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Farm Bill Update

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by

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I. What is the Farm Bill?

A. The Farm Bill is the result of a once every 5 years or so review by Congress of the major programs and activities of the U.S. Department of Agriculture (USDA) and other related agencies, including the Farm Credit Administration.

B. Farm Bills generally cover the following program and activity areas.

1. **Commodity Programs:** These programs provide assistance to producers of certain major crops, including wheat, feed grains, cotton, rice, soybeans, milk, and sugar. This assistance includes price support loans (nonrecourse marketing loans that ensure a farmer receives at least the loan rate as the price for the crop) and payments to offset low prices. These programs also provide assistance to a wide range of farmers and ranchers that suffer losses from natural disasters and authorize a form of insurance to farmers and ranchers that produce agricultural commodities where Federal crop insurance is not available.

2. **Conservation Programs:** These programs encourage farmers and ranchers, through payments and regulations, to take steps to conserve the water, soil and other natural resources on their farms. These programs include the Conservation Reserve Program, Agricultural Conservation Easement Program, Environmental Quality Incentives Program, and the wetlands conservation and highly erodible land conservation regulations.

3. **Trade Programs:** These programs fund international food aid and activities that develop and maintain export markets for U.S. agricultural products.

4. **Nutrition Programs:** These programs provide food assistance to needy families and food banks across the country. These programs include the Supplemental Nutrition Assistance Program (SNAP or sometimes it is referred to as Food Stamps), The Emergency Food Assistance Program (TFAP), and the Food Distribution Program on Indian Reservations (FDIPR). These programs are not limited to rural areas.

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<sup>1</sup> This outline and my presentation at the Symposium represent my personal views. These views are not necessarily the views of my employer, the Farm Credit Administration.

5. Credit Programs: The programs provide funding to farmers and ranchers for their operations. These programs include the Farm Loan Programs of the Farm Service Agency as well as the loan programs of the cooperative banks and associations of the Farm Credit System which are regulated by the Farm Credit Administration (FCA).<sup>2</sup>

6. Rural Development Programs: These are programs that provide loans, grants, and loan guarantees to support the development of rural businesses; rural community facilities; and rural electric, telecommunications, and water utilities. Together these programs represent a rural development bank that lends around \$10 billion per year in these areas.<sup>3</sup>

7. Research, Education, and Extension Programs: These programs provide funding for agricultural research and education programs conducted within USDA and outside of USDA, mainly in higher education institutions. These programs also provide services (extension services) directly to farmers and ranchers on a variety of topics that help them improve their agricultural operations and lives generally.

8. Forestry Programs: These programs and activities provide assistance to private forest owners regarding the management of their forests and use of the wood they produce. There are programs and activities included in this area that also impact the management of the National Forests.

9. Energy Program: These are programs that provide assistance and support to development and marketing of bioenergy and biobased products.

10. Horticulture Programs: These programs provide assistance to producers of a wide variety of specialty crops (crops generally not covered under the Commodity programs). These programs include the USDA Organic Program.

11. Crop Insurance Program: The Federal crop insurance program provides insurance against losses (price or revenue) to farmers and ranchers covering production of a very wide range of agricultural commodities.

B. The programs and activities covered by the Farm Bill are within the jurisdiction of the Senate Committee on Agriculture, Nutrition and Forestry, and the House Agriculture Committee. Major USDA programs and activities outside the jurisdiction of these committees that are generally not covered by a Farm Bill are the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the school meals programs, rural housing programs, and core programs and activities of the Forest Service.

C. Farm Bills include authorizations of appropriations for certain programs and activities for discretionary funds to be provided by appropriations committees through annual appropriations bill. Farm Service Agency's Farm Loan Programs and National Institute for Food and Agriculture research programs are funded with discretionary funds. Farm Bills also include mandatory funding for certain programs. Mandatory funds are made available to USDA outside

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<sup>2</sup> FCA is an independent agency separate from USDA. The Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) authorizes the creation of the banks and associations of the Farm Credit System and the regulatory authority of FCA.

