



# Forestry in the 2008 Farm Bill

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## Summary

The Food, Conservation, and Energy Act of 2008 (the 2008 farm bill) became law P.L. 110-246 when the House and Senate voted to override President Bush's veto on June 18, 2008. The conference agreement on the bill (H.R. 2419) had been enacted, vetoed by the President, and overridden (P.L. 110-234), but inadvertently excluded the trade title. Both chambers repassed the conference agreement (with the trade title) as H.R. 6124; it was again vetoed and again overridden as P.L. 110-246.

The 2008 farm bill contained a forestry title and forestry provisions in other titles. General forestry legislation is within the jurisdiction of the Agriculture Committees, and past farm bills have included provisions addressing forestry, especially on private lands. Most federal forestry programs are permanently authorized, and thus do not require reauthorization in the farm bill.

The forestry title (Title VIII) of the 2008 farm bill amended the Cooperative Forestry Assistance Act of 1978 (P.L. 95-313; 16 U.S.C. §§ 2101-2114) in several ways. It added national priorities for forestry assistance, required statewide forest assessments, created a new community forest and open space conservation program (to protect forests threatened with conversion to non-forest uses), established a new Coordinating Committee, added an Emergency Forest Restoration Program, and authorized competitive allocation for some forestry assistance funding. The title also directed cooperation and collaboration with Indian tribes, amended the Lacey Act to restrict imports of illegally logged wood products, authorized changes to certain national forest timber contracts, and provided grants to Hispanic-serving institutions. In addition, it reauthorized and extended four existing programs.

Other titles also contained provisions affecting forestry. The conservation title (Title II) modified most programs to include forestry activities and directed the creation of infrastructure for environmental services markets (including carbon markets). The trade title (Title III) included a section requiring lumber importers to report on imports and fees paid, to assure implementation of the 2006 U.S.-Canada Softwood Lumber Agreement. The energy title (Title IX) included woody biomass in many programs. Finally, the tax title (Title XV) included provisions to authorize new tax-exempt forest conservation bonds, to modify income deductions for qualified timber income, and to modernize and clarify the tax treatment of timber real estate investment trusts (REITs).

Other forestry provisions were suggested by various interests, and might be considered in the next farm bill. Funding is one issue, as half the mandatory spending for the Forest Land Enhancement Program (FLEP) was cancelled and the program was not reauthorized. Protecting communities from wildfire continues to be a priority for some, while controlling invasive species is a priority for others. Assisting forest-dependent communities in diversifying their economies has also been debated. Finally, some have expressed interest in trying to provide payments for *ecosystem services*—forest values that have not traditionally been sold in the marketplace.

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Federal forestry has historically been associated with agriculture, and with agriculture legislation. Forestry programs have been addressed in past farm bills and other agriculture legislation. This report provides brief background on the House and Senate Agriculture Committees' jurisdiction over forestry, with examples of bills addressed by the committees. It then presents information on the forestry provisions in the 2008 farm bill, the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), organized by provisions in the forestry title and other provisions.<sup>1</sup> It concludes with some forestry issues that were debated and that might be discussed in the next farm bill. The **Appendix** includes a side-by-side description of the House, Senate, and enacted provisions.

## Background

Both the House and Senate Committees on Agriculture have jurisdiction over “forestry in general” and acquired national forests.<sup>2</sup> Thus, the committees have been able to exert considerable influence over federal forestry activities over the years. For example, the Forest and Rangelands Renewable Resources Planning Act of 1974 (RPA, P.L. 93-378; 16 U.S.C. §§ 1600-1614) and the National Forest Management Act of 1976 (NFMA; P.L. 94-588), which guide Forest Service (USFS) planning and management, were both initially referred to the Agriculture Committees. More recently, the Healthy Forests Restoration Act of 2003 (P.L. 108-148; 16 U.S.C. §§ 6501-6591) was referred to and reported by the Agriculture Committees.

In addition to forestry on federal lands, the Agriculture Committees have jurisdiction over forestry research and forestry assistance to states and to private landowners.<sup>3</sup> Forestry research is governed largely by the Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95-307; 16 U.S.C. §§ 1641-1647), which revised and updated the McSweeney-McNary Act of 1928. Forestry assistance is governed largely by the Cooperative Forestry Assistance Act of 1978 (CFAA; P.L. 95-313; 16 U.S.C. §§ 2101-2111), which revised and updated the Clarke-McNary Act of 1924. Both laws were referred to and reported by the Agriculture Committees.

