

## **Hearing Transcript of the House Agriculture Subcommittee on Conservation, Credit, Energy, and Research to review the implementation of the 2008 Farm Bill energy title.**

### **Representatives Present:**

Chairman Tim Holden (D-PA)  
Rep. Stephanie Herseth Sandlin (D-SD)  
Rep. Kathleen A. Dahlkemper (D-PA)  
Rep. Mark Schauer (D-MI)  
Rep. Larry Kissell (D-NC)  
Rep. John Boccieri (D-OH)  
Rep. Mike McIntyre (D-NC)  
Rep. Bill Owens (D-NY)  
Rep. Bobby Bright (D-AL)  
Rep. Scott Murphy (D-NY)  
Rep. Frank Kratovil, Jr. (D-MD)  
Rep. Walt Minnick (D-ID)  
Rep. Earl Pomeroy (D-ND)  
Ranking Member Bob Goodlatte (R-VA)  
Rep. Jerry Moran (R-KS)  
Rep. Steve King (R-IA)  
Rep. Randy Neugebauer (R-TX)  
Rep. Adrian Smith (R-NE)  
Rep. Blaine Luetkemeyer (R-MO)  
Rep. Glenn Thompson (R-PA)  
Rep. Bill Cassidy (R-LA)

### **Opening Statement:**

Chairman Holden stated that the purpose of the hearing was to discuss the implementation of the 2008 Farm Bill energy title. He expressed concern that some of the programs being implemented are not following the intent of Congress.

### **Panel 1 Witnesses:**

- Ms. Cheryl Cook, Deputy Under Secretary for Rural Development, U.S. Department of Agriculture, Washington, D.C.
- Mr. Jonathan Coppess, Administrator, Farm Service Agency (FSA), U.S. Department of Agriculture, Washington, D.C.
- Ms. Carmela Bailey, National Program Leader for Biobased Products and Bioenergy, National Institute of Food and
- Agriculture (NIFA), U.S. Department of Agriculture, Washington, D.C.

Deputy Under Secretary Cook began by stating that America's energy system is in transition, calling for fuel-supply diversification, reduction of dependence on imported oil, reduction of our carbon footprint, and the development of renewable energy resources within the U.S. She said that rural energy is the future because biofuel production as well as small scale wind, hydroelectric, solar, and geothermal developments usually occur in rural areas. Therefore agriculture energy efficiency is especially relevant to agricultural producers as well as rural

residents and rural businesses.

Rural Development is currently implementing four of the five Title IX energy programs from the 2008 Farm Bill (Section 2009, the Rural Self-Sufficiency Initiative, has yet to be implemented), as well as a number of other renewable energy investments such as the Title VI business programs. Funding from the Section 9003 and 9007 programs was awarded to 1559 programs during FY 2009, creating/saving an estimated 10,300,000 million BTUs of energy (USDA). Two Section 9003 project investments have been announced to date (\$80 million to Range Fuels, Inc and \$54.5 million to Sapphire Energy). \$80 million remains under the Extension NOFA for FY 2009 and up to \$150 million remains for FY 2010 under the NOFA. Rural Development expects applicant volume, which was reduced by recent recession, to increase in the year ahead. Section 9004 project awards totaling \$13.3 million had been approved as of May 14, 2010; \$6.7 million remains for FY 2009 and \$8 million is available for the NOFA for FY 2010. Of the Section 9005 program funds, 95% will be allocated for small producers.

In FY 2009, 141 producers were awarded \$14.7 million; \$40 million in budget authority is available for this program in FY 2010. Approximately 75% of the Section 9007 (REAP) funds, totaling about \$99.4 million, are allocated to the States for FY 2010. The Section 9009 program has not yet been implemented and no funds have been appropriated to it.

