Farm Bill Tax and TradeTitle

H.R. 2419, the "Food, Conservation, and Energy Act of 2008"

Supplemental Agricultural Disaster Assistance

Supplemental Agricultural Disaster Assistance Trust Fund.
Currently, farmers and ranchers may have to wait several years to receive assistance from Congress for agricultural disasters. Farmers and ranchers need a dependable safety net when weather-related disasters strike. The bill creates a Disaster Trust Fund that would finance five programs that comprehensively address agricultural disasters across the nation. These programs include the Supplemental Revenue Program, Livestock Forage Program, Tree Assistance Program, Livestock Indemnity Program, and Emergency Assistance for Livestock, Honeybees, and Farm Raised Fish. The Disaster Trust Fund will be funded through an allocation of tariffs. The transfer of funds to the trust fund will sunset September 30, 2011. Payments would be made for crop years after 2007. *This provision is estimated to cost $3.807 billion over five years and $3.807 billion over ten years.*

- **The Supplemental Revenue Assistance Program (SURE)** covers crop losses due to natural disasters. To receive benefits from SURE, farmers must: 1) carry crop insurance on their entire farm; and 2) be located in a Secretarially declared disaster county or a contiguous county, or show proof of an individual loss of at least 50 percent. Farmers carrying higher levels of insurance will be eligible for higher payments. The Supplemental Revenue Program covers whole-farm crop losses.

- **The Livestock Forage Program** provides assistance to ranchers in areas affected by drought. These payments are based on the severity of the drought experienced in the rancher's county. Ranchers in areas with exceptional or extreme droughts will qualify for higher levels of assistance. In order to qualify for assistance ranchers must be located in a county that is experiencing a severe, extreme or exceptional drought condition based upon the Drought Monitor.

- **The Tree Assistance Program** provides compensation for specialty crop farmers to replant trees and vines that have been destroyed by natural disasters such as hurricanes, freezing rain, or severe temperatures.

- **The Livestock Indemnity Program** provides compensation to ranchers for livestock that are lost due to disasters such as extreme heat, blizzards, hurricanes, or other conditions. Indemnity payments are 75 percent of the fair market value of the livestock.

- **Emergency Assistance for Livestock, Honeybees, and Farm Raised Fish** is a program that addresses unique disasters not adequately covered by any other program within the Trust Fund. This program will provide assistance for unique or isolated disasters such as floods, tornadoes, hurricanes or Colony Collapse Disorder.

Revenue Provision for Agriculture Program

Customs User Fees. Customs assesses *passenger and conveyance fees* to cover inspection costs 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. Customs also assesses *merchandise processing* fees based on the value of the good entering into the United States. Such fees currently expire in December 2014. The final conference report extends the passenger and conveyance processing fees to September 30, 2017 and the merchandise processing fees until November 14, 2017. The provision requires pre-payment of the inspection fees due in late fiscal year 2017 and merchandise processing fees in early 2018. The provision would require U.S. Customs and Border Protection to reconcile any overpayments with interest or underpayments within 30 days in order to ensure that the importer is held harmless for any error. *This provision is estimated to raise $10 billion over ten years.*

Conservation Provisions

Exclusion of Conservation Reserve Program Payments to Retired or Disabled Individuals from Self-Employment Taxes. Farmers enrolling their land in CRP receive payments for refraining from farming their property and for engaging in certain conservation practices mandated by the Department of Agriculture. These payments are described in the contract with the Department of Agriculture as "rental payments." On December 18, 2006, the IRS released Notice 2006-108, which sets forth a proposed revenue ruling concerning self-employment tax on CRP payments. In the Notice, IRS holds that all CRP payments are not excluded from net income under the rental payments exception and are therefore subject to self-employment taxes regardless of whether or not the taxpayer is actively farming. The bill provides that CRP payments to retired or disabled individuals are to be treated as rental payments for tax purposes and are therefore excluded from self-employment taxes and will not reduce the individual's Social Security or disability payments. This provision is effective for payments made after December 31, 2007. *This provision is estimated to $84 million over five years and $192 million over ten years.*

Rural Heritage Conservation Extension. The Pension Protection Act of 2006 (PPA), Public Law 109-432, included an enhanced tax deduction for contributions of conservation easements. Prior to PPA, taxpayers could only deduct up to 30% of the AGI for donations of conservation easements to qualified conservation organizations or state or local governments. Taxpayers were allowed to carry-forward their deduction for up to 5 years. However, taxpayers were often unable to yield the maximum benefit from their easement donations. The enhanced deduction provision in PPA allowed all taxpayers to deduct up to 50% of their AGI for donations of conservation easements and carry forward the deduction for up to 15 years, and allowed ranchers and farmers to deduct up to 100% of their AGI for donations of conservation easements. The enhanced deduction provision expired at the end of 2007. The bill will extend the enhanced deduction for contributions of conservation easements through December 31, 2009. *This provision is estimated to cost $105 million over five years and $105 million over ten years.*