<sup>3</sup> For more information on the funding levels of these activities see the Rural Development section of the Department of Agriculture Appendix to the President's 2020 Fiscal Year Budget which is on the White House website at [www.whitehouse.gov/wp-content/uploads/2019/03/agr-fy2020.pdf](http://www.whitehouse.gov/wp-content/uploads/2019/03/agr-fy2020.pdf)

of the appropriation process. Commodity, most crop insurance, and most conservation programs are funded with mandatory funds.<sup>4</sup>

## II. The Agriculture Act of 2018

A. On December 20, 2018, the President signed into law the [Agriculture Act of 2018](#) (Pub. L. 115-334, 132 Stat. 4490, December 20, 2018), the 2018 Farm Bill.<sup>5</sup>

B. The [Conference Report](#) for the 2018 Farm Bill (H.Rept. 115-1072, December 10, 2018) is a valuable resource in understanding the legislation. The Conference Report not only includes the text of the legislation, it also includes the Statement of Managers which is a very good source of legislative history regarding individual provisions of the legislation.

## III. Key Provisions of the 2018 Farm Bill

A. SNAP (toughest set of issues Congress considered in the 2018 Farm Bill)

### 1. [House Bill](#)

a. Expanded the ages for work requirements from 18-49 to 18-59.

b. Provided more funding and requirements to States regarding their Employment and Training Programs, that help SNAP recipients find work.

c. Limited Broad Based Categorical Eligibility (BBCE). BBCE allows households to be eligible to participate in SNAP if the members of the household are participating in certain public assistance programs, even if the household does not meet asset tests. For more information on BBCE see the CRS report on *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility* (CRS, No. R42054, August 1, 2019) at [crsreports.congress.gov/product/pdf/R/R42054](https://crsreports.congress.gov/product/pdf/R/R42054)

2. [Senate Bill](#) did not make major changes to the work requirements or generally the eligibility requirements for SNAP.

5. The final version of the 2018 Farm Bill primarily followed the Senate Bill and did not make major changes to work or eligibility requirements.<sup>6</sup>

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<sup>4</sup> For a more detailed discussion of Farm Bills, including the topics discussed above, see the Congressional Research Service (CRS) report, *What is the Farm Bill?* (CRS, No. RS22131, April 26, 2018) found at: [crsreports.congress.gov/product/pdf/RS/RS22131](https://crsreports.congress.gov/product/pdf/RS/RS22131) This report examines the basic elements of the [Agricultural Act of 2014](#) (Pub. L. 113-79, 128 Stat. 649, February 7, 2014) (2014 Farm Bill) as well as how cost projections by the Congressional Budget Office regarding the 2014 Farm Bill impact Congress' consideration of the what was ultimately included in the 2014 Farm Bill and of what could be included the 2018 Farm Bill. These costs reflect the amount of mandatory funds provided for in the Farm Bill. These costs can also be referred to as the "score" or "budget score."

<sup>5</sup> This outline will only focus on a limited number of provisions of the 2018 Farm Bill. For a detailed discussion of the elements noted in this outlines and analysis of many others in the 2018 Farm Bill, see the CRS report, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, (CRS, No. R45525, February 22, 2019) which can be found at [crsreports.congress.gov/product/pdf/R/R45525](https://crsreports.congress.gov/product/pdf/R/R45525)

<sup>6</sup> For more information about the funding of SNAP and other nutrition issues in the 2018 Farm Bill, see the CRS report *2018 Farm Bill Primer: SNAP and Nutrition Title Programs* (CRS, No. IF11087, January 30, 2019) which can be found at [crsreports.congress.gov/product/pdf/IF/IF11087](https://crsreports.congress.gov/product/pdf/IF/IF11087) For more information about SNAP eligibility issues in general, see the CRS report *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility*

## B. Commodity Programs

1. Farmers that produce covered commodities (generally wheat, feed grains, seed cotton, rice, soybeans and other oilseeds, pulse crops, and peanuts<sup>7</sup>) are given a choice between two payment programs. Price Loss Coverage (PLC) is a payment program that is based on statutory fixed benchmark prices, with limited adjustments.<sup>8</sup> Agricultural Risk Coverage is a payment program that has benchmark prices more closely tied to recent market prices.<sup>9</sup>

2. Farmers that produce loan commodities (generally, covered commodities plus cotton, graded wool, nongraded wool, mohair, and honey<sup>10</sup>) can obtain a marketing loan that is a nonrecourse loan that provides farmers price support to the loan level. To the extent that market prices are less than the statutorily established loan rate, the farmer can receive a payment from USDA for such difference instead of taking out a marketing loan.<sup>11</sup>

4. Dairy producers receive assistance through a program that provides varying levels of insurance regarding the margin between the USDA determined market price milk and the USDA determined feed costs for dairy farmers.<sup>12</sup> Whether a producer pays a premium, or if so, how much, is determined based on the size of the margin insured and the size of the milk production being insured.