Recent farm bills have also included forestry provisions, primarily addressing the forestry assistance programs. The 1990 farm bill (the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624) contained a separate forestry title that:

- created four new forestry assistance programs;
- revised two existing forestry assistance programs;
- amended two forestry assistance programs;

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<sup>1</sup> The conference agreement on the 2008 farm bill was originally approved by the House and the Senate as H.R. 2419 and vetoed by the President in May 2008. Both chambers overrode the veto, making the bill law (P.L. 110-234). However, the trade title was inadvertently excluded from the enrolled bill. To remedy the situation, both chambers repassed the farm bill conference agreement (including the trade title) as H.R. 6124. The President vetoed the measure on June 18, 2008, and both chambers again overrode the veto, which made H.R. 6124 law as P.L. 110-246, and superseded P.L. 110-234.

<sup>2</sup> Jurisdiction over national forests established from the public domain lies with the House Natural Resources Committee and the Senate Energy and Natural Resources Committee. See each Committee's website for details on its jurisdiction.

<sup>3</sup> These three programs—forest management, forestry research, and forestry assistance—have traditionally been the three principal branches of the USDA Forest Service.

- revised the administrative provisions for forestry assistance;
- created five special forestry research programs;
- amended three existing forestry research programs;
- authorized a private, non-profit tree planting foundation; and
- created a new USFS branch: international forestry.

The 1996 farm bill (the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127) included only a few forestry provisions, extending the authorization for the one expiring assistance program and adding a new funding option within an existing program.

The 2002 farm bill (the Farm Security and Rural Investment Act of 2002, P.L. 107-171) contained a separate forestry title. The conference could not resolve many of the differences between the House and Senate forestry provisions, and thus the conference report contained fewer provisions than either. (Some of the disputed provisions were enacted subsequently in the Healthy Forests Restoration Act.)

## **The 2008 Forestry Title**

Numerous programs were created, modified, and/or extended in the forestry title of the 2008 farm bill (Title VIII). The various provisions can be sorted into two groups: provisions amending the Cooperative Forestry Assistance Act (CFAA), and other provisions.

### **Provisions Amending the CFAA**

The CFAA provides various types of forestry assistance to states and private landowners.<sup>4</sup> The 2008 farm bill modified several of the provisions, adding new requirements, authorizing new programs and spending, and otherwise modifying forestry assistance programs.

One significant aspect of the 2008 farm bill was the lack of a private forest landowner assistance program, which the Administration had proposed to terminate. The Forest Land Enhancement Program (FLEP) was created in the 2002 farm bill. It was not reauthorized, and thus has expired. FLEP funding ended earlier; funds were borrowed for wildfire suppression, a small portion was repaid, and other funds cancelled. In the end, only about half of the \$100 million of mandatory spending enacted in 2002 was actually spent on the program. This marks the first time since the CFAA was enacted in 1978 that no such forest landowner financial aid program is authorized.

### **National Priorities**

The 2008 farm bill (§ 8001) established a new set of national priorities for federal assistance for private forest conservation. It added a new subsection to § 2 of the CFAA:

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<sup>4</sup> For more information on these programs, see CRS Report RL31065, *Forestry Assistance Programs*, by (name redacted).

(c) PRIORITIES.—In allocating funds appropriated or otherwise made available under this Act, the Secretary shall focus on the following national private forest conservation priorities, notwithstanding other priorities specified elsewhere in this Act:

- (1) Conserving and managing working forest landscapes for multiple values and uses.
- (2) Protecting forests from threats, including catastrophic wildfires, hurricanes, tornados, windstorms, snow or ice storms, flooding, drought, invasive species, insect or disease outbreak, or development, and restoring appropriate forest types in response to such threats.
- (3) Enhancing public benefits from private forests, including air and water quality, soil conservation, biological diversity, carbon storage, forest products, forestry-related jobs, production of renewable energy, wildlife, wildlife corridors and wildlife habitat, and recreation.

Thus, the 2008 farm bill requires that forestry assistance aim to conserve working forests, protect and restore forests, and enhance public benefits from private forests.

### **Statewide Assessments and Strategies**

The 2008 farm bill (§ 8002) requires each state to conduct a statewide assessment of forest resource conditions, trends, threats, and priorities to receive federal forestry assistance funds. Each state also must prepare a strategy for addressing the identified threats, and describe the resources needed to address those threats. The states were to prepare the initial assessment and strategy, with updates as needed, and to coordinate with specified agencies and groups. The Secretary may use up to \$10 million annually for FY2008-FY2012 of appropriated forestry assistance planning funds to assist states with their assessments and strategies.

