29, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but the residence is not purchased or constructed on account of Hurricane Katrina. Any portion of a qualified Katrina distribution may, during the period beginning on August 25, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted.

A qualified Hurricane Rita distribution is a distribution: (1) that is received after February 28, 2005, and before September 24, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but the residence is not purchased or constructed on account of Hurricane Rita. Any portion of a qualified Hurricane Rita distribution may, during the period beginning on September 23, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted.

A qualified Hurricane Wilma distribution is a distribution: (1) that is received after February 28, 2005, and before October 24, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but the residence is not purchased or constructed on account of Hurricane Wilma. Any portion of a qualified Hurricane Wilma distribution may, during the period beginning on October 23, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted.

Any amount recontributed is treated as a rollover. Thus, that portion of the qualified distribution is not includible in income (and also is not subject to the 10-percent early withdrawal tax).

Loans from qualified plans to individuals sustaining an economic loss

Section 1400Q(c) provides an exception to the income inclusion rule for loans from a qualified employer plan related to Hurricanes Katrina, Rita, and Wilma made to a qualified individual during an applicable period and provides a repayment delay for loans that are outstanding on or after a qualified beginning date if the due date for any repayment with respect to such loan occurs after the qualified beginning date and December 31, 2006.

The exception to the general rule of income inclusion is provided to the extent that the loan (when added to the outstanding balance of all other loans to the participant from all plans maintained by the employer) does not exceed the lesser of (1) \$100,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or (2) the greater of \$10,000 or the participant's accrued benefit under the plan.

In the case of a qualified individual with an outstanding loan on or after the qualified beginning date from a qualified employer plan, if the due date for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date, and ending on December 31, 2006, such due date is delayed for one year. Any subsequent repayments with respect to such loan shall be appropriately adjusted to reflect the delay in the due date and any interest accruing during such delay. The period during which required repayment is delayed is disregarded in complying with the requirements that the loan be repaid within five years and that level amortization payments be made.

A qualified individual entitled to this plan loan relief includes a qualified Katrina individual, a qualified Rita individual, or a qualified Wilma individual. A qualified Hurricane Katrina individual is an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina. The qualified beginning date for a qualified Katrina individual is August 25, 2005 and the applicable period is the period beginning on September 24, 2005, and ending December 31, 2006.

A qualified Hurricane Rita individual is an individual whose principal place of abode on September 23, 2005, is located in a Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita. The qualified beginning date for a qualified

Hurricane Rita individual is September 23, 2005, and the applicable period is the period beginning on September 23, 2005, and ending on December 31, 2006.

A qualified Hurricane Wilma individual is an individual whose principal place of abode on October 23, 2005, is located in a Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma. The qualified beginning date for a qualified Hurricane Wilma individual is October 23, 2005, and the applicable period is the period beginning on October 23, 2005, and ending on December 31, 2006.

An individual cannot be a qualified individual with respect to more than one hurricane.

Plan amendments relating to Hurricanes Katrina, Rita, and Wilma

Section 1400Q(d) permits certain plan amendments made pursuant to any provision in section 1400Q, or regulations issued thereunder, to be retroactively effective. If the plan amendment meets the requirements of section 1400Q, then the plan will be treated as being operated in accordance with its terms. In order for this treatment to apply, the plan amendment is required to be made on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as provided by the Secretary of the Treasury. Governmental plans are given an additional two years in which to make required plan amendments. If the amendment is required to be made to retain qualified status as a result of the changes made by section 1400Q (or regulations), the amendment is required to be made retroactively effective as of the date on which the change became effective with respect to the plan, and the plan is required to be operated in compliance until the amendment is made. Amendments that are not required to retain qualified status but that are made pursuant to section 1400Q may be made retroactively effective as of the first day the plan is operated in accordance with the amendment. A plan amendment will not be considered to be pursuant to section 1400Q (or regulations) if it has an effective date before the effective date of the provision (or regulations) to which it relates.

House Bill

No provision.

Senate Amendment

The Senate amendment provides relief similar to the relief provided in section 1400Q with respect to use of retirement funds in connection with the tornadoes and storms that occurred in the Kansas disaster area.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Modification of the advanced coal project credit and the gasification project credit (sec. 15346 of the conference agreement and secs. 48A and 48B of the Code)

Present Law

Advanced coal project credit

An investment tax credit is available for power generation projects that use integrated gasification combined cycle (“IGCC”) or other advanced coal-based electricity generation technologies.⁶⁸ The credit amount is 20 percent for investments in qualifying IGCC projects and 15 percent for investments in qualifying projects that use other advanced coal-based electricity generation technologies.

To qualify, an advanced coal project must be located in the United States and use an advanced coal-based generation technology to power a new electric generation unit or to retrofit or repower an existing unit. Generally, an electric generation unit using an advanced coal-based technology must be designed to achieve a 99 percent reduction in sulfur dioxide and a 90 percent reduction in mercury, as well as to limit emissions of nitrous oxide and particulate matter.⁶⁹

The fuel input for a qualifying project, when completed, must use at least 75 percent coal. The project, consisting of one or more electric generation units at one site, must have a nameplate generating capacity of at least 400 megawatts, and the taxpayer must provide evidence that a majority of the output of the project is reasonably expected to be acquired or utilized.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. Certifications are issued using a competitive bidding process. The Secretary of Treasury must establish a certification program no later than 180 days after August 8, 2005,⁷⁰ and each project application must be submitted during the three-year period beginning on the date such certification program is established. An applicant for certification has two years from the date the Secretary accepts the application to provide the Secretary with evidence that the requirements for certification have been met. Upon certification, the applicant has five years from the date of issuance of the certification to place the project in service.

⁶⁸ Sec. 48A.

