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**An Examination of the General Commodity
Provisions of the Food Security Act of 1985**

by

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AN EXAMINATION OF THE GENERAL COMMODITY PROVISIONS OF THE FOOD SECURITY ACT OF 1985

INTRODUCTION

Over the years, changes in the economy have forced farmers to seek aid from the federal government for solving problems which are beyond their control. These problems include the commodity price decreases, shrinking export markets, inadequate domestic demand and the growing need for special credit.¹ The demand for such aid has increased as farming has developed from a way of life — largely self-sufficient and independent — into a modern, gigantic, commercial food and fiber producing industry.² The present economy and farming conditions have once again demanded legislative action and increased federal aid.

The five-year compromise farm bill approved by the House-Senate Conference Committee was formulated to protect farm income, promote trade, and conserve millions of acres of fragile soil for future generations.³ These objectives are addressed by three main categories in the general commodity section. The first category places limitations on benefits given to producers who participate in programs such as acreage allotment and set-asides.⁴ The second category on wheat and feed grain certificates is new and promotes trade and reduces surpluses, thus benefiting the farm and world economies. The third category continues to preserve soil and help protect farm income by preventing commodity surpluses which have an adverse effect on market price.⁵

PAYMENT LIMITATIONS AND PRODUCER BENEFITS

Background

The 1985 Farm Bill amended several provisions concerning payment limitations and producer benefits. The limitation on the total amount of payments, excluding disaster payments, that any person is entitled to receive under one or more of the annual programs for wheat, feed grains, upland cotton, extra long staple cotton, and rice has remained at \$50,000 per year.⁶ It will continue at that level from 1986 through 1990.⁷ Thus no person can re-

1. A. KORPELA, FEDERAL FARM LAW MANUAL 5 (1956).

2. *Id.*

3. H.R. COMM. ON AGRIC., 99th Cong., 1st Sess., NEWS RELEASE (Dec. 16, 1985) (Statement by Chairman Kika de la Garza, D-Tex)

4. See generally Note, *An Examination of Several Aspects of Federal Farm Legislation*, 31 S.D.L. REV. 341 (1986).

5. *Id.*

6. Food Security Act of 1985, Pub. L. No. 99-98, 99 Stat. 1354, 1445 [hereinafter cited as Food Security Act] (for crop years 1982 through 1985 the total payment amount was \$50,000, Act of December 22, 1981, Pub. L. No. 97-98, § 1011(1), 95 Stat. 1212).

7. Food Security Act, *supra* note 6, at § 1001, 99 Stat. at 1445 (to be codified at 7 U.S.C. § 1308).

ceive payments totaling more than \$50,000 per year on any or all of the general commodity programs, excluding disaster payments.⁸

Payments covered by the limitation do not include loans and purchases, but do include all other payments made to producers under the Agricultural Act of 1949.⁹ A separate limitation of \$100,000 was set up for 1986 through 1990 for disaster payments on any or all of the commodities — wheat, feed grains, upland cotton and rice.¹⁰

The 1985 Act gives the Secretary of Agriculture the authority to define the term "person" as deemed necessary to assure a fair and reasonable application of the limitation established under this section.¹¹ The Secretary defines "person" as an "individual, joint stock company, corporation, association, trust, estate, or other legal entity."¹² In order to be considered a separate person for the purpose of payment limitation, the individual or other legal entity must have a separate and distinct interest in the land or the crop involved, exercise separate responsibility for such interest, and be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.¹³ Allowing the Secretary to determine a definition of "person" is a safeguard against fraudulent participation in any schemes designed to evade the payment limitation.¹⁴

If the total amount of payments which will be earned by any person will be reduced by the payment limitation, the Secretary is required to reduce the set-aside acreage for that person's farm to the extent the Secretary determines is fair and reasonable.¹⁵ Section 1001 prevents payment limitations from having a detrimental effect on farmer income. The purpose of payments is to help farmers maintain adequate farm revenue.