5. Major changes in the 2018 Farm Bill.

a. Starting with the 2021 crop farmers will be able to choose annually whether they will sign up for the PLC or ACR.<sup>13</sup> The 2014 Farm Bill made farmers choose between these programs for the life of the Farm Bill.

b. Farmers who elect the PLC payment program will have the opportunity to update their payment yields. As a means to control the costs of these payment programs, Congress limits when farmers can update the yields they use to determine payments. Generally, these payments are based on the farmer's historic yields that can go back many years and may not reflect the current yields based on more productive seeds, inputs, and farming practices.<sup>14</sup>

c. Acres that have been planted to grass or pasture from 2009 through 2017 are not eligible for payments.<sup>15</sup>

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*and Benefits* (CRS, No. R42505, April 11, 2018) which can be found at [crsreports.congress.gov/product/pdf/R/R42505](https://crsreports.congress.gov/product/pdf/R/R42505)

<sup>7</sup> See section 1111(6) of the Agricultural Act of 2014 (7 U.S.C. §9011(6)). Please note that the 2018 Farm Bill amended the commodity programs in the Agricultural Act of 2014, the 2014 Farm Bill. Therefore, the references will be 2014 Act.

<sup>8</sup> See section 1116 of the Agricultural Act of 2014 (7 U.S.C. §9016).

<sup>9</sup> See section 1117 of the Agricultural Act of 2014 (7 U.S.C. §9017).

<sup>10</sup> See section 1201(a) of the Agricultural Act of 2014 (7 U.S.C. §9031).

<sup>11</sup> See subtitle B of title I of the Agricultural Act of 2014 (7 U.S.C. §9031 et seq.).

<sup>12</sup> See subtitle D of title I of the Agricultural Act of 2014 (7 U.S.C. §9051 et seq.).

<sup>13</sup> See section 1115 of the Agricultural Act of 2014 (7 U.S.C. §9015).

<sup>14</sup> See section 1113(d) of the Agricultural Act of 2014 (7 U.S.C. §9013(d)).

<sup>15</sup> See section 1112(d)(3) of the Agricultural Act of 2014 (7 U.S.C. §902(d)(3)).

d. Most of the loan rates under the marketing loan program were increased over the rates established in the 2014 Farm Bill.<sup>16</sup>

### C. Conservation Programs

1. The major conservation programs are the Conservation Reserve Program, Agricultural Conservation Easement Program, and Environmental Quality Incentive Program.

a. Under the Conservation Reserve Program, producers enter into long term contracts to apply approved conservation practices on coverage acreage. The producer receives cost share assistance to establish the conservation practice and rental payments for the years under the contract that the practice remains in place.<sup>17</sup>

b. Under the Agricultural Conservation Easement Program, USDA purchases easements to ensure the implementation of a variety of long-term conservation practices.<sup>18</sup>

c. Under the Environmental Quality Incentives Program, USDA makes payments to producers to adopt and maintain approved conservation practices.<sup>19</sup>

2. In the 2014 Farm Bill, one of the biggest changes Congress made the conservation programs was the combination of several programs that authorized USDA to purchase easements to encourage long term conservation practices to establish the Agricultural Conservation Easement Program.<sup>20</sup>

3. In the 2018 Farm Bill, Congress continued the consolidation of conservation programs by combining the Conservation Stewardship Program, an acreage-based payment program to producers that follow specific conservation practices, into the Environmental Quality Incentive Programs. The overall funding for the combined programs was reduced.

4. The overall acreage limitation for the Conservation Reserve Program was increased in the 2018 Farm Bill, but the rental rate payments have been reduced.

5. Many of the issues discussed in the Commodity Programs and Conservation Program sections above are discussed in more detail in analysis prepared by the University of Illinois in a report called *The Agriculture Improvement Act of 2018: Initial Review* which can be accessed at <https://farmdocdaily.illinois.edu/2018/12/the-agriculture-improvement-act-of-2018-initial-review.html>.