⁶⁹ For advanced coal project certification applications submitted after October 2, 2006, an electric generation unit using advanced coal-based generation technology designed to use subbituminous coal can meet the performance requirement relating to the removal of sulfur dioxide if it is designed either to remove 99 percent of the sulfur dioxide or to achieve an emission limit of 0.04 pounds of sulfur dioxide per million British thermal units on a 30-day average.

⁷⁰ The Secretary issued guidance establishing the certification program on February 21, 2006 (IRS Notice 2006-24).

The Secretary of Treasury may allocate \$800 million of credits to IGCC projects and \$500 million to projects using other advanced coal-based electricity generation technologies. Qualified projects must be economically feasible and use the appropriate clean coal technologies. With respect to IGCC projects, credit-eligible investments include only investments in property associated with the gasification of coal, including any coal handling and gas separation equipment. Thus, investments in equipment that could operate by drawing fuel directly from a natural gas pipeline do not qualify for the credit.

In determining which projects to certify that use IGCC technology, the Secretary must allocate power generation capacity in relatively equal amounts to projects that use bituminous coal, subbituminous coal, and lignite as primary feedstock. In addition, the Secretary must give high priority to projects which include greenhouse gas capture capability, increased by-product utilization, and other benefits.

Gasification project credit

A 20-percent investment tax credit is also available for investments in certain qualifying coal gasification projects.⁷¹ Only property which is part of a qualifying gasification project and necessary for the gasification technology of such project is eligible for the gasification credit.

Qualified gasification projects convert coal, petroleum residue, biomass, or other materials recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion. Qualified projects must be carried out by an eligible entity, defined as any person whose application for certification is principally intended for use in a domestic project which employs domestic gasification applications related to (1) chemicals, (2) fertilizers, (3) glass, (4) steel, (5) petroleum residues, (6) forest products, and (7) agriculture, including feedlots and dairy operations.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. Certifications are issued using a competitive bidding process. The Secretary of Treasury must establish a certification program no later than 180 days after August 8, 2005,⁷² and each project application must be submitted during the three-year period beginning on the date such certification program is established. The Secretary of Treasury may not allocate more than \$350 million in credits. In addition, the Secretary may certify a maximum of \$650 million in qualified investment as eligible for credit with respect to any single project.

House Bill

No provision.

⁷¹ Sec. 48B.

⁷² The Secretary issued guidance establishing the certification program on February 21, 2006 (IRS Notice 2006-25).

Senate Amendment

No provision.

Conference Agreement

In implementing either section 48A (relating to the credit described above) or section 48B (relating to the coal gasification credit), the provision directs the Secretary to modify the terms of any competitive certification award and any associated closing agreements in certain cases. Specifically, modification is required when it (1) is consistent with the objectives of such section, (2) is requested by the recipient of the award, and (3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base. However, no modification is required if the Secretary determines that the dollar amount of tax credits available to the taxpayer under the applicable section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary must consult with other relevant Federal agencies, including the Department of Energy.

Effective Date

The provision is effective for credit allocation awards issued before, on, or after the date of enactment.

D. Other Revenue Provisions

1. Limitation on farming losses of certain taxpayers (sec. 12501 of the Senate amendment, sec. 15351 of the conference agreement and sec. 461 of the Code)

Present Law

For taxpayers who materially participate (as defined in section 469(h)) in a farming activity, net farming losses are reported in full as a reduction to income from both passive and nonpassive sources. For taxpayers who do not materially participate in a farming activity, the passive activity rules of section 469 limit the ability to use such losses to reduce income from nonpassive sources.

Farming income generally includes sales of livestock, produce, grains, and other products; cooperative distributions; Agricultural Program Payments; certain Commodity Credit Corporation (“CCC”) loans (if an election is made to include loan proceeds in income in the year received); certain crop insurance proceeds and federal crop disaster payments; and other income. Farm expenses generally include feed, fertilizers, gasoline, fuel, and oil; insurance; interest; hired labor; rent and lease payments; repairs and maintenance; taxes; utilities; depreciation; and other business-related expenses. Living expenses and other personal expenses are not deductible farming expenses.

Present law (section 263A(e)(4))⁷³ defines a farming business as the trade or business of farming, including the trade or business of operating a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees (excluding evergreen trees that are more than six years old at the time severed from the roots). Treasury regulation section 1.263A-4(a)(4) further provides that a farming business generally means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. The raising, shearing, feeding, caring for, training, and management of animals are included in this definition. For example, the raising of cattle for sale is considered a farming business. However, the mere buying and reselling of plants or animals grown or raised entirely by another is not considered to be raising an agricultural or horticultural commodity. While a farming business does include processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products (e.g., harvesting, washing, inspecting, and packing fruits and vegetables for sale), it does not include the processing of commodities or products beyond those activities that are normally incident to the growing, raising, or harvesting of such products.

House Bill

No provision.

⁷³ This is the same definition of “farming business” used for averaging of farm income under section 1301.

Senate Amendment

The Senate amendment limits the amount of losses that can be claimed by an individual, estate, trust, or partnership on Schedule F to \$200,000 in cases where the taxpayer has received Agricultural Program Payments or CCC loans. Losses that are limited in a particular year may be carried forward to subsequent years.

Effective date.—The provision is effective for taxable years beginning after December 31, 2007.

Conference Agreement

The conference agreement follows the Senate amendment with modifications. The conference agreement limits the farming loss of a taxpayer, other than a C corporation, for any taxable year in which any applicable subsidies are received to the greater of (1) \$300,000 (\$150,000 in the case of a married person filing a separate return), or (2) the taxpayer's total net farm income for the prior five taxable years. For purposes of the provision, applicable subsidies are (1) any direct or counter-cyclical payments under title I of the Food, Conservation, and Energy Act of 2008 (or any payment elected in lieu of any such payment), or (2) any CCC loan. Total net farm income is an aggregation of all income and loss from farming businesses for the prior five taxable years.

