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Legislative Bulletin……………………………………….………May 14, 2008

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Numerous

Total Cost of Discretionary Authorizations: Unknown

Effect on Revenue: Increases federal revenue by $685 million over ten years

Total Change in Mandatory Spending: $714.2 billion in mandatory spending over the 2008 to 2018 period, compared to estimated spending under the March 2008 CBO baseline equal to $710.5 billion—an increase of $3.7 billion.

Total New State & Local Government Mandates: Numerous

Total New Private Sector Mandates: Numerous—above the UMRA threshold according to CBO

Number of *Bills* Without Committee Reports: 0

H.R. 2419—Food, Conservation, and Energy Act of 2008 (Peterson-MN)

Order of Business: H.R. 2419 is scheduled for consideration on Wednesday, May 14, 2008. The rule for consideration of the conference report to accompany H.R. 2419 (H.Res. 1189) waives all points of order against the conference report and against its consideration, and provides one hour of general debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Agriculture.

Background: H.R. 2419, commonly referred to as the Farm Bill, authorizes most U.S agriculture and food assistance programs. These programs were last extended by the 2002 Farm Bill, the Farm Security and Rural Investment Act (P.L. 107-171), which increased mandatory spending for farm programs by $80.1 billion over ten years. As a result, the farm sector is currently enjoying historic levels of federal taxpayer support. This current extension comes at a time when the financial state of the U.S. agriculture sector is thriving. According to the USDA's Economic Research Service, net farm income is forecast to be $92.3 billion in 2008, an increase of $3.6 billion from 2007 "and over $30 billion above its average for the previous ten years." Similarly, the value of farm business assets is set to increase by 13.1% in 2008, of which farm real estate is expected to rise by 14.9%. Debt-to-asset ratios continue to decline from 9.9% in 2007 to 9.1% in 2008.

In addition, this new Farm Bill is being considered in the midst of significantly higher food prices worldwide. Global food prices have sparked riots in roughly thirty countries and led to hunger and malnutrition in others. In the U.S., the *Associated Press* reports the worst food inflation in 17 years with food prices rising 4% in 2007 and 4.5% in 2008, compared to an average of 2.4 percent over the last fifteen years.

Summary: H.R. 2419 revises agricultural programs such as commodities, sugar, food stamps, conservation, specialty crops, etc. Highlights of the conference report are as follows:

Cost:

- **$714 Billion in Total Mandatory Spending:** CBO estimates that the conference report provides a total of $371.6 billion in mandatory spending over the 2008 to 2013 period and $714.2 billion in mandatory spending over the 2008 to 2018 period. Total spending for programs under the Farm Bill exceeds CBO's March 2008 baseline by $13.1 billion—$3.6 billion is the amount the bill is above the baseline and the bill also uses an additional $9.5 billion in offsets from custom user fees to offset $9.5 billion in higher spending for Farm Bill programs.

- **Cost in Excess of 2002 Farm Bill:** On an annual basis, H.R. 2419 averages $65 billion a year. By point of comparison, the 2002 Farm Bill cost $270 billion over six years, an average of $45 billion a year. On an annual basis, H.R. 2419 would exceed the 2002 Farm Bill spending by 44%. It is sometimes argued that the 2002 Farm Bill came in under budget. According to CRS, while spending on commodity programs came in $22.7 billion less than projected, spending on nutrition came in $28.7 billion more than projected. Overall, the 2002 farm bill cost $6.1 billion or 2.3% more than the original projection of $264.1 billion.

- **PAYGO Violation:** The conference report violates PAYGO by using the fourteen-month old, March 2007 CBO baseline to score the budgetary impact of the bill. Under the March 2008 CBO baseline, the bill worsens the federal deficit by $2.9 billion, and thus fails to comply with PAYGO.

  Note: Unless otherwise stated, all budget figures in this document are based on the March 2008 CBO baseline.

- **Budget Gimmicks:** According to the Administration, the conference report uses various timing shifts and early phase outs of various spending provisions that total $8.5 billion.

