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Editor: Robert P. Achenbach, Jr. esq. Contributing Editor Dr. Neil E. Harl, esq.

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A SUMMARY OF PROVISIONS IN THE FOOD, AGRICULTURE, CONSERVATION AND TRADE ACT OF 1990, S. 2830

— by Neil E. Harl*

Editor's note: This is the first of a two-part summary of the provisions of the 1990 farm bill. The next issue will contain a summary of the tax provisions of the 1990 budget bill and the following issue will contain a summary of the remaining portions of the 1990 farm bill.

Title XIV — Conservation

Highly erodible land conservation. The legislation alters what constitutes a violation of conservation compliance by requiring that any highly erodible land that is set aside or diverted must be covered by a conservation compliance plan. (Sec. 1411) The legislation adds to the list of benefits subject to denial under the conservation compliance program including disaster assistance payments for weather damaged trees, Agricultural Conservation Program (ACP) payments, Emergency Conservation Program payments, Conservation Reserve Program payments and assistance under the Small Watersheds Program.

An owner or operator is given up to two years to implement a conservation plan after the conservation reserve contract period has ended, if the plan requires the construction of structures, but more time is allowed if it is not technically or economically feasible for the structures to be built in this time period. The Conference report states—

"The Managers intend for owners or operators whose lands are leaving the conservation reserve who plan to return to crop production to be actively implementing their conservation plans, whether such plan requires management practices or structures. Actively implementing means implementing according to the schedule established in the plan. The amount of time that may be necessary for implementing a plan with structures may be more than that for a management oriented plan and it is for this reason 2 years, or more if necessary, is given to implement structures."

If a tenant becomes ineligible for payments and other benefits, the ineligibility may be limited to the farm on which the ineligibility occurs if the tenant satisfies the Secretary that (1) the tenant has made a good faith effort to meet the requirements and to obtain a reasonable conservation compliance plan for the farm, and (2) the landlord refuses to comply with the plan on the farm.

A person is not to become ineligible for program loans, payments and benefits as a result of failure actively to apply a conservation plan if the person has (1) no violations within the prior 5 years on a farm, and (2) acted in good faith and without the intent to violate the law.

* Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.

In lieu of invoking program ineligibility, the Secretary is to reduce program benefits by \$500 to \$5,000 depending on the seriousness of the violation. A person is not to become ineligible for program loans, benefits or payments if the violation is technical and minor in nature, the failure is due to circumstances beyond the control of the person or a temporary variance is granted to the person.

The legislation deleted an amendment that would have added to current law that compliance plans meet a 50 percent reduction in erosion from that level that would occur if conservation measures were not applied, unless the Secretary determined such a reduction was not feasible. The Conference report states—

"The Managers agree that the erosion reduction standard that producers with highly erodible land must meet in implementing a conservation plan shall not exceed those standards in effect upon the day of enactment of this Act and established in accordance with the Food Security Act of 1985. The Secretary should apply feasible technical and economic standards at the local level that do not cause undue hardship when establishing the requirements for measures to be included in conservation compliance plans. Alternative conservation systems should continue to be offered to producers as a means of achieving the goals of this program."

Wetland conservation (Sec. 1421 et seq). The statute includes a definition of wetlands that is stated by the conferees to be consistent with the current definition but states that "wetland" means land that— (1) has a predominance of hydric soils, (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances, supports a prevalence of such vegetation.

The Conference report expands upon the definition of wetlands by stating —

"The Managers note that there has been considerable confusion and controversy generated by attempts to apply the...Food Security Act of 1985. The provisions of this section, while restating the three characteristics that apply to a wetland, are not intended to indicate a change, in any way, in the intent of the original provision..."

"The Managers intend that the three criteria for identifying the specific characteristics of a wetland must all be met for an area to be identified as wetland....Wetland generally include swamps, marshes, bogs, prairie potholes, and other similar areas.

"The Managers' intent continues to be that an agricultural area cannot be designated a wetland on the basis of a single characteristic (e.g., the predominance of hydric soils). All three criteria must be satisfied in order for an area to be designated a wetland. The Managers do not intend that designations be made solely on the basis of the existence of a single characteristic. All

three characteristics must be present to arrive at a wetland designation, unless interrupted by temporary weather conditions or if hydrophytic vegetation has been removed by farming or ranching practices.

"When evaluating agricultural land to determine the presence or absence of wetland, the Managers recognize that agricultural lands are disturbed areas and must be viewed in that context. Cropping practices that can result in the removal of hydrophytic vegetation, or other conditions such as temporary drought or excessive moisture, can complicate the process of identifying wetland.

"The Managers also reaffirm that unconverted wetland acreage may continue to be farmed without penalty, when conditions permit, so long as the producer does not drain, dredge, fill, or level the farmed wetland so as to cause its conversion.

"The Managers recognize that a farmed wetland often will not exhibit hydrophytic vegetation since the act of cultivation will frequently remove such vegetation. In that regard, the Managers intend the term "under normal circumstances" to mean that a prevalence of hydrophytic vegetation must be present to allow a wetland designation unless such vegetation has been removed, or if disturbed by farming, ranching, or related activities, or eliminated as the result of unusual natural events and a determination made that hydrophytic vegetation would have been present but for the disturbance.

"The Managers intend that the term "prevalence of hydrophytic vegetation" refers to a condition in which, "under normal circumstances", a majority of the plant life species present require saturated or inundated soil conditions, as well as those that can tolerate saturated or inundated soil conditions but are capable of surviving in upland areas.

"The Managers further intend that the term "frequency and duration" of inundation or saturation required in the definition of the term "wetland" means that permanent or periodic inundation, or soil saturation to the surface, exists during a significant portion of the growing season, conforming the hydrology of the area to the wetland definition, and that this condition occurs in years of normal precipitation. Such condition may also exist seasonally. The Managers do not intend that land subject to infrequent flooding or occasional, brief pooling, such as from abnormally heavy rains or unusually heavy snowmelt, be construed to meet the hydrological requirements of a wetland."

The legislation adds to the list of benefits subject to denial for wetlands violations including disaster assistance payments for weather damaged trees, Agricultural Conservation Program (ACP) payments, Emergency Conservation Program payments, Conservation Reserve Program payments and assistance under the Small Watersheds Program. (Sec. 1421)

The legislation establishes that a wetlands' violation occurs at either the point of planting an agricultural commodity on a converted wetland or, after the date of enactment of the legislation, at the point of converting a wetland for the purpose of, or to have the effect of making possible, the production of a commodity. (Sec. 1421)

The legislation directs the Secretary to delineate wetlands on a map and to make a reasonable effort to make an on-site wetland determination whenever requested by an owner or operator. (Sec. 1421) The Secretary is also directed to provide notice to affected owners or operators, to certify each map as sufficient evidence for the purpose of making determinations of ineligibility for program benefits and to provide an opportunity to appeal the delineations to the Secretary prior to certification. In the case of an appeal, the Secretary is to review and certify the accuracy of the mapping of all lands subject to the appeal mapped prior to the date of enactment of the legislation.