The following examples illustrate the operation of this provision:

Example 1.—Assume an individual taxpayer has \$1 million of net income from a farming business in each taxable year 2010 to 2014, and incurs a \$5 million farming loss in 2015. For purposes of this provision, the farming loss in 2015 is limited to the greater of (1) \$300,000 or (2) \$5 million (total net farm income for the prior five taxable years). Thus, the farming loss is allowable in full in 2015. Assuming the taxpayer had no other income or deductions in any of the taxable years 2010 to 2015, the \$5 million net operating loss for 2015 is carried back to the prior five taxable years under the present-law net operating loss carryback rules and reduces the taxpayer's taxable income in each of those years to zero.⁷⁴

Example 2.—Assume an individual taxpayer has \$300,000 of net farm income and \$700,000 of non-farm income in 2010, and \$1 million of net farm income in each taxable year 2011 to 2014. In 2015, the taxpayer incurs a \$7 million farming loss. For purposes of this provision, the farming loss in 2015 is limited to the greater of (1) \$300,000 or (2) \$4.3 million (total net farm income for the prior five taxable years). Thus, \$2.7 million of the farming loss is disallowed under the provision and will be treated as a deduction attributable to a farming business in 2016. The \$4.3 million farming loss allowed for 2015 is carried back to the prior five taxable years and allowed as a deduction under present-law rules. The taxpayer's taxable

⁷⁴ Under section 172(b)(1)(G), farming losses may be carried back to each of the five taxable years preceding the taxable year of the loss.

income in each of the years 2010⁷⁵ to 2013 is reduced to zero and taxable income in 2014 is reduced by the remaining farm loss of \$300,000 to \$700,000.

For purposes of calculating total net farm income for the prior five years, losses that are limited under the provision are taken into account in the year in which they are allowed as a deduction. For example, if a taxpayer has a \$500,000 excess farm loss in 2010 that is not allowed as a deduction until 2012, the calculation in 2011 of total net farm income for the prior five years does not take into account the \$500,000 as a farm loss. Instead, the \$500,000 loss would be included in the calculation of prior year's total net farm income for taxable years 2013 through 2017. In the case where the filing status of the taxpayer is not the same for the taxable year and each of the taxable years in the five-year period, the Treasury Department is authorized to provide guidance for the computation of total net farm income.

In the case of a partnership or S corporation, the limit is applied at the partner or shareholder level.⁷⁶ Therefore, each partner or shareholder takes into account its proportionate share of income, gain, or deduction from farming businesses of a partnership or S corporation, and any applicable subsidies received by a partnership or S corporation during the taxable year (regardless of whether such items are treated as income for Federal tax purposes).

For purposes of the provision, the term "farming business" has the meaning provided in present-law section 263A(e)(4), with a modification for certain processing activities. Thus, for purposes of this provision, the conference agreement broadens the definition of "farming business" to include the processing of commodities, without regard to whether such activity is incidental, by a taxpayer otherwise engaged in a farming business with respect to such commodities. The farming activities of a cooperative are attributed to each member for purposes of this rule. Thus, a member of a cooperative who raises a commodity and sells it to the cooperative for processing is considered to be the processor of such commodity. In this case, patronage dividends received from a cooperative that is engaged in a farming business are considered to be income from a farming business for purposes of this provision.

As under the Senate amendment, any loss that is disallowed under the provision in a particular year is carried forward to the next taxable year and treated as a deduction attributable to farming businesses in that year.

Farming losses arising by reason of fire, storm, or other casualty, or by reason of disease or drought, are disregarded for purposes of calculating the limitation.

⁷⁵ The loss carryback to 2010 reduces both the \$300,000 of net farm income and \$700,000 of non-farm income to zero.

⁷⁶ The Treasury Department may provide guidance for the application of this provision to any other pass-thru entity to the extent necessary to carry out the purposes of this provision. In the case of tiered partnership or pass-thru entity structures, the Treasury Department may provide guidance as necessary to carry out the purposes of this provision.

Treasury regulatory authority is provided to prescribe such additional reporting requirements as appropriate to carry out the purposes of this provision.

Effective date.—The provision is effective for taxable years beginning after December 31, 2009.

2. Increase and index dollar thresholds for farm optional method and nonfarm optional method for computing net earnings from self-employment (sec. 12502 of the Senate amendment, sec. 15352 of the conference agreement and sec. 1402(a) of the Code)

Present Law

In general

Generally, tax under the Self-Employment Contributions Act (SECA) is imposed on the self-employment income of an individual. SECA tax has two components. Under the old-age, survivors, and disability insurance component, the rate of tax is 12.40 percent on self-employment income up to the Social Security wage base (\$97,500 for 2007). Under the hospital insurance component, the rate is 2.90 percent of all self-employment income (without regard to the Social Security wage base).

Self-employment income subject to the SECA tax is determined as the net earnings from self-employment. An individual may use one of three methods to calculate net earnings from self-employment. Under the generally applicable rule, net earnings from self-employment means gross income (including the individual's net distributive share of partnership income) derived by an individual from any trade or business carried on by the individual, less the deductions attributable to the trade or business that are allowed under the SECA tax rules. Alternatively, an individual may elect to use one of two optional methods for calculating net earnings from self-employment. These methods are: (1) the farm optional method; and (2) the nonfarm optional method. The farm optional method allows individuals to pay SECA taxes (and secure Social Security benefit coverage) when they have low net income or losses from farming. The nonfarm optional method is similar to the farm optional method.