Endangered Species Recovery Deduction. The bill establishes a tax deduction for the cost of actions to implement site-specific management measures included in recovery plans under the Endangered Species Act. This provision is effective for expenditures paid or incurred after December 31, 2008. *This provision is estimated to cost $72 million over five years and $283 million over ten years.*

Taxation of Qualified Timber Gain and Timber REIT Provisions. Under current law gains on timber sales are eligible for capital gains tax treatment. The bill provides an alternative maximum tax rate of 15 percent for gain on qualified timber harvest by a C corporation. Qualified timber gain is gain from the sale or exchange of timber held for at least 15 years. In addition, the bill provides for modernization of timber real estate investment trusts (REIT) rules for timber property, including: (1) clarifying that gains from the sale of timber held for less than one year is qualifying income; (2) providing that mineral royalty income is qualifying income; (3) changing the taxable REIT subsidiary asset test for timber REITs from 20% to 25%; and (4) making changes to the safe harbors for timber property sales. This provision is effective on the date of enactment and sunsets one year after the date of enactment. *This provision is estimated to cost $183 million over five years and $218 million over ten years.*

Forest Conservation Bonds: Public-private partnerships play a vital role in conservation efforts by communities across the country. The bill establishes a national program allowing the issuance of $500 million in tax-credit timber conservation bonds, for issue by a qualified non-profit organization and for the acquisition of forest and forest lands that are subject to conservation restrictions. *This provision is estimated to cost $250 million over five years and $250 million over ten years.*

Alternative and Renewable Fuels from Agriculture

Cellulosic Biofuels Credit. Cellulosic biofuels can be produced from agricultural waste, wood chips, switch grass and other non-food feedstocks. With an abundant and diverse source of feedstocks available, cellulosic biofuels hold tremendous promise as a home-grown alternative to fossil-based fuels. Because cellulosic biofuels are very expensive to produce, government assistance is needed to spur these fuels to commercial viability. The bill includes a new, temporary cellulosic biofuels production tax credit for up to $1.01 per gallon, available through December 31, 2012. *This provision is estimated to cost $348 million over five years and $403 million over ten years.*

Comprehensive Biofuels Study. The bill directs the Secretary of the Treasury, in consultation with the Secretary of Agriculture and the Secretary of Energy and the Administrator of the Environmental Protection Agency, to request that the National Academy of Sciences produce an analysis of current scientific findings relating to the future production of biofuels and the domestic effects of an increase in the production of biofuels. *This provision is estimated to have no revenue effect.*

Modification of the Incentives Relating to Alcohol Fuels (Volumetric Ethanol Excise Tax Credit). The bill reduces the 51¢ per-gallon incentive for ethanol to 45¢ per gallon for calendar year 2009 and thereafter. If Treasury makes a determination -- in consultation with EPA -- that 7.5 billion 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 7.5 billion gallons were not produced or imported 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¢ per gallon and 45¢ per gallon. *This provision is estimated to raise $1.203 billion over five years and $1.203 billion over ten years.*

Calculations of Volume of Alcohol for Fuel Credits. 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. The denaturant must be added under a formula approved by the Secretary, and the denaturant cannot exceed 5% of the volume of such alcohol (including denaturants). This provision reduces the amount of allowable denaturants to 2% of the volume of the alcohol as regulated by the Alcohol and Tobacco Tax and Trade Bureau. *This provision is estimated to raise $124 million over five years and $124 million over ten years.*

Extension of Tariff on Ethanol. The bill extends the tariff on imported ethanol for two years (through December 31, 2010). This provision is effective on the date of enactment. *This provision is estimated to raise $70 million over five years and $70 million over ten years.*

Duty Drawback on Imported Ethanol. This provision clarifies the eligibility for a drawback for jet fuel products. A drawback is a rebate on duties, fees, or taxes paid on imported goods when a U.S. business subsequently exports a "commercially interchangeable" good. Current law permits drawback claims for exported jet fuel on the basis of ethanol imports, even though such jet fuel exports are not blended with the ethanol imports. The conference report discontinues this practice for ethanol imports beginning on October 1, 2008, allowing for a phase-out of the current practice. Drawback claims for such imports must be filed by October 1, 2010. *This provision is estimated to raise $12 million over five years and $17 million over ten years.*

