

## VII. 1996 FARM BILL

**Producer Note:** This section only discusses the environmental or conservation related provisions of the 1996 Farm Bill.<sup>57</sup> For a more thorough examination of flexibility programs, export programs, dairy marketing, risk management, and other provisions of the 1996 Farm Bill, resources such as the local Farm Service Agency office, a producers' association, or appropriate governmental offices should be consulted.

### A. Environmental Conservation Acreage Reserve Program

The Environmental Conservation Acreage Reserve Program (ECARP) includes the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP). Under ECARP, USDA may designate watersheds, multi-state areas, and regions of special environmental sensitivity as priority areas eligible for enhanced federal assistance. USDA may also designate areas in which it will assist producers in meeting federal, state, and local environmental laws and regulations.

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<sup>55</sup> S.D. CODIFIED LAWS ANN. § 41-6-29 (Supp. 1996).

<sup>56</sup> S.D. CODIFIED LAWS ANN. §§ 41-8-33 *and* 41-3-6 (1991 & Supp. 1996).

<sup>57</sup> Federal Agricultural Improvement and Reform (FAIR) Act of 1996, P.L. 104-127.

## *1. Conservation Reserve Program*

**Producer Note:** The Conservation Reserve Program<sup>58</sup> (CRP) has been reauthorized and extended by the 1996 Farm Bill. Producers who wish to participate in this program may submit an offer to enroll land during specified signup periods. A continuous signup is provided for certain special practices, including filter strips, riparian buffers, shelter belts, grassed waterways, field wind breaks, living snow fences, salt tolerant vegetation and shallow areas for wildlife. The Commodity Credit Corporation (CCC) administers the program through Farm Service Agency (FSA) state and county offices. The owner or operator submits a per acre rental bid. If accepted, the CCC enters into a contract with the owner or operator to convert the land into a conserving use for a minimum of 10 years in return for financial and technical assistance. Conservation plans approved by the local conservation district are required on eligible acreage.

The CRP has been extended through the year 2002 at the current level of enrolled acreage of 36.4 million acres. Under the 1996 Farm Bill, land ownership requirements prior to enrollment have been reduced from three years to one year.

USDA is authorized to allow current participants in the CRP to terminate any CRP contract which was entered into prior to January 1, 1995 with written notice, so long as the contract has been in effect at least five years. This early termination provision does not, however, apply to those enrolled lands which are determined to be of high environmental value.

CRP contracts which are not eligible for early termination include:

- Contracts entered into after January 1, 1995;
- Contracts entered into before January 1, 1995 which are less than five years old;
- Land with an erodibility index greater than 15;
- Land devoted to useful life easements, field windbreaks, grass waterways, shallow water areas, filter strips, shelter belts, and bottom land timber on wetlands;
- Land enrolled under the wetland eligibility criteria; and
- Land located within an average of 100 feet of a stream or other permanent water body.

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<sup>58</sup> Conservation Reserve Program-Long Term Policy, 61 Fed. Reg. 49697-01 (1996) (to be codified at 7 C.F.R. pt. 704 and pt. 1410)(proposed Sep. 23, 1996).

Total acreage placed in the CRP, combined with that placed in the Wetlands Reserve Program (WRP), may not exceed 25 percent of the total cropland of the county. In addition, no more than 10 percent of the cropland in the county can be subject to a CRP or WRP easement. CRP participants must comply with the CRP contract, implement approved conservation plans, establish required vegetative cover or water cover, not produce agricultural commodities or allow grazing or harvesting unless provided by the U.S. Secretary of Agriculture under certain conditions on land subject to the contract, comply with state noxious weed laws, and control all weeds, insects, and pests on the land. Additionally, conservation compliance and Swampbuster requirements must be met as a condition of CRP eligibility.