The Secretary is not required to provide an opportunity for an appeal of delineations completed prior to the enactment of the legislation that are not changed, and for which an appeal had already occurred. The Conference report provides further guidance in this area —

"The Managers agree that the certification process is to provide farmers with certainty as to which of their lands are to be considered wetlands for purposes of Swampbuster. The Managers note that the current USDA wetland delineation process involves the use of substantial materials to make an initial determination in the field office, developed in consultation with other appropriate Federal and State agencies. Wetlands identified in this process are delineated on maps which are then mailed to producers for review. If the producer finds such map to be in error, and the USDA agrees that an error has been made, then the map is corrected. If the USDA does not agree that there is an error in the map, and the producer continues to believe so, then the producer may appeal such determination.

"The Managers find that this process is adequate for certification of any new maps delineated after the date of enactment of this Act. For maps completed prior to the date of enactment of this Act, the Managers intend for producers to be notified that their maps are to be certified and that they have some appropriate time for appeal. In this circumstance, producers who had not already been mailed their maps should be given a map for their review....The Secretary shall not be required to provide an opportunity for an appeal on maps completed prior to the date of enactment of this Act where such maps have not been changed, and had already been appealed and for which an on site visit had been conducted. After the appropriate length of time for allowing an appeal has expired, the Managers intend for the Department to certify such maps.

"The Managers note also that...no person should be adversely affected because of having taken an action based on a previous determination by the Secretary. It is the intent of the Managers that a person shall not be considered to have been adversely affected except to the extent that, consistent with customary USDA practice for granting relief of that kind, the person involved was acting in good faith reliance on the mis-determination made on behalf of the Secretary.

"Such determinations would include determinations by state, county, or other offices of the Department. This would mean that if the person involved knew or should have known in the normal course of business that the Department's determination was erroneous, that person will not be considered to have been adversely affected by the previous determination.

"In addition, the Managers intend that the relief granted should only be that relief necessary to correct for the actual effect of the erroneous determinations. In some cases, however, the necessary relief will include, to the extent determined to be appropriate, relief for subsequent crop years, such as in the case where there has been a substantial good faith investment based on the erroneous determination. The Secretary may require such mitigation or such modification of the previous determination as may be appropriate consistent with the adopted provision."

The legislation modifies and adds to the exemptions already in effect. The "natural conditions" exemption is restated so that a person is exempt from the wetlands restrictions for agricultural activities on a wetland in which a farmer or rancher uses normal cropping or ranching practices that are consistent for the area as a result of natural conditions without actions by the producer that destroy a natural wetland characteristic. Producers are also exempt from the conversion of an artificial lake, pond or wetland created from a non-wetland area for various purposes including various aspects of food production, livestock management and flood control. (Sec. 1422)

Persons are exempt from the ineligibility provisions for any action on lands (referred to as non-wetlands) that do not have a predominance of hydric soils, are not inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions or do not, under normal circumstances, support a prevalence of such vegetation. (Sec. 1422) A person is exempt from the ineligibility provisions if the effect on the functional hydrological and biological value of the wetland is minimal, the wetland has been frequently cropped and the impact is mitigated through restoration of a converted wetland. (Sec. 1422)

As noted, the legislation permits a producer to drain a frequently cropped wetland and not become ineligible for program benefits if the producer mitigates the drainage through the restoration of a wetland converted prior to December 23, 1985. This restoration must occur in advance of, or be concurrent with, the drainage of the frequently cropped wetland. The restoration must be in accordance with an approved restoration plan and not be at the expense of the federal government. The restored wetland is to provide equivalent wetland functions and values, and shall be on not more than a one-for-one acreage basis unless more acreage is needed. The restoration must be in the same general area as the wetland that is to be converted. The Conference report states — "The Managers intend that the mitigation sites be located as close to the actual wetland loss as is practicable. However, it is recognized that a flexible approach to location of such mitigation sites will be necessary to ensure that opportunity to effectively mitigate is present in any given instance. Requiring mitigation "within the same general area of the local watershed" means the mitigation would be required to take place within the hydrologically defined watershed in which the loss is to occur. The topography and characteristics of the area should be similar and the restored wetlands approximate the values of the areas being converted for which mitigation is taking place. The Committee expects the agencies to define such areas, in each instance, to include relatively large geographic areas measured in the tents of thousands of acres and not in terms of each small tributary that may cross a field. At the same time, the Managers intend that the agencies are to keep the mitigation site as close to the converted area as practicable. Should a conversion occur along the fringe of a watershed boundary, the location of the mitigation site in the adjacent watershed also relatively near the fringe of that watershed would be consistent with this intent."

The producer must also agree to protect the restored wetland with a recorded easement which shall be in force for as long as the converted wetland for which the restoration is to mitigate remains in agricultural use or is not returned to its original wetland classification. No alteration or modification is allowed on restored wetlands that lowers the wetland functions and values.

As to appeals, the Conference report states— "The Managers do not intend, in providing for appeal of a mitigation plan requiring more than one restored acre for each converted acre, to allow more than one appeal of the technical aspects of such a plan. A producer is not to be afforded the right to appeal the one-for-one requirement, and then appeal a second time the other technical requirements of the plan. The area restored must have been converted or commenced to be converted by December 23, 1985."

Sanctions. Existing sanctions for wetlands violations are continued except under limited circumstances. A violation while acting in good faith with no violation during the past 10 years will be denied program benefits of \$750 to \$10,000 depending on

the seriousness of the violation if the person agrees to restore the wetland.

A producer who has converted a wetland and is in violation in one crop year is not considered in violation in subsequent crop years if the characteristics of the converted wetland are restored. As for the adequacy of conversion, the Conference report states — "The Managers note that the statutory language requires that the producer actively and fully restore the characteristics of the converted wetland to its prior wetland state. Full restoration is not intended to mean the exact replication of the original wetland, including its physical dimensions or distribution of vegetation. "The Managers note also that different periods of time are necessary for fully restoring different wetlands' functions and values. It could take several decades for restored hardwoods in a bottomland area to reach pre-conversion maturity. In such a case, the Managers do not intend that the trees must reach full pre-conversion maturity before the producer can be eligible for the graduated sanction and future program benefits. The full restoration of other wetlands can take much less time than for a bottomland area, although full restoration may not be possible immediately. Simply plugging a drain or breaking a tile can restore the necessary hydrology of some wetlands, but time is required for herbaceous hydrophytic vegetation to reappear. The Managers do not intend for full restoration to mean immediate restoration. Rather, the producer is to take such steps as are necessary for such wetland functions and values to be fully restored within a period of time that is physically and biologically appropriate."

