



**Agricultural Law Press**  
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# Agricultural Law Digest

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## The Agricultural Act of 2014

-by Neil E. Harl\*

The long-awaited replacement to the Food, Conservation, and Energy Act of 2008,<sup>1</sup> which was to expire in 2012, but was extended by the Congress for one more year,<sup>2</sup> languished as the Agriculture Reform, Food and Jobs Act of 2013<sup>3</sup> with the substantial differences reconciled on January 27, 2014, passed by both Houses of Congress and was signed by the President on February 7, 2014 as the Agricultural Act of 2014, hereinafter "Ag Act."<sup>4</sup> Failure to pass the legislation would have activated the 1938 legislation<sup>5</sup> and the 1949 legislation<sup>6</sup> both of which were permanent legislation and would have gone into effect by default had the Congress failed to enact replacement legislation for the 2008 Act.

### Budgetary impacts

The final legislation is expected to involve expenditures of \$489 billion over the next 5-years with \$391 billion for nutrition assistance and \$98 billion for agriculture programs (which includes \$90 billion for crop insurance, \$58 billion for conservation, \$44 billion for farm commodity programs and lesser amounts for trade, horticulture, research and bioenergy.<sup>7</sup>

The discussion following focuses on the 12 titles of the 2014 legislation.

### Farm commodities, Title I

The legislation makes significant but not major changes in farm commodity policy.

*Direct payments.* One expected outcome was the repeal of the direct payments provision.

#### Ag Act § 1101, repealing 7 U.S.C. §§ 8713, 8753.

*Price and revenue protection.* The legislation also repealed countercyclical payments but enacted a new provision instead. **Ag Act § 1101, repealing 7 U.S.C. § 8714, 8754.** The legislation retains a countercyclical price program (referred to as Price Loss Coverage or PLC) which provides a benefit if the farm price for the covered crop in question declines below "reference prices" which are higher than the target prices in the 2008 legislation. For corn, the "reference price" is \$3.70 per bushel. For soybeans the figure is \$8.40 per bushel and for wheat is \$5.50 per bushel. **Ag Act § 1111(18).** Current policy is continued by making payments on 85 percent of historical planted acreage or "base acres." The base acre figures can be updated for plantings from 2009 through 2012. **Ag Act § 1112.**

*Agriculture Risk Coverage.* This program, referred to as ARC, is an alternative to PLC and covers a portion of a producer's out-of-pocket loss when crop revenues decline with payments, again, on 85 percent of the base acres. **Ag Act § 1117.** Payments are triggered when actual crop revenue drops below 86 percent of historical or benchmark revenue. **Ag Act § 1117(c).** Both this program and PLC are separate from the crop insurance program. Producers electing Price Loss Coverage (PLC) are eligible to purchase an additional subsidized crop insurance to protect against what are termed "shallow losses."

*Non-recourse loans.* Nine-month non-recourse marketing assistance loans are available

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for loan commodities. **Ag Act § 1201.** The loan rates are set at \$1.95 per bushel on corn on corn, \$5.00 per bushel for soybeans and \$2.94 per bushel for wheat. **Ag Act § 1202(a).**

*Loan deficiency payments.* If a producer forgoes a marketing loan, loan deficiency payments can be paid. **Ag Act § 1205.** For producers of wheat, barley or oats, payments may be made in lieu of deficiency payments if the crop is grazed. **Ag Act 1206.**

*Recourse loans for high moisture crops.* For the 2014 through 2018 crops, producers who normally harvest all or part of their crop in a high moisture state are eligible for recourse loans. **Ag Act § 1209.**

*Disaster programs.* The new legislation reauthorizes and funds five disaster programs for weather-related losses on a retroactive basis for fiscal years 2008 through 2011. Four programs for livestock and tree assistance were authorized and funded from fiscal year 2012 and later years with no expiration date. **Ag Act § 1501.** The total amount of disaster assistance payments received by a person or legal entity cannot exceed \$125,000 in any crop year.