The Biomass Crop Assistance Program (BCAP) and the Feedstock Flexibility Program, are implemented by the Farm Service Agency (FSA). The President's proposed budget includes preliminary estimates for outlays for BCAP at \$263 million in FY 2010 and \$479 million in FY 2011. As of May 31 FSA has disbursed \$233 million on 4,551 contracts. In February 2010, FSA published a proposed rule for full implementation of the BCAP program and suspended the matching of payments until publication of the final BCAP regulation. FSA is currently in the process of addressing over 24,000 comments received on the proposed rule. The final regulation is expected this autumn. The Feedstock Flexibility Program is not expected to be used in the near future because FSA's limited staff capacity and high sugar prices; the proposed rule for the Program is within the internal clearance process.

The National Institute of Food and Agriculture (NIFA) along with the Department of Energy (DOE) administer Section 9008 of Title IX. This program has been competitive since its inception in the 2002 Farm Bill, and over 800 pre-applications were received last year. 108 invited full applications and 12 awards were made. DOE offices administer the pre-application process and NIFA administers the full application process. Each agency makes the final award selections independently, based on program policy factors. For 2010, \$33 million from USDA and DOE are available. For this year's application, applicants must detail their projects' integration of all three technical areas as well as sustainability. NIFA is currently working to craft a post-award evaluation process.

Chairman Holden (D-PA) questioned Ms. Cook regarding the hold up in the Office of Management and Budget (OMB) in setting the rules and regulations concerning loan guarantees. Ms. Cook answered that there was no hold up, but rather there was only one examiner in OMB responsible for rural development projects. Mr. Holden also asked why USDA only collected payment on half of the Title IX programs for rural development. Mr. Coppess answered that it was common for agencies to use it at their own discretion. Mr. Holden then inquired about the seriousness of having conflicting definition of "rural." Ms. Cook answered by saying that the committee and the Farm Bill have the right definitions. Rural in this bill applies to towns, cities, or unincorporated places that have a total population of less than 50,000.

Ranking Member Goodlatte (R-IN) noted that it does not help farmers when resources for biomass research are not directed to rural areas. He inquired about restricting assistance to biomass companies and asked if USDA had performed any analysis on where to direct funds. Ms. Cook cited the balancing act that the department had to perform in regards to directing funds. Ranking Member Goodlatte asked if rural areas are not included in the new proposal then why USDA would keep them in contracts. Ms. Cook responded by saying that it would maintain consistency with FY 2010 payments for rural development.

Rep. Boccieri (D-OH) noted that renewable energy is rural energy and that improved energy efficiency is essential for agriculture producers. He asked Ms. Cook if USDA concurs with her testimony and if there was anyone remaining from the previous administration who would disagree. She responded by saying that she went through the appropriate channels when preparing her testimony and that she was unaware of any remaining personnel from the previous administration who would disagree. Rep. Boccieri also wanted to know how saving farmers money on their energy use was controversial. Ms. Cook responded by saying that there were controversies that did not fall under the jurisdiction of the committee or USDA. Rep. Boccieri later made a point in regards to Section 9008 that there were offices in USDA with overlapping jurisdictions. He wanted to know which office takes the lead. Ms. Cook replied that Secretary Vilsack is in charge and everyone involved in energy affairs meets on a weekly basis and reports to the secretary. She noted that they also coordinate with other federal agencies. Rep. Boccieri also inquired about short-term job creation. Ms. Cook said that they had created 7,000 jobs in rural America and were working to save jobs as well.

Rep. Moran (R-KS) expressed his frustration with trying to get USDA to better define a U.S. company. He stated that the creation of the definition was not statutory and that the proposal in question continues using the same definition despite assurances from Secretary Vilsack that his concern would be addressed. Rep. Moran stated his concern that companies were not receiving money for ethanol research. He then asked when the CRP sign-up would take place. Mr. Coppess answered that the CRP sign-up is in its final stages and the environmental impact and regulation report will be published in the near future. Rep. Moran also stated that the unpredictability of USDA causes problems for farmers because they may have to delay planting crops. He then asked if the Environmental Impact Statement (EIS) was complete. Mr. Coppess answered that it is complete and it will be published in a few days.