Agricultural Resources Conservation Program (Sec. 1431 et seq). The legislation enacts the Agricultural Resources Conservation (ARC) Program to be implemented through contracts and the acquisition of easements to protect highly erodible lands, other fragile lands and wetlands. The program is comprised of the Conservation Reserve Program (CRP) and the Wetlands Reserve Program (WRP).

The Secretary is directed to enroll a minimum of 40 million acres and has the authority to enroll as much as 45 million acres in the program. The Conference report states—

"The Managers do not intend for the ARC to retire excessive amounts of productive cropland, nor unduly diminish economic activity in rural areas. It is important that the U.S. crop production sector maintain adequate cropland capacity to meet domestic and export needs while providing sufficient protection against the variability in yields due to weather. It is also important that sufficient cropland remain in use in rural areas that are highly dependent on agriculture to maintain these areas' economies.

"The Managers believe that enrolling 40 million acres into the ARC will not diminish the Nation's ability to meet domestic and export needs and economic activity in rural areas. When considering enrolling more than 40 million acres into the ARC, the Managers intend for the Secretary to consider, in addition to budgetary concerns: (2) whether such enrollments would threaten our ability to maintain adequate commodity stocks and to meet domestic and export needs; (2) the consequences of such enrollments on the economic health and vitality of rural communities.

"The Managers recognize that there are limited funds available for the conservation activities authorized in the ARC, and that it may be fiscally impossible to expand the number of acres beyond 40 million, even if crop supply and demand, and local economic conditions, would permit such expansion."

Conservation Reserve Program (Sec. 1432). In addition to lands already eligible, the legislation makes eligible land used as—

(1) Highly erodible croplands that, if permitted to remain in production, would substantially reduce the production capability of

future generations or croplands that cannot be farmed in accordance with a conservation compliance plan,

(2) Marginal pasturelands converted to wetland or established as wildlife habitat prior to the date of enactment,

(3) Marginal pasturelands to be devoted to trees in or near riparian areas or for similar water quality purposes, not to exceed 10 percent of the number of acres of land that is placed in the conservation reserve in each of the 1991 through 1995 calendar years.

(4) Croplands otherwise not eligible which contribute to the degradation of water quality or pose an on-site or off-site environmental threat to water quality if permitted to remain in agricultural production and water quality objectives cannot be achieved under the water quality incentives program.

(5) A shelterbelt, windbreak or permanent contoured grass strip devoted to trees, or shrubs to avoid or mitigate soil loss or an on or off-farm environmental threat, if the producer agrees to an easement on these plantings for their useful life, where that period of time will extend beyond the contract period.

(6) Newly created, permanent grass sod waterways or contour grass sod strips established and maintained as part of an approved conservation plan,

(7) Lands where the Secretary determines that the lands pose an off-farm environmental threat or pose a threat of continued degradation of productivity due to soil salinity, if permitted to remain in production.

As for whether farmed wetlands are eligible for the conservation reserve, the Conference report states —

"In not making farmed wetland explicitly eligible for the conservation reserve, the Managers are expressing their preference for seeing such lands enrolled in the wetlands reserve. Farmed wetlands are explicitly eligible for the conservation reserve under the 1985 Food Security Act, and have been made administratively eligible since the eighth conservation reserve sign-up in 1989. The Managers intend that farmed wetlands will no longer be admitted into for [sic] the conservation reserve, at least until such time it is conclusively determined the wetland reserve will not substantially meet its goal.

"The wetland reserve restores and protects eligible lands, including farmed wetlands, by placing a 30-year or permanent easement on these lands, or an easement of the maximum length allowed under state law. The Managers believe that such long term or permanent protection for these areas is greatly preferred over the shorter, ten year contracts of the conservation reserve.

"The Managers believe that farmers will want to participate in the wetland reserve, and if it is actively implemented and promoted, the program should be fully successful. In the event that the wetland reserve proves unable to reach at least one-third of its 1 million acre goal by 1995, farmed wetlands could once again be made eligible for the conservation reserve. Such a decision should not be made by the Secretary until the wetland reserve has been in operation for a full 3 years. By allowing for the possible enrollment of farmed wetlands into the conservation reserve, the Managers do not intend for the wetland reserve to be implemented so as to reduce the likelihood of its success.

"The Managers intend, in making marginal pasturelands converted to wetlands eligible for the reserve, only to make eligible those marginal pastured that were converted to wetlands, prior to the date of enactment of this Act, as a result of natural processes or Acts of God. The intent is not to allow persons to convert a marginal pastureland and then enroll such lands into the reserve. The intent also is not to make eligible for the program marginal pasturelands that have been converted to wetlands through the actions of an outside party, even if that party is unrelated to or acted without the knowledge or approval of the person seeking to enroll such lands.

Rather, in those limited instances where abnormal rainfall or other weather-related or geologic process caused marginal pastureland to flood and remain flooded indefinitely, such marginal pasturelands shall be eligible for the conservation reserve."

Regarding eligibility of land for the conservation reserve program and also the water quality incentive program, the Conference report states —

"The Secretary is directed...to not enroll land for water quality purposes if the land can be effectively treated under the water quality incentive program. The Managers note that this provision is included because of the recognition that it is more efficient and cost-effective to alter, where possible, cropping management activities to achieve conservation goals than it is to remove environmentally sensitive lands from production and compensate the farmer for the lost economic activity.

"The Managers recognize that there are circumstances where a management program will not be effective, and the retirement of the cropland in question is the only option available for achieving water quality goals. The lands made eligible for the conservation reserve for water quality purposes under these circumstances are broadly defined. The Managers intend that the majority of the land enrolled under such circumstances will be the types of land, or located within the areas made eligible for the agricultural water quality incentives program. The Managers intend that the Secretary consult and work with the Federal and state authorities identified in the eligible lands section of the water quality incentives program when implementing the conservation reserve for water quality purposes."

