

# Issue Brief for Congress

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## Soil and Water Conservation Issues

**Updated April 14, 2003**

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## Soil and Water Conservation Issues

### SUMMARY

Conservation is a prominent topic in the FY2002 farm bill, signed into law on May 13, 2002 (P.L. 107-171). Title II reauthorizes and amends most existing conservation programs and enacts several new ones through FY2007. Other titles also contain some conservation provisions. Agencies at the Department of Agriculture are implementing these programs.

This farm bill will greatly increase conservation spending. The Congressional Budget Office estimated at the time of enactment that it would provide \$9.2 billion in new mandatory budget authority above the April 2001 baseline through FY2007 for conservation programs. This amount is slightly more than the House-passed bill would have provided, but considerably less than the Senate bill would have provided.

Title II makes numerous changes to the conservation effort. It enacts a new Conservation Security Program to provide payments to producers who apply conservation practices on working lands, starting in FY2003. Other new programs will retire grasslands, address surface and ground water conservation needs, address conservation issues in certain regions, permit approved third parties to supplement federal capabilities to provide conservation assistance, and (in the forestry title) replace existing programs with a new assistance program. It greatly expands many conservation programs. Funding will grow for; the Environmental Quality Incentives Program (from \$200 million annually to \$1.3 billion in FY2007), the Farmland Protection Program (from a total of \$35 million to \$125 million annually starting in FY2004), and the Wildlife Habitat Incentive Program (from a total of \$50 million to \$85 million annually starting in FY2005). Enrollment ceilings were raised for

the Conservation Reserve Program (CRP) (from 36.4 million acres to 39.2 million acres) and the Wetlands Reserve Program (from 1,075,000 acres to 2,275,000 acres).

Two agencies in the Department of Agriculture are implementing most of these programs, which continue to be based on providing incentives to attract voluntary participants. The Natural Resources Conservation Service (NRCS) provides technical assistance and administers many of the smaller cost-sharing programs, and the Farm Service Agency (FSA) administers the most expensive program (the CRP) and emergency programs.

As both agencies implement the farm bill, controversies can be anticipated when the Administration's interpretation of the law's intent differed from that of interested Members of Congress. Three major issues that have been raised in recent months are: (1) how to fund technical assistance in support of the mandatory programs because an OMB determination that would not allow this assistance to be funded as part of each program by the CCC; (2) how to implement the Conservation Security Program; and (3) how to implement the third party provider provisions. Congress addressed the first two issues in FY2003 appropriations and is monitoring USDA activities on the third. More generally, appropriators will continue to have some influence on implementation through their actions on agriculture appropriations in FY20-04 and beyond. In addition, both agriculture committees may respond by holding oversight hearings.

## **MOST RECENT DEVELOPMENTS**

Agencies at the Department of Agriculture, primarily the Natural Resources Conservation Service and the Farm Services Agency, are implementing Title II of the Farm Security and Rural Investment Act of 2002, which authorizes most conservation programs through FY2007, and authorizes \$9.2 billion over current levels in new budget authority for mandatory spending on these programs. Provisions in this law add new programs to the conservation effort and amend and greatly expand funding for most existing programs.

Congress completed action on FY2003 appropriations legislation early in the 108<sup>th</sup> Congress. Among the many agricultural issues it addressed were: (1) how to fund the technical assistance needed to support each of the mandatory conservation programs as the overall effort grows rapidly from year to year, and (2) at what levels to cap funding levels for the Conservation Security Program each year, so that these savings could be used to offset the cost of an agricultural disaster assistance package enacted in these appropriations.

The Administration has submitted its FY2004 appropriations proposals, and Congress is starting the budget process by considering a budget resolution and holding hearings on the Administration proposal.

## **BACKGROUND AND ANALYSIS**

### **Evolution of Federal Resource Conservation Issues**

Conservation of soil and water resources has been a public policy issue for more than 60 years, an issue repeatedly recast as new problems have emerged or old problems have resurfaced. Two themes involving farmland productivity dominated the debate until 1985. One was to reduce the high levels of soil erosion, and the other was to provide water to agriculture in quantities and quality that enhance farm production.

Congress responded repeatedly to these themes by creating new programs or revising existing ones. These programs were designed to reduce resource problems on the farm. These programs combined voluntary participation with technical, educational, and financial assistance incentives. By the early 1980s, however, concern was growing, especially among environmentalists, that these programs were not adequately dealing with environmental problems resulting from agricultural activities (especially off the farm). Publicized instances of significant problems, especially soil erosion rates said to rival the dust bowl era, increased awareness and intensified the policy debate.

Congress responded, in a watershed event, by enacting four major new conservation programs in the conservation title of the 1985 Food Security Act. One of these programs, the Conservation Reserve (CRP), greatly increased the federal financial commitment to conservation and targeted federal funds at some of the most severe problems by retiring land under multi-year contracts. The other three, sodbuster, conservation compliance, and swampbuster, created a new approach to conservation, by halting producer access to many

federal farm program benefits if they did not meet conservation program requirements for highly erodible lands and wetlands.

Provisions enacted in the next farm bill, in 1990, reflected a rapid evolution of the conservation agenda, including the growing influence of environmentalists and other non-agricultural interests in the formulation of conservation policy, and a recognition that agriculture was not treated like other business sectors in many environmental laws. Congress expanded this agenda to address groundwater pollution, water quality, and sustainable agriculture, and allowed for the use of easements, as well as amending existing programs. Amendments to the CRP reflect these changes; its earlier focus on highly erodible land shifted to give greater emphasis to environmental concerns.

