

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRASSLEY:

S. Res. 188. A bill to designate October 30, 1995, as "National Drug Awareness Day"; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LIEBERMAN:

S. 1367. A bill to amend the Food Security Act of 1985 to strengthen the payment limitations, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

## THE FARM FAIRNESS ACT OF 1995

• Mr. LIEBERMAN. Mr. President, the commitment we have made to balancing the budget has forced each of us to reassess a wide variety of Federal programs. We are asking tough but necessary questions about welfare, Medicare, funding for the arts, and so forth, all with an eye toward determining whether we are truly doing right by the taxpayer, and whether we can afford to continue the status quo.

One corner of the budget that I believe deserves this kind of heightened scrutiny is the U.S. Department of Agriculture's farm subsidy programs. Each year about \$10 billion gets plowed into price and income supports for commodities, in the name of helping the struggling family farmer. But there's substantial evidence to show that these programs are not serving the interests of those small farmers, nor are they doing justice to America's taxpayers.

The current system for distributing commodity payments is too complicated, plagued by too many loopholes, and permits far too many tax dollars to flow to wealthy landowners, passive investors, and others who the programs are not designed to serve. Perhaps worst of all, the system in place today actually encourages farmers to try to circumvent the laws governing who is eligible for program payments and the limits on how much they can receive. The resulting waste and abuse is not fair to the taxpayer, nor is it fair to the overwhelming majority of hard-working farmers who are obeying the spirit as well as the letter of the law.

That is why I rise today to introduce the Farm Fairness Act of 1995, a plan to dramatically reform the payment limit and eligibility laws, and restore some basic fairness to the way subsidies are distributed. This legislation would go a long way toward rooting out the waste and abuse in the commodity programs while strengthening our commitment to the family farmer these programs are meant to support. What's more, it would save hundreds of millions of dollars each year, which would enable us to significantly reduce the cuts in the commodity programs

we are asking the small- and medium-sized farmer to absorb over the next budget cycle.

Mr. President, the need for the kind of changes I am proposing has been well established by the USDA inspector general. Over the last few years, the IG's office has produced dozens of investigative reports documenting widespread attempts to cash in on loopholes in the law. These plans invariably involve the creation of shell corporations set up for the sole purpose of getting around the \$50,000 cap on payments that was set by Congress. These efforts have been effective, too: in 1993, nearly 10,000 farms received payments above the \$50,000 limit.

The law is so full of loopholes that these excessive payments are technically legal, even though they make a mockery of the \$50,000 cap. In fact, a U.S. Attorney's Office recently declined to prosecute a substantial fraud case against a big farming group because, in the judgment of the U.S. Attorney, the law seemed to sanction the group's deceptive behavior. "[T]he program rules are not simply complex, but actually invite the creation of complicated entities, and numerous federal payments, that arguably do not correspond to a common sense notion of farming," the U.S. Attorney wrote.

Perhaps the most notorious case of abuse is that of landowner profiled a few years ago on "60 Minutes," whose family exploited several loopholes in the eligibility laws to receive almost \$3 million in USDA money over a 2 year period. He did it by creating an ornate ownership structure that looked like a Christmas tree, but this tree was trimmed with phony partners: among them were three churches and a local boy scout council that the landowner used to maximize his payments.

Like this landowner, many farmers are enticed by these loopholes to concentrate more on farming the government than farming their land. This trend of farming the government is so pervasive that one former Agriculture Secretary called it "the principal problem" in the farming community today.

As a result of these flaws in the law, you don't have to be a farmer to receive farm subsidies. In fact, a recent study showed that at least \$2 billion in crop payments have been made to individuals living in America's 50 biggest cities over the last decade. We cannot think of any justification for crop subsidies going to Manhattan, Greenwich, and Beverly Hills.

More farm subsidies are going to non-farming locales than any taxpayer would ever guess. That's because, in spite of the rhetoric about the family farmer, these programs are disproportionately benefiting wealthy landowners and off-farm investors: The richest 4 percent of program participants receive more than 40 percent of all payments.