### **Community Forest and Open Space Conservation Program**

The farm bill (§ 8003) amended the CFAA to establish a Community Forest and Open Space Conservation Program. The program provides grants to local governments, Indian tribes, or nonprofit organizations to acquire lands threatened by conversion to non-forest uses and that provide economic, environmental, educational, and recreational benefits and serve as models of sustainable forest stewardship for other landowners. The grants may be up to 50% of the acquisition cost, with the authorization for “such sums as are necessary.” This program is similar to the Forest Legacy Program, which authorizes the federal acquisition, or grants to states for their acquisition, of lands or easements on lands threatened by conversion to non-forest uses.

### **Forest Resource Coordinating Committee**

The bill (§ 8005) replaced the existing USDA Coordinating Committee with a new Forest Resource Coordinating Committee, composed of the heads of four USDA agencies (and chaired by the Chief of the Forest Service) and representatives of state agencies, academia, and interest groups. The Committee is to provide coordination and direction to the USDA agencies and to coordinate with state agencies, focused on achieving the national priorities identified above.

## **Competitive Funding**

The 2008 farm bill (§ 8007) requires the Secretary to allocate a portion of funds available under the CFAA on a competitive basis. The portion to be competitively allocated was “to be determined by the Secretary,” in consultation with the Forest Resource Coordinating Committee.

The bill (§ 8008) also allows the Secretary to competitively allocate up to 5% of cooperative assistance funding for “innovative national, regional, or local education, outreach, or technology transfer projects” that contribute substantially to achieving the national priorities. These projects require a 50% matching contribution.

## **Emergency Reforestation**

The farm bill (§ 8203) added an Emergency Forest Restoration Program to the existing Emergency Conservation Program under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334; 16 U.S.C. §§ 2201-2205).<sup>5</sup> The original program focused on emergency protection and rehabilitation of wind- or water-eroded agricultural lands. The expanded program provides up to 75% of the costs (up to \$50,000 annually) for landowners to rehabilitate or restore forest lands damaged by storms, fires, drought, invasive species, or insects or diseases.

## **Other Provisions**

### **Tribal-Forest Service Cooperative Relations**

Subtitle B (§§ 8101-8107) addressed authorities for cultural and heritage cooperation. One section authorizes the use of national forest lands, with federal assistance for reburial of human remains and cultural items. Another section authorizes temporary closures of national forest lands historically used by Indians to assure access for traditional and cultural uses. A third section authorizes free use of trees and forest products for traditional and cultural (but not commercial) purposes. The final substantive section generally prohibits disclosure of information on reburials as well as information on tribal resources, cultural items, uses, or activities.

### **Reauthorizations**

The 2008 farm bill reauthorized and/or extended several programs through 2012:

- § 8201, the Rural Revitalization Technologies Program, under § 2371(d)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 farm bill; 7 U.S.C. § 6601(d)(2));
- § 8202, the Office of International Forestry, under § 2405(d) of the Global Climate Change Prevention Act of 1990 (Title XXIV of the 1990 farm bill; 7 U.S.C. § 6704(d)); and

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<sup>5</sup> The CFAA contains a permanently authorized Emergency Reforestation program (16 U.S.C. § 2106a) that has not been funded since FY1993.

- § 7413, the Renewable Resources Extension Act of 1978 (P.L. 95-306; 16 U.S.C. §§ 1671-1676).<sup>6</sup>
- The bill (§ 8205) also extended and modified funding for the Healthy Forest Reserves. These reserves had been authorized through 2008 in the Healthy Forests Restoration Act of 2003 (P.L. 108-148; 16 U.S.C. §§ 6571-6578). The extension requires the Secretary to provide \$10 million annually for the program from the Commodity Credit Corporation for FY2008-FY2012.

## Illegal Logging

The farm bill (§ 8204) amended the Lacey Act Amendments of 1981 (P.L. 97-79; 16 U.S.C. §§ 3371-3378) to expand the restrictions on and penalties for importing wild plants or plant parts (e.g., logs and lumber) removed in violation of domestic or foreign laws.<sup>7</sup> It excluded crops, cultivars, and plants and plant parts (e.g., seeds, roots, and cuttings) intended for planting in the United States. It also expanded and clarified for plants the definition of taken or possessed illegally, and establishes a process for legal plant imports.

## National Forest Modifications

The bill included provisions affecting national forest lands:

- §§ 8301 and 8303, modifying the boundary of the Green Mountain National Forest (VT), and authorizing the sale or exchange of specific lands to the Bromley Mountain Ski Resort, with specific directions on using any proceeds generated by the sale or exchange;
- § 8302(a)-(e), directing the conveyance, without consideration, of certain USDA lands in New Mexico to the Chihuahuan Desert Nature Park; and
- § 8302(f), directing the conveyance, without consideration, of certain lands in the George Washington National Forest (VA) to the Central Advent Christian Church of Alleghany County.