Prior to the Republican congressional takeover in 1994, conservation policy discussions centered on: (1) how to build from conservation initiatives enacted in previous farm bills; (2) how to secure more dependable funding for programs at a time when reducing the federal deficit was a major priority; and (3) how to incorporate new concepts for resource management at scales larger than individual farms, called landscapes, watersheds or ecosystems. The takeover shifted the focus to identifying ways to make the conservation compliance and swampbuster programs less intrusive on farmer activities. It also reduced the influence of environmental interests in developing conservation policy. After President Clinton vetoed the initial farm bill that Congress had attached to the omnibus reconciliation legislation in December 1995, Congress passed a free-standing farm bill early in 1996, which included a wide ranging conservation title drafted by the Senate Agriculture Committee staff. The enacted bill gave considerable attention to wildlife. (For an overview of conservation provisions in the 1996 farm bill, see CRS Report 96-330, *Conservation Provisions in the Farm Bill: A Summary*.)

The role of conservation has continued to evolve since 1996. The debate over conservation in the 2002 farm bill was framed in terms of: (1) increasing funding; (2) creating new programs and addressing new issues; (3) providing more conservation on land that is in production; and (4) using funding for conservation programs to meet world trade obligations. Specific conservation provisions amending old programs enacted in Title II are discussed below, followed by new programs, then implementation activities. (Other provisions that could be categorized as conservation can be found in many titles, especially those addressing research, forestry, and energy.) For detailed information about the enacted provisions in Title II, including how they compare with the House and Senate-passed bills and prior law, see CRS Report RL31486, *Conservation Title of the 2002 Farm Bill: A Comparison of New Law with Bills Passed by the House and Senate, and Prior Law*.

The Administration had little formal involvement in the development of this farm bill, beyond issuing principles it should meet on September 19, 2001. Principles for conservation included:

- Sustain past environmental gains;
- Accommodate new and emerging environmental concerns;
- Design and adopt a portfolio approach to conservation policies;
- Reaffirm market-oriented policies;
- Ensure compatibility of conservation and trade policies;
- Coordinate conservation and farm policies; and
- Recognize the importance of collaboration with conservation partners.

## **Current Major Conservation Activities**

USDA's conservation effort, while diverse, have centered in recent years on implementing the Conservation Reserve Program (CRP), compliance programs, wetland protection programs, cost-sharing programs (Environmental Quality Incentives Program, primarily), and providing technical assistance. USDA will adjust this effort to reflect the altered mix of activities enacted in 2002. By FY2007, when the current law expires, the size of the overall conservation effort will be much larger and give less emphasis to land retirement programs and programs that support traditional row crop production. Lead conservation agencies will continue to be the Natural Resources Conservation Service (NRCS), which provides technical assistance and administers most programs, and the Farm Service Agency (FSA) which provides cost-sharing assistance and administers the CRP.

### **Conservation Reserve Program (CRP)**

Under the CRP, producers can bid to enroll highly erodible or environmentally sensitive lands into the reserve during signup periods, retiring it from production for at least 10 years. Successful bidders receive annual rental payments, and cost-sharing and technical assistance. Enrollment was limited to 36.4 million acres, and to 25% of the crop land in a county. USDA announced that 33.9 million acres were enrolled in an October 1, 2002 press release. Funding is mandatory spending.

USDA estimates that the average erosion rate on enrolled acres was reduced from 21 to less than 2 tons per acre per year. Retiring these lands also expanded wildlife habitat, enhanced water quality, and restored soil quality. The annual value of these benefits has been estimated from less than \$1 billion to more than \$1.5 billion; in some regions where there is heavy participation, estimated benefits exceed annual costs. However, the General Accounting Office and others have criticized the potentially ephemeral nature of these benefits, because the landowner is under no obligation to retain them after contracts expire. Annual CRP expenditures have been between \$1.5 billion and \$2.0 billion in recent years, or about half of all USDA conservation expenditures annually prior to the 2002 farm bill.

The Department held one open enrollment period each year between FY1997 and FY2000. Since FY2000, it has not offered a general opportunity to enroll land because relatively few contracts have been ending. By November 2002, 31.7 million acres had been enrolled this way. It continues to enroll land in three other ways. One of these allows continuous signup for individuals who wish to enroll portions of fields with particularly high environmental values. FSA reported that through March 2003 more than 1.8 million acres have been enrolled, with about one-third of these acres in Iowa and Illinois. The conservation practice that has received the most attention is buffer strips along water bodies. NRCS started an initiative in 1997 to enroll 2 million miles of buffer strips by 2002, and estimates that over 750,000 miles have been enrolled. In April 2000, the Department announced incentives to attract more participation: signing bonuses; higher cost-share payments for cover crops and maintenance payments on buffers; and increasing payments on pasture. It estimated these payments could total up to \$350 million over 3 years.

The second way is a state-initiated enhancement program, under which higher rents are paid to attract eligible land. Maryland, the first state to implement an approved program

starting in October 1997, is trying to enroll 100,000 acres of stream buffers, restored wetlands, and highly erodible lands along streams in a portion of the Chesapeake Bay Watershed. The Maryland program will cost the state \$25 million and the federal government \$170 million. Today, 24 states have approved enhancement programs (including two programs in two of the states), and three additional states and an Indian tribe have submitted proposals. FSA data show that almost 475,000 acres had been enrolled through March 2003, and with more acres (108,000) in Illinois than in any other state.

