

Public Law 110–246
110th Congress

An Act

To provide for the continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2012, and for other purposes.

June 18, 2008

[H.R. 6124]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Food, Conservation, and Energy Act of 2008”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Food,
Conservation,
and Energy Act
of 2008.
7 USC 8701 note.

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of Secretary.
- Sec. 3. Explanatory Statement.
- Sec. 4. Repeal of duplicative enactment.

TITLE I—COMMODITY PROGRAMS

- Sec. 1001. Definitions.

Subtitle A—Direct Payments and Counter-Cyclical Payments

- Sec. 1101. Base acres.
- Sec. 1102. Payment yields.
- Sec. 1103. Availability of direct payments.
- Sec. 1104. Availability of counter-cyclical payments.
- Sec. 1105. Average crop revenue election program.
- Sec. 1106. Producer agreement required as condition of provision of payments.
- Sec. 1107. Planting flexibility.
- Sec. 1108. Special rule for long grain and medium grain rice.
- Sec. 1109. Period of effectiveness.

Subtitle B—Marketing Assistance Loans and Loan Deficiency Payments

- Sec. 1201. Availability of nonrecourse marketing assistance loans for loan commodities.
- Sec. 1202. Loan rates for nonrecourse marketing assistance loans.
- Sec. 1203. Term of loans.
- Sec. 1204. Repayment of loans.
- Sec. 1205. Loan deficiency payments.
- Sec. 1206. Payments in lieu of loan deficiency payments for grazed acreage.
- Sec. 1207. Special marketing loan provisions for upland cotton.
- Sec. 1208. Special competitive provisions for extra long staple cotton.
- Sec. 1209. Availability of recourse loans for high moisture feed grains and seed cotton.
- Sec. 1210. Adjustments of loans.

Subtitle C—Peanuts

- Sec. 1301. Definitions.
- Sec. 1302. Base acres for peanuts for a farm.
- Sec. 1303. Availability of direct payments for peanuts.
- Sec. 1304. Availability of counter-cyclical payments for peanuts.
- Sec. 1305. Producer agreement required as condition on provision of payments.
- Sec. 1306. Planting flexibility.
- Sec. 1307. Marketing assistance loans and loan deficiency payments for peanuts.

“(1) EMERGENCY MEASURES.—The term ‘emergency measures’ means those measures that—

“(A) are necessary to address damage caused by a natural disaster to natural resources on nonindustrial private forest land, and the damage, if not treated—

“(i) would impair or endanger the natural resources on the land; and

“(ii) would materially affect future use of the land; and

“(B) would restore forest health and forest-related resources on the land.

“(2) NATURAL DISASTER.—The term ‘natural disaster’ includes wildfires, hurricanes or excessive winds, drought, ice storms or blizzards, floods, or other resource-impacting events, as determined by the Secretary.

“(3) NONINDUSTRIAL PRIVATE FOREST LAND.—The term ‘nonindustrial private forest land’ means rural land, as determined by the Secretary, that—

“(A) has existing tree cover (or had tree cover immediately before the natural disaster and is suitable for growing trees); and

“(B) is owned by any nonindustrial private individual, group, association, corporation, or other private legal entity, that has definitive decision-making authority over the land.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

“(b) AVAILABILITY OF ASSISTANCE.—The Secretary may make payments to an owner of nonindustrial private forest land who carries out emergency measures to restore the land after the land is damaged by a natural disaster.

“(c) ELIGIBILITY.—To be eligible to receive a payment under subsection (b), an owner must demonstrate to the satisfaction of the Secretary that the nonindustrial private forest land on which the emergency measures are carried out had tree cover immediately before the natural disaster.

“(d) COST SHARE REQUIREMENT.—Payments made under subsection (b) shall not exceed 75 percent of the total cost of the emergency measures carried out by an owner of nonindustrial private forest land.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such funds as may be necessary to carry out this section. Amounts so appropriated shall remain available until expended.”

(b) REGULATIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Agriculture shall issue regulations to carry out section 407 of the Agricultural Credit Act of 1978, as added by subsection (a).

Deadline.
16 USC 2206
note.

SEC. 8204. PREVENTION OF ILLEGAL LOGGING PRACTICES.

(a) DEFINITIONS.—

(1) PLANT.—Subsection (f) of section 2 of the Lacey Act Amendments of 1981 (16 U.S.C. 3371) is amended to read as follows:

“(f) PLANT.—

“(1) IN GENERAL.—The terms ‘plant’ and ‘plants’ mean any wild member of the plant kingdom, including roots, seeds, parts,

or products thereof, and including trees from either natural or planted forest stands.

“(2) EXCLUSIONS.—The terms ‘plant’ and ‘plants’ exclude—

“(A) common cultivars, except trees, and common food crops (including roots, seeds, parts, or products thereof);

“(B) a scientific specimen of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that is to be used only for laboratory or field research; and

“(C) any plant that is to remain planted or to be planted or replanted.

“(3) EXCEPTIONS TO APPLICATION OF EXCLUSIONS.—The exclusions made by subparagraphs (B) and (C) of paragraph (2) do not apply if the plant is listed—

“(A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

“(B) as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

“(C) pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.”.

(2) INCLUSION OF SECRETARY OF AGRICULTURE.—Section 2(h) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371(h)) is amended by striking “plants the term means” and inserting “plants, the term also means”.

(3) TAKEN AND TAKING.—Subsection (j) of section 2 of the Lacey Act Amendments of 1981 (16 U.S.C. 3371) is amended to read as follows:

“(j) TAKEN AND TAKING.—

“(1) TAKEN.—The term ‘taken’ means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed.