The 1985 Food Security Act has provided two new programs which directly benefit producers. The first is the Advance Deficiency Program which more quickly provides farmers with deficiency payments.¹⁶ Deficiency payments are given to farmers who cooperate in the various programs such as acreage allotment and set-aside programs for corn, wheat, feed grains, upland cotton and rice.¹⁷ Under this provision, if the Secretary determines that deficiency payments will likely be made, then the Secretary will make those payments available in advance to producers who agree to participate in that

8. 1 AGRICULTURAL LAW 31 (J. Davidson ed. 1981).

9. *Id.*

10. Food Security Act, *supra* note 6, at § 1001, 99 Stat. at 1445 (to be codified at 7 U.S.C. § 1308).

11. *Id.*

12. 7 C.F.R. § 795.3 (1980).

13. *Id.*

14. *See generally* 7 C.F.R. § 795.5-795.17 (for further explanation of determining whether multiple individuals or other legal entity constitutes one or separate persons).

15. Food Security Act, *supra* note 6, at § 1001(4), 99 Stat. at 1445 (to be codified at 7 U.S.C. § 1308).

16. Food Security Act, *supra* note 6, at § 1001, 99 Stat. at 1446 (to be codified at 7 U.S.C. § 1308).

17. *Id.*

program.¹⁸ These advance payments will be made in cash, commodities, or a combination of both.¹⁹ If the actual deficiency payments payable to the producer for a crop results in a lesser payment than was advanced, then the producer must refund the difference as determined by the Secretary for that particular crop.²⁰ If advance payments are made and it is later determined that deficiency payments are not appropriate, then the producers who received the advance must refund the payments by the end of the marketing year for the crop.²¹ If, after receipt of the advance payment, the producer fails to comply with the requirements established for the acreage limitation or the set-aside program, then he is required to pay back the advanced amount immediately, with interest from the date of the advance.²²

The advance recourse commodity loan program is a new section which allows the Secretary to make recourse loans available in advance to qualified producers.²³ Qualified producers normally receive the Consumer Credit Corporation's non-recourse price support loans after harvest.²⁴ Unlike a non-recourse loan which does not hold the debtor personally liable for the amount in excess of the value of the collateral after default, a recourse loan allows a creditor to hold a debtor liable for the full amount of the loan.²⁵ The collateral used for the price support loan is the program crop or commodity itself.²⁶ Under the normal price support loan, the farmer has absolutely no individual or personal liability absent fraud in measuring his crop.²⁷ The Secretary is given authority to prescribe reasonable terms and conditions as he feels necessary, but the producer is required to obtain crop insurance as an eligibility condition.²⁸

Under the 1985 Act interest payment certificates will be issued to those producers who repay their price support loans.²⁹ The Secretary will provide a negotiable certificate to any producer who repays, with interest, a price support loan under any of the annual programs for wheat, feed grains, or rice established by the Department of Agriculture.³⁰ The certificate amount is equal to the amount of interest paid by the producer on the price support loan.³¹ The certificate is redeemable in wheat, feed grains, upland cotton, or

18. *Id.*

19. *Id.*

20. *Id.*

21. Food Security Act, *supra* note 6, at § 1001, 99 Stat. at 1446 (to be codified at 7 U.S.C. § 1308).

22. *Id.*

23. *Id.*

24. H.R. REP. NO. 271(I), 99th Cong., 1st Sess. 494, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS 1103, 1163 [hereinafter cited as H.R. REP. NO. 271(I)].

25. 7 U.S.C.A. § 1425 (West Supp. 1985).

26. 7 U.S.C.A. § 1444 (West Supp. 1985).

27. 7 U.S.C.A. § 1425 (West Supp. 1985).

28. *See generally* Note, *supra* note 4 (for background and analysis on crop insurance).

