
Title III

Conservation

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The conservation title amends (1) conservation compliance and highly erodible land (sodbuster) provisions and (2) wetland conservation (swampbuster) provisions. The amendments provide farmers with more flexibility in meeting requirements and conditions of these two sets of provisions.

As established by the Food Security Act of 1985, conservation compliance and sodbuster provisions require that producers implement an approved conservation plan on their highly erodible cropland to remain eligible for a wide range of USDA program benefits. Under swampbuster, producers must refrain from converting

wetlands to make possible the production of an agricultural commodity to remain eligible for USDA program benefits.

The title also extends the Conservation Reserve Program (CRP) and the Wetland Reserve Program (WRP), and establishes several new programs to address high-priority environmental protection goals. New programs include the Environmental Quality Incentives Program, the Wildlife Habitat Incentives Program, the Flood Risk Reduction Program, a Farmland Protection Program, a Conservation Farm Option, and a Conservation of Private Grazing Lands initiative. A new National Natural Resource Conservation Foundation is also created as a nonprofit corporation to fund research, education, and demonstration projects related to conservation.

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Subtitle A

Definitions

This subtitle defines important components applicable to the conservation compliance and sodbuster provisions, including “conservation plan,” “conservation system,” and “field.” A conservation system is defined as conservation measures and practices that are based on local resource conditions, available conservation technology, and the standards and guidelines contained in Natural Resources Conservation Service (NRCS) field office technical guides, and is designed to achieve, in a cost-effective and technically practicable manner, a substantial reduction in erosion or a substan-

tial improvement in soil conditions on highly erodible cropland.

The subtitle also requires that within 60 days the Secretary publish in the Federal Register both the universal soil loss equation and the wind erosion equation used by USDA. Any future changes to these equations must involve public notice and comment. Both of these equations are used to determine if there has been a substantial reduction in soil erosion on fields containing highly erodible cropland.

Subtitle B

Highly Erodible Land Conservation

The 1996 Act modifies conservation compliance and sodbuster provisions of the Food Security Act of 1985 to provide producers with more flexibility in developing and implementing conservation plans, in self-certifying compliance, in obtaining variances for problems affecting application of conservation plans, and in obtaining good faith exemptions.

Producers who violate conservation plans, or fail to use a conservation system, on highly erodible land risk loss of eligibility for many payments including production flexibility contract payments, Environmental Quality Incentive Program payments, and WRP payments. Crop insurance payments are no longer at risk due to noncompliance. As before, eligibility for farm storage facility loans; disaster payments; loans made, insured, or guaranteed by the Farm Service Agency (formerly FmHA loans); CRP payments; commodity storage payments; payments under sections 401 or 402 of the Agricultural Credit Act of 1978; and payments under sections 3 or 8 of the Watershed Protection and Flood Prevention Act may be denied for failure to comply with an approved conservation plan or to use an approved conservation system.

The subtitle clarifies that conservation requirements for highly erodible CRP lands returned to production must be no more onerous than those required for similar lands in the area under conservation compliance.

The “good faith” provision of the 1985 Act is also revised. Previously, a producer could receive a good faith exemption from a compliance violation if there had been no other violation within the previous 5 years and it was determined that the producer had acted in good faith and without the intent to violate the conservation compliance or sodbuster provisions. The 1996 Act removes the 1-in-5 year rule and allows a grace period not to exceed 1 year to implement measures needed to be in compliance. Further, if a USDA employee observes possible conservation compliance deficiencies while providing on-site technical assistance, the producer is provided 1 year to correct the deficiencies. USDA must notify the producer within 45 days of corrective actions needed. If corrective

actions are not completed within 1 year, the Secretary may then conduct a compliance status review.

The 1996 Act requires the Secretary to establish expedited procedures for granting temporary conservation plan variances for weather, pest, or disease problems. Once a producer requests a variance, the Secretary must make a decision on whether to grant the variance within 30 days. If the Secretary fails to render a decision within this time frame, the temporary variance is automatically granted.

The 1996 Act requires the Secretary to provide technical guidelines and establish a certification system for third parties to perform residue measurement, and accept residue measurement and other data voluntarily supplied by the producer. The Secretary must use residue measurements supplied by the producer or a certified third party if the Secretary determines that the measurements indicate the residue level for the field meets the level required by the conservation plan.