Agricultural Investment Provisions

Agricultural Bond Improvements. Agricultural Bonds (Aggie Bonds) are tax-exempt bonds issued by State and local governments to provide low interest loans for first-time ranchers and farmers. A first-time rancher or farmer is any individual who has never had a direct ownership interest in substantial farmland. Substantial farmland means a parcel of land that is larger than 30 percent of the median size of a farm in the county in which such parcel is located and that has a fair market value greater than $125,000. Aggie Bonds have not been updated in over 26 years. The bill improves Aggie Bonds by: (1) increasing the loan limit from $250,000 to $450,000 and indexing such limit amount for inflation; and (2) eliminating the dollar limitation in the definition of substantial farmland. This provision is effective for bonds issued after the date of enactment. *This provision is estimated to cost $4 million over five years and $20 million over ten years*.

Section 1031 Eligibility for Mutual Ditch, Reservoir, or Irrigation Company Stock. In general, section 1031 does not apply to any exchange of stock. Colorado uses mutual ditch, reservoir, and irrigation companies to manage joint water distribution rights, and the stock of such companies are recognized as real property. The bill clarifies that the exchange of mutual ditch, reservoir, or irrigation company stock is effectively an exchange of real property and therefore qualifies for section 1031. This provision is effective for exchanges completed after the date of enactment. *This provision is estimated to cost $1 million over five years and $2 million over ten years.*

Agricultural Chemicals Security Tax Credit. The bill provides retailers of agricultural products and chemicals and manufacturers, formulators, or distributors of certain pesticides a business tax credit for 30 percent of costs for the protection of such chemicals or pesticides. Such protection costs include employee security training and background checks, installation of security equipment, and computer network safeguards. The bill sets a $2 million annual limit on such credit and a per facility limitation of $100,000 (reduced by credits received for the five prior taxable years). This provision is effective for expenses paid or incurred after the date of enactment. *This provision is estimated to cost $13 million over five years and $14 million over ten years.*

Equine Depreciation. The depreciation period for the cost of a race horse currently varies depending on the age of the race horse. The cost of race horses older than two years may be depreciated over three years. The cost of race horses that are two years old or younger when they are placed into service must be depreciated over seven years. The bill creates a uniform depreciation period of three years for all race horses. This provision is effective December 31, 2008 and expires December 31, 2013. *This provision is estimated to cost $229 million over five years and $126 million over ten years.*

Kansas Tornado Disaster Relief. The bill provides tax relief to the victims of tornados and storms that hit the Greensburg, Kansas area, including: (1) suspension of certain limitations on personal casualty losses; (2) extension of the replacement period for nonrecognition of gain; (3) providing an employee retention credit for employers affected by the May 4, 2007 storms and tornados; (4) special allowance for certain property acquired on or after May 5, 2007; (5) an increase in the amount allowed to be expensed under section 179; (6) expensing for certain demolition and clean-up costs; (7) special treatment of public utility property disaster losses; (8) extended carryback period for net operating losses attributable to storm losses; (9) special treatment of representations regarding income eligibility for purposes of qualified rental project requirements; and (10) special rules for the use of retirement funds. *This provision is estimated to cost $70 million over five years and $60 million over ten years.*

Modification to the Advance Coal Project Credit and the Gasification Project Credit. Because of rising costs of natural gas production, which is the primary ingredient in ammonia fertilizer, most ammonia fertilizer production in the US has moved off shore raising questions of food security. Since 2003 approximately 20 ammonia plants in the US have closed, those plants represent about 2/3 of domestic production. The bill will clarify the Treasury has the ability to accept additional improvements (such as better environmental performance, carbon capture sequestration, and feedstock transportation savings) in projects post credit allocations. This would allow an Industrial Gasification project to go forward and reverse the trend of ammonia production moving offshore, with new domestic and competitive production of ammonia from petroleum coke, instead of natural gas. The project will re-fire an idled ammonia plant and is targeted to produce over 500 million pounds per year of ammonia product. That product can be used for either fertilizer or industrial applications. That will make ammonia supply more secure and less dependent on foreign imports and help to keep prices lower. *This provision is estimated to have no revenue effect.*