Commodity Support Programs:

Agricultural commodities are supported by 3 mechanisms: direct payments, counter-cyclical payments, and marketing loan payments.

- **Direct Payments:** Direct payments are fixed annual payments that are calculated based on the historical production of a commodity, not actual production. Historical production is comprised of base acreage and a set yield per acre. Direct payments are made only for certain commodities known as covered commodities. These commodity crops include, but are not limited to, upland cotton, wheat, soybeans, sorghum, oats, barley, corn, rice, and oilseeds. Peanuts are also considered a covered commodity, but dealt with under their own program. There is currently a prohibition against growing fruits or vegetables on covered commodity base acreage. H.R. 2419 leaves the direct payment rates the same as in the 2002 Farm Bill, but reduces percentage of base acreage that payments are made on from 85% to 83.3% of base acreage, essentially reducing direct payments by $313 million. It also prohibits USDA from advancing direct payments in 2012, unlike years 2008-2011.

- **Counter-Cyclical Payments:** Counter-Cyclical Payments (CCP) are made based on historical production, like direct payments. Unlike direct payments, the amount of CCP varies with market prices and pays the difference between the target price (which is set in law in this bill) and the effective price (higher of the direct payment rate plus the higher of the national season-average market price or the national loan rate). CCP are not made if the effective price is above the target rate. H.R. 2419 ultimately increases target prices for many commodities, with the exception of upland cotton which is reduced. Commodities receiving increased target prices include wheat, grain sorghum, barley, oats, and soybeans. Target prices have been established for several new commodities including dry peas, lentils, small chickpeas and large chickpeas. Under current law, peanuts also receive a CCP, but through its own program.

- **Marketing Assistance Loans/Loan Deficiency Payments***:* Marketing Loans are non-recourse, interest-bearing loans that producers can obtain by pledging harvested commodities as collateral. Loan rates are set in law, and based upon per unit of a commodity produced. These loans are intended to give producers some income between harvest and eventual sale to prevent commodities from being dumped onto the market at once and depressing market prices. Loan Deficiency Payments are direct payments, equivalent to marketing loan gains, made to producers who forgo nonrecourse loans, even though they are eligible. A marketing loan gain occurs when the market price of a commodity is lower than the loan rate at which the producer took out the loan. Because marketing loans are non-recourse loans, and failure to repay the loan would only result in forfeiture of the crop pledged as collateral to the government, a producer is able to repay the loan assuming the lower rate than the loan was taken out at and keep the difference. Both marketing loans and LDP are based on actual production of a commodity. Under the 2002 Farm Bill, marketing loans are available for all covered commodities, including peanuts, plus wool, mohair, honey, dry peas, lentils, and small chickpeas. H.R 2419 creates a loan program for large chickpeas, and ultimately increases marketing loan rates are increased for wheat, barley, oats, oilseeds, graded wool, and honey. No change occurs from the 2002 Farm Bill for corn, grain sorghum, upland cotton, extra long staple cotton, rice, and soybeans. However, under current law, extra long staple cotton is not eligible for LDP.

- **Payment Limitations:** Under the 2002 Farm Bill, a person can only receive up to $360,000 in farm program payments per year. The 2002 farm bill also places caps on the different types of payments. It limits a person to $40,000 for direct payments, $65,000 for counter-cyclical payments, and $75,000 for marketing loan gains and loan deficiency payments. The 2002 Farm Bill also established an income test, making people with an Adjusted Gross Income (AGI) of $2.5 million or greater—unless 75% of their income is derived from farming—ineligible for farm program payments. However, these caps are not absolute. One of the ways these caps have been circumvented is through the use of the "spouse rule." Under this rule, a spouse is eligible to collect the various farm program payments up to the caps, just like the other spouse. Another way around these caps is through the use of the "three-entity rule." This rule allows a person to collect payments from up to three separate entities, with the ability to collect up to the caps for the first entity, and up to half of the caps on the second and third entity. H.R. 2419 revises several of these limitations. It does so by imposing an Adjusted Gross Income (AGI) cap of:

    - $500,000 for non-farm income;
    - $750,000 for farm income. Beyond this, a producer is no longer eligible for direct payments.