## National Forest Timber Contract Options

The farm bill (§ 8401) allowed purchasers of non-salvage USFS timber sale contracts awarded between July 1, 2004, and December 31, 2006, to request a modification to their contracts. The options available were to cancel a portion of the contract, to have the payment rate recalculated (called a *rate redetermination*), or to substitute an approved Producer Price Index for the index specified in the contract. The Secretary may agree to the contract modification if the several specified terms and limitations are met.

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<sup>6</sup> This was included in the forestry title of the Senate-passed bill (§ 8201), but was in the research and related matters title (Title VII) in the House version and the enacted law.

<sup>7</sup> See CRS Report RL33932, *Illegal Logging: Background and Issues*, by (name redacted).



## Hispanic-Serving Institutions

The 2008 farm bill (§ 8402) authorized a program of competitive grants for undergraduate scholarships to recruit, retain, and train Hispanics and other under-represented groups in forestry and related fields. The program was authorized through 2012 at “such sums as may be necessary.”

## Forestry in Other Titles

Forestry practices and woody biomass were addressed elsewhere in the 2008 farm bill, as well. Many conservation programs include forestry practices that qualify as conservation activities for cost-share assistance purposes. Also, many of the existing and proposed bioenergy programs include woody biomass as a possible feedstock. Programs that include forest-related activities, but are not focused primarily on these activities, are not included in this report; two specific woody fuel energy programs in the 2008 farm bill are described below. The provisions addressing softwood lumber imports from Canada and taxation of forests and forestland owners are also discussed briefly.

### Conservation

The conservation title of the 2008 farm bill (Title II) modified numerous agricultural conservation programs to include forestry practices on nonindustrial private forest lands as approved activities for the program.<sup>8</sup> Forestry practices and nonindustrial private forest lands are now accepted for the Conservation Stewardship Program (Subtitle D), Farmland Protection and Grassland Reserve (Subtitle E), Environmental Quality Incentives Program (Subtitle F), and other conservation programs (Subtitle G).

In addition, § 2709 added a new § 1245 to the 1985 farm bill (the Food Security Act of 1985, P.L. 99-198) addressing environmental services markets.<sup>9</sup> The section required technical guidelines to facilitate the development of environmental services markets, with priority on carbon markets. It specified that the guidelines establish procedures to measure benefits, protocols to report benefits, and a registry to track benefits. It also specified that the guidelines provide for verification of the benefits, including possibly by independent third parties. While not establishing markets for environmental or ecosystem services (discussed below), the guidelines would likely create the infrastructure to allow such markets to develop.

### Softwood Lumber Imports

Imports of softwood lumber from Canada have been of concern to U.S. lumber producers for many years.<sup>10</sup> A 2006 Softwood Lumber Agreement provided a temporary respite from the dispute, but some U.S. producers have asserted that the Canadian producers are not paying the export fees required by the agreement. A provision (§ 3301) in the agricultural trade and aid title

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<sup>8</sup> See CRS Report RL32940, *Agriculture Conservation Programs: A Scorecard*, by (name redacted) and (name redacted).

<sup>9</sup> See CRS Report RL34042, *Environmental Services Markets in the 2008 Farm Bill*, by (name redacted).

<sup>10</sup> See CRS Report RL33752, *Softwood Lumber Imports from Canada: Issues and Events*, by (name redacted) and (name redacted).

of the 2008 farm bill (Title III) added a new Title VIII (Softwood Lumber) to the Tariff Act of 1930 (19 U.S.C. §§ 1202 et seq.). The provision requires softwood lumber importers to declare imports and fees paid, allowing the federal government to verify and reconcile data on softwood lumber imports and to assure implementation of the Agreement.

### **Woody Biomass Energy**

The energy title of the 2008 farm bill (Title IX) included two provisions to expand the use of woody biomass in energy production.<sup>11</sup> Both provisions are in § 9001, which revises the energy title of the 2002 farm bill (also Title IX). The first provision (§ 9012) created a competitive research-and-development grant program for using woody biomass, with priorities for low-value biomass, processes integrated with biorefineries, wood-derived transportation fuels, and improved yield from energy plantations. Funding was authorized at \$5 million annually for FY2008-FY2012.

The other provision (§ 9013) created a new Community Wood Energy Program. This is a grant program for state and local governments to develop a community wood energy plan and acquire wood energy systems for public buildings. Project priorities are to be determined considering energy efficiency and appropriate conservation and environmental criteria. The state or local government monies are required to match the federal grant. Funding was authorized at \$5 million annually for FY2008-FY2012.

