

4-19-1996

Federal Agriculture Improvement and Reform Act of 1996

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Recommended Citation

Harl, Neil (1996) "Federal Agriculture Improvement and Reform Act of 1996," *Agricultural Law Digest*: Vol. 7 : No. 8 , Article 1.

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Agricultural Law Digest

An Agricultural Law Press Publication

Volume 7, No. 8

April 19, 1996

Editor: Robert P. Achenbach, Jr.

Contributing Editor Dr. Neil E. Harl, Esq.

ISSN 1051-2780

FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996

(H.R. 2854 signed into law April 4, 1996)

SUMMARY OF PROVISIONS

— by Neil E. Harl*

Title I — Agricultural Market Transition Act (Commodity Programs)

The act ends the traditional pattern of price and income support with respect to program crops effective for the 1996 crop and phases out government payments to farmers with payments ending in 2002. **Act § 101(b)(1)**. The act suspends for seven years (but does not eliminate) the permanent law provisions of the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949. **Act § 171(a), (b)**.

Production flexibility contracts. The act provides for seven year production flexibility contracts that offer payments to eligible owners and producers who agree to follow specified conservation and other requirements. **Act § 111**. The contracts begin with the 1996 crop (or the date a CRP contract was entered into or expanded) and end with the crop in 2002. **Act § 112(b)**.

As for eligibility to enter into production flexibility contracts, the act specifies that owners and producers are eligible who had some land enrolled in one or more of the 1991-1995 federal farm programs for wheat, feed grains, cotton or rice. **Act § 111(d)**. In addition to those participating in the federal acreage reduction programs, owners and producers are eligible who had land in the Conservation Reserve Program (16 U.S.C. § 3931) where the term expired or was voluntarily terminated on or after January 1, 1995 or was released from coverage under a CRP contract during the period beginning on January 1, 1995, and ending August 1, 1996. **Act § 111(d)**.

The acreage eligible for payments is the base acreage that would have been established for 1996 under programs preceding enactment of the act with an adjustment for existing CRP program acres. **Act §§ 114(a), 102(4)**.

The act refers to "contract acreage" in calculating payments but then defines the term to mean "1 or more crop acreage bases established for contract commodities..." *Id.*

An owner or producer may enroll all or part of the eligible cropland on the farm. **Act § 111(e)**. It is not necessary for owners or producers to purchase crop insurance as a condition of participating. **Act § 111(b)(6)**.

As for landlords and tenants, the act specifies that an

owner of farmland is eligible who assumes all or part of the risk of producing a crop. **Act § 111(b)(1)**.

A tenant (as producer) on eligible cropland under a "share-rent" lease is eligible to enter into a contract, regardless of the length of the lease, if the owner enters into the same contract. **Act § 111(b)(2)**.

A tenant who cash rents eligible cropland under a lease expiring on or after September 30, 2002, is eligible, in which case the owner is not required to enter into the contract. **Act § 111(b)(3)**.

If a cash rent lease expires before September 30, 2002, the tenant may be eligible and the owner may enter into the same contract. **Act § 111(b)(4)**. If the tenant enrolls less than 100 percent of the eligible cropland, the owner's consent is required. *Id.*

If a cash rent lease expires before September 30, 2002, and the tenant declines to enter into the contract, the owner is eligible to enter into a contract with the payments under the contract not beginning until the lease ends. **Act § 111(b)(5)**.

The legislation states specifically that the Secretary is to "provide adequate safeguards to protect the interests of tenants and sharecroppers." **Act § 111(b)(6)**. Under a crop-share arrangement, the payment must be shared with the tenant. It is clear that payments follow the land. However, it is not clear if a lease can be terminated with the landowner shifting to custom farming and collecting the entire payment.

The act specifies that an annual contract payment is to be made not later than September 30 of each year through 2002. **Act § 112(d)(1)**.

The total amount available for all contract payments is—

\$5,570,000,000	for FY 1996
5,385,000,000	for FY 1997
5,800,000,000	for FY 1998
5,603,000,000	for FY 1999
5,130,000,000	for FY 2000
4,130,000,000	for FY 2001
4,008,000,000	for FY 2002

Act § 113(a). Refunds of unearned 1995 advance deficiency payments are to be deducted from contract payments.