The conference report preserves the 2002 Farm Bill's payment limitation of $40,000 for direct payments and $65,000 for counter-cyclical payments. It also eliminates the three-entity rule. However, H.R. 2419 removes payment limitations for marketing loan gains and loan deficiency payments.

H.R. 2419 also establishes payment limitations for the new ACRE Program. It puts in place a cap of $32,000 for direct payments and $73,000 for counter-cyclical payments.

Some conservatives may be concerned that the changes made in H.R. 2419 do not constitute sufficient reform of commodity payments. The conference report could still allow people with incomes of $2.5 million to collect subsides, as a couple could have non-farm income of $500,000 per person (the maximum under H.R. 2419), and also have a farm income of $750,000 per person.

- **Prohibition on Payments to 10 Base Acres:** H.R. 2419 prevents a farmer with less than 10 base acres from receiving direct payments, counter-cyclical payments, or average crop revenue election payments (except for socially disadvantaged and limited resource producers). Nationwide, this would impact more than 400,000 households. Some conservatives may be concerned that this provision would impact many small family farms while continuing to distribute federal payments to large farms.

<u>Counter-cyclical Revenue Program:</u>

H.R. 2419 creates a new revenue-based, counter-cyclical program, the Adjusted Crop Revenue Election (ACRE) program. CBO scores this program as costing an additional $6.52 billion over the 2008—2018 period.

This voluntary program will allow producers to enroll beginning with the 2009 crop year. Once a producer enrolls in the program, they must remain in the program for the duration of the farm bill and forgo receiving counter-cyclical payments, 20% of the direct payment rate, and 30% of the marketing assistance loan rate. ACRE revenue payments are made on 85% 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% of planted or considered planted acres. All covered commodities and peanuts are eligible to participate in the program.

The ACRE program will provide a revenue guarantee equal to 90% of the 5-year state average yield per planted acre (excluding the years with the highest and lowest yields) of a commodity multiplied by the 2-year national average price for the covered commodity. Once the ACRE guarantee is established, it cannot vary by more than 10% 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% of the revenue guarantee.

***Sugar Program**:*

Under current law, the price of sugar is heavily regulated. USDA both limits how much domestic producers may sell with mandatory "marketing allotments" and how much foreign sugar may be imported with quotas in order to keep prices high. In addition, domestic sugar producers are eligible for non-recourse loans at a statutorily-set loan rate further designed to prop up prices. Since USDA is required to operate the program at "no cost," officials are required to manipulate the marketing allotments and import quotas to ensure that the market rate is slightly higher than the loan rate—so that producers do not have an incentive to forfeit their crops as collateral to the federal government in place of their loan obligation.

H.R. 2419 raises the loan rate by three-quarters of a cent from 18.0 cents under current law to 18.75 cents by 2011 for per pound of raw cane sugar (a 4% increase), and from 22.9 cents to 128.5% of the loan rate for the raw cane sugar beginning with the 2009 crop year for refined beet sugar. In addition, the conference report requires at least 85 percent of U.S. sugar consumption to come from domestic producers and creates a new sugar-to-ethanol program. These two latter provisions are designed to address concern about increased sugar imports from Mexico (which are no longer restricted under NAFTA as of 2008) and other CAFTA countries as the U.S. continues to liberalize the sugar trade. Since these imports would cause a drop in the price of sugar and make it difficult for USDA to operate the program at no cost, as producers dump their sugar on the government, H.R. 2419's new sugar-to-ethanol program would require the purchase of "surplus" sugar for sale to ethanol producers.

Some conservatives may be concerned that the entire framework of the sugar program is designed to protect the producer at the expense of the consumer, and that by increasing these protections and subsidies further, H.R. 2419 only serves to increase artificially high sugar prices. Some conservatives might also note that the consumers who will be impacted the most from such increases are those who are low-income and operating on fixed income, facing the prospect of higher prices for bread, cookies, crackers, candy, soft-drinks, and other food products that use sugar. According to the Organization for Economic Cooperation and Development, the current sugar program costs consumers roughly $1.5 billion per year in higher sugar prices, and one estimate has already concluded that H.R. 2419 will increase that annual amount by $400 million.