### **Timber Tax Provisions**

The tax and trade provisions of the 2008 farm bill (Title XV) included provisions affecting forests and forest landowners. The first (§15316) authorized, in limited amounts, tax-exempt private activity bonds whose proceeds are to be used to finance private forest conservation efforts. This would allow, for example, a non-profit organization to use tax-exempt bonds to acquire private timberlands that were threatened with conversion to non-forest uses, such as residential developments.

Another provision (§ 15311) added a new § 1203 to the Internal Revenue Code to permit taxpayers to elect to deduct up to 60% of any timber gains from taxable income. The remaining 40% would be taxed at ordinary-income rates.

Finally, several provisions (§§ 15312-15315) altered and clarified the tax treatment of timber real estate investment trusts (REITs). In recent years, most wood products companies that own timberlands have separated the timberlands from wood processing (and other) operations, with the timberlands administered under a REIT because of more favorable tax treatment for REIT timber income than for wood processing company timber income. The provisions in the 2008 farm bill were to clarify, update, and make minor modifications to timber REIT taxation.

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<sup>11</sup> See CRS Report RL32712, *Agriculture-Based Renewable Energy Production*, by (name redacted).

## **Possible Forestry Issues for a Future Farm Bill**

Reauthorization of the many agriculture programs is a prime reason for the periodic farm bills, but most forestry programs are permanently authorized. This may reduce the pressure to include a forestry title in upcoming farm bills. Nonetheless, interest groups have raised various forestry issues other than the authorization levels for possible discussion within a future farm bill, such as forestry assistance funding, wildfire protection, invasive species, economic diversity, and markets for ecosystem services that have not traditionally been marketed.

### **Forestry Assistance Funding**

Federal funding for forestry assistance programs has generally been rising, but the increase has not been spread equally among the various programs. Since the severe 2000 fire season and the development of the National Fire Plan, funding for cooperative fire programs (assistance to states and volunteer fire departments) has risen substantially (more than triple pre-2000 funding), and has remained at very high levels. Funding for Forest Legacy (acquisition of lands or easements on lands threatened with conversion to non-forest uses) has also risen substantially, from less than \$4 million in FY1998 to \$50 million or more annually since FY2001 (and a request of \$100 million for FY2005). In contrast, the Administration has proposed terminating funding for the Economic Action Program (economic assistance to rural, forest-dependent communities), and funding has fallen from a peak of \$54 million in FY2001 to less than \$5 million in FY2008 (with no funds in FY2007).

The adequacy of funding for private landowner assistance programs has been a concern for many. These programs have provided cost-shares to qualified landowners for various forestry practices that increase tree growth, improve wildlife habitat, protect watersheds (thus improving water quality), and more. One of the changes enacted in the 2002 farm bill was to replace two programs—the Forestry Incentives Program (FIP) and the Stewardship Incentives Program (SIP)—with the Forest Land Enhancement Program (FLEP). Because funding for FIP and SIP had been discretionary and either stagnant (FIP) or absent (SIP), FLEP was given mandatory funding through the Commodity Credit Corporation of \$100 million total through the end of FY2007. However, some FLEP funds were borrowed to pay for firefighting and other funding was cancelled; in total, about half of the \$100 million “guaranteed” for FLEP was actually spent on landowner assistance.

Even the existence of landowner cost-share assistance is in doubt. Forestry is included in many conservation programs that provide financial assistance to private landowners, but FLEP was not reauthorized in the 2008 farm bill. For the first time since 1978, no forestry-specific landowner assistance program is authorized. Some question whether a modest forestry-specific assistance program is needed, since a small share of the much larger conservation programs might provide more forestry assistance funding. Nonetheless, Congress may revisit the issue of separate funding for forest landowner assistance programs.

## **Wildfire Protection**

The threat of wildfire damages to resources and property seems to have increased in recent years. Attention has focused on high biomass fuel levels (particularly in federal forests) and on homes in or near at-risk forests, an area known as the wildland-urban interface (WUI).<sup>12</sup> The 2002 farm bill (§ 8003) created a new Community and Private Land Fire Assistance Program to assist communities and private landowners in planning and other activities to protect themselves from wildfires. The program was authorized at \$35 million annually through FY2007 and “such sums as are necessary ... thereafter.” The USFS has included such expenditures as authorized activities in its State Fire Assistance Program. However, Congress has not appropriated funds explicitly for this program.

Protecting private lands and structures from wildfires continues to garner congressional attention, as the threat of wildfire persists. How to assist private landowners and communities, how to combine this assistance with other assistance and incentive programs, and how to fund such assistance could be debated in the farm bill context.