Additional Revenue Raising Provisions

Limitation on Farming Losses of Certain Taxpayers. Except for passive activity rules in section 469, the amount of farming losses that a taxpayer may use to reduce non-farm business income is not limited. The bill limits the amount of farming losses that a taxpayer may use to offset non-farm business income to the greater of $300,000 or the net farm income the taxpayer has received over the last five years. Losses that are limited in a particular year may be carried forward to subsequent years. This provision only applies to eligible taxpayers who receive any direct or counter-cyclical payments under title 1 of the Food and Energy Security Act of 2008, or Commodity Credit Corporation loans. For purposes of this provision, the bill broadens the definition of "farming business" to include the processing of commodities, without regard to whether such activity is incidental for a taxpayer otherwise engaged in a farming business with respect to such commodities. The provision is effective for taxable years beginning after December 31, 2009. *The provision is estimated to raise $206 million over five years and $479 million over ten years.*

Optional Self-Employment Tax. Qualifying for Social Security benefits can be difficult for self-employed farmers and ranchers because they do not always have a steady income stream. When there are no earnings, no Social Security taxes are paid and no quarters are accrued. Through farm optional methods, farmers and ranchers may voluntarily pay Social Security taxes in order to earn quarters so that they can receive Social Security benefits. However, the payment thresholds are outdated and no longer allow farmers and ranchers to earn four quarters of credit per year. The bill modifies the farm optional method so that electing taxpayers may be eligible to secure four credits of Social Security benefit coverage each taxable year. The bill makes a similar modification to the nonfarm optional method. This provision is effective for taxable years beginning after December 31, 2007. *This provision is estimated to raise $46 million over five years and $105 million over ten years.*

Information Reporting for Commodity Credit Corporation Transactions. The Commodity Credit Corporation (CCC) may make market assistance loans to farmers of eligible commodities. A farmer 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 farmer uses cash instead of certificates to repay the loan, 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 transactions after January 1, 2007, IRS Notice 2007-63 provides that the CCC must use Form 1099-G to report market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan. The bill codifies the requirement of IRS Notice 2007-63. This provision is effective for loans repaid on or after January 1, 2007. *This provision is estimated to have no revenue effect*.

Agriculture and Economic Aid Trade Measures

Caribbean Basin Initiative (CBI). The Caribbean Basin Initiative (CBI) provides preferential access to the U.S. market for certain products from select countries in the Caribbean basin region. Some of these countries are also eligible for enhanced benefits under the Caribbean Basin Trade Partnership Act (CBTPA) for certain apparel and other products. Such preferential access expires on September 30, 2008. The conference report extends these benefits for two years until September 30, 2010. *This provision is estimated to cost $161 million over ten years.*

Haiti Trade Preferences. The Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act provides duty-free access to the U.S. market for certain wire harness automotive components and certain apparel articles if they meet strict guidelines and rules of origin. The conference report expands the scope of the HOPE Act by simplifying the rules for allowing Haitian apparel to qualify for duty-free access to the U.S. market. These provisions, known as HOPE II, provide duty-free access for certain apparel articles which may, in certain circumstances, contain fabric from countries other than Haiti or the United States. HOPE II also includes a labor monitoring mechanism to assist Haitian producers abide by international labor standards and Haitian labor law. *This provision is estimated to cost $112 million over ten years.*

First Sale. The longstanding practice of "first sale" allows an importer to assess the value of imported goods based on the first sale of goods destined for the United States, regardless of when that sale occurred. Without consulting Congress or the importing industry, U.S. Customs and Border Protection (CBP) has proposed regulatory changes to assess duties on the "last sale" rather than the "first sale" value of goods. Such a change could increase significantly the duties paid by American importers. The farm bill (1) requires CBP to collect information on the number of importers that value imports using the "first sale" methodology; (2) requires the United States International Trade Commission to provide Congress with a report on the number of importers using "first sale" methodology, and the value of those imports; and (3) expresses a sense of Congress that CBP should not implement its change in interpretation until at least January 1, 2011. *This provision is estimated to have no revenue effect.*

Wine Export Reform. Current law permits a firm to receive a refund on duties paid to import a product when a "commercially interchangeable" product is subsequently exported. Wine exporters can receive a refund of duties paid based on wine color (i.e. white wine exports can receive a duty refund for white wine imports). CBP has proposed tightening that standard to allow drawback based on specific wine varieties, rather than color, which would significantly narrow the ability of U.S. wine exporters to use the drawback provision. The conference report maintains current practice. *The proposal is estimated to have no revenue effect*.

Softwood Lumber. Title III of the conference report contains a provision to enforce international agreements related to trade in softwood lumber. The conference report requires American importers of softwood lumber to declare that their imports are consistent with the terms of international agreements**;** obligates U.S. Customs and Border Protection to verify that the importer's declarations are true and accurate; and provides for the imposition of penalties for knowing violations. This provision will enter into force 60 days after the date of enactment, and will remain in force permanently. *This provision is estimated to have no revenue effect.*