The 1996 Act allows producers to self-certify compliance with their conservation plan when they apply for benefits. The Secretary is not required to conduct a status review for producers who self-certify. These producers are further allowed to revise their conservation plans in any manner if the level of conservation treatment provided by the plan is maintained. To encourage on-farm conservation research, the Secretary may allow a person to include, on a field trial basis, practices that are not currently approved in NRCS Field Office Technical Guides, but that the Secretary considers have a reasonable likelihood of success.

Based on a producer’s request, county or area committees are authorized to determine if the producer’s conservation system would impose an undue economic hardship, and if so, provide the producer with relief to avoid the hardship.

Finally, the Secretary is also required to establish a wind erosion pilot project that would review and modify as appropriate the use of wind erosion factors in carrying out the conservation compliance and sodbuster provisions of the legislation.

Subtitle C

Wetland Conservation

The swampbuster provision of the 1985 Act was amended to provide producers with increased flexibility to address wetland issues while stressing the protection of overall wetland functions and values. Producers who violate the swampbuster provision risk loss of eligibility for production flexibility contract payments, Environmental Quality Incentive Program payments, and WRP payments. Crop insurance payments are no longer at risk due to swampbuster violations. As before, eligibility for farm storage facility loans, disaster payments, loans made, insured, or guaranteed by the Farm Service Agency (formerly FmHA loans), CRP payments, commodity storage payments, payments under sections 401 or 402 of the Agricultural Credit Act of 1978, and payments under sections 3 or 8 of the Watershed Protection and Flood Prevention Act may be denied for a swampbuster violation. The Secretary shall determine which of, and the amount of, these loans and payments the person shall be ineligible for in proportion to the severity of the violation.

The 1996 Act requires the Secretary to certify wetland determinations as accurate. Once certified, all wetland determinations remain in effect as long as the land is used for agricultural purposes or until the owner or operator requests a review from the Secretary. Wetlands converted to agricultural use prior to December 23, 1985, are not subject to wetland compliance provisions even if wetland conditions return as a result of lack of maintenance, lack of management, or circumstances beyond the control of the person. A converted wetland that was determined by the NRCS to have been manipulated for the production of an agricultural commodity or forage prior to December 23, 1985, and was returned to wetland conditions through a voluntary restoration, enhancement, or creation action, may later be converted and/or used for the production of an agricultural commodity if certain conditions are met. These conditions are: (1) NRCS has documented site conditions before and after the restoration, enhancement, or creation action, (2) the proposed conversion action was approved by NRCS prior to implementation, and (3) the proposed conversion results in wetland functions and values at least equivalent to those that existed before the restoration, enhancement, or creation action.

The Secretary is required to identify, through regulation, categories of actions that constitute minimal effects on wetlands. Wetland mitigation can now be achieved through the enhancement of an existing wetland or through the creation of a new wetland, in addition to restoration of a converted wetland as permitted by previous law, as long as the wetland functions and values are maintained. Wetland conversion activities authorized by a permit issued under Section 404 of the Clean Water Act will not trigger a swampbuster violation if NRCS determines that they were adequately mitigated.

The 1996 Act gives the Secretary broader authority than before to grant complete exemptions for swampbuster violations if the person acted in good faith and without the intent to violate and if the person undertakes active restoration of the wetland within 1 year of the violation. To receive a good faith exemption, previously, a producer had to be actively restoring the wetland and demonstrate that he or she had not otherwise violated swampbuster provisions within the past 10 years. Even so, the producer was still subject to graduated penalties ranging from \$750 to \$10,000.

The legislative requirement for agreement with the U.S. Fish and Wildlife Service and for consultation with the Secretary of the Interior regarding wetland determinations, restoration, mitigation, and monitoring are repealed by the 1996 Act. NRCS is granted sole responsibility for such activities. Finally, the Secretary is authorized to establish and operate a pilot program for mitigation banking of wetlands. Mitigation banking entails the creation of a "bank" of new or restored wetlands. When producers diminish or destroy their own wetlands, they can mitigate their actions by purchasing equivalent wetlands from the "bank."

The 1996 Act expands the definition of agricultural land contained in the interagency (USDA, Environmental Protection Agency, Department of the Interior, Department of the Army) memorandum of agreement to include not only cropland and pasture, but also tree farms, rangeland, native pasture, and other land used for livestock production. NRCS will begin immediately to provide wetland determinations on these lands at the request of the owner or operator.