## ***2. Wetlands Reserve Program***

The Wetlands Reserve Program<sup>59</sup> (WRP) has been reauthorized through the year 2002 with a maximum enrollment of 975,000 acres. One-third of all new enrollments must be in permanent easements, one-third in 30-year easements or less, and one-third in wetland restoration agreements which include cost sharing. At least 75,000 of the total acres must be enrolled in other than permanent easements before any additional permanent easements will be accepted for enrollment in the program.

**Producer Note:** To participate in the WRP program, a producer may enroll acreage at any time by applying for program participation with the local NRCS office.

Emphasis will be given to enrollment of lands that:

- Maximize wildlife benefits;
- Maximize the amount of wetlands;
- Achieve cost-efficient wetlands restoration; and
- Have the least likelihood of being reconverted.

Conservation plans are required for WRP program participation. Eligibility determinations for participation in the program is made by NRCS. In addition, landowners may be provided with 75 percent to 100 percent cost sharing for restoring wetlands under permanent easements, 50 percent to 75 percent for 30-year easements, and 50 percent to 75 percent for restoration cost share agreements.

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<sup>59</sup> Wetlands Reserve Program, 61 Fed. Reg. 42137-01 (1996) (to be codified at 7 C.F.R. pt. 620 and pt. 1467).

### 3. *Environmental Quality Incentives Program*

The Environmental Quality Incentives Program<sup>60</sup> (EQIP) is a new cost share program which was created to provide assistance to crop and livestock producers. Available funds for assistance will be evenly split between crop and livestock producers. Agricultural land that poses a serious problem to soil, water, or related resources is eligible for EQIP contracts. Large livestock operations are ineligible for cost sharing for animal waste management facilities under the program, but they remain eligible for technical assistance.

**Producer Note:** The producer desiring EQIP participation may apply at NRCS for an EQIP contract at any time. The contract includes a plan, approved by the local conservation district, that indicates the practices to be applied and the amount of cost share to be received. Producers should be aware that the regulations implementing EQIP have been proposed. However, changes could occur in the final regulations.

Contracts which are based on an EQIP plan will be used to implement the program. Payments in the EQIP program are limited to \$10,000 per year and to \$50,000 over the duration of the contract. Contracts may be for no less than five years and no more than 10 years. Assistance to producers will be available through cost share payments, incentive payments, education, and technical assistance. Cost share payments are limited to no more than 75 percent of the projected cost of the practice. Incentive payments are also available to encourage the adoption of new practices.

EQIP will be focused in conservation priority areas. Higher priority will be given to areas where state or local governments offer financial or technical assistance, or where agricultural improvements will help meet water quality objectives.

#### **B. Swampbuster, Sodbuster, and Conservation Compliance Programs**

##### *1. Swampbuster*

**Producer Note:** The Swampbuster program has been in place since 1985 and was passed to discourage producers from converting wetlands to croplands and generally encourage landowners to preserve wetland areas. The 1985 law made producers ineligible for farm program participation if farming occurred on wetlands after 1985. A 1990 amendment strengthened the program by making conversion alone even without cropping a swampbuster violation. USDA implements Swampbuster regulations and the NRCS is the primary agency involved in ensuring compliance with Swampbuster provisions.

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<sup>60</sup> Environmental Quality Incentives Program, 61 Fed. Reg. 53574-01 (1996) (to be codified at 7 C.F.R. pt. 1466)(proposed Oct. 11, 1996).

Wetland conservation provisions, known as Swampbuster, are continued under the 1996 Farm Bill. Wetland mitigation is allowed through restoration, enhancement, or creation so long as wetland functions are maintained. When a violation of the Swampbuster program occurs, USDA has the discretion to waive the penalty of ineligibility for USDA program benefits if USDA determines the person acted in good faith and without intent to violate the Swampbuster provisions.

Abandoned prior converted wetlands and farmed wetlands are not subject to Swampbuster so long as the use of those lands is limited to agricultural purposes. USDA is authorized to identify categories of actions that constitute minimal effects. Finally, prior wetland determinations will be reviewed for accuracy.