## **Invasive Species**

Invasive species—non-native plants and animals that are displacing native ones—are becoming recognized as a substantial problem.<sup>13</sup> In a speech to the Idaho Environmental Forum on January 16, 2004, then-USFS Chief Dale Bosworth identified invasive species as one of the four major threats to the nation’s forests and rangelands.<sup>14</sup> The USFS’s Forest Health Management Program has evolved from a mechanism to survey and control insects and diseases, to a program to address all forest pests, including invasive species. Several times, the Bush Administration proposed an Emerging Pests and Pathogens Fund to address rapidly developing problems of invasive species, but the Appropriations Committees rejected the request both years. In its deliberations over a future farm bill, Congress could address the structure and financing of programs to prevent and control invasive species on federal, state, and private forests.

## **Economic Diversity**

The economies of many rural communities have evolved around the use—finding, extracting, processing, and selling—of natural resources. In some of these areas, one resource (e.g., timber, minerals, livestock) has traditionally dominated the local economy, but the economies of such areas can be devastated when that resource is depleted or when its markets are depressed (permanently or even temporarily). Many communities have sought approaches to diversifying their economies, to mitigate the economic and social disruption that can occur when a dominant economic sector is depressed. The National Forest-Dependent Rural Communities Economic Diversification Act of 1990 was enacted in §§ 2372-2379 of the 1990 farm bill to authorize forestry and economic diversification technical assistance to “economically disadvantaged” rural communities. Under the title *Economic Action Program*, funding rose from \$14 million in

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<sup>12</sup> See CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by (name redacted).

<sup>13</sup> See CRS Report RL30123, *Invasive Non-Native Species: Background and Issues for Congress*, by (name redacted) et al.

<sup>14</sup> The other three identified threats are fire and fuels, unmanaged recreation, and loss of open space. See <http://www.fs.fed.us/projects/four-threats>.

FY1996 to \$54 million in FY2001, but has declined since, and President Bush has proposed terminating the program in several budget requests. In its future farm bill deliberations, Congress might consider ways to perpetuate economic assistance programs for traditional wood products-dependent communities, either as a continued USFS program or as part of other USDA rural assistance programs.<sup>15</sup>

### **Markets for Ecosystem Services**

Forests provide a broad array of environmental services—clean air and water, wildlife habitats, pleasant scenery, and more—for which private landowners are generally not compensated, because these services are typically not bought and sold in a marketplace. A variety of interests have examined the possibilities of finding ways to compensate landowners for continuing to provide ecosystem services.<sup>16</sup> One means would be to develop such markets, and the 2008 farm bill included a provision (§ 2709, discussed above) that could facilitate such a development. Alternatively, some proposals are for federal “green payments” to directly reward farmers and other landowners who provide environmental benefits through their land management practices. Green payments for forest and other landowners’ ecosystem services might be discussed in Congress’s deliberations in a future farm bill.

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<sup>15</sup> See CRS Report RL31837, *An Overview of USDA Rural Development Programs*, by (name redacted).

<sup>16</sup> American Forests, the Southern Environmental Law Center, and others held a workshop to discuss landowner compensation for ecosystem services provided in Washington, DC, on May 18-20, 2005.

# Appendix. House, Senate, and Enacted Forestry Provisions of the 2008 Farm Bill

Current Law/Policy	House-Passed Bill (H.R. 2419)	Senate-Passed Substitute Amendment (H.R. 2419)	New Law (P.L. 110-246)
Farm Security and Rural Investment Act of 2002 [7 U.S.C. § 7901 note]	Farm, Nutrition, and Bioenergy Act of 2007 [§ 1]	Food and Energy Security Act of 2007 [§ 1]	Food, Conservation, and Energy Act of 2008 [§ 1]
<b>AGRICULTURAL TRADE AND AID (TITLE III)</b>			
<b>U.S.-Canada Softwood Lumber Agreement</b>			
No comparable provision.	No comparable provision.	Sense of Senate that the President should act to ensure that imports of softwood lumber from Canada are consistent with the U.S.-Canada Softwood Lumber Agreement. [§ 11903]	Amended the Tariff Act of 1930 to require a softwood lumber importer declaration program to verify and reconcile data on softwood lumber imports, to assure implementation of U.S.-Canada Softwood Lumber Agreement. [§ 3301]
<b>FORESTRY (TITLE VIII)</b>			
<b>Cooperative Forestry Programs</b>			
The Forest Land Enhancement Program provided financial aid for private forest practices (mandatory spending of \$100 million for FY2002-07). Only about half of \$100 million was spent; the remainder was borrowed for firefighting or cancelled by Congress. [16 U.S.C. § 2103] General authority is provided for under the Cooperative Forestry Assistance Act of 1978 (CFAA, P.L. 95-313), as amended, authorizes USDA to establish a variety of cooperative programs to protect and manage nonfederal forest lands. [16 U.S.C. §§ 2101-2114]	No reauthorization provision, allowing program to terminate.	No reauthorization provision, allowing program to terminate.	No reauthorization provision, allowing program to terminate.
No comparable CFAA provision.	Added new priorities: (1) conserving working forests, (2) protecting forests from natural threats and restoring	Similar to the House bill, but with subtle differences in priorities for protecting and restoring forests and for enhancing	Adopted House provision with minor changes. [§ 8001]