Regarding the 45 million acreage goal, the legislation requires the Secretary to manage the ARC to ensure that there will be 1 million acres available for the enrollment of non-WRP lands into the CRP in each of the years 1994 and 1995. (Sec. 1432) The Conference report states —

"The Managers note that the conferees, in ensuring a total of 2 million acres will be available for enrollment into the conservation reserve in 1994 and 1995, intend to provide a buffer that can be used to enroll highly erodible lands that cannot be treated with a conservation plan under the conservation compliance program. Although nonhighly erodible, non-wetlands reserve lands can be enrolled under these 2,000,000 acres, the Managers intend that highly erodible lands not able to meet conservation compliance be given priority for entry into the reserve under this buffer."

The legislation contains a provision regarding conservation priority areas and directs the Secretary to attempt to maximize water quality and habitat benefits in these watersheds using whatever means is appropriate and consistent with the program.

Conservation reserve participants are required to implement a plan for *all eligible* lands, not just highly erodible lands as in current law, to a less intensive, conserving use. (Sec. 1433)

Conservation reserve participants are required to establish approved vegetative cover or water cover for the enhancement of wildlife on CRP lands. (Sec. 1433) The use of water cover for watering livestock, irrigating crops or the raising of fish for commercial purposes is prohibited.

Limited fall and winter grazing is to be permitted on CRP land where the grazing is incidental to the gleaning of crop residues on the fields in which the land is located. Participants must accept an appropriate reduction in rental payments. (Sec. 1433)

A producer who enters the CRP after the date of the Act and who subsequently purchases highly erodible grassland and converts the land to cropland use is denied future CRP benefits, must return all earlier payments or accept an adjustment.

To the extent practicable, not less than one-eighth of the land placed in the CRP during the 1991 through 1995 crop years is to be devoted to trees, shrubs, other non-crop vegetation or water that

may provide a permanent habitat for wildlife including migratory waterfowl. (Sec. 1433)

The legislation authorizes the Secretary to permit agricultural commodities to be planted between the rows of trees on CRP land if the trees are hardwoods and the federal payments are reduced by at least 50 percent on a bid basis. (Sec. 1433) This is known as "alley cropping."

A CRP participant who loses the land as a result of foreclosure may not be required to repay amounts previously received plus interest if the Secretary determines that forgiving the repayments is appropriate in order "to provide fair and equitable treatment." (Sec. 1433) If the participant regains the land after foreclosure within the original contract period, the original contractual obligations apply to the participant until the end of the contract.

Payment provisions—

(1) Under the CRP program, 50 percent of the costs of establishing conservation cover on CRP lands is to be paid by the federal government. For hardwood trees, shelterbelts, windbreaks or wildlife corridors, 50 percent of the reasonable and necessary maintenance costs are to be paid for a 2 to 4 year period commencing with the date a tree is planted. The maintenance cost of replanting is included if the trees or shrubs are lost due to conditions beyond the control of the owner or operator. The conference report states—

"The Managers do not intend for the Secretary to be required to cost share for any activities and their costs that the Secretary determines not to be appropriate and in the public interest. For example, the Secretary is not to be required to make cost share payments for activities with per acre costs that are in excess of the fair market value of the land or are otherwise excessive."

(2) Cost share payments are not to be made to the extent the payments, when added to the other sources of cost-share assistance, may not exceed 100 percent of the costs of establishing the practice. (Sec. 1434)

(3) A participant is prohibited from receiving cost-share assistance from any other federal cost-share program with respect to the land. (Sec. 1434)

(4) Program payments made to a participant who is also participating in a state conservation reserve enhancement program are to be in cash only.

(5) Participants may receive rental, cost-sharing and tax benefits from a state for participating in the conservation reserve in addition to the federal benefits.

The Secretary is authorized to permit participants who contract to convert at least 10 acres of land to the production of hardwood trees to extend the planting of the trees over a 3-year period if at least one-third of the trees are planted in each of the first two years.

The legislation specifies that CRP payments are not to be subject to sequestration under the Gramm-Redman-Hollings Act. (Sec. 1434) The Conference report states—

"The Managers believe that Section 252 of the Gramm-Rudman Act already exempts payments under the long-term contracts of the Commodity Credit Corporation (CCC) from sequestration. The Managers believe also that Section 252 exempts payments under any CCC contract from any subsequently issued sequester order, whether or not there has been an earlier sequester order. Therefore, the amendment should not be needed.

"However, differing views have been expressed as to the applicability of a sequester order to payments made under the conservation reserve. Accordingly, in order to clarify this matter, the Conference substitute adopts the provisions of the House bill [providing protection against sequestration]. It should be noted

that the adoption of this amendment is not intended to suggest that other payments under other CCC multi-year contracts are sequestrable. Farmers should be assured that long-term payments agreed to be made by the CCC in return for a committed land use will not be sequestered. It is doubtful that these programs could operate at all without such certainty."

CRP participants whose reserve lands are in grass are to be permitted to convert the lands to hardwood trees, shelterbelts, windbreaks, wildlife corridors, or wetlands, and in some cases, to extend the period of the contract to 15-years or, in the case of wetlands, to convert the contract to long term or permanent easements. Lands converted to shelterbelts, windbreaks or wildlife corridors are to be covered by an easement extending beyond the length of the conservation reserve contract for the useful life of the planting. (Sec. 1435)

The Secretary is given the authority to extend, for as long as deemed appropriate, the protection of crop acreage bases, quotas and allotments on CRP land after the contracts expire if the owner or operator agrees to continue to keep the land in the appropriate conserving uses. (Sec. 1436) In return for the extension, no payments are made to the participant but the owner or operator must agree to continue to abide by the terms and conditions of the original contract. The Secretary may permit haying and grazing of acreage subject to such an agreement except during any consecutive 5-month period established by the state committee during the months of April through October. In the case of a natural disaster, unlimited haying and grazing may be permitted.

CRP contracts may be extended for 10 years after the initial contracts end during the years 1996 through 2000 or the land should be available for the purchase of long term or permanent easements on land that should remain in conserving uses.

Wetlands reserve program (Sec. 1438 et seq). A wetlands reserve program is to be established to assist owners of eligible lands in restoring and protecting wetlands. The Secretary is directed to enroll, to the extent practicable, 1 million acres during the 1991 through 1995 crop years. The Secretary is directed to enroll no more than—

- (1) 200,000 acres in 1991,
- (2) 400,000 acres in the 1991 to 1992 period,
- (3) 600,000 acres in the 1991 to 1993 period,
- (4) 800,000 acres in the 1991 to 1994 period, and
- (5) 1,000,000 acres in the 1991 to 1995 period. (Sec. 1438)

Land is eligible to be placed in the reserve if the Secretary of Agriculture, in consultation with the Secretary of the Interior at the local level, determines that—

(1) The land is farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands where the conversion was commenced on or after December 23, 1985.