The amounts are to be allocated among the program crops on the following basis (with various adjustments) —

Corn	46.22%
Wheat	26.26%

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Grain sorghum	5.11%
Barley	2.16%
Oats	0.15%
Upland cotton	11.63%
Rice	8.47%

Act § 113(b).

For each contract, the payment is based on 85 percent of the contract acreage times the farm program payment yield.

Act § 114(a).

The act specifies that contract payments are to be shared between owners and producers on “a fair and equitable basis.” **Act § 114(g).**

The payment limitation per person “under 1 or more production flexibility contracts” is reduced to \$40,000 under the legislation. **Act § 115(b)(1).** The “three entity” rule continues to apply. The limitation on gains from marketing loans and loan deficiency payments remains at \$75,000. **Act § 115(b)(2).** Contract payments withheld because of the payment limitation contribute to deficit reduction rather than being redistributed among contract holders.

Violations and transfers. An owner or producer who violates a contract requirement may suffer a termination of the contract. **Act § 116(a).** That results in forfeiture of rights to receive future contract payments with a refund required of all contract payments received during the period of violation with interest. **Id.**

If the contract acreage is foreclosed upon, the owner or producer is not required to repay if forgiving the payments “is appropriate to provide fair and equitable treatment.” **Act § 116(c)(1).** If the owner or operator resumes operations, the provisions of the contract apply. **Act § 116(c)(2).**

A transfer of an interest in land covered by a contract results in termination of the contract unless the transferee agrees to assume all obligations under the contract. **Act § 117(a).** If an owner or producer dies, becomes incompetent or otherwise is unable to receive contract payment, payments are to be made as provided in regulations to be written. **Act § 117(c).**

On contract acres, any crop can be planted without limitation (other than fruits and vegetables). **Act § 118(b)(1).**

Fruits and vegetables (other than lentils, mung beans and dry peas) cannot be grown on contract acres unless there is a history of double cropping a program crop with fruits and vegetables. **Act § 118(b)(2)(A).** If the farm or the producer has a history of planting fruits and vegetables, the producer can plant fruits or vegetables on contract acres subject to an acre-for-acre reduction in contract payments. **Act § 118(b)(2)(B), (C).**

Haying and grazing is permitted on contract acreage without restriction. See **Act § 118(a).**

The programs 0/85, 50-85, 0-92 and 50/92 are all eliminated.

An owner or producer must —

- Comply with applicable conservation requirements.

Act § 111(a)(1).

- Comply with applicable wetland protection requirements. **Act § 111(a)(2).**

- Comply with planting flexibility requirements. **Act § 111(a)(3).**

- Use the land subject to a contract for agricultural or related activities but not for non agricultural commercial or industrial uses. **Act § 111(a)(4).**

Loan program. A loan program similar to that available under prior legislation is continued for wheat, feed grains, cotton, rice and oilseeds. **Act § 131(a).**

For wheat, feedgrains and cotton, loan rates are capped at 1995 levels (\$1.89 per bushel for corn, \$2.58 per bushel for wheat, 51.92 cents per pound for upland cotton and \$6.50 per hundredweight for rice). **Act § 132.** The loan rate is to be based upon the average price received by producers over the preceding five years, excluding the highest and lowest years. **Id.** The Secretary of Agriculture may make adjustments downward in the loan rate based upon the stocks-to-use ratio. **Id.**

For soybeans, the loan rate is set at 85 percent of the five-year average of market prices (excluding the high and low years) but not more than \$5.26 per bushel and not less than \$4.92 per bushel. **Id.**

For other oilseeds, the range is 8.7 cents to 9.3 cents per pound.

Except for upland cotton and extra long staple cotton, the loan is limited to a nine month term beginning with the first of the month after the month the loan is made. **Act § 133(a).** Cotton loans are for 10-months. **Act § 133(b).**

The Farmer-Owned Reserve is suspended for the 1996-2002 crops.