If we are to justify a continued investment in the commodity programs, I believe there must be some funda-

mental reforms. The legislation I am introducing today would do just that. It is designed to restore some common sense to the administration of these programs, to remove the incentives for farming the government, and ultimately to better target the subsidies to those who were meant to receive them.

Among other things, this proposal would: Close the loopholes that allow huge sums of farm subsidies to flow to nonfarmers; eliminate the shell corporations the current rules encourage farmers to create; set tough penalties for cheating the Government to add a real deterrent for engaging in fraudulent behavior; bring some simplicity into a system that is nearly unintelligible to anyone but a well-trained lawyer; and reduce the budget in a way that minimizes the pain for the small family farmer who is playing by the rules.

The Congressional Budget Office estimates that the Farm Fairness Act would save approximately \$1.8 billion over the next 7 years. I believe that is a conservative estimate, and that if the reforms I am proposing are properly enforced, this legislation would reduce commodity payments anywhere from \$2 billion to \$3 billion over 7 years. That amounts to a significant chunk of the \$13.4 billion in commodity program cuts called for in the budget reconciliation package we are in the process of considering.

Without a proposal like this, those cuts will be made across the board, meaning the small wheat farmer in Fargo will suffer as much as the passive investor in Key Largo. To prevent that from happening, I intend to offer a version of the Farm Fairness Act as an amendment to the budget reconciliation bill this week.

This proposal is called the Farm Fairness Act because it will restore some fairness to the way we support farmers, by targeting payments to the people who are actually plowing the fields and harvesting the crops. And it will make sure that taxpayers finally get a fair return for the tax dollars we spend on the commodity programs. It is a balanced measure, one that Members from both farm and nonfarm States can support, and I would urge my colleagues to do so.

Mr. President, I ask unanimous consent that the full text of this legislation be included in the RECORD, along with a section-by-section summary that I have prepared explaining the contents of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1367

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Farm Fairness Act of 1995".

**SEC. 2. PAYMENT LIMITATIONS.**

(a) IN GENERAL.—Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by striking paragraphs (1) through (3) and inserting the following:

“(1)(A) Subject to sections 1001A through 1001C, for each of the 1996 and subsequent crops, the total amount of payments specified in subparagraph (B) that a person shall be entitled to receive under 1 or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds may not exceed \$35,000.

“(B) In subparagraph (A), the term ‘payments’ means—

“(i) deficiency payments;  
“(ii) land diversion payments;  
“(iii) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment or public access for recreation;

“(iv) any gain realized by a producer from repaying a loan for a crop of any commodity (other than honey) at a lower level than the original loan level established under the Agricultural Act of 1949;

“(v) any deficiency payment received for a crop of wheat or feed grains under the Agricultural Act of 1949 as the result of a reduction of the loan level for the crop under the Act;

“(vi) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, rice, or oilseeds under the Agricultural Act of 1949; and

“(vii) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under the Agricultural Act of 1949.

“(2) In applying the limitation specified in paragraph (1)(A) to payments specified in paragraph (1)(B):

“(A) The Secretary shall attribute the payments directly to persons who receive the payments.

“(B) In the case of payments that are received by an entity, the Secretary shall attribute the payments to individuals who own the entity in proportion to the ownership interest of the individuals in the entity.”

**SEC. 3. DEFINITION OF PERSON.**

Section 1001(5)(B)(i)(II) of the Food Security Act of 1985 (7 U.S.C. 1308(5)(B)(i)(II)) is amended by inserting “general partnership, joint venture,” after “limited partnership.”

**SEC. 4. REMOVAL OF 3-ENTITY RULE.**

Subsection (a) of section 1001A of the Food Security Act of 1985 (7 U.S.C. 1308-1) is amended to read as follows:

“(a) PREVENTION OF CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.—The Secretary shall attribute payments specified in section 1001(1)(B) to persons in accordance with section 1001(2).”