### D. Hemp.

1. In the 2014 Farm Bill, Congress enacted a pilot research program for the production and marketing of industrial hemp. Industrial hemp was defined as hemp that contains not more than .3 percent of Tetrahydrocannabinol (THC). This research could be conducted through institutions of higher education or state departments of agriculture.<sup>21</sup>

2. In the 2018 Farm Bill, Congress enacted several provisions to allow the commercial production of hemp.

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<sup>16</sup> See section 1202 of the Agricultural Act of 2014 (7 U.S.C. §9032).

<sup>17</sup> See subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. §3831 et seq.).

<sup>18</sup> See subtitle H of title XII of the Food Security Act of 1985 (16 U.S.C. §3865 et seq.).

<sup>19</sup> See chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. §3839aa et seq.).

<sup>20</sup> See section 1265 of the Food Security Act of 1985 (16 U.S.C. §3865).

<sup>21</sup> See section 7606 of the Agricultural Act of 2014 (7 U.S.C. §5940).

a. Congress removed industrial hemp, as defined in the 2014 Farm Bill, from the list of controlled substances under the Controlled Substances Act.<sup>22</sup>

b. Congress authorized the Secretary of Agriculture to administer a program regulating the commercial production of hemp (as defined as industrial hemp pursuant to the 2014 Farm Bill) in the U.S. The authorization for this program was provided for as an amendment inserting a new subtitle G to the Agricultural Marketing Act of 1946.<sup>23</sup>

i. The legislation lists a number of requirements for the program, including the need to be able to identify the location of hemp production, the ability to test plants to ensure they are within the THC limitations, and the means to properly account for and destroy plants that are outside the THC limitations.

ii. Under this program, the Secretary can approve state or tribal plans to administer the hemp program in their state or tribal areas.

iii. In those states or tribal areas where the program is not locally administered the Secretary shall administer the program. The hemp programs approved or administer by the Secretary preempt state and local laws.

iv. The legislation provides for a safe harbor for hemp producers who produce under the program, but negligently violate the program by producing plants outside the THC limitations. Such violations will not be subject to enforcement under Federal or State controlled substances laws.

v. Under the legislation the 2014 Farm Bill hemp pilot program will remain in effect until one year after the Secretary implements the 2018 Farm Bill hemp program.

vi. The legislation provides interstate commerce protection for hemp and hemp products.<sup>24</sup>

c. The Secretary of Agriculture has announced that Agricultural Marketing Service (AMS) will administer the hemp program at USDA and regulations to implement the program will not be in place until the 2020 crop. For the 2019 crop, the Secretary has recommended that hemp production continue under the pilot program.<sup>25</sup>

### 3. Issues.

a. Whether hemp produced under the 2014 Farm Bill pilot program is protected under the interstate commerce provisions in the 2018 Farm Bill discussed above? There has been litigation on this subject that suggests it is not.<sup>26</sup> However, the General Counsel of

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<sup>22</sup> See section 12619 of the Agriculture Improvement Act of 2018 (Pub. L. No. 115-334; 132 Stat. 5018; December 20, 2018).

<sup>23</sup> See section 10113 of the Agriculture Improvement Act of 2018 (Pub. L. No. 115-334; 132 Stat.4908, December 20, 2018 and 7 U.S.C. §1639o).

<sup>24</sup> See section 10114 of the Agriculture Improvement Act of 2018 (Pub. L. No. 115-334; 132 Stat.4914; 7 U.S.C. §1639o note).

<sup>25</sup> For more information about USDA's implementation of the hemp program, including the Secretary's determinations regarding 2019 crop production of hemp, go to the hemp page at the USDA website: [www.ams.usda.gov/rules-regulations/farmbill-hemp](http://www.ams.usda.gov/rules-regulations/farmbill-hemp).

<sup>26</sup> See, *Big Sky Scientific LLC. v. Idaho State Police*, Case No. 19-CV-00040 (D. Idaho).