Subtitle D

Environmental Conservation Acreage Reserve Program (ECARP)

ECARP was previously composed of the Conservation Reserve Program and the Wetland Reserve Program. The 1996 Act retains ECARP as an umbrella program and adds the new Environmental Quality Incentives Program. The Secretary is authorized to designate watersheds, multistate areas, or regions of special environmental sensitivity as conservation priority areas that are eligible for enhanced assistance under ECARP programs. In the 1990 Act, conservation priority areas, including the Chesapeake Bay region, Long Island Sound region, and Great Lakes region, were established only for the Conservation Reserve Program. ECARP programs are to be funded with Commodity Credit Corporation (CCC) funds. The purposes of the CCC are expanded, effective January 1, 1997, to include conservation and environmental programs authorized by law (see subtitle E).

Conservation Reserve Program (CRP)

The 1996 Act reauthorizes the CRP at a maximum of 36.4 million acres at any one time through the year 2002. The Secretary is authorized to enroll new acres in addition to renewing existing CRP acres.

The Secretary shall allow a participant who entered into a contract before January 1, 1995, to terminate the contract at any time if the contract has been in effect for at least 5 years. This termination is subject to a 60-day notice to USDA. However, CRP acres with filter-strips, grass waterways, riparian areas, windbreaks, shelterbelts, acres having an erodibility index greater than 15, and other lands with high environmental benefits as determined by the Secretary (including wetlands) are ineligible for early withdrawal. Producers will receive prorated rental payments for contracts that are withdrawn before the end of a fiscal year. The 1996 Act further stipulates that early withdrawal of a CRP contract shall not affect the ability of the owner or operator to submit a bid to reenroll the land in the CRP at a future date.

Wetland Reserve Program (WRP)

The WRP is reauthorized through the year 2002 with up to 975,000 acres enrolled at any one time. Beginning October 1, 1996, to the extent practicable, one-third of the newly enrolled land shall be in permanent easements, one-third in 30-year easements, and one-third under wetland restoration agreements with cost sharing. At least 75,000 acres of land in temporary easements must be enrolled in the program before any additional permanent easements are accepted. In addition to eligibility criteria from previous legislation, land eligible for the WRP must now maximize wildlife benefits and wetland values and functions.

Restoration plan development under the WRP is now the responsibility of NRCS, in consultation with the State technical committee, and no longer requires the agreement of the U.S. Fish and Wildlife Service. Compensation for WRP easements can now be made in 5 to 30 annual payments rather than 5 to 20 annual payments under previous law. In addition to cost-sharing levels for permanent and 30-year easements under prior law, the 1996 Act stipulates that the Secretary shall cost-share 50 percent to 75 percent of eligible costs for wetland restoration agreements.

Environmental Quality Incentives Program (EQIP)

The 1996 Act requires the Secretary to establish a new program, EQIP, and to combine in it the functions of the Agricultural Conservation Program, the Great Plains Conservation Program, the Water Quality Incentives Program, and the Colorado River Basin Salinity Control Program. The objective of the program is to encourage farmers and ranchers to adopt practices that reduce environmental and resource problems. Half of the available funds for EQIP are to be targeted at practices relating to livestock production (see subtitle E).

EQIP must be carried out to maximize environmental benefits provided by the program per dollar expended. During 1996-2002, the Secretary shall provide technical assistance, education, cost-sharing, and incentive payments to producers who enter into 5- to 10-year contracts specifying EQIP conservation plans. The program is available to farmers and ranchers who own or operate land on which crops or livestock are produced including cropland, pasture, rangeland, and other lands identified by the Secretary.

EQIP conservation plans will indicate changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management, and/or land use changes to be implemented by the producer. The plans will be intended to improve soil, water, and related natural resources including grazing lands, wetlands, and wildlife habitat. Producers who implement land management practices (for example, nutrient management, tillage management, grazing management) can receive technical assistance, education, and incentive payment amounts to be determined by the Secretary. Producers who implement structural practices (for example, animal waste management facilities, terraces, filterstrips) can receive technical assistance, education, and cost-sharing of up to 75 percent of the projected cost of the practice(s). However, large confined livestock operations, subject to definition by the Secretary, will be ineligible for cost sharing to construct animal waste management facilities. An evaluation and selection process for offers will be used to maximize environmental benefits per dollar expended under the EQIP program.

Program funding will be \$200 million annually through 2002 except for fiscal year 1996 in which case funding will be \$130 million (see subtitle E). In general, the total amount of cost-share and incentive pay-

ments paid to a producer under EQIP may not exceed \$10,000 for any fiscal year or \$50,000 for any multi-year contract. However, the Secretary is given authority to pay a producer more in a fiscal year if the Secretary determines it to be essential to accomplish the purposes of the program.