Current Law/Policy	House-Passed Bill (H.R. 2419)	Senate-Passed Substitute Amendment (H.R. 2419)	New Law (P.L. 110-246)
No comparable CFAA provision.	forests, and (3) enhancing public benefits from private forests. [§ 8001]	benefits. [§ 8001]	Adopted Senate provision. [§ 8003]
No comparable CFAA provision.	No comparable provision.	Authorized new cost-share grants for local governments, tribes, and non-profits to acquire lands threatened by conversion to non-forest uses and provide public benefits. [§ 8002]	Adopted Senate provision. [§ 8003]
§ 2109(d)(1) of the CFAA defines “State” to include “Trust Territory of the Pacific Islands.” [16 U.S.C. § 2109]	Added requirements for financial assistance: state-wide forest assessment of conditions, trends, threats, and priorities and strategies to address threats and describe resources. [§ 8002]	Added new requirements for financial assistance: statewide forest plan to identify critical areas; address regional needs; and plan for managing and monitoring forests, achieving national priorities. [§ 8004]	Adopted House provision with minor changes. [§ 8002]
Subsections of the CFAA provide for a USDA Coordinating Committee, to coordinate among agencies, and for State Coordinating Committees, to coordinate with state foresters and other interested parties. [16 U.S.C. § 2113]	Replaced “Trust Territory of the Pacific Islands” with “the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau.” [§ 8003]	Same as the House bill. [§ 8005]	Adopted House provision. [§ 8004]
No comparable CFAA provision.	Replaced USDA Committee with new Forest Resource Coordinating Committee, to coordinate among agencies, state agency representatives, and others. [§ 8004] Modified state committee duties to include recommendations concerning the new state-wide forest assessment and strategies. [§ 8005]	Exempted projects proposed by Indian tribes from State Coordinating Committee recommendations. [§ 8003]	Adopted House provision with minor changes. [§ 8005 & 8006]
No comparable CFAA provision.	Required a Secretary-determined portion of funds to be allocated competitively among states. [§ 8006]	No comparable provision.	Adopted House provision. [§ 8007]
No comparable CFAA provision.	Authorized up to 5% of funding for cost-shared competitively-allocated innovative education, outreach, or technology transfer projects. [§ 8006]	No comparable provision.	Adopted House provision. [§ 8008]
CFAA permanently authorized an Emergency Reforestation program. [16 U.S.C. § 2106a] It has not been funded since FY1993.	Authorized a new Emergency Reforestation program as part of the Emergency Conservation program (16 U.S.C. §§ 2201-2204). [§ 8102]	Established new emergency landscape restoration program to rehabilitate croplands, grasslands, and private non-industrial forests following natural disasters. [§ 2398]	Adopted House provision with changes—definitions of disaster; and authorization of such sums as needed. [§ 8203]

Current Law/Policy	House-Passed Bill (H.R. 2419)	Senate-Passed Substitute Amendment (H.R. 2419)	New Law (P.L. 110-246)
<b>Other Forestry Provisions</b>			
No comparable provision.	No comparable provision.	Included definitions and made tribes eligible for Forest Legacy funding [16 U.S.C. § 2103c] and forest management assistance. [§§ 8101-8112]	No comparable provision.
No comparable provision.	No comparable provision.	Authorized Cultural and Heritage Cooperation, with purposes, definitions, and prohibition on disclosing information, and provides for reburial of human remains and cultural items; for temporary area closures for traditional and cultural purposes; and for free use of forest products for traditional and cultural purposes. [§§ 8121-8127]	Adopted Senate provision. [§§ 8101-8107]
The Healthy Forests Restoration Act of 2003 (P.L. 108-148) authorized easements through FY2008 to protect private forests for endangered species and biodiversity. [16 U.S.C. § 6578]	Extended program with \$10 million from the CCC annually through FY2012. [§ 8101]	Moved program into Food and Security Act of 1985, authorizes such sums as necessary, replaces 99-year easement option with permanent easement, and encourages tribes to participate. [§ 2331]	Adopted House provision with changes—\$9.75 million annually for FY2009-FY2012; permanent easements instead of 99-year easements; and encouragement for tribal participation. [§ 8205]
The Renewable Resources Extension Act of 1978 (P.L. 95-306) authorized educational and technical aid via state extension agencies and eligible universities and colleges. [16 U.S.C. §§ 1671-1676]	Extended the program through FY2012. [§ 7507]	Extended the program through FY2012. [§ 8201]	Extended the program through FY2012. [§ 7413]
The Global Climate Change Prevention Act of 1990 within the 1990 farm bill authorized the Forest Service Office of International Forestry through FY2007. [7 U.S.C. § 6704(d)]	Extended the program through FY2012. [§ 8103]	Extended the program through FY2012. [§ 8202]	Extended the program through FY2012. [§ 8202]
The 1990 farm bill, as amended, authorized Rural Revitalization Through Forestry via technology transfer, business assistance, and local training, through FY2008. [7 U.S.C. § 6601(d)(2)]	Extended the program through FY2012. [§ 8104]	No comparable provision.	Adopted House provision. [§ 8201]
No comparable provision.	Authorized competitive forestry grants	No comparable provision.	Adopted House provision. [§ 8402]