A third way to enroll land outside the general enrollment periods was created when Congress authorized a new pilot program to enroll up to 500,000 acres of small, isolated farmable wetlands in six upper Midwestern states in Title XI of the FY2001 Agriculture Appropriations legislation. USDA offers signup bonuses to attract participation. Signup started in June 2001, and almost 70,000 acres had been enrolled by November 2002.

NRCS provides technical assistance in support of CRP, but the 1996 farm bill placed a cap on the portion of funding from the CCC that can be used to reimburse agencies for services provided to deliver CCC programs. These funds have been insufficient to pay all related technical assistance costs in recent years, and in FY1999, NRCS briefly suspended CRP-related activities. The FY1999 Supplemental Appropriations (P.L. 106-31) and FY2001 Agriculture Appropriations (P.L. 106-387) provided additional funds, and provisions in the 2002 farm bill have sought to eliminate the problem.

A new CRP concern was raised in March 2000 when the Sixth U.S. Circuit Court of Appeals reversed a 1996 federal tax court ruling and required that farmers must pay a 15.3% self-employment tax on CRP payments. Program supporters fear the ruling could have a chilling effect on participation. Legislation to overturn the ruling has been reintroduced, but as tax legislation, it would not be considered by the agriculture committees and was not considered in the farm bill. (For more information on this issue, see CRS Report RS20564, *Conservation Reserve Payments and Self-Employment Taxes*, and for CRP generally, see CRS Report 97-673, *Conservation Reserve Program: Status and Current Issues*.)

Section 2101 of the 2002 farm bill reauthorizes the CRP through FY2007 and raises the enrollment cap from 36.4 million acres to 39.2 million acres. Also, only land that was cropped 4 of 6 years preceding enactment will be eligible, thus making it more difficult to cultivate land primarily to gain access to the program. It makes the 6-state pilot program to retire small, isolated farmable wetlands a national program, with an enrollment ceiling of 1 million acres within the total enrollment cap. Some economic uses of enrolled lands will be permitted, including managed haying and grazing, and siting of wind turbines, with a reduction in annual rental payments.

Under prior law, all economic uses of CRP law were prohibited, and under the 2002 law, only a few specified uses will be permitted. An exception is made for natural disasters, where emergency haying and grazing can be allowed in designated counties in return for reduced payments. Drought was widespread in FY2002, and USDA permitted emergency haying and grazing on all land enrolled in the CRP, subject to certain limitations to protect the values derived from lands enrolled in the CRP. USDA extended the option of emergency grazing in four states through the end of the calendar year.

## Conservation Compliance and Sodbuster

Under sodbuster provisions, established in the 1985 farm bill, producers who cultivate highly erodible land (HEL) not cultivated between 1981 and 1985 are ineligible for most major farm program benefits, including price supports and related payments. These benefits are lost for all the land the farmer operates, not just for the HEL. A smaller penalty can be imposed on producers once every 5 years if circumstances warrant. Producers who cultivate highly erodible land using an approved conservation plan are not subject to these provisions. The 1996 farm bill revised these provisions in ways that increased producer flexibility.

Under conservation compliance, also established in the 1985 farm bill, producers who cultivate HEL lose the same program benefits as sodbusters unless they obtained an approved conservation plan by 1990 and had fully implemented it by the end of 1994. As under sodbuster, benefits are lost for all the land the non-complying farmer operates, and graduated penalties are available once every 5 years. Any person who had HEL enrolled in the CRP has 2 years after a contract expires to be fully in compliance (or longer if the Secretary determines that 2 years is insufficient).

According to 1997 data compiled by NRCS, producers were actively applying plans on more than 97% of the tracts of land that were reviewed. NRCS estimates that soil erosion on these acres is being reduced from an average of 17 tons per year to 6 tons per year. More generally, a 1997 national survey of erosion rates taken by NRCS, showed that cropland erosion totaled about 1.9 billion tons per year. This decline in the annual rate of almost 1.4 billion tons from the 1982 survey is attributed mostly to the compliance and CRP programs.

Critics, primarily from the environmental community, have contended that USDA staff has not vigorously enforced conservation requirements. The Inspector General and the U.S. General Accounting Office also have been critical of the implementation effort. Others, primarily from the agriculture community, have countered that the Department has been too vigorous, and was inconsistent in its enforcement from state to state, especially in the early years. Many of the agriculture community concerns were addressed in the 1996 farm act. (For more background on the compliance programs, see CRS Report 96-648, *Conservation Compliance for Agriculture: Status and Policy Issues*.)

Section 2002 of the 2002 farm bill prohibits the delegation of authority by USDA to other parties to make highly erodible land determinations.

## Wetlands and Agriculture

Swampbuster and the Wetlands Reserve Program (WRP) have been the main agricultural wetland protection programs, and an expanded small, isolated farmable wetlands program, added to the CRP in the 2002 farm bill, is discussed above. Under swampbuster, farmers who convert wetlands to produce crops lose the same federal farm program benefits as would be lost under conservation compliance or sodbuster until the wetland is restored. Swampbuster includes four major exemptions. It allows a partial penalty once a decade.

Swampbuster has been controversial since it was first enacted. Some from the farm community view wetland protection efforts on agricultural lands as too extensive or overzealous. They observe that it protects some sites that appear to provide few of the values

attributed to wetlands. A portion of this group also view these efforts as an unacceptable intrusion of government into the rights of private property owners, or “takings.” Environmental and other groups counter that the swampbuster program has been enforced weakly and inconsistently, with few violators losing farm program benefits. Controversies also arise over inconsistencies, such as when adjoining states use different interpretations of rules that lead to different determinations.