EQIP is to be phased-in over a 180-day period through an interim program. At the end of this time, the authority to use the terms and conditions of the Agricultural Conservation Program, the Great Plains Conservation Program, the Water Quality Incentives Program, and the Colorado River Basin Salinity Control Program shall be terminated.

Conservation Farm Option (CFO)

The Secretary must establish conservation farm option pilot programs for producers of wheat, feed grains, cotton, and rice. Only owners or operators with contract acreage enrolled in the agricultural market transition program are eligible for participation. Under the pilot programs, producers shall have the opportunity to receive one consolidated USDA program payment in lieu of separate payments from CRP, WRP, and EQIP. The producer must implement a conservation farm plan that addresses soil, water, and related resources; water quality; wetlands; or wildlife habitat. Participation is voluntary and based upon a 10-year contract between the Secretary and the producer, with the potential for a 5-year extension. An owner or operator may not terminate a CRP contract and enter into a CFO contract if the Secretary determines that this would reduce net environmental benefits. Initially, funding for fiscal 1997 is \$7.5 million, increasing to \$62.5 million in 2002. A total of \$197.5 million of CCC funds is dedicated to this option for FY 1997-2002.

Subtitle E

Conservation Funding and Administration

This subtitle specifies that the Secretary shall use the funds of the CCC to carry out various conservation programs discussed elsewhere in title III. In carrying out conservation compliance, sodbuster, swampbuster, CRP, WRP, and EQIP, the services of local, county, and State committees shall be used. In carrying out CRP, WRP, and EQIP the Secretary shall consult with, to the extent practicable, the U.S. Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, soil conservation districts, and other appropriate agencies. For swampbuster, CRP, WRP, and EQIP the Secretary is permitted to utilize the services of NRCS, Forest Service, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, local, county, and State committees, soil conservation districts, and other appropriate agencies.

The Secretary shall not enroll more than 25 percent of the cropland in any county in the CRP and WRP combined, and not more than 10 percent of the cropland in a county may be subject to a CRP or WRP easement, excluding shelterbelt and windbreak easements. The

Secretary may exceed these limitations if doing so would not adversely affect the local economy of a county and operators in the county are having difficulty complying with conservation compliance plans.

With the exception of tenants on land subject to extended CRP contracts, the Secretary must provide adequate safeguards for tenants sharing in payments under conservation compliance, sodbuster, swampbuster, CRP, WRP, and EQIP. In addition, the Secretary must permit farmers to secure technical assistance for conservation compliance plans from approved sources other than NRCS.

Membership of State Technical Committees will be expanded to include agricultural producers, nonprofit groups, agribusiness, and other persons with demonstrable expertise in conservation. State Technical Committees will provide public notice of, and allow public attendance at meetings considering conservation title issues. State Technical Committees will take on a larger role in recommending priorities and other policies for management of USDA conservation programs.

Subtitle F

National Natural Resources Conservation Foundation

A National Natural Resources Conservation Foundation is established as a private charitable non-profit corporation to promote and fund innovative solutions to conservation problems through partnerships between government and private interests. It can also conduct research, education, demonstration projects, technical assistance, raise and accept private donations, and make grants to State and local agencies and non-profit organizations for conservation purposes. The foundation is not an agency or instrument of the U.S. Government, and is not permitted to participate in political campaigns or conduct government lobbying. Initial funding of \$1 million per year is authorized to be appropriated for the work of the foundation for fiscal years 1997-99.

A nine-person board of trustees shall administer the foundation. The initial members of the board are to be

appointed by the Secretary and will serve a combination of 1, 2, and 3-year terms. Subsequent members of the board are to be nominated and selected by the board. The board is to be composed of individuals with expertise in agricultural conservation policy matters including a farmer or rancher and a representative each from a statewide conservation organization, a private sector organization, an organization outside the Federal Government dedicated to conservation education, and soil and water conservation districts. One member of the board shall be appointed by the Secretary to act as chairperson for a 2-year term. Members of the board receive no compensation for their service. An Executive Director, also initially appointed by the Secretary and subsequently selected by the board, will serve as the chief operating officer of the foundation. Subsequent directors will be appointed by the Board.