Farm optional method

If an individual is engaged in a farming trade or business, either as a sole proprietor or as a partner, the individual may elect to use the farm optional method in one of two instances. The first instance is an individual engaged in a farming business who has gross farm income of \$2,400 or less for the taxable year. In this instance, the individual may elect to report two-thirds of gross farm income as net earnings from self-employment. In the second instance, an individual engaged in a farming business may elect the farm optional method even though gross farm income exceeds \$2,400 for the taxable year but only if the net farm income is less than \$1,733 for the taxable year. In this second instance, the individual may elect to report \$1,600 as net earnings from self-employment for the taxable year. In all other instances (i.e., more than \$2,400 of gross farm income and net farm income of at least \$1,733) a person engaged in a farming business must compute net earnings from self-employment under the generally applicable rule. There is no limit on the number of years that an individual may elect the farm optional method during such individual's lifetime.

The dollar limits in the farm optional method are not indexed for inflation.

Nonfarm optional method

The nonfarm optional method is available only to individuals who have been self-employed for at least two of the three years before the year in which they seek to elect the nonfarm optional method and who meet certain other requirements. Specifically, an individual may elect the nonfarm optional method if the individual's: (1) net nonfarm income for the taxable year is less than \$1,733; and (2) net nonfarm income for the taxable year is less than 72.189 percent of gross nonfarm income. If a qualified individual engaged in a nonfarming business who elects the nonfarm optional method has gross nonfarm income of \$2,400 or less for the taxable year, then the individual may elect to report two-thirds of gross nonfarm income as net earnings from self-employment. If the electing individual engaged in a nonfarming business has gross nonfarm income of at least \$2,400 for the taxable year, then the individual may elect to report \$1,600 as net earnings from self-employment for the taxable year. In all other instances, a person engaged in a nonfarming business must compute net earnings from self-employment under the generally applicable rule. An individual may elect to use the nonfarm optional method for no more than five years in the course of the individual's lifetime.

The dollar limits in the nonfarm optional method are not indexed for inflation.

Other rules applicable to farm optional and nonfarm optional methods

In the case of a cash method trade or business, gross income is defined as the gross receipts from such trade or business less the cost or other basis of property sold in carrying out such trade or business with certain adjustments. In the case of an accrual method trade or business, gross income is defined as the gross income from the trade or business with certain adjustments. If an individual (including a member of a partnership) derives gross income from more than one trade or business then such gross income (including the individual's distributive share of the gross income of any partnership) is treated as derived from a single trade or business.

Social Security benefit eligibility

Generally, Social Security benefits can be paid to an individual (and dependents or survivors) only if that individual has worked long enough in covered employment to be insured. Insured status is measured in terms of "credits," previously called "quarters of coverage." For this purpose, Social Security uses the lifetime record of earnings reported for that individual. In the case of a self-employed individual, net earnings from self-employment is used to calculate Social Security benefit eligibility.

Up to four quarters of coverage can be earned for a year, depending on covered wages for the year and the amount needed to earn each quarter of coverage. For 2007, credit for a quarter of coverage is provided for each \$1,000 of wages.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the farm optional method so that electing taxpayers may be eligible to secure four credits of Social Security benefit coverage each taxable year by increasing and indexing the thresholds. The provision makes a similar modification to the nonfarm optional method.

Effective date.—The provision is effective for taxable years beginning after December 31, 2007.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Information reporting for commodity credit corporation transactions (sec. 12503 of the Senate amendment, sec. 15353 of the conference agreement and new sec. 6039J of the Code)

Present Law

The Farm Security and Rural Investment Act of 2002⁷⁷ authorizes a marketing assistance loan program through the Commodity Credit Corporation (“CCC”). Under such program, the CCC may make loans for eligible commodities at a specified rate per unit of commodity (the original loan rate). The repayment amount for such a loan secured by an eligible commodity generally is based on the lower of the original loan rate or the alternative repayment rate, as determined by the CCC, as of the date of repayment. The alternative repayment rate may be adjusted to reflect quality and location for each type of commodity. A taxpayer receiving a CCC loan can use cash to repay such a loan, purchase CCC certificates for use in repayment of the loan, or deliver the pledged collateral as full payment for the loan at maturity.

If a taxpayer uses cash or CCC certificates to repay a CCC loan, and the loan is repaid at a time when the repayment rate is less than the original loan rate, the difference between the original loan amount and the lesser repayment amount is market gain. Regardless of whether a taxpayer repays a CCC loan in cash or uses CCC certificates in repayment of the loan, the market gain is taken into account either as income or as an adjustment to the basis of the commodity (if the taxpayer has made an election under section 77).

If a farmer uses cash instead of certificates, the farmer will receive a Form CCC-1099-G Information Return showing the market gain realized. For transactions prior to January 1, 2007, however, if a farmer uses CCC certificates to facilitate repayment of a CCC loan, the farmer will not receive an information return. For loans repaid on or after January 1, 2007, IRS Notice 2007-63 provides that the CCC reports market gain associated with the repayment of a CCC loan

⁷⁷ Pub. L. No. 107-171.

whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan.⁷⁸ The CCC reports the market gain on Form 1099-G, Certain Government Payments.

House Bill

No provision

Senate Amendment

The Senate amendment codifies the requirements of IRS Notice 2007-63 providing that the CCC reports market gain associated with the repayment of a CCC loan, regardless of whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan.

Effective date.—The provision is effective for loans repaid on or after January 1, 2007.

Conference Agreement

The conference agreement includes the Senate amendment provision.

⁷⁸ 2007-33 IRB.

E. Protection of Social Security (sec. 15361 of the conference agreement)

To ensure that the assets of the trust funds established under section 201 of the Social Security Act are not reduced as the result of the enactment of this Act, the Secretary of the Treasury shall transfer certain amounts annually from the general revenues of the Federal Government to those trust funds.

IV. TRADE PROVISIONS

A. Extension of Certain Trade Benefits (secs. 15401-15407 and 15410-15411 of the conference agreement)

Present Law

Sec. 213A of the Caribbean Basin Recovery Act (19 U.S.C. 2703a) establishes the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“HOPE I”). HOPE I extended preferences to Haiti for apparel meeting certain rules of origin, and for certain automotive wire harnesses.