29. Food Security Act, *supra* note 6, at § 1004, 99 Stat. at 1447-48 (to be codified at 7 U.S.C. § 1425).

30. Food Security Act, *supra* note 6, at § 1004, 99 Stat. at 1448 (to be codified at 7 U.S.C. § 1425).

31. *Id.*

rice owned by the Commodity Credit Corporation.³² The issuance of certificates is subject to the availability of commodities owned by the Corporation.³³

Analysis

Existing deficiency and disaster payment limitations will continue to assure that Government farm payments go primarily to those operations that are not larger than the family farm.³⁴ In the past, attempts to receive payments over the projected limits have been thwarted.³⁵ One example was a leasing scheme in which a producer leased several tracts of cotton land to various individuals, who then assigned their cotton payments to the lessor.³⁶ The lessor actually farmed all of the land and received virtually all of both the profits and also the cotton payments.³⁷ This was found to be a sham to avoid the \$55,000 payment limitation under the 1973 cotton program.³⁸

The Secretary has been given the necessary power to prevent these shams from being viewed as bona-fide joint ventures by the definition of "person" under the statutes.³⁹ The Secretary has also been given the power to issue regulations deemed necessary to assure a fair and reasonable application of the limitations established under this section.⁴⁰ In the past, the Secretary has withheld or required refunds if a person participates in any scheme or device designed to evade the payment limitations.⁴¹

The Advance Deficiency Program serves two important purposes. First, it provides farmers with badly needed cash just as they are facing expenses at planting time.⁴² Second, early access to payments, especially during the credit crisis currently facing agriculture, encourages participation in the acreage reduction program and helps to assure that they are successful in curbing production and strengthening farm income.⁴³

The Advance Recourse Commodity Loan Program allows the needy producer to obtain funds which might not otherwise be available for spring planting expenses.⁴⁴ As the farm economy worsens, farmers will find their traditional lenders more reluctant to provide credit for planting crops.⁴⁵ The

32. *Id.*

33. *Id.*

34. H.R. REP. NO. 271(I), *supra* note 24, at 55, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1159.

35. 1 AGRICULTURAL LAW, *supra* note 8, at 33.

36. *United States v. Clark*, 546 F. 2d 1130, 1132-33 (5th Cir. 1977).

37. *Id.*

38. *Id.* at 1135.

39. Food Security Act, *supra* note 6, at § 1001, 99 Stat. at 1444-45 (to be codified at 7 U.S.C. § 1308).

40. *Id.*

41. 7 C.F.R. § 795.17 (1980).

42. H.R. REP. NO. 271(I), *supra* note 24, at 57, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1161.

43. *Id.*

44. H.R. REP. NO. 271(I), *supra* note 24, at 57, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1163-64.

45. H.R. REP. NO. 271(I), *supra* note 24, at 57, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1164.

Department of Agriculture has estimated that up to five percent of the farmers were unable to obtain money to plant their 1985 crops.⁴⁶ A much larger percentage of farmers in the Midwest were unable to get operating credit in the spring of 1985.⁴⁷

The interest payment certificate program is evidence of the governmental concern over commodity surplus. In the past when a farmer put his commodities in the Commodity Credit Corporation's system, he received a loan for the stored crop. This loan allowed the producer to use the money until the market price for his particular crop increased above the loan amount.⁴⁸ If the market price did not exceed the loan amount the farmer's commodities were redeemed by the Corporation. The farmer kept the loan amount as his payment for that commodity and was not required to pay interest on the loan. If the price increased, the participating farmer was then given the market price for his crop, but was required to repay the loan plus the fixed rate of interest established by the government.

Under the new certificate system, the basic loan program is the same, but the producer on a rising market, upon repayment with interest, receives a certificate redeemable in commodities.⁴⁹ The certificates have the same value as the amount of interest paid. Under the new program, the producer receives an interest free loan whether commodities rise or fall. Under the certificate system, producers will probably be more likely to participate in the Corporation's system, which should decrease commodity surplus and increase market prices.