“(2) TAKING.—The term ‘taking’ means the act by which fish, wildlife, or plants are taken.”.

(b) PROHIBITED ACTS.—

(1) OFFENSES OTHER THAN MARKING.—Section 3(a) of the Lacey Act Amendments of 1981 (16 U.S.C. 3372(a)) is amended—

(A) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph:

“(B) any plant—

“(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

“(I) the theft of plants;

“(II) the taking of plants from a park, forest reserve, or other officially protected area;

“(III) the taking of plants from an officially designated area; or

“(IV) the taking of plants without, or contrary to, required authorization;

“(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

“(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or”; and
 (B) in paragraph (3), by striking subparagraph (B) and inserting the following subparagraph:

“(B) to possess any plant—

“(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

“(I) the theft of plants;

“(II) the taking of plants from a park, forest reserve, or other officially protected area;

“(III) the taking of plants from an officially designated area; or

“(IV) the taking of plants without, or contrary to, required authorization;

“(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

“(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or”.

(2) PLANT DECLARATIONS.—Section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended by adding at the end the following new subsection:

“(f) PLANT DECLARATIONS.—

“(1) IMPORT DECLARATION.—Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation a declaration that contains—

“(A) the scientific name of any plant (including the genus and species of the plant) contained in the importation;

“(B) a description of—

“(i) the value of the importation; and

“(ii) the quantity, including the unit of measure, of the plant; and

“(C) the name of the country from which the plant was taken.

“(2) DECLARATION RELATING TO PLANT PRODUCTS.—Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plant product shall—

“(A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product;

“(B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain

Effective date.

the name of each country from which the plant may have been taken; and

“(C) in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection.

“(3) EXCLUSIONS.—Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported.

“(4) REVIEW.—Not later than two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment. Deadline.

“(5) REPORT.—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing—

“(A) an evaluation of—

“(i) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of this section; and

“(ii) the potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

“(B) recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; and Recommendations.

“(C) an analysis of the effect of subsection (a) and this subsection on—

“(i) the cost of legal plant imports; and

“(ii) the extent and methodology of illegal logging practices and trafficking.

“(6) PROMULGATION OF REGULATIONS.—Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations— Deadline.

“(A) to limit the applicability of any requirement imposed by paragraph (2) to specific plant products;

“(B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and

“(C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.”

(c) CROSS-REFERENCES TO NEW REQUIREMENT.—Section 4 of the Lacey Act Amendments of 1981 (16 U.S.C. 3373) is amended—

(1) by striking “subsections (b) and (d)” each place it appears and inserting “subsections (b), (d), and (f)”;

(2) by striking “section 3(d)” each place it appears and inserting “subsection (d) or (f) of section 3”; and

(3) in subsection (a)(2), by striking “subsection 3(b)” and inserting “subsection (b) or (f) of section 3, except as provided in paragraph (1).”

(d) CIVIL FORFEITURES.—Section 5 of the Lacey Act Amendments of 1981 (16 U.S.C. 3374) is amended by adding at the end the following new subsection:

“(d) CIVIL FORFEITURES.—Civil forfeitures under this section shall be governed by the provisions of chapter 46 of title 18, United States Code.”

(e) ADMINISTRATION.—Section 7 of the Lacey Act Amendments of 1981 (16 U.S.C. 3376) is amended—

(1) in subsection (a)(1), by striking “section 4 and section” and inserting “sections 3(f), 4, and”; and

(2) by adding at the end the following new subsection:

“(c) CLARIFICATION OF EXCLUSIONS FROM DEFINITION OF PLANT.—The Secretary of Agriculture and the Secretary of the Interior, after consultation with the appropriate agencies, shall jointly promulgate regulations to define the terms used in section 2(f)(2)(A) for the purposes of enforcement under this Act.”

Regulations.

Effective date.
16 USC 3373
note.
16 USC 3373.

(f) TECHNICAL CORRECTION.—Effective as of November 14, 1988, and as if included therein as enacted, section 102(c) of Public Law 100-653 (102 Stat. 3825) is amended—

(1) by inserting “of the Lacey Act Amendments of 1981” after “Section 4”; and

(2) by striking “(other than section 3(b))” and inserting “(other than subsection 3(b))”.

SEC. 8205. HEALTHY FORESTS RESERVE PROGRAM.

(a) ENROLLMENT.—Section 502 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6572(f)(1)) is amended—

(1) by striking subsections (e) and (f);

(2) by redesignating subsection (g) as subsection (f); and

(3) by inserting after subsection (d) the following new subsection:

“(e) METHODS OF ENROLLMENT.—

“(1) AUTHORIZED METHODS.—Land may be enrolled in the healthy forests reserve program in accordance with—

“(A) a 10-year cost-share agreement;

“(B) a 30-year easement; or

“(C)(i) a permanent easement; or

“(ii) in a State that imposes a maximum duration for easements, an easement for the maximum duration allowed under State law.

“(2) LIMITATION ON USE OF COST-SHARE AGREEMENTS AND EASEMENTS.—

“(A) IN GENERAL.—Of the total amount of funds expended under the program for a fiscal year to acquire easements and enter into cost-share agreements described in paragraph (1)—

“(i) not more than 40 percent shall be used for cost-share agreements described in paragraph (1)(A); and

“(ii) not more than 60 percent shall be used for easements described in subparagraphs (B) and (C) of paragraph (1).

“(B) REPOOLING.—The Secretary may use any funds allocated under clause (i) or (ii) of subparagraph (A) that