USDA has issued a statement indicating that it is USDA's position that such hemp is protected.<sup>27</sup>

b. What are the challenges to raising hemp? During a recent hearing before the Senate Committee on Agriculture, Nutrition and Forestry, an experienced hemp producer testified about the challenges of raising hemp, legal and operational. These challenges range from the lack of approved herbicides and pesticides for hemp production to the legal status of CBD for use in food. His written testimony can be found on the Committee's website at [www.agriculture.senate.gov/imo/media/doc/Testimony\\_Furnish.pdf](http://www.agriculture.senate.gov/imo/media/doc/Testimony_Furnish.pdf).

c. What is the status of about our ability to test effectively for THC levels in hemp plants consistent with the 2018 Farm Bill standards. At the same Senate hearing described above, a witness, Erica Stark of the National Hemp Association, testified about the issues related to current THC testing of hemp. Specially, she raised concern about the effectiveness and lack of uniform standards regarding THC testing of hemp across the country and how these concerns can and need to be addressed to prevent them from blocking development of the hemp industry in the U.S. Her testimony can be found on the Committee's website at:

[https://www.agriculture.senate.gov/imo/media/doc/Testimony\\_Stark%2007.25.19.pdf](https://www.agriculture.senate.gov/imo/media/doc/Testimony_Stark%2007.25.19.pdf).

d. The legal status of Cannabidiol (CBD) is challenge. CBD is a chemical compound found in both marijuana and hemp. Pursuant to the 2018 Farm Bill CBD from hemp is no longer on the Federal controlled substances list. While very little scientific research has been done on CBD, there is a strong anecdotal belief that CBD can improve well-being and sleep as well as address a number of medical conditions. The Food and Drug Administration (FDA) has approved one medical use for CBD but has not approved CBD to be added to food despite a growing market for CBD infused food items. Currently, CBD and the medical claims surrounding it are being investigated by the FDA, as well as whether it should be allowed in food. On the other hand, hemp seeds are currently approved to be consumed as food by the FDA. Dr. Amy Abernethy of the FDA recently testified before the Senate Committee on Agriculture, Nutrition and Forestry regarding the FDA's work on studying CBD and hemp, including the issues discussed above. This testimony can be found on the Committee's website at

[https://www.agriculture.senate.gov/imo/media/doc/Testimony\\_Abernethy%2007.25.19.pdf](https://www.agriculture.senate.gov/imo/media/doc/Testimony_Abernethy%2007.25.19.pdf).<sup>28</sup>

e. As discussed above, the Secretary is planning on AMS promulgating the 2018 Farm Bill hemp program regulations in the fall of 2019 effective for the 2020 hemp crop. These regulations will have to address a number of issues.

i. Many states have established their own testing procedures, licensing monitoring, disposal and other administrative procedures. It will be interesting to see how much flexibility the regulations will provide to allow for some state variation. As discussed above, there are concerns regarding the proper protocols

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<sup>27</sup> A link to this legal opinion issued by the General Counsel can be found on the USDA website at [www.ams.usda.gov/content/legal-opinion-authorities-hemp-production](http://www.ams.usda.gov/content/legal-opinion-authorities-hemp-production)

<sup>28</sup> See also the CRS report, *FDA Regulation of Cannabidiol (CBD) Product*, (CRS, No. IF11250, June 12, 2019) found at [crsreports.congress.gov/product/pdf/IF/IF11250](http://crsreports.congress.gov/product/pdf/IF/IF11250)

for THC testing and the AMS regulations will need to address and clarify THC testing standards.

ii. The Hemp provisions in the 2018 Farm Bill create a safe haven for those who negligently produce hemp that exceeds the THC limitation. How will AMS define such “negligent violations” of the program? Given the limited data regarding the production of hemp and the factors that increase and decrease THC levels in the plant coupled with the very tight .3 percent THC standard, the manner in which AMS defines this term will determine how risky hemp production will be considered to be in the short to medium term.

iii. How will AMS address tribal plan requests in light of the special relationship Native American tribes have with the Federal government. Tribes were not included in the 2014 Farm Bill pilot program. Some tribal leaders are concerned that tribes are behind a number of states in hemp production and that USDA needs to enter into consultations with tribal leaders to help them catch up. A discussion of these issues came up at the recent Senate Committee Agriculture, Nutrition, and Forestry. The Honorable Darrell G. Seki, Sr., Chairman of the Red Lake Band of Chippewa Indians testified about these concerns. His testimony can be found on the Committee’s website at [https://www.agriculture.senate.gov/imo/media/doc/Testimony\\_Seki.PDF](https://www.agriculture.senate.gov/imo/media/doc/Testimony_Seki.PDF).