CERTIFICATES

Background

One of the powers granted by the Commodity Credit Corporation Charter Act to the Corporation was to export and aid in the development of foreign markets for agricultural commodities.⁵⁰ The Food Security Act of 1985 has introduced a certificate program for wheat and feed grain exports which will provide extra incentive for producers to participate in the exportation of commodities.⁵¹

The incentive is provided by having the Secretary issue wheat and feed grain certificates to producers to whom the Secretary makes loans and payments for a crop, provided the producers comply with the terms and conditions of that crop program.⁵² The certificates will be distributed among eligible producers in a manner which will insure each producer receives certificates having an aggregate face value that represents an equal rate of return per

46. *Id.*

47. *Id.*

48. See generally Note, *The Commodity Credit Corporation's Price Support Loan Program: Should It Continue?*, 31 S.D. L. REV. 350 (1986).

49. Food Security Act, *supra* note 6, at § 1004, 99 Stat. 1447, 1448 (codified at 7 U.S.C. § 1425).

50. 1 AGRICULTURAL LAW, *supra* note 8, at 63.

51. See generally Food Security Act, *supra* note 6, at § 1006, 99 Stat. 1448-51 (to be codified at 7 U.S.C. § 1445b-5).

52. *Id.*

unit of wheat or feed grains produced.⁵³ The certificates may be redeemed for a cash amount equal to the monetary denomination if the holder exports a quantity of crop equal to the quantity on the certificate.⁵⁴ To be eligible to receive these certificates, the producer must participate in the program under this title for a particular crop.⁵⁵ If there is no acreage limitation or set-aside in effect for that crop, the farmer must limit that crop to his applicable crop acreage base; or if a set-aside program is in effect, the producer must comply with that program.⁵⁶

Analysis

Wheat and feed grain export certificates appear to many to be an effective tool in promoting additional exports.⁵⁷ Export certificates allow producers to sell their wheat for a premium price while providing a vehicle for exporters to reduce their costs in the wheat they buy.⁵⁸ This enables exporters to become more competitive in export markets. The producer still sells his wheat to the exporter at the market price, but is subsidized by the certificates which provide incentive to participate.⁵⁹ Since the exporter is able to buy at market price he will be able to target specific markets and regain this country's earlier, high market share.⁶⁰

Additional exports are necessary at this point because this country's wheat exports have dramatically decreased in the past several years due to a combination of factors.⁶¹ These factors include unfair subsidies and increased production by competing grain-producing countries, the strength of the dollar relative to other currencies, worldwide recession, and the 1980 grain embargo to the Soviet Union.⁶² The Certificate Program gives the Secretary of Agriculture an important marketing tool to meet the challenge of unfair foreign subsidies by targeting traditional markets which we have lost and sends an important message to our export competitors that we will be a successful competitor in the world market.⁶³

The export certificate program should make American wheat more attractive to foreign buyers. The certificates are designed to promote agricultural exports but do not in any way eliminate the competing factors in the marketplace which determine the market price.⁶⁴ Producers, elevators and

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. H.R. REP. NO. 271(I), *supra* note 24, at 58, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1162.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Hearings of the House Subcomm. on Wheat, Soybeans, and Feed Grains*, 98th Cong., 2nd Sess. 5 (1984) (statement by Hon. Ron Marlenee).

exporters remain free to buy and sell wheat at prices they have negotiated.⁶⁵ The system does not set the price for wheat and is not a system of making subsidizing payments to foreign governments.⁶⁶

Some estimate that the certificate program will increase wheat exports 40-70 million bushels per year or 3.5 percent from baseline levels.⁶⁷ This would mean 200-350 million additional bushels of wheat by the end of the 1990 crop year.⁶⁸ This increase in wheat available for export would mean a three percent reduction in the target price which would enable this country to be more competitive in the world market.⁶⁹

This legislation gives the Secretary of Agriculture an important marketing tool to meet the challenge of unfair foreign subsidies by zeroing in on those traditional markets which we have lost.⁷⁰ It also sends an important message that we will successfully compete once again.⁷¹