(2) The likelihood of the successful restoration of the land and the resultant wetland values merit inclusion of the land in the program, taking into consideration the cost of the restoration.

Land may also be placed in the wetlands reserve if it is —

(3) Farmed wetland and adjoining land enrolled in CRP with the highest wetland functions and values and that are likely to leave the conservation reserve and return to production,

(4) Other wetland of an owner that would not otherwise be eligible if determined that the inclusion of the wetland in an easement would significantly add to the functional value of the easement, and

(5) Riparian rights that link wetlands protected by easements or other device or circumstance that achieves the same purpose as an easement.

The Secretary may not acquire easements on— (1) land containing timber stands established under CRP, or (2) pasture land "established to trees" under CRP.

Lands are to be enrolled in the WRP through the purchase of an easement—

(1) The term of the easement is to be 30 years, be permanent, or be the maximum duration allowed under state law.

(2) Compensation is to be in cash on a bid basis in not less than 5 nor more than 20 annual payments of equal or unequal size. For a permanent easement, a single lump sum amount may be paid.

(3) An owner granting an easement is required to provide for the restoration and protection of the functional values of the wetland pursuant to a "wetland easement conservation plan" that permits—(a) repairs, inspections and improvements necessary to maintain existing public drainage systems, and (b) landowners to control public access on the easement areas while identifying access routes to be used for wetland restoration activities and management and easement monitoring.

(4) The plan must prohibit—

(a) The alteration of wildlife habitat and other natural features of the land, unless specifically permitted by the plan,

(b) The spraying of the land with chemicals or the mowing of the land except where permitted by the plan or is necessary to comply with federal or state noxious weed control laws or emergency pest treatment programs,

(c) Activities on the land or adjacent land that would alter, degrade or diminish the functional value of the eligible land, and

(d) The adoption of any other practice that would tend to defeat the purpose of the program.

The development of restoration plans is required, in consultation with SCS and the Fish and Wildlife Service.

Cost sharing is authorized to the extent cost sharing "is appropriate and in the public interest"—(1) for an easement which is not permanent, cost sharing is to be not less than 50 percent and not more than 75 percent of eligible costs; and (2) for permanent easements, cost sharing is to be not less than 75 percent and not more than 100 percent of eligible costs.

The total amount of easement payments made to a person is not to exceed \$50,000 for any year except for payments for perpetual easements. Easement payments are in addition to and do not affect the payments an owner is otherwise eligible to receive. States and political subdivisions may be excepted from the limitation. Payments under this provision are not subject to sequestration.

An easement may not be created under this program on land that has changed ownership in the preceding 12 months unless by reason of death of the previous owner, the new ownership was acquired before January 1, 1990 or the land was not acquired for the purpose of placing it in the WRP.

Easements may be modified or terminated with the agreement of the current owner.

Agricultural water quality incentives (Sec. 1439 et seq). The legislation states that it is the policy of Congress that water quality protection, including source reduction of agricultural pollutants, henceforth shall be an important goal of the programs and policies of USDA. Agriculture producers in environmentally sensitive areas should request assistance to develop and implement

plans. (Sec. 1439) The bill defines "agricultural water quality protection practice" as "a farm-level practice or a system of practices designed to protect water quality by mitigating or reducing the release of agricultural pollutants, including nutrients, pesticides, animal waste, sediment, salts, biological contaminants, and other materials, into the environment." (Sec. 1439)

The term "source reduction" means "minimizing the generation, emission, or discharge of agricultural pollutants or wastes through the modification of agricultural production systems and practices." The Conference report states —

"The Managers believe that source reduction is an important component in agriculture water quality protection efforts and intend that, in administering the water quality incentive program adopted by the Conference, the concept of source reduction should be viewed as an important means to achieve the overall goal of improving water quality or other natural resources. Source reduction itself should not be viewed as a goal independent of water quality improvement or other environmental objectives but instead provides a means of pollution reduction. In the case of animal waste, efficient and effective management practices such as manure containment, composting, or processing are among the modifications of agricultural systems and practices that might be useful in minimizing the discharge of agricultural pollutants."

During the 1991 through 1995 calendar years, the Secretary is to formulate and carry out a voluntary incentive program through agreements to assist owners and operators of a farm in developing and implementing a water quality protection plan. Through the end of 1995, owners and operators may enter into 3 to 5 year agreements in eligible areas with payments over the 3 to 5 year period. In order to receive annual incentive payments, owners and operators must agree—

(1) To implement a water quality protection plan approved by the Secretary,

(2) Not to conduct any practices on the farm that would tend to defeat the purposes of the program,

(3) To comply with additional provisions determined by the Secretary to be desirable that are included in the agreement to carry out the water quality protection plan or to facilitate the practical administration of the program,

(4) In the event of a violation of a term or condition of the agreement at any time the owner or operator has control of the land, to refund any incentive or cost-share payment received, with interest, and forfeit future payments,

(5) On the transfer of the right and interest of the owner or operator in the land subject to the agreement, unless the transferee agrees to assume all obligations of the agreement, to refund any cost-share and incentive payments received,

(6) To report accurately, nutrient, pesticide and animal waste materials usage rates on management areas for three previous years, and

(7) To supply production evidence, well test results, soil tests, tissue tests, nutrient application levels, pesticide application levels, and animal waste material usage levels to the Soil Conservation Service or designee including the local conservation district for each year of the agreement.

Owners and operators who agree voluntarily to develop and implement agricultural production practices, in concert with the water quality protection plan, that preserve and enhance wetland or wildlife habitat, are eligible to receive cost-share assistance. Procedures are to be developed for the approval of agricultural practices. The Conference report states—

"The Managers note that the primary purpose of the water quality incentives program is to promote the protection of water quality.

The wildlife or wetland option of the water quality program is intended to provide additional incentives for practices that can contribute to the preservation and enhancement of wetland functions and values, and the associated wildlife benefits. This option is not the primary goal of the program. The Managers intend for the practices authorized under this option to be consistent with the water quality objectives of the program."

Owners and operators who choose the wetland preservation option to implement, improve and maintain agricultural production practices, in concert with their water quality protection plan, are to undertake practices designed to preserve and enhance (but not restore) existing wetland. Owners and operators who choose the wildlife habitat improvement option to implement, improve and maintain agricultural production practices, in concert with their water quality protection plan, that are designed to improve on-farm wildlife habitat, including the establishment of perennial cover, the protection of riparian areas, wildlife corridors, and areas of critical habitat for endangered species are eligible.