**SEC. 5. ACTIVELY ENGAGED IN FARMING.**

(a) PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT.—

(1) INDIVIDUALS.—Section 1001A(b)(2)(A)(i) of the Food Security Act of 1985 (7 U.S.C. 1308-1(b)(2)(A)(i)) is amended by striking subclause (II) and inserting the following:

“(II) personal labor and active personal management;”

(2) CORPORATIONS OR OTHER ENTITIES.—Section 1001A(b)(2)(B) of the Act is amended to read as follows:

“(B) CORPORATIONS OR OTHER ENTITIES.—

“(i) SIGNIFICANT CONTRIBUTION.—A corporation or other entity shall be considered as actively engaged in farming with respect to a farming operation if—

“(I) the entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land;

“(II) stockholders or members who individually or collectively own at least a 50 percent interest in the operation make a significant contribution of personal labor and active personal management to the operation; and

“(III) the standards provided in clauses (ii) and (iii) of subparagraph (A), as applied to the entity, are met by the entity.

“(ii) NO SIGNIFICANT CONTRIBUTION.—Notwithstanding clause (i), if the stockholders or members who are not described in clause (i)(II) do not individually or collectively make a significant contribution of personal labor or active personal management to the operation, the payments to the entity shall be reduced by a percentage equal to the percentage ownership in the entity of the members.

“(iii) TRANSITION RULE.—A family farm corporation shall meet the requirements of clause (i)(II) during the 10-year period beginning on October 1, 1996, if—

“(I) the corporation met the requirements of this subparagraph (as in effect prior to the amendment made by section 5(a)(2) of the Farm Fairness Act of 1995) during at least the 5-year period ending on the date of enactment of the Act;

“(II) the corporation ceases as a result of the death, disability, or retirement of a stockholder or member of the corporation to meet the requirements of clause (i)(II); and

“(III) stockholders or members who individually or collectively own at least a 10 percent interest in the operation make a significant contribution of personal labor and active personal management to the operation.”

(3) ENTITIES MAKING SIGNIFICANT CONTRIBUTIONS.—Section 1001A(b)(2) of the Act is amended—

(A) by striking subparagraph (C); and  
(B) by redesignating subparagraph (D) as subparagraph (C).

(4) FAMILY MEMBERS.—The first sentence of section 1001A(b)(3)(B) of the Act is amended by striking “active personal management or personal labor” and inserting “active personal management and personal labor”.

(b) LANDOWNERS.—Section 1001A(b)(3)(A) of the Act is amended to read as follows:

“(A) LANDOWNERS.—A person that is a landowner contributing the owned land to the farming operation, if the person demonstrates to the satisfaction of the Secretary that the person—

“(i) receives rent for the use of the land based on the production of the land or the operating results of the operation;

“(ii) rents the land only to persons who are considered actively engaged in farming under this section; and

“(iii) meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A).”

(c) DEFINITIONS.—Section 1001A(b) of the Act is amended by adding at the end the following:

“(7) DEFINITIONS.—In this subsection and section 1001(5)(D) (7 U.S.C. 1308(5)(D)):

“(A) ACTIVE PERSONAL MANAGEMENT.—The term ‘active personal management’ means personally providing, on a daily basis as required during the entire growing season for a crop—

“(i) direct supervision and direction of activities and labor involved in a farming operation; or

“(ii) on-site services that are directly related and necessary to a farming operation.

“(B) CAPITAL.—The term ‘capital’ does not include any payment described in paragraph (1) or (2) of section 1001 (7 U.S.C. 1308). The Secretary shall establish procedures to ensure that the term is applied in a manner that does not include any such payment.

“(C) SIGNIFICANT CONTRIBUTION.—The term ‘significant contribution’ means—

“(i) in the case of land, capital, or equipment contributed by a person to an operation, a percentage of the land, capital, or equipment, respectively, to the operation that is at least equal to the percentage interest of the person in the operation; and

“(ii) in the case of personal labor and personal active management contributed by a person to an operation, at least 1,000 hours annually or 50 percent of the commensurate share, whichever is less.”

(d) CONFORMING AMENDMENTS.—Section 1001(5) of the Act (7 U.S.C. 1308(5)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (E) as subparagraph (D).