Some concerns raised by the agricultural community were thought to have been addressed when a Memorandum of Agreement (MOA) making NRCS responsible for all federal wetland determinations on agricultural lands under swampbuster and the Clean Water Act’s §404 Program was signed by NRCS, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency (EPA) on January 6, 1994. But aspects of implementation have proven controversial. These agencies have been unable to revise the MOA to reflect changes in the 1996 farm bill.

A new issue for agriculture was raised when the Supreme Court determined, in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* (January, 2001) that the §404 (of the Clean Water Act) wetland permit program should not apply to “isolated waters.” One result is that an estimated 8 million acres of agricultural wetlands that had been subject to the §404 program will now be subject only to swampbuster. Some of these wetlands (up to 1 million acres) may be enrolled in the new farmable wetland component of the CRP. For more information on this decision, see CRS Report RL30849, *The Supreme Court Addresses Corps of Engineers Jurisdiction Over “Isolated Waters”: The SWANCC Decision.*)

The second wetlands program, the WRP, was established in the 1990 farm bill. It uses permanent and temporary easements and long-term agreements to protect farmed wetlands. By the end of FY2001, enrollment has reached the cap of 1,075,000 acres, with almost 35% of that total in 3 states: Louisiana, Mississippi, and Arkansas. Permanent easements account for almost 90% of the total. The Secretary may delegate the administration of easements to other federal or state agencies with the necessary expertise. Since 1996, appropriators have limited enrollment most years. In addition to the annual appropriations, emergency funding was provided to enroll lands flooded in 1993 in the upper Midwest. (For more information about wetlands, see CRS Issue Brief IB97014, *Wetland Issues*, updated regularly.)

Section 2002 of the 2002 farm bill prohibits USDA from delegating the authority to make wetland determinations to other parties. Section 2101 creates a national program to retire small isolated agricultural wetlands, as described above in the CRP discussion. Section 2201 amends the WRP to reauthorize the program through FY2007 and increases the enrollment ceiling to 2,275,000 acres, while limiting enrollment to 250,000 acres per year.

## **Cost-Sharing Assistance**

Over the past several decades, cost-sharing programs have provided financial incentives to induce farmers to participate in conservation efforts. These programs pay a portion of the cost of installing or constructing approved conservation practices. Before 1996, the largest of these programs, by far, had been the Agricultural Conservation Program (ACP), administered by the FSA and funded at between \$175 and \$200 million annually.

The 1996 farm act replaced the ACP and three smaller cost-sharing programs) with the Environmental Quality Incentives Program (EQIP). EQIP is a mandatory spending program which supports structural, vegetative, and land management practices. Annual funding was authorized at \$200 million, and half the funding was to address the needs of livestock producers. A plan was required to participate. Each contract was limited to \$10,000 annually and to \$50,000 in total. Contracts were 5 to 10 years in length, and the initial payments were made the year after the contract was signed. Large livestock operations, to be defined in regulations by USDA, were ineligible for contracts to construct animal waste management facilities. The law required USDA to designate priority areas in each state for more concentrated attention; USDA allocated at least 65% of the funding to priority areas.

Interest in participation has far exceeded available funds. For FY2000, for example, NRCS received about 54,000 applications requesting \$402 million, but was only able to sign 16,000 contracts, with a total cost of almost \$177 million. These contracts provided \$140 million in financial assistance, \$33 million in technical assistance and almost \$4 million in educational assistance. The Clinton Administration repeatedly sought higher funding levels (but did not submit the needed authorizing legislation). Congress rejected these proposals and usually limited funding to less than \$200 million prior to FY2001, when it provided full funding in omnibus appropriations legislation (P.L. 106-554). (For further information on the early implementation of EQIP, see CRS Report 97-616, *Environmental Quality Incentives Program (EQIP): Status and Issues*, last updated March 2, 1998.)

Section 2301 of the 2002 farm bill reauthorizes EQIP through FY2007. It gradually increases annual funding from \$200 million to \$1.3 billion in FY2007. It eliminates the use of priority areas. Participants will be paid in the first year of a contract. The large livestock operation funding prohibition for animal waste management facilities is eliminated. The total of all EQIP payments a producer can receive, combined, is \$450,000 through FY2007. Contracts can be as short as 1 year. Producers with comprehensive nutrient management plans are eligible for incentive payments, and producers receiving funding for animal waste manure systems must have these plans. Cost share assistance can be higher for beginning and limited resource producers. A portion of EQIP funds in FY2003 through FY2006 can be used for innovative grants, such as fostering markets for nutrient trading. Additional funds, starting at \$25 million in FY2002 and growing to \$60 million in FY2004 are provided for a new ground and surface water conservation program within EQIP. In addition, \$50 million is earmarked for the Klamath River basin and is to be provided as soon as possible.

## Technical Assistance

NRCS provides technical assistance on a voluntary basis to conserve and improve natural resources. Technical assistance is a component of most conservation programs, and the cost of providing it has amounted to just under \$1 billion annually in recent years, according to the NRCS. Almost two thirds of this funding is found in the Conservation Operations line item. NRCS has characterized technical assistance as the “intellectual capital” of the agency, allowing it to combine its scientific and technical expertise with knowledge of local conditions.