With respect to apparel, HOPE I extended preferential treatment to three categories of apparel: (1) apparel meeting a value-added rule of origin; (2) limited quantities of woven apparel wholly assembled in Haiti; and (3) brassieres meeting a cut and sew requirement.

HOPE I (in section 213A(d)) conditions Haiti’s eligibility for these preferences on the President determining and certifying that Haiti has either established, or is making continual progress towards establishing, protection of internationally recognized worker rights. These rights include the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age of employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The use of the HOPE I preference program has been very limited to date.

In fact, just 1.6% of Haiti’s apparel exports in 2007 were under the HOPE I program. The Conferees believe that the limited use of the program is largely attributable to HOPE I’s complex value-added rule of origin. As a result, the economic benefits – namely, new investment and significant new job creation – that the preference program was intended to spread widely to foster stability and security in Haiti have not been forthcoming.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

To address the deficiencies in HOPE I, the conference report includes the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), which provides additional ways (under simplified rules) that Haitian apparel can qualify for duty-free treatment, as well as authorizing a new apparel sector labor capacity building and monitoring program (the Technical Assistance Improvement and Compliance Needs Assessment and Remediation Program or “TAICNAR program”) to ensure the benefits of the new preferences

are spread widely. The Conferees intend HOPE II to help Haitian industry attract new investment and create immediate jobs, generate income for workers to cover increased food costs and pay for other necessities, and continue to provide incentives to encourage the use of inputs manufactured by U.S. companies.

Key aspects of the HOPE II apparel provisions are outlined below. The Conferees note that HOPE II creates six discrete stand alone rules for apparel (and some textile) products to qualify for preferential treatment: (1) the value-added rule (as provided for in HOPE I, subject to a change in the cap); (2) a capped benefit for woven apparel meeting a wholly assembled/knit-to-shape rule; (3) a capped benefit for certain knit apparel meeting a wholly assembled/knit-to-shape rule; (4) an uncapped benefit for certain types of apparel meeting a wholly assembled/knit-to-shape rule; (5) an uncapped benefit for apparel meeting a wholly assembled/knit-to-shape rule under the “3 for 1” Earned Import Allowance Program; and (6) an uncapped benefit for apparel meeting a wholly assembled/knit-to-shape rule, where the apparel is made from “short supply” yarns or fabrics. The Conferees note that if a capped benefit is filled in a given year, an importer can still use one or more of the other rules. In addition, apparel from Haiti may also qualify for preferential access to the U.S. market under the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106-200) (CBTPA).

Ten Year Duration.—The conference report extends most apparel preferences, including all apparel preferences created under HOPE II, for 10 years, until September 30, 2018. The ten year duration is aimed at fostering a more stable investment climate for businesses seeking to use HOPE I or II preferences.

Expanded Preferences for Woven Apparel.—The conference report expands the HOPE I “woven apparel cap” to 70 million square meters equivalents (“SMEs”), and extends the benefit for 10 years. Apparel exported under this provision can qualify for preferences if the apparel is “wholly assembled” or knit-to-shape, or both, in Haiti, without regard to the origin of the fabric (or fabric components, or components knit to shape, or yarn) comprising the apparel article. The definition of “wholly assembled” is taken from existing Customs regulations.

New Knit Apparel Cap.—HOPE II creates a new “knit apparel cap” of 70 million SMEs, with exclusions for men’s/boys’ cotton t-shirts, men’s/boys’ mmf t-shirts, certain men’s/boys’ sweatshirts/pullovers, and certain men’s/boy’s cotton-blend sweatshirts. Apparel exported under this provision can qualify for preferences if the apparel is “wholly assembled” or knit-to-shape, or both, in Haiti, without regard to the origin of the fabric (or fabric components, or components knit to shape, or yarn) comprising the apparel article.

Modified Single Transformation Rule for Certain Apparel and Certain Luggage.—HOPE II extends preferential treatment to certain apparel articles wholly assembled, or knit to shape, or both, in Haiti, without regard to the origin of the fabric (or fabric components, or components knit to shape, or yarn) comprising the apparel article. The apparel articles covered by this provision are: (1) brassieres; (2) those apparel articles covered by the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA-DR) “single transformation” rule; (3) headgear; and (4) certain sleepwear.

With regard to covered sleepwear, HOPE II extends preferences to women's and girls' pajama bottoms (i.e., sleep pants), regardless of whether such bottoms are a separate garment or are part of a set.

HOPE II also extends preferential treatment to luggage and handbags wholly assembled in Haiti, without regard to the source of the fabric, materials or components. The Conferees did not include the concept of knit-to-shape in this provision, because such processing does not typically occur for such luggage/handbags.

“3 for 1” EIA Program for Knit or Woven Apparel.—HOPE II creates a “3 for 1” earned import allowance program (EIA) to be developed and administered by the Secretary of Commerce. Under the “3 for 1” EIA, Haitian producers or entities controlling production that purchase qualifying fabric for apparel production in Haiti may export other apparel to the United States duty-free, and not subject to quantitative limitations, regardless of the origin of the fabric (or fabric components, components knit to shape, or yarns) from which the apparel product is made. Specifically, for every 3 SMEs of qualifying fabric purchased, a producer or entity controlling production receives a “credit” for 1 SME that can be used in the manufacture of apparel using non-qualifying fabric (e.g., Taiwanese fabric). The Secretary of Commerce is to establish electronic “accounts” for producers or entities controlling production where such “credits” can be deposited. A producer or entity controlling production can then withdraw these credits for an “earned import allowance certificate” that reflects the requested number of credits. Apparel wholly assembled, or knit to shape, or both, in Haiti using non-qualifying fabric may enter the United States duty-free, if the apparel is accompanied by such an “earned import allowance certificate” that reflects the number of credits equal to the SMEs of the apparel for which preferential treatment is sought.