The Secretary is to—

- (1) Provide an eligibility assessment of the farming operation as a basis for developing the water quality protection plan,
- (2) Provide technical assistance,
- (3) Provide an annual incentive payment,
- (4) Provide cost-share assistance,
- (5) Provide participants with information, education and training, and
- (6) Encourage owners or operators to obtain cost-share assistance under other cost-share programs.

Limits on payments—

- (1) Incentive payments are to be set at an amount, on a per acre basis, sufficient to encourage producers to participate in the program and to cover additional costs incurred by the producer and production values forgone, if any.
- (2) Cost-share payments are not to exceed 50 percent of the cost of the eligible practice.
- (3) Payments may not exceed—(a) \$3500 per person per year in the form of incentive payments, and (b) not more than an additional \$1500 per person per contract in the form of cost-share assistance.
- (4) A lump sum payment may be made if necessary to pay the initial costs of implementing a practice required under the contract.
- (5) Payments received under this program are in addition to and do not affect other agricultural programs.

Modifications can be made to agreements if the participant agrees. An agreement may be terminated if—(1) the producer agrees, or the producer violates the terms and conditions of the agreement, and (2) termination is in the public interest

Refunds may be obtained, with interest, if in the public interest.

A producer participating in this program is assured of program payment yield and base protection during the agreement period. The objective is to enter into agreements covering 10 million acres of land during 1991-1995 calendar years.

Plans should include—

- (1) A description of the prevailing farm enterprises, cropping patterns and cultural practices,
- (2) A description of the farm's resources including soil characteristics, proximity to bodies of water and other characteristics relevant to protecting water quality.
- (3) To the extent practicable, specific quantitative water quality protection goals and objectives that will minimize contamination or degradation of surface or ground water.

(4) Water quality protection practices that will, if implemented, assist the producer in complying with state and federal environmental laws and will complement plans produced for highly erodible land.

(5) The specific agricultural practices that will be implemented, improved and maintained including practices that ensure continued farm productivity and profitability by promoting efficient use of fertilizers, other crop nutrients and pesticides as well as management practices to be avoided.

(6) To the extent practicable, water quality protection practices for safe storage, mixing and loading of pesticides and fertilizers and storage and handling of animal wastes.

(7) The timing and sequence for implementing practices that will assist the producer in complying with state and federal environmental laws.

(8) Information that will enable evaluation of the effectiveness of the plan in protecting water quality, and

(9) Recommendations of application rates and disposal methods of nutrients, pesticides and animal waste materials.

Contracts are to be accepted within one year after enactment of the legislation. Lands eligible for enrollment in the program include those—

- (1) In areas not more than 1,000 feet from a public well unless a larger wellhead area is deemed desirable.
 - (2) Lands in shallow Karst topography areas where sinkholes convey runoff directly into groundwater.
 - (3) Areas considered to be critical cropland areas as having priority problems from agricultural nonpoint source pollution.
 - (4) Areas where agricultural nonpoint sources have been determined to pose a significant threat to habitat utilized by threatened and endangered species.
 - (5) Areas recommended by state agencies for environmental protection.
 - (6) Areas recommended by EPA or the Secretary of the Interior.
 - (7) Lands not located within designated or approved areas but located such that if permitted to continue to operate under existing management practices would defeat the purpose of the program.
 - (8) Areas contributing to identified water quality problems.
- Priority is to be given lands on which agricultural production has been determined to contribute to, or creates the potential, for failure to meet applicable water quality standards. The Secretary is to provide technical assistance to agricultural producers in developing and implementing plans and to develop model and demonstration farm programs.

During the 1991 through 1995 calendar years, the Secretary is to formulate and carry out an environmental easement program through the acquisition of permanent easements or easements for the maximum term permitted under state law from owners of eligible farms or ranches to ensure continued long term protection of environmentally sensitive lands or reduction in the degradation of water quality through continued conservation and improvement of soil and water resources. (Sec. 1440)

The Secretary may acquire easements on land placed in the conservation reserve (other than land likely to continue to remain out of production that does not pose an off-farm environmental threat) or other cropland that—

- (1) Contains riparian corridors,
- (2) Is an area of critical habitat for wildlife, especially threatened and endangered species, or
- (3) Contains other environmentally sensitive areas that would prevent compliance with environmental goals if commodities were produced on the land.

The Secretary may not acquire easements on—(1) land that contains timber stands established under the conservation reserve, or (2) pasture land established to trees under the conservation reserve.

The owner or operator must agree to implement a natural resource conservation management plan approved by the Secretary in consultation with the Secretary of the Interior with the owner or operator agreeing—

- (1) To the creation and recordation of a deed restriction to reflect the easement,
- (2) To provide a written statement of consent to the easement signed by those holding a security interest in the land,
- (3) To comply with additional provisions determined by the Secretary to be desirable and are included in the easement,
- (4) To specify the location of any timber harvesting on the land subject to the easement; customary forestry practices are permitted (pruning, thinning and tree stand improvement) but Christmas tree harvesting and sales on a commercial basis of trees and nuts are prohibited on the land,
- (5) To limit the production of any agricultural commodity on the land to production for the benefit of wildlife,
- (6) Not to conduct any harvesting or grazing, nor otherwise make commercial use of forage, on land subject to the easement unless specifically provided in the easement,
- (7) Not to adopt any other practice that would tend to defeat the purposes of the program.

On violation of the easement or related agreement, the easement remains in force but the Secretary may require refund of payments plus interest. The natural resource conservation management plan is to set forth—(1) the conservation measures and practices to be carried out by the owner of the land subject to the easement, and (2) the commercial use, if any, permitted on the land.

The plan must provide for the permanent retirement of any existing cropland base and allotment history for the land. The Secretary is to—

- (1) Share in the cost of conservation measures and practices to the extent appropriate and in the public interest up to 100 percent of the cost,
- (2) Pay, for a period not to exceed 10 year,s annual payments not to exceed the lesser of—
 - (a) \$250,000, or
 - (b) The difference in the value of the land with and without the easement.
- (3) Provide necessary technical assistance.
- (4) Permit the land to be used for wildlife activities, including hunting and fishing, if such use is permitted by the owner.

Payments—

- (1) The amount payable as easement payments is to be set in part on the basis of the amount necessary to encourage owners to participate.
- (2) Payment is to be in cash and may be made in advance of a determination of performance.
- (3) If an owner entitled to payment dies, becomes incompetent or is otherwise unable to receive payment, or is succeeded by another who completes the required performance, the Secretary is to make payment in such manner as is fair and reasonable under the circumstances.
- (4) The total amount of easement payments may not exceed \$50,000 [note the above discussion of a \$250,000 limitation].