*Caps on payments.* The new farm bill establishes a cap of \$125,000 per person on the total of PLC, ARC, marketing loan gains and loan deficiency payments for all commodities except peanuts (with a separate \$125,000 limit for peanuts). **Ag Act § 1603.** USDA is instructed to write regulations defining “significant contribution of active personal management” in an effort to curb multiple payments to those involved in “management.” **Ag Act § 1604.** The new rules are not to apply to individuals or entities “comprised solely of family members.” **Ag Act § 1604(c).**

The limits imposed in the 2008 legislation which were based on adjusted gross income (designed to prevent the deduction of “excess farm losses” against non-farm income)<sup>8</sup> were changed to a single, total AGI limit of \$900,000. **Ag Act § 1604(g)(1).**

The Secretary of Agriculture is required, twice each year, to reconcile social security numbers of payment recipients with the Social Security Administration to halt payments to deceased producers. **Ag Act § 1608.**

*Dairy policy.* Major changes were made in dairy policy including the elimination of the dairy product price support program, the milk income loss contract (MILC) program and export subsidies. **Ag Act §§ 1421, 1422, 1423.** A new replacement program makes payments to dairy producers when the national average farm price for milk minus an average feed cost ration falls below a producer-selected margin ranging from \$4 per hundredweight to \$8 per hundredweight. **Ag Act §§ 1403, 1404, 1406.** Premiums on an adjusted basis are levied. **Ag Act § 1407.** Federal milk marketing orders continue, at least for now, although the Act repeals the authority for the Milk Marketing Order Review Commission. **Ag Act § 1427.**

*Sugar policy.* The highly controversial sugar policy continues, largely unchanged from prior law. **Ag Act § 1301.**

## Conservation, Title II

The 2014 legislation reauthorized the Conservation Reserve Program with an enrollment cap reduced from 32 million acres to 24 million acres by fiscal year 2018. **Ag Act §§ 2001, 2001(d).** The CRP program was also amended to include the enrollment of grassland acres similar to those previously authorized by the

Grasslands Reserve Program which was repealed. The Act amends and renames a program the “Wetlands Program” with an acreage limitation of 750,000 acres. **Ag Act § 2002.**

The EQIP Program, which was initially focused on conservation on land in production and more recently broadened to include assistance with livestock odor control has been reauthorized with a five percent funding amount to support wildlife habitat practices, replacing the Wildlife Habitat Incentives Program which was repealed. **Ag Act §§ 2203, 2707.** Funding for EQIP was reduced by roughly \$500 million over 10-years.

The Conservation Stewardship Program, formerly known as the Conservation Security Program, was reauthorized at a reduced enrollment level of 10 million acres annually down from the current level. **Ag Act § 2101.** A limit of \$200,000 has been imposed on all payments under that program for 2014 through 2018. **Ag Act § 2101(f).**

Two new conservation programs were created – (1) the Agricultural Conservation Easement Program (ACEP) and (2) the Regional Conservation Partnership Program (RCP). **Ag Act § 2301.** The two programs replace several existing programs involving conservation easements, namely the Wetland’s Reserve Program, the Farmland Protection Program and the Grasslands Reserve Program. **Ag Act §§ 2703, 2704, 2705.** The ACEP retains most of the current easement programs by authorizing two types of easements – wetlands reserve easements that protect and restore wetlands and agricultural land easements that prevent non-agricultural uses on productive farm lands or grasslands. **Ag Act § 2301.** The RCP replaces the Agricultural Water Enhancement Program, the Chesapeake Bay Watershed Program, the Cooperative Conservation Partnership Initiative and the Great Lakes Basin Program. **Ag Act § 2401.** The idea behind the RCP is to partner with state and local governments and other groups to further conservation on a regional or watershed basis.

In a sharp shift of policy, the legislation includes federally funded crop insurance premiums to the list of program benefits that could be lost if a producer is found to produce an agricultural commodity on highly erodible land without implementing an approved conservation plan or coming with a qualifying exemption or converting wetlands to crop production. **Ag Act § 2611.** The legislation gives those “new to compliance” five years to develop and comply with an approved conservation plan. **Ag Act § 2611(a)(2).**

## Trade, Title III

The Agricultural Act of 2014 reauthorizes the various international food aid programs and amends current food aid law to place greater emphasis on improving the quality of food aid products, particularly to enhance the quality of food aid products and to insure that food aid does not disrupt local markets. **Ag Act §§ 3001, 3002, 3003, 3008.**

The legislation reauthorizes funding for the Commodity Credit Corporation Export Credit Guarantee Program along with three other agricultural export market promotion programs through fiscal year 2018. **Ag Act § 3101.** The legislation also repeals the specified annual dollar amounts for nonemergency food aid and replaces the provision with an agreement providing not less than 20 percent and not more than 30 percent of the funds to be made available for nonemergency food aid programs, with a minimum

of \$350 million provided each fiscal year for nonemergency food aid. **Ag Act § 3012.**

The legislation requires the Secretary of Agriculture to propose a plan to reorganize the international trade functions of the U.S. Department of Agriculture. **Ag Act § 3012.**

#### **Nutrition, Title IV**

The Supplemental Nutrition Assistance Program (SNAP) and related programs were reauthorized in the legislation for five years with an estimated reduction in nutrition spending of approximately \$8 billion over 10-years. **See Ag Act § 4024.** Most of the eligibility and benefit calculation rules were not changed by the legislation and the legislation does not include changes to broad-based “categorical eligibility.” Funding is increased for the Emergency Food Assistance Program that provides USDA foods and federal support to emergency feeding organizations. **Ag Act § 4027.** This title was unusually subdued in comparison with the rhetoric that preceded enactment.