An example may help illustrate the process: Producer A in Haiti purchases 300 SMEs of denim fabric woven in the United States using U.S. yarns in order to manufacture jeans in Haiti. Producer A, upon submission of documentation supporting the purchase of the U.S. denim (such documentation can include information submitted by the U.S. textile mill that exported the fabric), will receive 100 credits in Producer A's Commerce Department account. If Producer A subsequently wants to export jeans that are wholly assembled in Haiti to the United States duty-free and such jeans are wholly assembled in Haiti from Italian denim, Producer A would redeem all or part of the accrued 100 credits for the requisite earned import allowance certificate. For instance, if the jeans made with the Italian fabric account for 50 SMEs, Producer A would request a certificate that equaled 50 credits.

In HOPE II, the Conferees have established principles for the “3 for 1” EIA program. The Conferees expect and intend the Secretary of Commerce to establish additional requirements in order to make the program efficient, workable, and administrable, and have provided the Secretary with the authority to promulgate and enforce such requirements. In addition, the Conferees urge the Secretary of Commerce to establish the “3 for 1” EIA program as an electronic program, including with respect to the EIA certificate.

The Conferees note that woven and knit fabrics are treated differently under the HOPE II-created EIA program. Specifically, qualifying woven fabric must be wholly formed in the United States, from U.S. yarns (subject to some limited exceptions). Qualifying knit fabric may

be wholly formed or knit to shape in the United States, U.S. free trade agreement (FTA) partner country or U.S. preference partner country (e.g., a beneficiary country under the African Growth and Opportunity Act), or any combination, from U.S. yarns (subject to some limited exceptions).

Modified Single Transformation Rule for Apparel Made from “Short Supply”

Fabrics/Yarns.—HOPE II also includes a provision to extend duty-free treatment to any apparel article wholly assembled or knit to shape, or both, in Haiti where the apparel article is made from fabrics or yarns designated as not being available in commercial quantities under any U.S. preference program or FTA, or is covered by certain provisions of Annex 401 of the NAFTA (i.e., those provisions which extend duty-free treatment to apparel notwithstanding the origin of fabric or yarns). The Conferees note that the entire apparel article need not be made from a “short supply” fabric or yarn – only the fabric, fabric components, components knit to shape, or yarns that make up the component that determines the tariff classification of the article need be made of “short supply” fabrics or yarns for entry under this rule.

Transition Value-Added Rule.—HOPE II preserves the existing value-added rule of origin from HOPE I, but freezes the cap for exports qualifying for this rule at the 2008 level (i.e., 1.25% of U.S. apparel imports). Under HOPE II, the value-added rule retains the termination date provided for in HOPE I (five years from enactment of HOPE I). The Conferees chose to sunset this provision as provided for in HOPE I and not extend the rule for an additional ten years, because Haitian exports under the value-added rule have been minimal, reflecting the complexity of the rule. The conferee notes that more flexible value-added rules applied to apparel in other preferential trade arrangements (e.g., the United States-Jordan Free Trade Agreement) have been effective in increasing trade.

Allow Direct Shipment from and Co-production in the Dominican Republic.—HOPE II recognizes the unique situation of Haiti and the Dominican Republic, the two sovereign nations that share the Caribbean island of Hispaniola, and the ties between the textile and apparel industries of both countries. The Conferees believe that existing ties between the textiles and apparel industries of both countries should be maintained and strengthened. Toward that end, HOPE II allows direct shipment from the Dominican Republic of apparel qualifying under section 213A, as amended by HOPE II. The direct shipment provision will minimize transit times and costs when apparel wholly assembled or knit to shape in Haiti is sent to the Dominican Republic for packaging or post-assembly operations.

The Conferees have included direction to the Commissioner responsible for U.S. Customs and Border Protection to provide technical and other assistance to Haiti and the Dominican Republic to develop procedures to prevent unlawful transshipment and use of counterfeit documents. The Conferees intend that assistance to be provided expeditiously and in a manner that facilitates trade, and to include assisting Haiti and the Dominican Republic in developing a secure, electronic system to combat unlawful transshipment and use of counterfeit documents.

The Conferees also expect the processing requirement necessary for an apparel article to qualify under HOPE II – that is, that apparel be wholly assembled or knit to shape, or both, in Haiti – to facilitate co-production between Haiti and the Dominican Republic. The HOPE II processing requirement does not preclude assembly or other operations from occurring outside

Haiti. Co-production operations performed in the Dominican Republic could include, but are not limited to, activities such as minor assembly, repair, embellishment, and finishing.

Clarifications on Administration of Caps.—HOPE II clarifies that exports qualifying for preferences under apparel provisions not subject to quantitative limitations (e.g., the apparel qualifying under the rules contained in section 213A(b)(3), as amended by HOPE II) should not be included in the calculation of any quantitative limitations contained in HOPE II. In addition, apparel qualifying under a rule subject to a particular cap (e.g., the woven or knit apparel caps in section 213A(b)(2), as amended by HOPE II), should not be counted against another cap (e.g., the value-added cap, included in section 213A(b)(1), as amended by HOPE II). Finally, the legislation clarifies that HOPE II benefits are *in addition* to preferences extended to Haitian exports under the Caribbean Basin Economic Recovery Act (CBERA), including apparel preferences under section 213(b)(2) of the CBERA, as amended, and that apparel exports qualifying for preferences under 213(b)(2) should not be counted against the quantitative limitations established in HOPE II.