The 1996 Farm Bill made other changes in the Swampbuster program which include:

- Expansion of areas in which mitigation can be used, allowing individuals to work with producers, conservation districts, and other relevant entities;
- More options for mitigation, including restoration, enhancement, or creation;
- Natural Resources Conservation Service (NRCS), based upon recommendations of the state technical committee, may identify practices that have a minimal effect on the environment and may put them on fast track determination; and
- Wetland conversion activities authorized by a section 404 permit which make agricultural production possible will be accepted for Swampbuster program purposes if the permitted activities were adequately mitigated.

**Producer Note:** Prior converted cropland is a converted wetland where the conversion occurred prior to December 23, 1985, and an agricultural commodity had been produced at least once before December 23, 1985.

In addition, the 1996 Farm Bill expands the definition of agricultural land contained in the Interagency Wetlands Memorandum of Agreement<sup>61</sup> to include cropland, pasture land, tree farms, rangeland, native pasture land, and other land used for livestock production, placing NRCS in charge of making delineation decisions.

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<sup>61</sup> NATURAL RESOURCE CONSERVATION SERVICE, INTERAGENCY WETLANDS MEMORANDUM OF AGREEMENT (1994). NRCS has the primary responsibility for interagency coordination and NRCS can distribute copies of the Memorandum of Agreement.

**Producer Note:** Interim regulations implementing Swampbuster changes found in the 1996 Farm Bill are already in effect. Producers must make themselves aware of the new Swampbuster regulations by obtaining copies from NRCS or USDA offices and should keep themselves informed of regional wetlands issues.

## 2. *Sodbuster*

**Producer Note:** The Sodbuster program also began with the 1985 Farm Bill. These programs were designed to conserve highly erodible land brought into crop production. Under Sodbuster, producers are ineligible for farm program payments unless conservation systems are applied on the land that achieve tolerable levels of soil erosion. Highly erodible land determinations are made by NRCS.

The highly erodible lands conservation program, known as Sodbuster, is retained under the Farm Bill. A new provision states that if CRP lands are returned to production, those lands cannot be required to meet a higher conservation standard than that applied to other highly erodible cropland located within the same area.

In addition, a wind erosion pilot project is established under the 1996 Farm Bill. The pilot project is for producers in selected counties which have nearly 100 percent of their cropland designated as highly erodible and where wind erosion factors are likely to have caused inequitable application of highly erodible land factors to that cropland. In this circumstance, the cropland must be redelineated.

## 3. *Conservation Compliance*

**Producer Note:** Conservation compliance provisions of the 1985 and 1990 Farm Bills were continued under the 1996 Farm Bill. These provisions required the producer to have a plan approved by NRCS and implemented by the producer to address highly erodible cropland to remain eligible for certain USDA program benefits. These plans are continued by the 1996 Farm Bill, with some changes. The term conservation plan describes the conservation systems or practices relative to the location, use, tillage system, and treatment measures used to improve soil condition.

Under the 1996 Farm Bill, after consultation with local conservation districts, USDA is required to establish expedited procedures to grant temporary variances in conservation plans, formerly referred to as conservation compliance plans. Decisions on variances must be made within 30 days or the request will be considered granted.

County committees may provide for appropriate relief where application of a conservation system would impose an undue economic hardship on the producer. This discretion is allowed upon consideration of the use of variances and exemptions.

Public notice of future changes in the technical standards affecting conservation compliance, Swampbuster, and CRP programs are also required. If a person has acted in good faith and without any intent to violate the law, up to one year can be provided for that person to actively apply conservation plans for the farm. This action will help ensure that penalties are in proportion to violations.

USDA employees are directed under the 1996 Farm Bill to work with landowners to whom they are providing onsite technical assistance to correct an observed potential compliance problem. Landowners have up to one year to take corrective action before the violation will be reported. Farmers are encouraged to maintain records of residue measurement, including those provided by third parties. These measurements can be used to determine erosion levels on annual review.