Rep. Dahlkemper (D-PA) had an interest in farmers creating sustainable energy sources and inquired why HERO DX, an Erie based biodiesel company, could not qualify under the bill because it was not a "rural entity." Ms. Cook responded by saying that defining a rural area is difficult and that most definitions come through the Farm Bill. USDA will provide a report on addressing conflicting definitions of what constitutes "rural." *Rep. Dahlkemper also asked if an economic impact analysis had been conducted for BCAP. Mr. Coppess said that one had been done but that it had not yet been released.*

Rep. Neugebauer (R-TX) noted that the definition of biofuel is very inclusive and fuels must meet the Renewable Fuel Standard (RFS) to be eligible for Title IX support, and he was concerned that provisions in the Clean Air Act defined what constitutes a biofuel in the farm programs. Ms. Cook responded by saying that the Farm Bill definition was the most appropriate. Rep. Neugebauer made the point that those who worked on the 2008 Farm Bill thought that they were making farm policy, but the EPA was making policies affecting the agriculture that were not written in law. He recommended that they take a legislative rather than administrative approach to farm policy. Rep. Thompson (R-PA) was concerned the viability of renewable energy sources and whether subsidized fuels would ever be able to turn a profit. Ms. Cook replied that the

government was not using subsidies, but rather it was providing loan guarantees to the private sector. The government covers a percentage of losses in loan guarantees, but she said that the government very rarely has to step in. Rep. Thompson asked if there were any economic studies that show which alternative energy sources are good investments. Ms. Cook answered that studies are not capable of being done due to the multiple feasibilities, such as technical, scientific, regulatory and environmental. Rep. Thompson said that there could be unintended consequences from BCAP inflating the price of feedstock. He said that crops have other uses and producers would have to compete with subsidized industries for these resources. Mr. Coppess replied that there was no evidence of losing out, but it was a concern nonetheless.

*Rep. Minnick (D-ID) expressed his concern that there was no feedback on BCAP subsidies and constituents will be upset because of the rising cost of inputs. He explained that 95 percent of bark is going for fuel or mulch, which causes traditional users to have to pay more to use resources when competing with subsidized industries. He also stated that the cost of BCAP programs affects every consumer in America. Mr. Coppess said that he understands these concerns and will address them as soon as possible. Rep. Minnick (D-ID) asked if USDA was going to protect traditional producers. **Mr. Coppess said they are not ignoring the concern, will tailor final rule to make certain that there are no unintended consequences.** When asked if there was a timeline for tailoring this final rule, Mr. Coppess said the fall or earlier. They are waiting on the Environmental Impact Statement.*

*Rep. King (R-IA) asked if it was possible for subsidized biobased products to be shipped overseas. Mr. Coppess said that it is possible because there are no restrictions on the sale of these products. He then asked if there was a safeguard from people just burning subsidized wood products. Rep. King emphasized that USDA has the responsibility to monitor how subsidies are being spent.*

Rep. Pomeroy (D-ND) asked why canola feedstock does not qualify for the Title IX support. He said that there was no basis for the omission, and he wanted to know how USDA would address this issue. Ms. Cook pointed out that canola was currently going through the appeal process with EPA, and, when pressed further, she acknowledged that USDA has the capacity to support canola while it is in the appeals process. Rep. Pomeroy also asked why the administration recommended a \$2.4 million cut in the rural electric development program. Cook said it was a victim of the economic downturn. Rep. Pomeroy said that cutting resources would diminish the ability of farmers to benefit from the development of wind power.

Rep. Smith (R-NE) asked why Section 9005 would not allow commodities under the appeals process to receive a loan guarantee. Ms. Cook said that this issue was actively being appealed. Rep. Smith asked if it were true that only two awards have been given for the Biorefinery Assistance Program. Ms. Cook confirmed this number citing the facts that the program had been a victim of the economy and the lender community has been hesitant to provide loans. The loan guarantee level was raised from 80 to 90 percent to help reassure lenders.