(5) Easement payments are in addition to and do not affect the total amount of payments the owner is eligible to receive under other programs.

(6) The payment limits do not apply to a state agency or political subdivision in connection with agreements entered into under an environmental easement enhancement program.

(7) Payments are exempt from sequestration.

In determining the acceptability of easement offers, the Secretary is to consider—

- (1) The extent to which the purposes of the program would be achieved,
 - (2) The productivity of the land, and
 - (3) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.
- Easements may not be created on land that has changed ownership in the preceding 12 months unless—
- (1) The new ownership was acquired by will or succession as a result of death of the previous owner,
 - (2) The new ownership was acquired before January 1, 1990, or,
 - (3) The Secretary determines that the land was acquired under circumstances that give adequate assurances that the land was not acquired for the purpose of placing it in the program.

An easement may be modified if—(1) the current owner agrees to the modification, and (2) the Secretary determines that the modification is desirable. An easement may be terminated if—(1) the current owner agrees to termination, and (2) the Secretary determines that the termination would be in the public interest.

Tree planting initiative (Sec. 1441). The legislation declares it to be the policy of the United States to—

- (1) Promote the retention and management of lands currently in forest cover as forested land,
- (2) Provide for the reforestation of federal, state and private nonindustrial forest lands following timber harvest or loss of cover because of fire, insect damage, disease or damaging weather,
- (3) Encourage the reforestation of previously forested lands and the afforestation of marginal agricultural lands, and
- (4) Promote the planting of trees and the proper management of existing forest lands to reduce soil erosion, improve water quality, enhance fish and wildlife habitat and provide for the sustained production of commodity and noncommodity resources.

The policy is to be implemented through—

- (1) The conservation reserve,
- (2) The agricultural conservation program (ACP),
- (3) The Cooperative Forestry Assistance Act of 1978,
- (4) The provisions of this legislation.

The Secretary is not to enroll more than a total of 25 percent of the cropland in any county into the Environmental Conservation Acreage Reserve Program and the Environmental Easement Program, and not more than 10 percent of the cropland may be subject to an easement under this legislation. These limitations may be exceeded if it is determined that—(1) the local economy would not be adversely affected, and (2) producers in the county are having difficulty complying with conservation plans or other environmental requirements.

These limitations do not apply to cropland that is subject to an easement that is used for the establishment of shelterbelts and windbreaks.

The Conference report states—

"The Managers do not intend that the 25 percent limit be waived for all potential conservation reserve entrants. For those counties where it is determined producers are not able to meet conservation

compliance, the 25 percent limit should be waived on a case-by-case basis so that only those specific producers not able to meet compliance can enter the program. Of course, this waiver should only be given if the Secretary also determines that there are no negative economic consequences for the local economy."

The Secretary is directed to provide technical materials and information for the control of weeds and pests on conservation reserve lands. The Secretary is given the discretion to treat weed and pest control costs as a conservation practice on conservation reserve lands. The conference report states—

"The Managers note that there are parts of the United States where weeds and pests are a particular problem and that conservation reserve lands are contributing to this situation. Conservation reserve contracts require that participants apply appropriate weed and pest control practices on the enrolled lands. The Managers intend that the Secretary enforce rigorously this provision of the contracts, and take whatever actions are appropriate and necessary to see that participants comply with this provision. Such actions might include the denial of some or all of the annual rental payments for failure to comply with this contract requirement."

State Technical Committee (Sec. 1446). The Secretary is to establish in each state a technical committee to assist in the technical considerations relating to implementation of the conservation provisions in the legislation. The technical committee is to develop technical guidelines for the programs.

Other conservation measures (Sec. 1451 et seq). The legislation provides for the creation of the "Integrated Farm Management Program Option" to assist producers of agricultural commodities in adopting integrated, multi-year, site-specific farm management plans by reducing farm program barriers to resource stewardship practices and systems.

To be eligible for the program, a producer must

- (1) Prepare and submit an integrated farm management plan,
- (2) Actively apply the terms and conditions of the plan,
- (3) Devote to a conserving use on the average through the life of the contract not less than 20 percent of the crop acreage bases enrolled under the program.
- (4) Comply with the terms and conditions of any annual acreage limitation program in effect for the crop acreage bases.
- (5) Keep records as required.

To the extent practicable, the Secretary is to enroll "not more than 3,000,000 nor more than 5,000,000 acres" of cropland in the calendar years 1991 through 1995. [Note: The language in the statute appears to be in error; moreover, as noted below, the committee report refers to 20 million acres maximum.] The contracts are to be for periods of not less than 3 years and may, at the option of the producer, be for periods of up to 5 years. Contracts may be renewed by mutual agreement.

Each approved plan must—

- (1) Specify the acreage and the crop acreage bases to be enrolled in the program,
- (2) Describe the resource-conserving crop rotation to be implemented and maintained on the acreage during the contract period,
- (3) Contain a schedule for the implementation, improvement and maintenance of the resource-conserving crop rotation described in the plan,
- (4) Describe the farming operations and practices to be implemented on the acreage and how the operations and practices could reasonably be expected to result in—

- (1) The maintenance or enhancement of the overall productivity and profitability of the farm,

- (2) The prevention of the degradation of farmland soils, the long term improvement of fertility and physical properties of the soils, and

- (3) The protection of water supplies from contamination by managing or minimizing agricultural pollutants if their management or minimization results in positive economic and environmental benefits.

- (5) Assist the producer in complying with federal, state and local requirements designed to protect soil, wetland, wildlife habitat and the quality of surface water and groundwater, and to contain such other terms as the Secretary may require.

The program is to be implemented so as to minimize any adverse economic effects on the agribusinesses and other agriculturally related economic interests within any county, state or region that may result from a decrease of harvested acres. The total amount of crop acreage that may be removed from production may be restricted, taking into account the crop acreage that has been or will be removed from production under other price support, production adjustment or conservation program activities. To the greatest extent practicable, producers are to be permitted to enroll acreage adequate to maximize conservation goals on the farm and ensure economic effectiveness of the program.

Plans are not to be approved that would result in the involuntary displacement of farm tenants or lessees by landowners through the removal of portions of the farm from production of a commodity. For a tenant or lessee who has rented a farm for two or more of the immediately preceding years [Note: The legislation seems to lack a number preceding years] a refusal by the landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew the lease is considered to be an involuntary displacement in the absence of written consent by the tenant to nonrenewal.