Current Law/Policy	House-Passed Bill (H.R. 2419)	Senate-Passed Substitute Amendment (H.R. 2419)	New Law (P.L. 110-246)
No comparable provision.	to Hispanic-serving institutions to recruit, retain, and train “Hispanics and other under-represented groups.” [§ 8201]	Amended the Lacey Act Amendments of 1981 (P.L. 97-79; 16 §§ U.S.C. 3371-78) to expand restrictions on and penalties for importing wild plants/parts (e.g., lumber, logs) removed in violation of U.S. or foreign laws. [§ 8204]	Adopted Senate provision with changes—definition of <i>plant</i> ; exclusion of recycled materials; clarification of impact on exports; and regulations to further define <i>plant</i> . [§ 8204]
No comparable provision.	No comparable provision.	Expanded boundary of Green Mountain National Forest (VT) to allow additional land acquisition. Authorizes exchange/ sale of specific forest lands to Bromley Mountain Ski Resort, with directions on proceeds use. [§ 8203 & § 8205]	Adopted Senate provisions. [§ 8301 & § 8303]
No comparable provision.	No comparable provision.	Authorized certain land conveyance in New Mexico. [§ 11075]	Adopted Senate provision, amended to authorize a land conveyance in Virginia. [§ 8302]
<i>No comparable provision.</i>	No comparable provision.	For non-salvage timber sale contracts awarded between 7/1/04 and 12/31/06, purchasers may request that the contract be cancelled, the contract payment rate be re-determined, or a substitute Producer Price Index be used. USDA may agree to the contract modification, if the specified terms and limitations are met. [§ 8301]	Adopted Senate provision with minor changes. [§ 8401]

**TAX AND TRADE PROVISIONS (TITLE XV)**

**Timber Provisions (Part I, Subpart B)**

Tax-exempt bonds for forest conservation. In general, interest on bonds issued by state and local governments is tax-exempt if used for governmental purposes (IRC section 103). However, not all state and local bonds used to finance private activities are tax exempt; private activity bonds are	No comparable provision.	Established (in limited amounts) a new type of tax-exempt private activity bond for bonds whose proceeds are used to finance forest conservation. [§ 12211]	Adopted Senate provision with modest changes. [§ 15316]
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Current Law/Policy	House-Passed Bill (H.R. 2419)	Senate-Passed Substitute Amendment (H.R. 2419)	New Law (P.L. 110-246)
subject to certain restrictions and are subject to caps. [IRC §§ 141-142]			
Deduction for qualified timber gain. For tax years beginning before 2011, individuals' long term capital gain is taxed at reduced rates (generally, 15%; section 1 of the tax code). Taxpayers are permitted to treat the cutting of timber as a sale eligible for capital gains treatment. [IRC § 631]	No comparable provision.	Added new section 1203 to the Internal Revenue Code, which permits taxpayers to elect to deduct 60% of timber gain from taxable income. (The remaining 40% would be taxed at ordinary-income rates.) [§ 12212]	Adopted Senate provision with changes. [§ 15311]
Timber real estate investment trust (REIT) provisions. REITs are specially-defined "pass through entities" that are permitted to deduct dividends they distribute from taxable income, thus eliminating corporate-level tax from distributed income. [IRC §§ 856-859] REITs are subject to several minimum-distribution requirements and 75% of REIT gross income must consist of certain types of real estate income.	No comparable provision.	Included several provisions affecting timber REITs, including clarification that timber gain is qualified real estate income for a REIT. [§§ 12213-12217]	Adopted Senate provisions. [§§ 15312-15315]

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