Rep. Sandlin (D-SD) expressed concern that we are allowing biomass in federal forests to rot and releasing gases into the atmosphere instead of utilizing them. She asked if the USDA has confidence that the program will be successful in creating independence for biomass energy. Mr. Coppess responded by saying that the program has great potential and years from now we will see the benefits from the great transformation in the energy sector. Rep. Sandlin, when commenting on the REAP program, emphasized the necessity to streamline the delivery of wheat. Rep. Sandlin said that farmers need earlier wheat funding notices, and she asked that funding notices be out by December for FY 2011. Ms. Cook replied that this was a pre-existing regulation and

they were working to make changes to REAP but that most of the REAP funding had been sent to state offices for distribution.

Rep. Luetkemeyer (R-MO) asked how biofuels are doing as a whole. Ms. Cook said that lenders have cut off money to growers who have never missed a payment because of the lack of confidence in the private lending sector. Rep. Luetkemeyer then asked if perhaps these programs were generating excess capacity in the biofuel industry and the overall demand for these products was not as high as the production capacity. Ms. Cook replied that they want to support businesses they believe will survive; the challenge is distribution. Rep. Luetkemeyer then inquired as to whether NIFA had been doing an analysis of increasing food production costs. Ms. Bailey replied that they are supporting the research and development of biofuels. When Rep. Luetkemeyer asked about the impact on food costs, Ms. Bailey replied that she could not address the impact but that she hopes food will become cheaper.

Rep. McIntyre (D-NC) asked for some examples of projects for which small businesses have applied for funding under the REAP program. Ms. Cook answered that funding requests have been received for many kinds of projects ranging from green dryers to wind power. She is in favor of the diversification of projects funded. Rep. McIntyre also wanted to know the benefits of the energy audits. Ms. Cook said it helps farmers understand energy cost of production.

Rep. Cassidy (R-LA) asked if farmers running already established biomass conversion facilities as well as those who expand older conversion facilities are eligible for funding from the BCAP program. Mr. Coppess replied that existing facilities could benefit because there was no requirement that a biomass conversion facility be new for it to receive funding under the Notice of Funding Availability. Rep. Cassidy then inquired as to why farmers using their own biofuels could not benefit as they can for selling biofuels. Mr. Coppess replied that funding awards are restricted to producers who engage in "arm's length" transactions only. However, in the proposed rule this language has been changed to "related party" transactions to be more broad and easy to interpret. Rep. Cassidy expressed his concern that throughout the U.S. a large percentage of energy is lost in the power grid due to the poor upkeep of power lines and other factors. This is especially common in rural areas that have fewer resources for upkeep and repair. He asked if there is anything to encourage power conservation and whether there are any plans to upgrade the power infrastructure (especially in rural areas). Bailey replied that Section 9009 and other rural development programs are designed to help upgrade rural homeowners' energy utilities.

Rep. Kissell (D-NC) asked Ms. Cook what constituents in her areas would have to do to get ethanol or blender fuel pumps. Cook responded that HUD and EPA would need to be convinced that they should go into more urban areas. USDA Rural Development doesn't have that jurisdiction. Rep. Kissell then asked the panel about what lessons they had learned from the 2008 farm bill for the 2012 committee to consider. Mr. Coppess stated that they are still in the process of learning but that they will have much information for the 2012 farm bill. Ms. Cook agreed that the implementation of the 2008 Farm Bill needed to be finalized, but she shared some observations about problems that need to be addressed. She stated that there is not enough being done to coordinate the energy standards of the federal government and the states. Many state governments are passing energy regulations, and working with them will benefit federal efforts. She also said that they should examine the investment necessary to upgrade the energy grid. Only through upgraded grid lines will renewable energy be able to efficiently reach consumers.

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