**SEC. 6. SCHEMES OR DEVICES.**

Section 1001B of the Food Security Act of 1985 (7 U.S.C. 1308-2) is amended by striking “applicable to” and all that follows through “succeeding crop year” and inserting “applicable to—

“(1) the crop year for which the scheme or device was adopted and the succeeding 5 crop years; and

“(2) if fraud was committed in connection with a scheme or device involving a price support, production adjustment, or conservation program administered by the Secretary of Agriculture, the crop year for which the scheme or device was adopted and the succeeding 10 crop years”.

**SEC. 7. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall become effective on October 1, 1996.

THE FARM FAIRNESS ACT OF 1995—SECTION-BY-SECTION SUMMARY

## SECTION 1

[Bill title.]

## SECTION 2

Payment limits: This section would set a new, single payment limit of \$35,000 for any individual, corporation or any other legal “entity” seeking to enroll in the USDA’s main crop subsidy programs. This limit would apply to all commodity payments, but it would not include the various conservation programs.

Under current law, there is a confusing multi-tier system of various payment limits. An individual or corporation can receive up to \$50,000 in deficiency payments; up to \$75,000 in several other price support payments (marketing loan gains, loan deficiency payments, and the sporadically-used “Findlay” payments); and up to a total of \$250,000 for all payments.

In light of the fact that fewer than 2% of all program participants receive more than \$40,000 in deficiency payments, creating a single \$35,000 cap seems a reasonable step that would impact very few family while producing significant budget savings.

Direct attribution: One of the biggest problems with the current system of payment limits is that it has established different limit levels depending on how the farming operation is structured. This makes it relatively easy for large producers to receive payments several times the current \$50,000 and \$75,000 limits.

This section would solve that problem by requiring the attribution of all crop subsidy payments directly to individuals, via social security numbers. For corporations, payments would still be distributed to the legal entity, but it would be attributed to the individual shareholders based on their respective interests in the corporation.

## SECTION 3

This section would close a widely-exploited loophole in the existing rules by adding general partnerships and joint ventures to the

list of business organizations that are subject to the payment limitations.

Under current law, general partnerships and joint ventures are not listed under the definition of legal "persons" and are thus exempt from the payment limitations. This exemption gives farming operations a heavy incentive to structure their businesses under the aegis of a general partnership: the more "entities" included in the partnership, the more payments the operation can receive.

#### SECTION 4

This section would repeal the most flagrantly-abused provision in the payment limit laws: the "Three-Entity Rule."

This rule was passed by Congress in 1987 purportedly to limit the number of sources from which a farmer could receive payments. In reality, though, it has mostly been an invitation for farmers to structure their operations in such a way as to maximize payments.

This section would allow farmers to receive payments from any number of sources. But because of the strict \$35,000 limit we establish, and the direct attribution system, there will be few remaining incentives for farmers to form multiple corporations and "shell" entities that exist only on paper.

#### SECTION 5

For any payment limitation reforms to work, the loopholes in the rules defining who is "actively engaged in farming" need to be tightened. Otherwise, significant dollars will continue to flow to off-farm investors, and big operations will continue to flout the payment limits.

This section contains several sensible changes in the eligibility rules. Among others, it would:

Require any individual or majority shareholder(s) in a corporation to make a significant contribution of "active personal management" and "active personal labor." Current rules require only one or the other.

Require minority shareholders to contribute at least "active management" or "active labor" on the farm. Current rules allow too many passive stockholders to receive payments just by making a contribution of capital, land or equipment, i.e., money. If a minority shareholder does not meet this threshold, the corporation's payments will be reduced in proportion to that shareholder's stake in the venture.

Redefine "active personal management" to demand a regular and consistent presence on the farm during the growing season, to guarantee that payees are closely involved in the day-to-day operations of the farming venture. The current definition is exceedingly vague, requiring only that the contribution be "critical to the farm's profitability."

Toughen the requirements on landowners. Under current law, landowners are essentially exempt from the labor and management contribution requirements, as long as they are engaged in a true share-lease arrangement with a tenant. This provision would require that the tenant actually be "actively engaged" for the landowner to qualify for payments.