Labor Provisions. The conference agreement amends Section 213A of the Caribbean Basin Recovery Act to include new provisions to promote compliance with core labor standards, as enumerated in the legislation, and to improve working conditions, in particular in the textile and apparel sector. The Conferees recognize that the core labor standards defined in the legislation refer to the rights as listed in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work and its Follow Up. Specifically, HOPE II requires that the President certify, within 16 months of enactment, that Haiti has created an independent Labor Ombudsman's Office responsible for performing the functions set forth in the conference agreement and established, with the assistance of the International Labor Organization ("ILO"), the TAICNAR Program. Unless the President extends the period for meeting these requirements, which is permitted under certain limited conditions set out in the conference agreement, the President is required to terminate Haiti's eligibility for preferential treatment under the section.

The functions of the Labor Ombudsman include overseeing the implementation of the TAICNAR Program, maintaining a registry of the textile and apparel producers that may seek preferential treatment and coordinating a committee comprised of representatives of government agencies, employers, and workers to consult on the implementation of the TAICNAR Program and other matters of common concern. The Labor Ombudsman is also responsible for receiving comments from interested parties about the labor conditions in the facilities of the registered producers and, where such comments are submitted in good faith and supported with evidence, directing the comments to the ILO or the appropriate Haitian government official. Further, where registered producers are found to have deficiencies, the Labor Ombudsman also shares responsibility for assisting them in complying with core labor standards and national labor laws directly relating to the standards and acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety. In performing its functions, the Labor Ombudsman is expected to coordinate and consult with other appropriate Haitian government officials (e.g., in the Ministry of Labor).

The TAICNAR Program is comprised of two elements. The first element of the program is technical assistance from the ILO to build Haiti's own capacity to inspect the facilities of

registered textile and apparel producers, enforce its labor laws, and resolve labor disputes. The scope of such assistance is broad, including ILO assistance in reviewing national labor laws and regulations and bringing them into compliance with core labor standards, increasing awareness of worker rights, and on-the-job training for labor inspectors, judicial officers, and other government officials.

The second element of the TAICNAR Program is ILO assessment of compliance with core labor standards and national labor laws in the facilities of the producers registered with the Labor Ombudsman and, where necessary, assistance with remediating deficiencies. Consistent with existing practice under its Better Factories Cambodia and Better Works programs, the ILO has a number of tools to perform such assessments, including unannounced site visits and confidential interviews with management and workers. The results of the assessment are reported, confidentially in the first instance, to the management and workers (or, where there is union representation, worker representatives) together with suggestions for remediation of deficiencies. Under the program, the ILO then aids the producer in remediating any deficiencies, with assistance, if necessary, from the Labor Ombudsman or other parties. Every six months, following implementation of the TAICNAR Program by Haiti, the ILO is expected to publish a public report on the assessments it has conducted during the preceding six-month. Such reports will identify the specific factories assessed and the conditions in these factories.

To encourage compliance with core labor standards and national labor laws directly related to core labor standards, the conference agreement provides for preferential treatment to be denied in certain circumstances. Specifically, the conference agreement directs the President to identify (on a biennial basis, beginning in the second year after implementation) producers who are failing to comply with these compliance conditions. The President is directed to offer assistance to any such producers in meeting the compliance conditions and, if the assistance is refused or if the producer otherwise fails to come into compliance, to withdraw, suspend, or limit preferential treatment to articles of the producer. The preferential treatment may be reinstated if the President later determines that the producer has come into compliance with core labor standards and national labor laws directly related to core labor standards. In making both the initial identification of non-compliant producers and any later reinstatement determination, the President is to consider the reports of the ILO.

**B. Extension of CBTPA
(sec. 15408-15409 of the conference agreement)**

Present law

The Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)), as amended by the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106-200) (CBTPA), provides that eligible textile and apparel articles of a designated CBTPA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has implemented the necessary procedures and requirements. These preference program provisions expire on September 30, 2008.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement amends section 213(b) of the Caribbean Basin Economic Recovery Act to extend the Caribbean Basin Trade Partnership Act, including the textile and apparel preference program provisions, through September 30, 2010.

**C. Unused Merchandise Drawback
(sec. 15421 of the conference agreement)**

Present law

Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) currently provides for unused merchandise drawback. Unused drawback is permitted if imported merchandise is exported or destroyed within 3 years of import without being used in the United States. Pursuant to section 313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2)), domestic or imported merchandise that is commercially interchangeable with the imported merchandise may be substituted for the imported merchandise and drawback granted on the export or destruction of the substituted merchandise within the 3-year period beginning on the date of importation. The drawback is limited to 99% of the duty, tax and fee imposed under Federal law on the imported merchandise upon entry or importation.

Section 313(j)(2) of the Tariff Act of 1930 does not contain a definition of “commercially interchangeable.” From late 2001 to May 2007, U.S. Customs and Border Protection (CBP) paid drawback claims on wine based on white domestic and imported table wine being commercially interchangeable with relatively valued imported white table wine. Red domestic and imported table wine was also considered to be commercially interchangeable with relatively valued imported red table wine. Relatively valued wine was considered to be wine within a price range of 50%.

CBP informed wine drawback claimants in May 2007 that, effective immediately, the above standard for commercial interchangeability was no longer applicable. CBP did not provide a definitive new standard but stated that the criterion of the varietal wine should have been a determining factor in determining commercial interchangeability.

The new provision carries forward the standard used for commercial interchangeability from 2001 to May 2007, and provides certainty for the filing and processing of unused drawback claims for imported and exported wine.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement amends section 313(j)(2) of the Tariff Act of 1930, to provide a standard for what is considered to be “commercially interchangeable” for purposes of unused merchandise drawback for wine. The provision is effective for claims filed for drawback on or after the date of enactment.

**D. Requirements Relating to Determination of Transaction
Value of Imported Merchandise
(sec. 15422 of the conference agreement)**

Present Law

No provision.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The Conference agreement includes an importer declaration requirement for one year to assist in gathering information on the valuation of goods imported into the United States.