#### **Credit, Title V**

The Agricultural Act of 2014 makes relatively modest changes in credit programs. USDA has been given discretion to recognize alternative legal entities to qualify for farm loans, **Ag Act § 5001(a)**; allows alternatives for meeting the three-year farming experience requirement, **Ag Act § 5001(b)**; increases the maximum size of down-payment loans, **Ag Act § 5005**; eliminates term limits on guaranteed operating loans; increases the percentage of a conservation loan that can be guaranteed; adds another lending priority for beginning farmers and clears the way for the purchase of highly fractionated land on Indian Reservations. **Ag Act § 5402.**

#### **Rural development, Title VI**

Relatively minor changes were made in rural development provisions by the 2014 legislation. Two rural business programs were consolidated into a single business development “platform” with \$65 million in appropriations through fiscal year 2018. **Ag Act § 6028.** The legislation also increases the mandatory spending authorization of the Value-Added Agricultural Product Grants to \$63 million and retains the \$40 million provided in the form of annual discretionary funding. **Ag Act § 6203.** The bill provides \$150 million in mandatory spending for pending rural development loans and grants with funding of the Microentrepreneur Assistance Program at \$3 million annually in mandatory spending and \$40 million in discretionary funding. **Ag Act § 6023.**

Funding was reauthorized for the Rural Electrification Act of 1936 including the program for Access to Broadband Telecommunication Services in Rural Areas as well as the Distance Learning and Telemedicine Program. **Ag Act § 6201.**

#### **Research, Title VII**

In a rather surprising move, mandatory spending under the research title was increased by \$1.145 billion over 10-years (compared with projected baseline spending). Funding was increased for the Specialty Crop Research Initiative (\$745 million over 10-years), the Organic Agricultural Research and Extension Initiative (\$100 million) and the continuation of the Beginning Farmer and Rancher Development Program (\$100 million). Also, mandatory funding of \$200 million was provided to establish the Foundation for Food and Agriculture Research as a non-profit corporation to supplement the basic and applied research in USDA. **See Ag Act § 7124.**

#### **Forestry, Title VIII**

The 2014 legislation repeals, reauthorizes and modifies existing programs under two principal authorities – (1) the Cooperative Forestry Assistance Act and (2) the Healthy Forests Restoration Act. Several forestry programs were reauthorized through fiscal year 2018.

#### **Energy, Title IX**

All of the major farm energy programs expired at the end of fiscal year 2013 with no baseline funding beyond that point. The 2014 legislation extends most of the renewable provisions with the exception of the Rural Energy Self-Sufficiency Initiative, the Forest Biomass for Energy Program, the Biofuels Infrastructure Study and the Renewable Fertilizer Study. **See Ag Act §§ 9001-9011.**

Over the five year period (fiscal year 2014 through fiscal year 2018) the legislation provides a total of \$694 million in new mandatory funding and authorizes \$765 million for the farm bill renewable energy programs.

#### **Horticulture, Title X**

The 2014 legislation approved nearly all of the programs reauthorized in both the Senate and House versions with increased funding for several important programs benefitting specialty crop producers including the Specialty Crop Block Grant Program, plant pest and disease programs, Market News for Specialty Crops, the Specialty Crop Research Initiative and the Fresh Fruit and Vegetable Program (also known as the snack program). The legislation also reauthorized most of the programs benefitting certified organic agricultural producers

#### **Crop insurance, Title XI**

The legislation increases funding for crop insurance above baseline levels by \$5.7 billion over 10-years. Much of the increased funding is attributable to two new crop insurance concepts, one for cotton and the other for other crops. (1) Inasmuch as cotton is not covered by the counter-cyclical price or revenue programs, a new crop insurance policy is created for cotton (called the Stacked Income Protection Plan or Stax). **Ag Act § 11017.** Under that plan, losses in county revenue are indemnified if greater than 10 percent of expected revenue but not more than the deductible level selected by the producer. (2) For other crops, an additional policy is made available called Supplemental Coverage Option based on county yields or revenue to cover part of the deductible under the producer’s underlying policy which is referred to as the farmer’s out-of-pocket loss or “shadow” loss. **Ag Act § 11003.**

In six states – Iowa, Minnesota, Montana, Nebraska, North Dakota and South Dakota – crop insurance subsidies and noninsured crop disaster assistance are reduced for the first four years of planting on native sod acreage. **Ag Act § 1104.**

The proposal to reduce crop insurance premium subsidies for high income farmers was *not* included in the legislation.