Lastly, this section would expressly prohibit individuals or shareholders from using their subsidy payments to account for their required capital contribution. Under current rules, farmers can apply their advanced deficiency payments toward their capital contribution, which undercuts the legal requirement that a recipient be at risk.

#### SECTION 6

This section would increase the penalties for engaging in a "scheme or device"—creating bogus corporations, etc.—and defrauding the government.

Under current law, any individual or entity found by the USDA to be engaged in a

scheme or device is prohibited from receiving payments for the rest of that crop year as well as the next crop year. This provision would ban payments for the succeeding five crop years. In addition, any individual or entity participating in commodity programs that is convicted of defrauding the government would be banned from receiving payments for the next 10 years. (There is currently no additional punishment for persons convicted of fraud.)

These steps are designed to create a real deterrent against attempts to milk the system and deceive the government. The existing penalties are clearly not having any impact.

#### SECTION 7

This section would establish the effective date of these changes as October 1, 1996. ●

### ADDITIONAL COSPONSORS

#### S. 545

At the request of Mr. BUMPERS, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 545, a bill to authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

#### S. 949

At the request of Mr. GRAHAM, the names of the Senator from Illinois [Mr. SIMON], the Senator from Connecticut [Mr. DODD], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

#### S. 1095

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1095, a bill to amend the Internal Revenue Code of 1986 to extend permanently the exclusion for educational assistance provided by employers to employees.

#### S. 1136

At the request of Mr. LEAHY, the name of the Senator from Illinois (Ms. MOSELEY-BRAUN) was added as a cosponsor of S. 1136, a bill to control and prevent commercial counterfeiting, and for other purposes.

#### S. 1200

At the request of Ms. SNOWE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1200, a bill to establish and implement efforts to eliminate restrictions on the enclaved people of Cyprus.

#### S. 1326

At the request of Ms. FEINSTEIN, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 1326, a bill respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

#### S. 1360

At the request of Mr. BENNETT, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor

of S. 1360, a bill to ensure personal privacy with respect to medical records and health-care-related information, and for other purposes.

#### AMENDMENT NO. 2942

At the request of Mr. BYRD, the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from Virginia [Mr. ROBB], the Senator from Illinois [Mr. SIMON], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Nevada [Mr. REID], the Senator from Arkansas [Mr. PRYOR], the Senator from Arkansas [Mr. BUMPERS], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Rhode Island [Mr. PELL], the Senator from Washington [Mrs. MURRAY], the Senator from Montana [Mr. BAUCUS], the Senator from Wisconsin [Mr. FEINGOLD], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Hawaii [Mr. AKAKA], the Senator from Delaware [Mr. BIDEN], the Senator from Massachusetts [Mr. KERRY], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Maryland [Mr. SARBANES], the Senator from Maryland (Ms. MIKULSKI), the Senator from Connecticut [Mr. DODD], the Senator from Wisconsin [Mr. KOHL], the Senator from Kentucky [Mr. FORD], the Senator from North Dakota [Mr. CONRAD], the Senator from Georgia [Mr. NUNN], and the Senator from California [Mrs. BOXER] were added as cosponsors of Amendment No. 2942 proposed to S. 1357, an original bill to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

#### AMENDMENT NO. 2974

At the request of Mr. BYRD, the names of the Senator from Wisconsin [Mr. FEINGOLD], the Senator from Illinois [Mr. SIMON], the Senator from North Dakota [Mr. DORGAN], the Senator from Virginia [Mr. ROBB], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of Amendment No. 2974 proposed to S. 1357, an original bill to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

SENATE RESOLUTION 188—  
NATIONAL DRUG AWARENESS DAY  
Mr. GRASSLEY submitted the following resolution; which was referred to the Committee on the Judiciary:

#### S. RES. 188

Whereas illegal drug use among the youth of America is on the increase;

Whereas illegal drug use is a major health problem, ruining thousands of lives and costing billions of dollars;

Whereas illegal drug use contributes to crime on the streets and in the homes of this nation;

Whereas national attention has turned from illegal drug use to other issues, and support for sustained programs has decreased;

Whereas public awareness and sustained programs are essential to combat an on-gong social problem;