A subsection of Section 2701 of the 2002 farm bill provides that funding for technical assistance in support of each mandatory program come from the funding provided by the

CCC for that program. Another subsection authorizes the Secretary to establish a program to certify qualified third parties to provide technical assistance.

Funding for technical assistance for the growing mandatory programs was challenged in late 2002, when the Office of Management and Budget, supported subsequently by the Department of Justice, issued an opinion that technical assistance funding for mandatory programs remains limited under a cap that has been placed in §11 of the Commodity Credit Corporation charter under prior law. Congress had thought that it had resolved this issue through language it included in the 2002 farm bill, and was supported in this conclusion by an opinion issued by the General Accounting Office. The Administration proposed to address this limit through a January 2003 proposal to create a new farm bill technical assistance line item and to fund it at \$333 million in FY2003. It proposed to fully offset this funding with reductions from several other, mostly conservation, programs. It stated that this line item, combined with other funding would be adequate to fully fund all technical assistance necessary to implement all mandatory and discretionary conservation programs.

Congress strongly rejected this proposal. The conservation title of the FY2003 omnibus appropriations law, drawing from the Senate bill, prohibits using any of the discretionary funds for technical assistance to implement any mandatory conservation programs. Additional language states that the 2002 farm bill already addressed this issue by providing that funding from the CCC for each program include funding for necessary technical assistance through FY2007. This language was added as an amendment to the farm bill in §213 of the disaster assistance package portion of the FY2003 omnibus appropriations (Division N, Title II). This amendment does not affect technical assistance funding for the CRP and the WRP, where limits are set by acres rather than dollar amounts.

## **Selected Other Conservation Activities**

The conservation includes many additional activities and programs. The list below includes only conservation activities in USDA that are administered by NRCS and FSA. Several other USDA agencies also make significant contributions to the conservation effort; examples include the Agricultural Research Service, which conducts research on numerous conservation topics; the Economic Research Service, which provides analysis of many conservation topics and played a major role in developing the Environmental Benefits Index used to compare CRP bids; and the Forest Service, which conducts research on forest and tree topics and administers programs to enhance timber stands on private lands. The many programs that are authorized but are not being implemented are not included.

**Watershed Programs.** NRCS has worked with local sponsors under several authorities to construct more than 10,500 structures to prevent floods, protect watersheds, control erosion and sediments, supply water, improve water quality, provide recreation opportunities, enhance habitat, and create or restore wetlands.

A rehabilitation program for aging small watershed structures, authorizing appropriations of up to \$90 million over 5 years was enacted in the Small Watershed Rehabilitation Amendments of 2000 (§313 of P.L. 106-472). The law permits federal funds to pay for 65% of rehabilitation projects, with the remainder coming from local sponsors, and requires that projects meet National Environmental Policy Act requirements. NRCS released a status report in June, 2000.

Section 2505 of the 2002 farm bill authorizes both mandatory funding for the rehabilitation program, rising from \$45 million in FY2003 to \$65 million in FY2007, and additional appropriations, rising from \$45 million in FY2003 to \$85 million in FY2007.

**Resource Conservation and Development (RC&D).** RC&D provides a framework for local interests to work together to improve the economy, environment, and living standard in multi-county areas through RC&D Councils. USDA provides technical and financial assistance to councils, and helps them secure funding and services from other sources. NRCS states that 368 areas encompassing more than 85% of the counties in the country have been designated.

Section 2504 of the 2002 farm bill permanently reauthorizes the program, and makes numerous technical amendments.

**Farmland Protection Program (FPP).** The 1996 farm bill authorized USDA to assist state and local governments to acquire easements to limit conversion of agricultural lands to nonagricultural uses. The program was allocated \$35 million from the CCC to protect between 170,000 and 340,000 acres of farmland. Eligible lands must be subject to a pending offer. From FY1996 through FY1998, \$33.5 million was obligated in 19 states to place easements on 127,000 acres on 460 farms with an estimated easement value of \$230 million. Congress provided an additional \$17.5 million in FY2001. The 2001 legislation also made certain private nonprofit organizations eligible to compete with state and local governments for these funds. These funds were used to protect about 28,000 acres in 28 states in FY2001. Demand to participate has greatly exceeded available funds.

Section 2503 of the 2002 farm bill increases annual mandatory funding from \$50 million in FY2002 to a high of \$125 million in FY2004 and FY2005. The definition of eligible land is expanded to include rangeland, pastureland, grassland, certain forest land, and land containing historic or archeological resources. The program will be subject to conservation compliance. Certain private nonprofit organizations can participate. It also authorizes appropriations for grants to carry out new farm viability programs. The \$50 million spent in FY2002 protected almost 100,000 acres in 41 states; less than \$3 million was spent in every state.

**Forest Incentive Program (FIP).** FIP, a line item in the NRCS budget, provided technical and financial assistance to help landowners install practices such as tree planting and timber stand improvement on non-industrial private forest lands. Section 8002 of the 2002 farm bill eliminates FIP and the Forest Service's Stewardship Incentive Program, replacing them with a new Forest Land Enhancement Program, to be funded with a total of \$100 million in mandatory funding between the date of enactment and the end of FY2007. The new program will be administered by the Forest Service. (For more information on FIP and related programs, see CRS Report RL31065, *Forestry Assistance Programs*.)