Conservation:

Overall, the Conservation Title of the Farm Bill scores as a $2.93 billion increase over the 2008—2018 period compared to CBO's baseline. Specifically, of note:

- **Conservation Reserve Program:** H.R. 2419 reauthorizes the Conservation Reserve Program through FY 2012 and reduces the maximum number of acres in the program from 39.2 million to 32 million from 2010 through 2012. The reduction in total acreage scores as savings of $1.32 billion compared to the CBO baseline.

- **Socially Disadvantaged Farmers:** H.R. 2419 reauthorizes Conservation Reserve Program transition incentives for new and socially disadvantaged farmers at a cost of $25 million compared to the CBO baseline.

- **Wetlands Reserve Program:** H.R. 2419 reauthorizes the Wetland Reserve Program, which gives farmers money to preserve privately owned wetlands at a cost of $1.46 billion compared to the CBO baseline. This section caps the program at 3.04 million acres of wetland and limits payment contracts to 30 years.

- **Conservation Security Program:** H.R. 2419 reauthorizes the Conservation Security Program, which gives money to farmers to promote conservation on private working lands, at a cost of $1.98 billion compared to the CBO baseline. This section caps the program at 12.7 million acres a year with a maximum subsidy of $18 per acre.

- **Farmland Protection Program:** H.R. 2419 reauthorizes the Farmland Protection Program, which provides matching funds for farmers to purchase development rights to keep functional farmland in agricultural use, at a cost of $665 million compared to the CBO baseline.

- **Grassland Reserve Program:** H.R. 2419 reauthorizes the Grassland Reserve Program, which gives money to farmers to protect grasslands on their property, at a cost of $307 million compared to the CBO baseline. This section caps the program at 1.2 million acres.

- **Environmental Quality Incentives Program (EQIP):** H.R. 2419 reauthorizes the Environmental Quality Incentives Program (EQIP), which provides money to farmers to promote "agricultural production and environmental quality" simultaneously, at a cost of $2.86 billion compared to the CBO baseline.

- **Chesapeake Bay Watershed Program:** H.R. 2419 provides the Chesapeake Bay Watershed Program, which provides financial and administrative support for Chesapeake Bay restoration (overseen by the EPA), at a cost of $432 million compared to the CBO baseline.

- **Desert Terminal Lakes Program:** H.R. 2419 provides $175 million for the Desert Terminal Lakes Program, which provides money for **three** lakes (Pyramid, Summit, and Walker) in Nevada. *Note:* Nearly every dollar of this program is spent via earmarks.

Nutrition:

- **Overall:** H.R. 2419 increases federal nutrition spending by $11.34 billion from 2008-2018. This increase is on top of the average $29.7 billion per year provided for nutrition programs under the current farm bill. It should be noted this portion of the current farm bill was 19.4% more expensive than CBO estimated in 2002—$29.7 billion per year as compared to $24.9 billion per year.

- **Food Stamps***:* H.R. 2419 increases and indexes for inflation the standard deduction, the monthly amount of income that is disregarded when calculating a household's food stamp benefit levels (costing $6.79 billion). The minimum food benefit would be increased to 8% of the cost of USDA's thrifty food plan—the estimated minimal cost of an adequate diet (costing $344 million). The conference report also excludes the full cost of dependant care from income tests (costing $570 million). H.R. 2419 also loosens the allowable financial resources a beneficiary can possess without losing food stamp eligibility, including certain retirement and education accounts (costing $1.53 billion). H.R. 2419 also renames the food stamp program as the "supplemental nutrition assistance program."

  Some conservatives may believe that, while well-intentioned, the food stamp program is essentially a welfare program. For instance, according to the Congressional Research Service, a dollar in food stamps results in only 17-47 cents of new food spending because while the food stamps must be spent on food, providing it frees up money that recipients would have spent on food to spend elsewhere.