Subtitles G and H

Forestry and Miscellaneous Conservation Provisions

Forestry and Forest Incentives Program

The Forestry Incentives Program (FIP) is reauthorized through 2002. In addition, appropriations are authorized, as necessary, for the Office of International Forestry for this same period and the Secretary is given authority to make grants to States under the Forest Legacy Program.

Floodplain Easements

Authority is provided to obtain floodplain easements under the Emergency Watershed Protection Program.

Resource Conservation and Development Program

The Resource Conservation and Development Program is reauthorized through 2002. The purpose of this program is to assist multicounty areas in enhancing conservation, water quality, wildlife habitat, recreation, and rural development.

Flood Risk Reduction Contracts

The 1996 Act authorizes the Secretary to offer flood risk reduction contracts to producers on farms that have contract acreage under the Agricultural Market Transition Act that is frequently flooded. Individuals can receive up to 95 percent of projected contract payments under the Agricultural Market Transition Act, that the Secretary estimates the producer would otherwise have received, from the time of the contract through September 30, 2002. In return, producers must terminate their production flexibility contract, comply with swampbuster and conservation compliance provisions, and forego future disaster payments, crop insurance payments, conservation program payments, and

loans for contract commodities, oilseeds, and extra long staple cotton. Flood Risk Reduction contract funding is to be provided through the Commodity Credit Corporation.

Grazing Lands Conservation Initiative

The 1996 Act requires the Secretary to conduct, subject to the availability of appropriated funds, a coordinated technical, educational, and related assistance program for owners and managers of non-Federal grazing lands including rangeland, pastureland, grazed forest land, and hay land. Working through local conservation districts, the purpose of the program is to conserve water quality, wildlife and fish habitat, help with weed and brush problems, enhance recreational opportunities, and maintain and improve the aesthetic character of non-Federal grazing lands. Funding is authorized to be appropriated at \$20 million in FY 1996, \$40 million in FY 1997, and \$60 million in FY 1998 and each subsequent year. In addition, the Secretary is authorized to establish two grazing management demonstration districts at the recommendation of the grazing lands conservation initiative steering committee. The purpose of these districts is to promote technical assistance self-help among farmers and ranchers who graze livestock.

Wildlife Habitat Incentives Program

The Secretary is required to establish a Wildlife Habitat Incentive Program to be operated by NRCS. The program provides cost-sharing assistance to landowners to develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife. A total of \$50 million is to be made available from CRP funds to conduct the program for fiscal years 1996 through 2002.

Farmland Protection Program

The Secretary is required to establish and carry out a new farmland protection program to purchase voluntary conservation easements or other interests in not less than 170,000 nor more than 340,000 acres of prime and unique farmland. To be eligible, land must be subject to a pending offer from a State or local government for the purposes of protecting topsoil by limiting nonagricultural uses of the land. The Secretary shall use not more than \$35 million of the funds of the Commodity Credit Corporation to carry out this program.

Interim Moratorium On By-Pass-Flows

A seven member task force will be appointed to study the issue of by-pass-flows and related water rights issues on National Forest land, and complete a report within 1 year. The task force is composed of one member appointed by the Secretary, two members appointed by the Speaker of the House, one member appointed by the Minority Leader of the House, two members appointed by the Majority Leader of the Senate, and one member appointed by the Minority Leader of the Senate. In the interim, there will be an 18-month moratorium on the imposition of nonvoluntary bypass flow requirements in Forest Service permits, except to the extent that such requirement protect public health and safety or obligations under the Endangered Species Act.

Everglades Ecosystem Restoration

The Secretary of the Treasury shall provide \$200 million to the Secretary of the Interior to carry out this program. The Secretary of the Interior shall use the funds to purchase and restore land located within the Florida Everglades Restoration area (that is, the area extending from the Kissimmee River basin to the Florida Bay) as a means of improving and restoring the Everglades. Authority was also provided to establish a special account of up to \$100 million from the sale or exchange of surplus Federal land in Florida that is not environmentally sensitive or part of a military base. The use of these special funds requires a contribution from the State of Florida of at least 50 percent of the appraised value of parcels to be acquired. Within 1 year, the Secretary of the Interior is required to submit to Congress a report to determine the feasibility of additional Everglade land acquisition and restoration activities.

Task Force on Agricultural Air Quality

The Chief of the Natural Resources is required to establish a task force to address agricultural air quality issues. The task force will be comprised of USDA employees, industry representatives, and other experts in the fields of agriculture and air quality. The task force will advise the Secretary on oversight and coordination of Federal Government research activities and data relating to agricultural's effects on air quality.