**Wildlife Habitat Incentives Program (WHIP).** WHIP was authorized in 1996 to use a total of \$50 million from mandatory funds allocated to the CRP to provide cost sharing and technical assistance for conservation practices that primarily benefit wildlife. The FY1998 appropriations obligated \$30 million, and the remaining \$20 million was obligated in FY1999. More recently, Congress provided additional conservation funding for FY2001,

and the Department allocated \$12.5 million to WHIP. Interest in this program has greatly exceeded available funding.

Section 2502 of the 2002 farm bill provides \$15 million in FY2002, growing to \$85 million in FY2005 and thereafter. It provides that up to 15% of the funding each year can be used for higher cost sharing payments to producers whom protect and restore essential plant and animal habitat under agreements of 15 years or longer.

**Emergency Programs.** The Emergency Watershed Program (EWP) is administered by the NRCS and the Emergency Conservation Program (ECP) is administered by the FSA. The EWP provides technical and cost sharing assistance for projects that restore land after flooding and protect it from future damage. The ECP provides cost-sharing and technical assistance to rehabilitate farmland damaged by natural disasters, and to carry out emergency water conservation measures during severe drought.

The 2002 farm bill does not amend emergency conservation programs. The Department announced on September 16, 2002, that it would release \$94 million in the EWP to 34 states in response to wildfires and other natural disasters.

**Water Quality Programs and Initiatives.** Groundwater and nonpoint pollution have emerged as major issues for conservation policy as more instances of contamination in which agricultural sources play major roles have been identified. Specific instances that drive public interest and concern range from a very large hog farm waste spill in North Carolina to the outbreak *Pfiesteria* and fish kills in portions of the Chesapeake Bay and a large "dead zone" in the central Gulf of Mexico. Questions are being raised about the extent of the problems, the severity of the potential threat to human health, the adequacy of government programs, and the contribution of agriculture. In some cases, contamination may have resulted even though producers followed accepted agricultural practices, and did not commit illegal acts. Current conservation programs that are used to address water quality concerns center on the EQIP program, plus both the Enhancement Program (CREP) and the continuous enrollment option under CRP.

NRCS released proposed revisions to its nutrient management policy, which are designed to help the farm community more effectively address these topics, on June 30, 1998. USDA and EPA released a "unified national strategy for animal feeding operations." on March 9, 1999. Elements in the strategy are controversial because it would greatly expand the number of animal operations at which nutrient management plans would be required. In early August 1999, EPA released a long-awaited draft plan for issuing Clean Water Act permits, which is required under court order. Large operators will be required to develop comprehensive nutrient management plans while smaller operators will be encouraged to develop them. EPA and USDA announced the final rule in mid December 2002. Farm interests were generally pleased because it will affect less producers and cost less when compared with earlier proposals.

Limiting total maximum daily loadings (TMDLs) is another approach to cleaning polluted waterways authorized under the Clean Water Act. Congress included a rider in H.R. 4425, the FY2001 Military Construction and FY2000 Urgent Supplemental Appropriations bill, prohibiting EPA from using FY2000 or FY2001 funds to implement the TMDL proposal the Clinton Administration had announced in August, 1999. It responded to the rider by

issuing a revised rule delaying the effective date of the program until October 31, 2001. (For more information, see CRS Report RL30437, *Water Quality Initiatives and Agriculture*.)

Water quality problems are likely to be addressed not only through existing programs, such as EQIP, discussed above, but also through the new programs, including:

- The Conservation Security Program, enacted in §2001, which is expected to be used to address water quality problems, especially nutrient management;
- the Ground and Surface Water Conservation Program, enacted in §2301 as part of EQIP;
- the Small Watershed Rehabilitation Program amendments enacted in §2505;
- the Agricultural Management Assistance Program, reauthorized in §2501, to provide \$20 million annually between FY2003 and FY2007 and \$10 million annually thereafter to 15 specified states that have been underserved by risk management programs;
- a new program for the Great Lakes Basin states enacted in §2502;
- a new Grassroots Source Water Protection Program, enacted in §2502; and
- a new program for the Delmarva Peninsula enacted in §2601-2604.

**Private Grazing Lands Program.** A voluntary coordinated technical and educational assistance program was enacted in the 1996 farm bill to maintain and improve resource conditions on private grazing lands. Appropriations were authorized at \$20 million in FY1996, \$40 million in FY1997, and \$60 million annually thereafter. Appropriators have not established a separate line item, but continue to earmark a portion of NRCS's Conservation Operations funds for this effort annually, providing \$21.5 million for FY2002.

Section 2502 of the 2002 farm bill reauthorizes the program through FY2007 with appropriations of \$60 million annually. Section 2401 of this bill authorizes a new Grasslands Reserve Program to retire 2 million acres under arrangements ranging from 10-year agreements to permanent easements, permits the delegation of easements to certain private organizations and state agencies, and provides up to \$254 million in mandatory funding.

**Air Quality Activities.** The 1996 farm bill created an interagency air quality task force in USDA. The task force represented USDA on scientific topics such as EPA's proposals to revise National Ambient Air Quality Standards for ground-level ozone and two sizes of particulates in 1997. Cooperation grew after USDA and EPA signed a Memorandum of Agreement in January 1998. More recently, federal agencies have been discussing how agricultural practices and programs affect global warming, especially by sequestering carbon. (For more information, see CRS Report 97-670, *Agriculture and EPA's Proposed Air Quality Standards for Ozone and Particulates*.)

The 2002 farm bill does not amend air quality provisions in the conservation title. On April 9, 2003, USDA announced that it had appointed new members, and that the task force, after a hiatus, would meet in late May.