The value of merchandise imported into the United States is determined primarily under transaction value. Transaction value is defined in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)(1)) as the price actually paid or payable for the merchandise when sold for exportation to the United States. Import transactions can involve one sale of the imported goods prior to importation or a series of sales. In the multiple sale scenario, Customs and Border Protection (“CBP”) currently permits importers to base transaction value on the price paid by the buyer in the first or earlier sale (e.g. the sale between the manufacturer and the intermediary), provided the importer can establish by sufficient evidence that the sale was at arm’s length and that at the time of such sale, the merchandise was clearly destined for exportation to the United States.

On January 24, 2008, CBP published in the Federal Register a proposed interpretation of the expression “sold for exportation to the United States.” 73 Fed. Reg. 4254 (Jan. 24, 2008). In the publication, CBP proposed that when imported merchandise has been subject to a series of sales prior to importation, the price actually paid or payable for the imported goods when sold for exportation is the price paid in the last sale occurring prior to the introduction of the goods into the United States.

Congress has serious concerns that CBP did not provide Congress or the importing community with any notice about its proposed interpretation. Congress also has serious concerns that CBP proposed its new interpretation without conducting adequate analysis of the proposed impact of such interpretation. Moreover, Congress has received several concerns and questions about CBP’s proposed interpretation, including questions of the number and value of importations that would be impacted by the change. CBP informed Congress that it does not keep records indicating which importers are basing transaction value on the price paid by the buyer in the first or earlier sale. Therefore, there is no information available to assess which sectors are using this provision, the extent of its use, and probable impact on the United States.

The Conferees through section (a) require Customs to collect adequate information regarding the impact of such proposal by requiring that importers declare whether the transaction value of the imported merchandise is determined on the basis of the price paid in the first or earlier sale occurring prior to introduction of the merchandise into the United States. The term “first or earlier sale” as used in subsection (a)(2) is intended to refer to the current CBP interpretation expressed in the January 24, 2008 Federal Register Notice.

Subsection (b) requires CBP to provide the collected information to the United States International Trade Commission (“ITC”) on a monthly basis. The Conferees intend for CBP and ITC to mutually agree on the format in which CBP will submit the data for ITC use. Subsection (c) requires the ITC to submit a report to the House Ways and Means Committee and the Senate Finance Committee within ninety days of receipt of CBP’s last monthly report.

In subsection (d), the Conferees express a sense of Congress that CBP should not before January 1, 2011, implement a change of interpretation of the expression “sold for exportation to the United States” for purposes of applying the transaction value of the imported merchandise in a series of sales. It is the sense of Congress that after January 1, 2011, CBP may propose to change or change its interpretation only if CBP: (1) consults with and provides notice to the appropriate committees not less than 180 days prior to proposing a change and not less than 90 days prior to publishing a change; (2) consults with, provides notice to, and takes into consideration views expressed by the Commercial Operations Advisory Committee not less than 120 days prior to proposing a change and not less than 60 days prior to publishing a change; and (3) receives the explicit approval of the Secretary of Treasury prior to publishing a change. The term “publishing”, as used in subsection (d), includes any notice CBP may provide to the regulated community through a public notice.

Through subsection (d)(3), the Conferees express a sense of Congress that CBP should take into consideration the ITC report as referenced in subsection (b) before publishing any change to the expression “sold for exportation to the United States.”

V. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the “Code”) and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have “widespread applicability” to individuals or small businesses.

COMPLIANCE WITH RULE XXI, CL.9 (HOUSE) AND WITH RULE XLIV
(SENATE)

The following list is submitted in compliance with clause 9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate, which require publication of a list of congressionally directed spending items (Senate), congressional earmarks (House), limited tax benefits, and limited tariff benefits included in the conference report, or in the joint statement of managers accompanying the conference report, including the name of each Senator, House Member, Delegate, or Resident Commissioner who submitted a request to the Committee of jurisdiction for each item so identified. Congressionally directed spending items (as defined in the Senate rule) and congressional earmarks (as defined in the House rule) in this division of the conference report or joint statement of managers are listed below. Neither the conference report nor the statement of managers contains any limited tax benefits or limited tariff benefits as defined in the applicable House and Senate rules.

MEMBER	PROGRAM DESCRIPTION	FUNDING LEVEL
Baucus	National Sheep and Goat Industry Improvement Center	\$1 million
Baucus	Appropriate Technology Transfer to Rural Areas	authorized for appropriation
Baucus	Camelina Pilot Program	\$9 million
Biden	Chesapeake Bay Watershed Conservation Program	\$382 million
Cardin	Chesapeake Bay Watershed Conservation Program	\$382 million
Casey	Chesapeake Bay Watershed Conservation Program	\$382 million
Chambliss	Cost Share Assistance for Wildlife Corridors	Up to \$100 million
Cochran	Natural Products Research Laboratory	authorized for appropriation
Conrad	Grants to Broadcasting Systems	authorized for appropriation
Harkin	Congressional Hunger Center	authorized for appropriation
Harkin	Appropriate Technology Transfer to Rural Areas	authorized for appropriation
Harkin	Policy Research Centers	authorized for appropriation
Hinojosa	Housing Assistance Council	authorized for appropriation
Inouye	Insular Pacific Sun Grant Sub-Center	authorized for appropriation
Inouye	Education Grants to Alaska Native Serving Institutions and Native Hawaiian Serving Institutions	authorized for appropriation
Kohl	Housing Assistance Council	authorized for appropriation
Nelson	Drought Mitigation Center/ University of Nebraska	authorized for appropriation
Reid	Desert Terminal Lakes/ Nevada	\$175 million FY 08-12
Roberts	Consortium for Agricultural for Agricultural Soils Mitigation of Greenhouse Gases/ Kansas State University	authorized for appropriation
Stevens	Education Grants to Alaska Native Serving Institutions and Native Hawaiian Serving Institutions	authorized for appropriation
Stevens	Water Systems for Rural and Native Villages in Alaska	authorized for appropriation