If a significant adverse economic impact will result to hay or livestock prices, in a particular geographic area, the quantity of hay that can be harvested or grazed from that area can be limited. The limitations can include restrictions on the number of times hay may be harvested or grazed from the acres per year, the timing of harvesting or grazing, the number of years land may remain in the same stand of hay, or a prohibition on the harvesting or grazing of hay from acres on which a small grain was not originally interplanted with the hay crop and harvested for grain. The Conference report states—

"The Managers note that the overall acreage limitation of 20 million acres placed in the program will effectively minimize any local negative economic consequences that could result from the program. This is particularly true since limited, but important, economic use is allowed on the acres enrolled into this program. At the same time, negative economic effects are possible, and the Managers intend that the Secretary consider this potential when determining whether or not to enroll land into the Integrated Farm Management program. The Managers intend that this program be implemented, to the extent possible, so as to ensure there are no negative economic consequences for local communities."

Contracts may be terminated if the producer agrees to termination, or the producer violates the terms and conditions of the contract.

Crop acreage bases and farm program payment yields are not to be reduced as a result of planting a resource-conserving crop as part of a resource-conserving crop rotation.

Acreage devoted to resource-conserving crops as part of a resource-conserving crop rotation, may also be designated as conservation use acreage for purposes of fulfilling any provisions under any acreage limitation or land diversion program and up to

50 percent of the acreage so designated is to be without restrictions on haying and grazing except that acreage devoted to perennial cover on which cost share assistance has been provided is not to be credited toward the producer's resource-conserving crop requirement.

Barley, oats or wheat planted as part of a resource conserving crop on reduced acreage may not be harvested in kernel form. Farm program payments are not to be reduced as a result of planting a resource-conserving crop as part of a resource-conserving crop rotation on payment acres. The term "resource conserving crop" includes legumes, legume-grass mixtures, legume-small grain mixtures, legume-grass-small grain mixtures and alternative crops. The term "alternative crops" means experimental and industrial crops grown in arid and semi-arid regions that conserve soil and water.

Program payments are not to be made if the producer hays or grazes the acreage during the 5-month period during which haying and grazing is not allowed or, if the crop includes small grain, before the producer harvests the small grain in kernel form.

The Secretary has the authority to make adjustments in the crop acreage base to reflect resource-conserving crop rotation practices maintained prior to participation in the program. Producers enrolled in a resource-conserving crop rotation are not to be ineligible to receive payment for program crops on acreage equal to the average number of traditionally underplanted acres for the three years before enrolling in the program.

Resource Conservation and Development Program (Sec. 1452). The RC&D program is reauthorized through 1995. The number of acres is increased to 450.

Management of undesirable plants on federal lands (Sec. 1453). The legislation amends the Noxious Weed Act of 1974. The authority is to be used to control the spread of undesirable plants as a result of transporting seeds or commodities to or from federal lands.

Farmland Protection (Sec. 1464 et seq). Federal departments and agencies are to use USDA-developed criteria to identify the actual quantity of farmland converted by federal programs. Under a new "Agricultural Resource Conservation Demonstration Program," the state of Vermont (and other states that operate or administer a land preservation fund on or before August 1, 1991) can qualify for special 10-year subsidized loans with no principal due during the 10 years.

Administration of environmental programs (Sec. 1470 et seq). The legislation establishes an Office of Environmental Quality in USDA and creates an Agriculture Environmental Quality Council to be chaired by the Secretary or designee.

Pesticide recordkeeping (Sec. 1491 et seq). Certified applicators of restricted use pesticides are required to maintain records comparable to records maintained by commercial applicators of pesticides in each state even if the state does not require the maintenance of records. A commercial certified applicator is to provide, within 30 days of a pesticide application, a copy of records maintained to the person for whom the application was provided. Records maintained are to be made available to any federal or state agency dealing with pesticide use or any health or environmental issue related to the use of pesticides. The Conference report states—

"The Managers intend that access to records maintained by certified applicators in accordance with this section be managed in a manner that will minimize the burden which is placed upon individual producers. In order to do so, the Managers have adopted language that would make Federal agency access to individual applicator or producer records the responsibility of the Department of Agriculture or its designee. In this way, USDA personnel or the personnel of the agency designated by the Secretary, would be the only Federal agency that need contact individual producers. However, the records obtained in this manner would be made available through USDA or the designated lead agency, to other Federal agencies for use in statistical analysis and for other purposes. Similarly, a single State lead agency would be identified to contact producers to obtain records on behalf of other state agencies. Both the Federal and State lead agency would be expected to respond to the requests of other agencies for access to such records and data in a timely and complete manner."

Upon the request of a health care professional who determines that information maintained on records is necessary to provide medical treatment, record and available label information is to be provided to that health care professional.

Violations are punishable by a fine of not more than \$500 for the first offense and, for subsequent offenses, not less than \$1,000 for each violation. The fine may be less if the person had made a good faith effort to comply with the requirements.

For pesticides registered for "a minor agricultural use," special rules apply under FIFRA. A registrant under FIFRA may, at any time, request that a pesticide registration of the registrant be canceled or amended to terminate one or more pesticide uses.

CASES, REGULATIONS AND STATUTES

BANKING

DUTY TO BORROWERS. The plaintiffs had borrowed substantial sums from the defendant bank for operating the plaintiffs' farm and ranch. After the downturn in the rural economy, the plaintiffs encountered financial difficulty and negotiated with the bank for additional loans to cover a pending default on loans secured by the farm land. Although a temporary agreement for a letter of credit was obtained, the plaintiffs eventually had to liquidate all property in satisfaction of the indebtedness. The plaintiffs filed this action alleging breach of fiduciary duty, breach of contract, breach of good faith in contract and in tort, fraud, deceit and promissory estoppel. The court denied the plaintiffs' fiduciary duty claim because the plaintiffs were experienced

farmers and the bank did not exercise control over the operations of the farm other than reasonable requirements for financial records. The plaintiffs alleged that the bank breached a contract to purchase some of the land and lease it back to the plaintiffs. The court held that the plaintiff had insufficient evidence of this contract and gave no consideration to support the contract. The court declined to recognize an action in tort for breach of good faith because the plaintiffs' right were already protected by other remedies in contract and tort. The court also held against the plaintiffs in the other causes of action because the bank followed the contracts agreed to by the parties and the plaintiffs' reliance on the alleged oral agreements was not reasonable. **Garrett v. Bankwest, Inc., 459 N.W.2d 833 (S.D. 1990).**