**Research and Technical Activities.** Many agencies in USDA conduct research and provide technical support. NRCS, for example, provides basic data about resource conditions and characteristics through the soil and snow surveys and periodic surveys through the National Resources Inventory. It also does applied research through the plant material and technical centers.

Section 2005 of the 2002 farm bill requires the Secretary to submit a report, with implementing recommendations, about how to better coordinate and consolidate conservation programs to both agriculture committees by December 31, 2005.

**Other Conservation Programs and Provisions in the 2002 Farm Bill.** In addition to the farm bill programs described above, the conservation title contains several other programs. It:

- Authorizes the Conservation Security Program in §2001 to provide payments to producers starting in FY2003, based on which of three levels of conservation is planned for and practiced. Payments are available on all agricultural land that was cropped in 4 of 6 years before 2002. The lowest level allows contracts of 5 years and annual payments up to \$20,000; the middle level allows contracts of 5 to 10 years and annual payments up to \$35,000; the top level allows contracts of 5 to 10 years and annual payments up to \$45,000. The lowest level requires a plan that addresses at least one resource concern on part of a farm; the middle level requires a plan that addresses at least one resource concern on the entire operation, and the top level requires a plan to address all resource concerns on the entire operation.
- Authorizes Partnerships and Cooperation in §2003, using up to 5% of conservation funding, for both stewardship agreements with other entities and special projects designated by state conservationists to enhance technical and financial assistance to address resource conservation issues.
- Amends administrative requirements in §2004, to provide the option of providing incentives to beginning and limited resource farmers and ranchers and Indian tribes, and to protect the privacy of personal information related to natural resource conservation programs and information about National Resources Inventory data points.
- Reauthorizes the Agricultural Management Assistance Program through FY2007 in §2501, and provides an additional \$10 million (for a total of \$20 million) in mandatory funding annually.
- Authorizes a Grassroots Source Water Protection Program in §2501 and annual appropriations of \$5 million through FY2007.
- Authorizes a Great Lakes Program for Erosion and Sediment Control in §2501 and annual appropriations of \$5 million through FY2007.
- Authorizes Desert Terminal Lakes provisions in §2507 require the Secretary to transfer \$200 million in mandatory funds to the Bureau of Reclamation to pay for providing water to at-risk natural desert terminal lakes; other provisions prohibit using these funds to purchase or lease water rights.
- Authorizes appropriations of matching funds through FY2007 to demonstrate local conservation and economic development through a Conservation Corridor Demonstration Program with state and local partners on the Delmarva Peninsula in §2601-2604.

## **Implementing the 2002 Farm Bill Conservation Provisions**

Official actions, including announcements in the *Federal Register (FR)*, taken to implement selected conservation programs authorized or significantly amended by the 2002 farm bill are listed below.

**Conservation Reserve Program:** No action. At an April 11, 2003 oversight hearing convened by a House Agriculture Subcommittee, Undersecretary J.B. Penn stated that the dates of the next general signup will be announced before June 2, 2003.

**Wetland Reserve Program:** *FR (06/07/02)* contains notice of amendment to existing rule published. On September 6, 2002, a press release announced that approximately \$275 million in FY2002 would go to 42 states to enroll up to 250,000 acres.

**Environmental Quality Incentive Program:** *FR (07/24/02)* contains notice providing additional \$275 million for FY2002. On August 1, 2002, the Secretary announces \$227 million released. On September 16, 2002, a press release announced that \$10 million in previously unallocated FY2002 funds will go to 14 drought-stricken states. *FR (2/10/03)* contains notice of proposed rules and requests comments by March 12, 2003.

**Conservation Technical Assistance:** On November 7, 2002, a "summit" is hosted by USDA in Washington to receive public input. *FR (11/21/02)* contains interim final rule, with comments to be submitted by February 19, 2003. Comments were requested on an interim final rule establishing payment rates for technical service providers and USDA policy for subcontracting in the 3/24/03 *FR*, with comments due by June 23, 2003.

**Small Watershed Rehabilitation Program:** No action.

**Resource Conservation and Development Program:** No action.

**Farmland Protection Program:** *FR (05/30/02)* notice requests proposals for FY2002, due August 15, 2002. On September 6, 2002, a press release announced that \$48 million would be spent in 32 states in FY2002. *FR (10/28/02)* contains proposed rule, with comments to be submitted by December 30, 2002. *FR (4/03/03)* contains requests for FY2003 proposals, to be submitted by May 19, 2003.

**Wildlife Habitat Incentive Program:** *FR (07/24/02)* contains final rule providing additional cost share assistance to participants with agreements exceeding 15 years.

**Agricultural Management Assistance Program:** On August 19, 2002, NRCS announces release of \$1.5 million.

**Private Grazing Lands Program:** *FR (06/29/02)* contains proposed rule. *FR (11/12/02)* contains final rule.

**Grasslands Reserve Program:** No action.

**Conservation Security Program:** *FR (2/8/03)* contains advance notice of proposed rule-making, with request for comments by March 20, 2003. A March 21, 2003 *FR* notice extended the comment period to April 3.

**Partnerships and Cooperation:** No action.

## Appropriations

**FY2003 Discretionary Programs.** The FY2003 omnibus appropriations law (P.L. 108-7) provides \$1.027 billion for all discretionary conservation programs within USDA, which is \$7 million higher than the House Appropriations Committee approved, \$9 million less than the Senate approved, and \$22 million below the Administration request of \$1.049 billion. The FY2003 law is a decrease of \$29 million below the FY2002 appropriation of \$1.056 billion, which included \$94 million of supplemental spending provided for watershed and flood prevention in P.L. 107-206.