### **C. Other Conservation Programs**

**Producer Note:** Many additional conservation programs were created under the 1996 Farm Bill. Producers must contact the local NRCS or USDA field office in order to obtain specific program regulations, applications for participation, technical assistance, and plan requirements. Some programs provide cost share payments.

#### **1. Conservation Farm Option**

The 1996 Farm Bill established a pilot program for producers of wheat, feed grains, upland cotton, and rice with market transition contract acreage. Under the Conservation Farm Option (CFO), the producer must develop and implement a conservation farm plan. Conservation farm contracts are for 10 years and can be extended for an additional five years. In exchange for payments under the CFO, the producer must forego payments in the CRP, WRP, and EQIP programs. The total payment for participation in CFO is the same as if the producer had received separate payments under each program, in addition to production flexibility contract payments.

#### **2. Flood Risk Reduction**

Contracts may be entered into with producers who have contract acreage that is frequently flooded. Participants will receive 95 percent of their market transition contract payments. The Secretary may also provide 95 percent of projected crop insurance payments. Participants agree not to receive any contract payments, commodity loans, crop insurance, conservation program payments, or any disaster program payments on the flood risk reduction acreage.

### 3. *Farmland Protection Program*

USDA is authorized to purchase easements or other interests in land with prime, unique, or other productive soils if those lands are subject to a pending offer by state or local governments to acquire the land for farmland protection purposes. Easements or other interests on 170,000 to 340,000 acres are allowed. USDA has provided \$14.5 million to California, Colorado, Connecticut, Delaware, Florida, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, and Wisconsin to help purchase development rights from farmers to keep productive farmland in production.

### 4. *Wildlife Habitat Incentives Program*

The Wildlife Habitat Incentives Program (WHIP) authorizes \$50 million in funding through the year 2002 to establish a program to make cost share payments to landowners in order to implement wildlife habitat improvement activities. In order to receive cost share payments, the landowner must submit a wildlife habitat development plan. The WHIP program, in addition to providing payments, is designed to provide technical assistance to landowners, provide education regarding wildlife needs, and foster a positive public attitude regarding wildlife, wildlife habitat, and land stewardship.

<p><b>Producer Note:</b> USDA has proposed regulations to implement WHIP. However, changes could occur in the final regulations.</p>
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### 5. *Conservation of Private Grazing Land*

Federal personnel are to be made available for technical assistance through the Conservation of Private Grazing Land program. The purpose of the program is to promote conservation and enhancement of natural resources on private lands. NRCS offices will administer the program and development of a conservation plan is required for participation.

### 6. *Commodity Credit Corporation Uses*

Under the 1996 Farm Bill, the Commodity Credit Corporation (CCC) Charter Act is revised to allow the use of CCC funds for authorized conservation programs. This action is intended to reduce the necessity for annual appropriations to carry out conservation programs.

### 7. *Air Quality*

The 1996 Farm Bill establishes a task force on agricultural air quality with NRCS as the chair of the task force. The task force has met and established operating procedures, outlined its objectives, and discussed issues brought up by the public.

## 8. *Other Miscellaneous Provisions*

Other miscellaneous provisions of the 1996 Farm Bill which may affect the environmental aspects of an agricultural operation include:

- Task force to study bypass flows and related water rights on national forest land, with an 18-month moratorium on bypass flow requirements during the renewal of Forest Service permits for water supply facilities;
- Flexibility in determining how soil survey information is communicated to the public;
- Reauthorization of the forestry incentives program;
- Reauthorization of the resource conservation and development program;
- Requirement that state technical committees give public notice of meetings and expand committee membership to include representatives of agricultural producers, non-profit conservation organizations, agribusiness, and experts on economic and environmental impacts of conservation techniques; and
- Purchase of floodplain easements under the Emergency Watershed Protection Program.