#### **Miscellaneous, Title XII**

Numerous provisions are included in the Miscellaneous Title. One highly controversial provision that was *deleted* in the conference committee was the interstate commerce provision that would have prohibited states from imposing production or manufacturing standards on agricultural products from other states.

### ENDNOTES

- <sup>1</sup> Pub. L. No. 110-246, 122 Stat. 1651 (2008).  
<sup>2</sup> Pub. L. No. 112-240, 126 Stat. 2313 (2012).  
<sup>3</sup> S. 954, 113th Cong., 1st Sess. 2013.  
<sup>4</sup> See H. Rep. 113-333, Jan. 27, 2014.  
<sup>5</sup> Agricultural Adjustment Act of 1938, Pub. L. No. 75-430, 52 Stat. 31 (1938).  
<sup>6</sup> Agricultural Act of 1949, Pub. L. No. 81-439, 63 Stat. 1051 (1949).

<sup>7</sup> Congressional Research Service, “The 2014 Farm Bill: A Comparison of the Conference Agreement with the Senate-Passed (S. 954) and House-Passed (H.R. 2642) Bills,” Feb. 5, 2014. See also Congressional Research Service Report R42484, “Budget Issues Shaping a Farm Bill in 2013.”

<sup>8</sup> Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 15351(a), 122 Stat. 1651 (2008), adding I.R.C. § 461(j).

## CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

### BANKRUPTCY

No items.

### FEDERAL FARM PROGRAMS

No items.

### FEDERAL ESTATE AND GIFT TAXATION

**EXECUTOR.** In a short Chief Counsel Advice letter, the IRS stated: “The plain language of the statute limits the statutory executor to the estate tax regime (Chapter 11). [I.R.C. §] 2203 does not provide any authority in the income tax regime (Chapter 1) or in the gift tax regime (Chapter 12) or in the GSTT regime (Chapter 13). The statutory executor has full authority to act in the estate tax realm, including the authority to execute Form 890 to waive restrictions on assessment of the estate tax. But [I.R.C. §] 2203 does not extend the statutory executor concept beyond the estate tax in Chapter 11, nor does it provide any authority to execute Form 870 to waive restrictions for assessment of income tax or to execute Form 890 to waive restrictions on assessment of gift tax or GSTT.” **CCA 201405016, Dec. 5, 2013.**

In a short Chief Counsel Advice letter, the IRS stated: “My initial thought—and let’s take this with a grain of salt at this point—is that when there is no longer an appointed executor, under 2203 each person in actual or constructive possession of any property of the decedent, which I believe would include everything on an F[orm] 8939, is then considered an executor. It may be that you would have to deal with and notify each recipient individually.” **CCA 201406010, June 7, 2013.**

**PORTABILITY.** The decedent died, survived by a spouse, on a

date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a “deceased spousal unused exclusion” (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent’s DSUE amount to the spouse, the decedent’s estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent’s date of death or the last day of the period covered by an extension. The decedent’s estate did not file a Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent’s estate, represented that the value of the decedent’s gross estate is less than the basic exclusion amount in the year of the decedent’s death and that during the decedent’s lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent’s DSUE amount pursuant to I.R.C. § 2010(c)(5) (A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201406004, Oct. 25, 2013.**

### FEDERAL INCOME TAXATION

**ALTERNATE MINIMUM TAX.** The IRS has published information about the alternative minimum tax for 2013. 1. Taxpayers may have to pay the tax if their taxable income, plus certain adjustments, is more than the AMT exemption amount for their filing status. The 2013 AMT exemption amounts for each filing status are:

- Single and Head of Household = \$51,900
- Married Filing Joint and Qualifying Widow(er) = \$80,800
- Married Filing Separate = \$40,400

The rules for AMT are more complex than the rules for regular income tax. For taxpayers filing a paper return, they can use the AMT Assistant tool on IRS.gov to find out if they may need to pay the tax. If a taxpayer owes AMT, the taxpayer usually must file Form 6251, *Alternative Minimum Tax – Individuals*. Some taxpayers who owe AMT can file Form 1040A and use the AMT Worksheet in the instructions. **IRS Tax Tip 2014-10.**

**BUSINESS EXPENSES.** The taxpayer owned and operated