- **Emergency Food Assistance Program**: H.R. 2419 provides $1.42 billion over eleven years for the Emergency Food Assistance Program (TEFAP), which provides funding to states in concert with food banks to tap federal commodity stocks.

- **Fruits and Vegetables/School Lunches:** H.R. 2419 creates a new program to make free fresh fruits and vegetables available through the school lunch program, costing $1.2 billion over eleven years.

Research:

- **Mandatory Funding for Organic Agriculture:** H.R. 2419 provides $78 million in mandatory spending, from 2008 to 2012, for the Organic Agriculture Research and Extension Initiative. According to the Joint Explanatory Statement, this program will "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."

- **Mandatory Funding for Specialty Crop Research Initiative:** H.R. 2419 provides $230 million in mandatory spending, from 2008 to 2012, to "disseminate science-based tools to address the needs of specialty crops and their regions."

- **Mandatory Funding for Beginning Farmer and Rancher Development Program:** H.R. 2419 provides $75 million in mandatory spending, from 2008 to 2012, for a grants program targeted to beginning farmers and ranchers.

<u>Energy:</u>

- **Commercial Biofuel Production:** H.R. 2419 reauthorizes loan guarantees to support the construction of commercial biofuel production factories and plants at a cost of $320 million compared to the baseline.

- **Bioenergy Program for Advanced Fuels:** H.R. 2419 reauthorizes the Bioenergy Program for Advanced Fuels at a cost of $300 million compared to the baseline.

<u>Tax Provisions, Offsetting Receipts:</u>

- **Ethanol:** H.R. 2419 reduces the value of the ethanol tax credit from 51 cents a gallon to 45 cents a gallon and creates a new "cellulosic biofuel producer credit." This would provide a non-refundable income tax credit of $1.01 for each gallon of qualified cellulosic fuel production. The conference report also pushes back the expiration date of the 54 cent per gallon ethanol tariff by two years, from 2008 to 2010.

- **Qualified Forestry Conservation Bonds:** H.R. 2419 includes a tax provision that allows $500 million worth of tax-advantaged "Qualified Forestry Conservation Bonds" to be issued by the Secretary of the Treasury. This tax provision is so narrowly crafted that the application of the bonds could only be used for one specific property, which is predominantly in the state of Montana (Senator Max Baucus is the sponsor of the provision). This provision is similar to section 12808 of the Senate-passed bill. Rep. Eric Cantor offered an MTI to instruct conferees to *not* include this provision in the conference report.

- **Increased Civil and Criminal Penalties*:*** According to CBO, H.R. 2419 increases federal revenue by $394 million over the 2008 to 2018 period from increased civil and criminal penalties on market manipulation.

- **Extension of Custom User Fees:** H.R. 2419 extends custom user fees, otherwise set to expire in 2014, to 2017. Though these fees would not otherwise expire for six years, this provision is included in the farm bill to "pay for" the additional spending above the baseline. CBO scores this provision as reducing direct spending (through negative spending in the form of offsetting receipts) by $9.5 billion over the 2008 to 2018 period.

Other Provisions:

- **Davis-Bacon:** H.R. 2419 would extend the controversial Davis-Bacon wage requirements to ethanol projects under the loan guarantee program. Specifically, the Davis-Bacon Act requires that each federal government contract worth over $2,000 for the construction, alteration, or repair of public buildings or public works (including airports and public housing) set the minimum wages to be paid to laborers and mechanics employed under the contract at no less than the **locally prevailing wages** paid on projects of a similar character (as determined by the Secretary of Labor).

- **Dairy Policy**: H.R. 2419 extends the Dairy Support program through the end of 2012 and requires the Secretary to support the price of cheddar cheese, butter, and nonfat dry milk by having the government purchase such products at prices set in the bill. The bill also establishes a dairy forward pricing program, which authorizes milk producers to voluntarily enter into formal price contracts with milk handlers for milk that is not class I. The bill also extends the Milk Income Loss Contract (MILC) Program, the dairy export incentive program, and the dairy indemnity program through 2012.