ACREAGE REDUCTION

Background

Farm surpluses first became acute in the 1920's.⁷² The first solution attempted was through orderly marketing of the product after the crop had been produced.⁷³ The Federal Farm Board attempted to support farm prices through the storage and withholding of crops.⁷⁴ The Board suffered heavy losses and a program was needed to hold production in line with demand.⁷⁵

Production control was written into the Agricultural Adjustment Act of 1933.⁷⁶ Under this act, millions of farmers signed for benefit payments, financed chiefly by a tax on the commodity involved.⁷⁷ Acreage allotment programs have been a major part of almost all agricultural legislation since.⁷⁸ Acreage reduction is one of the most commonly used tools for reducing commodity surplus.⁷⁹

The Agriculture and Food Act of 1981 authorized acreage reduction programs for the 1982 through 1985 crops of wheat, feed grains, cotton, and rice.⁸⁰ In order to implement the programs designed to take a portion of

65. *Id.*

66. *Id.*

67. H.R. REP. NO. 271(I), *supra* note 24, at 59, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1162.

68. *Id.*

69. *Id.*

70. H.R. REP. NO. 271(I), *supra* note 24, at 59, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1162-63.

71. *Id.*

72. A. KORPELA, *supra* note 1, at 93.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Minneapolis Star Tribune, August 11, 1985, at 11A., col. 2.

80. H.R. REP. NO. 271(I), *supra* note 24, at 85, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1158.

cropland out of production in time of surpluses, the Department of Agriculture established an acreage base and a program yield for each participating producer.⁸¹ The Department defines an acreage base as that portion of land on which a producer has historically planted the program crop.⁸² A program yield is the production capacity associated with a particular farm.⁸³ Combined, these are two of the components that go into the formula the Department uses to determine payments under its programs.⁸⁴

Section 1031 of the Food Security Act of 1985 was enacted to establish a system for determining farm and crop acreage bases and program yields for wheat, feed grains, upland cotton, and rice programs which is efficient, equitable, flexible, and predictable.⁸⁵ The County Committee⁸⁶ will determine the farm acreage base for a farm for the crop year.⁸⁷ The crop acreage base for a program crop is the sum of acres planted in each of the past five years.⁸⁸ This crop acreage base cannot exceed the number of acres equal to the average acreage planted on the farm in each of the past two crop years.⁸⁹ The Secretary may make adjustments to reflect crop rotation practices and to reflect the other factors necessary to determine a fair and equitable crop acreage base.⁹⁰ Special consideration is also given to those farms which have a history of double-cropping.⁹¹

Another new provision of the 1985 Act authorizes the Secretary to enter multi-year set-aside contracts as part of the programs in effect for 1986 through 1990 for crops of wheat, feed grains, upland cotton, and rice.⁹² The producers who agree to this contract are required to devote the set-aside acreage to vegetative cover capable of maintaining itself through the set-aside period.⁹³ The purpose of this contract is to provide soil protection, water quality enhancement, wildlife protection, and natural beauty.⁹⁴ Grazing of livestock is prohibited on this set-aside land.⁹⁵ The Secretary provides cost-sharing incentives to farm operators for the establishment of vegetative cover.⁹⁶

81. *Id.*

82. H.R. REP. NO. 271(I), *supra* note 24, at 85, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1159.

83. *Id.*

84. *Id.*

85. *Id.*

86. Food Security Act, *supra* note 6, at § 1031, 99 Stat. at 1461-62 (to be codified at 7 U.S.C. § 1461) (defines "County Committee" as the committee established under § 8(b) of the Soil Conservation and Domestic Allotment Act for the county in which the farm is administratively located).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Food Security Act, *supra* note 6, at § 1010, 99 Stat. 1454 (to be codified at 7 U.S.C. § 1445).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