The largest discretionary conservation program is Conservation Operations (CO), most of which supports technical assistance. The law provides \$825 million for CO in FY2003, which is less than the Administration request of \$841 million, but a significant increase from the \$779 million provided in the FY2002 appropriation. A large portion of the requested

increase, \$48 million, would have paid for technical assistance in helping animal feeding operations comply with clean water regulations. The law provides less than either the House bill (\$844 million) or the Senate bill (\$840 million). The conference report accompanying the law identifies 114 earmarks for CO with a total cost of more than \$110 million. The law, drawing from the House bill, makes earmarks additions to each state's allocation.

For watershed activities, the law provides \$110 million for Watershed and Flood Prevention Operations (\$200 million appropriated in FY2002, including a \$94 million supplemental appropriation provided in P.L. 107-206), \$11.2 million for Watershed Surveys and Planning (\$11 million in FY2002) and \$30 million for Watershed Rehabilitation Program (\$10 million in FY2002). It identifies several earmarks in the general provisions and in the conference report. The law includes provisions that limit spending for technical assistance to \$45.5 million of the total for Watershed and Flood Prevention Operations, and limit expenditures related to protecting threatened and endangered species to \$1 million.

The law provides \$51 million for the Resource Conservation and Development Program to support activities in designated RC&D districts. This amount is almost \$2 million more than the Administration request and \$1 million more than the House provided, but \$4.1 million less than the Senate provided.

**FY2003 Mandatory Programs.** The Administration's FY2003 request was submitted prior to enactment of the 2002 farm bill, which reauthorized and greatly increased funding for many conservation programs slated to expire at the end of FY2002. Although the Administration had stated its support for authorizing higher annual mandatory conservation funding levels in the 2002 farm bill, its request for FY2003 did not include any of the anticipated reauthorizations or increases, except that it requested level funding at \$200 million for EQIP. All the programs that are not addressed will be fully funded at the authorized levels. Congress limits: enrollment in the WRP to 245,833 acres instead of the 250,000 acres authorized in the farm bill in §759; funds for EQIP to \$695 million instead of the \$700 million authorized in the farm bill in §760; and provides no mandatory funding for the Watershed Rehabilitation Program in §740 (but \$30 million in discretionary funds is provided elsewhere in this law). (For more details on FY2003 conservation funding, see CRS Report RL31301, *Appropriations for FY2003: U.S. Department of Agriculture and Related Agencies*.)

The CSP was used to fund the entire agricultural disaster assistance package of more than \$3 billion. This was done by limiting CSP funding between FY2003 and FY2013 to a total of \$3.773 billion. The estimated saving provided by this cap, based on January 2003 CBO estimates of the total program cost of \$6.878 billion, not only funds the entire disaster package, but also leaves more funding for the CSP than had been estimated when the farm bill was enacted. Revised CBO estimates are that the program will have \$87 million in FY2004, then grow rapidly in future years. The House bill would have limited this program to a single state, Iowa, making it a pilot program in FY2003, but Congress adopted the Senate bill, thus making it available in all states.

**FY2004 Appropriations.** Requested funding levels for conservation are historic highs, but less than authorized levels in the 2002 farm bill in some instances. Much of the difference reflects the Administration proposal to fund technical assistance in support of mandatory programs by establishing a separate discretionary account called Farm Bill

Technical Assistance, funded at \$432 million. However, Congress resolved this funding issue without establishing such an account in the FY2003 appropriations legislation that was subsequently enacted (see discussion in the *Technical Assistance* subsection, above).

Administration requests for FY2004 include: \$704 million for Conservation Operations; \$5 million for Watershed Surveys and Planning; \$40 million for Watershed Operations; \$10 million for the Watershed Rehabilitation Program; and \$50 million for the Resource Conservation and Development Program. For the mandatory programs, EQIP would be funded at \$909 million instead of \$1 billion; the Ground and Surface Water component of EQIP would be funded at \$51 million instead of \$60 million; the Wildlife Habitat Incentives Program would be funded at \$42 million instead of \$60 million; the Farmland Protection Program would be funded at \$112 million instead of \$125 million; and the CSP would be funded for the first time at \$19 million.

## LEGISLATION

Almost 100 bills with conservation provisions were introduced in the 107<sup>th</sup> Congress; only the enacted farm bill is listed below. Legislation in the 108<sup>th</sup> Congress will be included only after Congress takes some action following introduction.

### **P.L. 107-171, H.R. 2646**

Provides for the continuation of farm programs through FY2011. Introduced July 26, 2001; referred to Committee on Agriculture. Reported August 2, 2001 (H.Rept. 107-191, pt. 1) and August 31, 2001 (H.Rept. 107-191, pt. II). Passed the House (amended) October 5, 2001. Passed the Senate (amended) February 13, 2002. House agrees to conference report May 2, 2002 (H.Rept. 107-424). Senate agrees to conference report May 8, 2002. Signed into law May 13, 2002.

## CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. Senate. Committee on Agriculture. *Conservation*. Hearings. 107<sup>th</sup> Congress, 2nd session. February 28 and March 1, 2002. 250p. S. Hrg. 107-225.

---- *Conservation on Working Lands for the New Federal Farm Bill*. Hearings. 107<sup>th</sup> Congress, 1<sup>st</sup> session. July 31, 2001. 86p. S. Hrg. 107-828.