- **McGovern-Dole Program:** H.R. 2419 creates a new entitlement for the McGovern-Dole International Food for Education and Child Nutrition Program, which has previously received discretionary funding. Specifically, H.R. 2419 provides $84 million in U.S. foreign aid to foreign countries to establish nutrition programs. In FY 2008, this program received $99 million through the appropriations process.

- **Specialty Crop Block Grant:** H.R. 2419 provides $365 million over five years in mandatory spending for the specialty crop block grants program, an increase of $246 million above current law.

- **Mandatory Funding for Pest and Disease Program:** H.R. 2419 creates a new entitlement program, at a cost of $177 million over five years that would conduct pest detection and surveillance activities in coordination with state departments of agriculture.

- **Sheep and Goat Industry Improvement Center Earmark:** H.R. 2419 provides $1 million in mandatory funding in FY 2008 for the National Sheep and Goat Industry Improvement Center, an earmark sponsored by Senator Max Baucus, and also authorizes a total of $50 million over the 2008 to 2012 period for this center (subject to appropriation).

- **Mandatory Country of Origin Labeling:** H.R. 2419 requires mandatory country of origin labeling for beef, lamb, pork, chicken, goat meet, fruits, vegetables, macadamia nuts, and peanuts.

- **Mandatory Funding for Outreach and Technology Assistance for Socially Disadvantaged Farmers:** H.R. 2419 provides $75 million of new entitlement funding for this program, which according to the USDA, "provides funds to organizations to conduct outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs."

- **Creates Agricultural Disaster Assistance Program:** H.R. 2419 creates, at an estimated cost of $4.65 billion, a Supplemental Agricultural Disaster Assistance trust fund, which would provide payments to farmers and ranchers who suffer loses in areas that are designated disaster areas by the USDA.

Possible Conservative Concerns:

- **Higher Spending and Budget Gimmicks:** The bill provides $714 billion in mandatory spending over the 2008 to 2018 period. Many conservatives argue that this high level of spending is unjustified given the high level of commodity prices. The price of food is expected to rise by about 5% in 2008, the largest increase since 1990. The Department of Agriculture estimates that 2007 net income was $87.5 billion, *48 percent* above the previous year's level of $59 billion. According to the Heritage Foundation, since the 2002 Farm Bill, farm income has more than doubled.

- **Lack of Sufficient Reform:** Some conservatives may be concerned that the changes made in H.R. 2419 do not constitute sufficient reform of commodity payments. The conference report could still allow people with incomes of $2.5 million to collect subsides, as a couple could have non-farm income of $500,000 per person (the maximum under H.R. 2419), and also have a farm income of $750,000 per person.

- **Davis-Bacon:** Many conservatives may oppose the expansion of Davis-Bacon and would argue that Davis-Bacon increases the cost of federal projects and forces private companies to spend hundreds of millions of dollars in administrative costs.

- **Ethanol:** Some conservatives may have concerns that the farm bill extends tax and tariff subsidies for ethanol, while keeping in place the ethanol mandate. The price of a bushel of corn is around $5, which is nearly triple the level of two years ago. 25% of all corn in the U.S. goes to ethanol.

- **Trade:** Some conservatives may believe that this Farm Bill will make it harder for the United States to successfully conclude future trade agreements Nowhere is this more apparent than with the Doha negotiations within the WTO.

Committee Action: H.R. 2419 was introduced on May 22, 2007 and was subsequently ordered to be reported by the House Agriculture Committee, by voice vote, on July 19, 2007. It subsequently passed the House on July 27, 2007 by a vote of 231 to 191, and went on to pass the Senate by a vote of 79 to 14 on December 14, 2007.

Administration Position: Though a SAP is not yet available, the Administration has indicated it will veto the legislation.

Cost to Taxpayers: CBO estimates that the conference report would lead to mandatory spending of $714 billion over eleven years ($3.7 billion above the baseline).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the conference report contains new intergovernmental and private sector mandates, creates various new entitlement programs, and spends $714 billion over the 2008 to 2018 period.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Joint Explanatory Statement contains a list of 21 earmarks.

Constitutional Authority: The conference report to H.R. 2419 fails to cite constitutional authority.

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