Analysis

The Agriculture and Food Act of 1981 authorized acreage reduction programs for 1982 through 1985 crops of wheat, feedgrains, cotton and rice.⁹⁷ The purpose of this program, as with any acreage allotment system, is to give the Department of Agriculture some control over production by requiring participating producers to take a certain percentage of their cropland, normally devoted to a program crop, out of production in times of surpluses.⁹⁸

Because of the way the 1981 farm bill was administered, phenomena called "inflated bases" and "phantom acreage" occurred.⁹⁹ Inflated bases resulted when a farm's base acreage increased above that farm's usual planted acres.¹⁰⁰ Phantom acreage occurred when the total of the individual crop acreage bases exceeded the total amount of cropland on that farm.¹⁰¹ Section 1031 of the Food Security Act seeks to alleviate these problems.

The bill provides a new system for determining program yield and acreage bases to end the inflated bases and phantom acreage problems.¹⁰² These changes should eliminate some of the negative aspects associated with the acreage allotment systems.

Making the system more efficient will not eliminate other shortcomings with the acreage reduction theory. The government spends millions of dollars on research designed to help farmers increase productivity, while at the same time spending millions of dollars to support acreage reduction programs. To many, this counter production spending is unnecessary, but under the present economic and political conditions, alternatives appear out of reach.

One commonly made suggestion is to use the money presently used in the allotment program to develop ways to market surplus commodities to developing nations. World-wide hunger would seem to require that farmers produce as much food as possible. Aid would then be provided on a more cost-effective basis to these less fortunate people. The Food Security Act will help protect farm income, promote trade, and conserve fragile soils.¹⁰³ Acreage reduction, along with all of its downfalls, still addresses the objectives set forth by this farm bill and it does serve each one of these aims. World-wide starvation is a problem which needs to be addressed in legislation other than the 1985 Food Security Act.

The authority granted the Secretary of Agriculture to enter multi-year set-aside contracts allows the Secretary to undertake a program that gives long-term stability to the commodity programs by reducing the acres in pro-

97. H.R. REP. NO. 271(I), *supra* note 24, at 54, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1158.

98. *Id.*

99. H.R. REP. NO. 271(I), *supra* note 24, at 55, *reprinted in* 1985 U.S. CODE CONG. & AD. NEWS at 1159.

100. *Id.*

101. *Id.*

102. *Id.*

103. NEWS RELEASE, *supra* note 3 (statement by Chairman Kika de la Garza, D-Tex.).

duction.¹⁰⁴ Although the Food Security Act will be supported by farmers whose participation was induced by economics, benefits cannot be measured by economics alone. The program provides for soil protection, water quality enhancement, wildlife protection, and enhanced natural beauty.

CONCLUSION

The Food Security Act of 1985 has made a positive step toward protecting farm income, promoting trade and conserving farm land for future generations. The payment limitations and producer benefit areas have attempted to aid farm income without excessively draining federal revenues. The Act has made positive steps to increase the efficiency of producer benefits by carefully defining proper aid recipients and insuring that benefits do not go to those who fail to meet the statutory limits.

The Act, through the advance deficiency and advance recourse commodity loan sections, is aimed at providing the needy producer with funds for spring planting expenses. Farmers also benefit by increased participation in acreage reduction and set-asides, which lower surplus and hopefully increase market prices.

The interest payment certificates section, which gives participating producers certificates with value equal to the interest paid on their price support loans, provides incentive for farmers to participate in the Commodity Credit Corporation. Increased participation should help limit commodity surplus and thus help farmers by increasing the market price on the crops they produce.

Finally, acreage allotments and multiyear set-asides will aid farm economy by reducing acres in production while supplementing farm incomes by compensating producers for their cooperation. These programs will help with commodity surplus problems and conserve millions of acres of fragile soils for future generations.

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104. H.R. REP. NO. 271(I), *supra* note 24, at 57, reprinted in 1985 U.S. CODE CONG. & AD. NEWS at 1161.