Repayment. For loans on wheat, feed grains and oilseeds, the loan is to be repaid at the loan rate plus interest or a rate set by the Secretary of Agriculture that takes into account potential loan forfeitures, minimizes the cost to the federal government of commodity storage and allows the commodity to be marketed freely and competitively. **Act § 134(a).**

For upland cotton and rice, repayment is to be at the loan rate plus interest or the prevailing world market price for the commodity. **Act § 134(b).**

Loans on extra long staple cotton are to be repaid at the loan rate plus interest. **Act § 134(c).**

Except for extra long staple cotton, the Secretary has the authority under the legislation to make loan deficiency payments to producers who agree to forego obtaining a loan for the commodity. **Act § 135(a).** The payment is based on the loan rate multiplied by the amount eligible to be placed under loan. **Act § 135(b).** A special marketing loan provision is available for upland cotton involving marketing certificates or cash payments to domestic users and exporters. **Act § 136.**

For high moisture corn and grain sorghum, recourse loans are available. **Act § 137(a).** Recourse loans are also available (for seed cotton) for both upland cotton and extra long staple cotton. **Act § 137(b).**

Dairy. The dairy price support program is extended through 1999. **Act § 141.** Price support levels are reduced as follows —

\$10.35	CY 1996
10.20	CY 1997
10.05	CY 1998
9.90	CY 1999

Beginning in 2000, the price support program is replaced by a recourse loan program for butter, nonfat dry milk and cheese at the 1999 price support level. **Act § 142.**

The federal milk marketing order program under prior law is continued. See **Act § 143.**

The Secretary of Agriculture is required to reform and consolidate the 33 existing milk marketing orders into not less than 10 and not more than 14 over the next three years. **Act § 143(a)(1).**

If not completed and implemented within three years, the Secretary is to administer milk marketing orders from Agricultural Marketing Service funds of USDA. **Act § 143(c).**

Not later than April 1, 1997, USDA is to submit to Congress a report reviewing the federal milk marketing order system. **Act § 143(d).**

The fluid milk promotion program funded by processors is extended until 2002. **Act § 146.**

The legislation grants Congressional consent to the Northeast Interstate Dairy Compact as approved by the legislatures of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. **Act § 147.**

However, the Secretary of Agriculture must find that there is a compelling public interest in the Compact region for the Compact to be implemented. **Act § 147(1).**

The Compact is limited to class I milk in the six New England states and is not to prohibit or in any way limit the marketing of milk produced in any other production area. **Act § 147(2), (7).**

The states of Delaware, New Jersey, New York, Pennsylvania, Maryland and Virginia are the only additional states that may join the Compact. **Act § 147(4).**

Peanuts. The peanut program is continued through the 2002 crop with several changes. **Act § 155.**

The quota support price is reduced by the legislation to \$610 per ton from the 1995 level of \$678 per ton. **Act § 155(a)(2).**

The floor under prior law of 1.35 million tons on the national poundage quota is eliminated. **Act § 155(i)(2).** This allows the Secretary to establish the quota to match demand. **Act § 155(i)(3).**

Persons who are not peanut producers and who reside in another state and government entities are prevented from holding peanut quotas. **Act § 155(i)(1)(v).**

The proportion of the peanut quota in a county that can be sold or leased outside the county is increased from 15 percent in 1996 to 40 percent by 2000. **Act § 155(i)(6).**

Sugar. The sugar program is continued through the 2002 crop with several amendments —

The national average loan rates are frozen at 18 cents per pound for raw cane sugar and 22.9 cents per pound for refined beet sugar, the 1995 levels. **Act § 156(a), (b).** The Secretary is to reduce the loan rate if it is determined that negotiated reductions in export subsidies and domestic subsidies provided for sugar of other major sugar growing, producing and exporting countries exceed the commitment in the Uruguay Round trade agreement. **Act § 156(c)(1).**

Recourse loans are to be made when the tariff-rate quota is 1.5 million short tons or less and nonrecourse loans when the tariff-rate quota is greater than 1.5 million short tons. **Act § 156(e)(1), (2).** When a nonrecourse loan is in effect,

there is a one-cent per pound penalty on forfeited cane sugar (and a comparable penalty for beet sugar). **Act § 156(g).**

The nonrefundable marketing assessment for deficit reduction is raised to 1.375 percent of the loan rate for cane sugar and 1.47425 percent of the loan rate for beet sugar. **Act § 156(f).**

The system of marketing allotments is eliminated.

Crop insurance. Several changes are made in the federal crop insurance program —

Under the legislation, producers are not required to purchase crop insurance to be eligible for commodity program benefits. **Act § 193(a)(2).** However, producers opting not to purchase insurance are required to waive all federal disaster assistance. **Act § 193(a)(2), amending 7 U.S.C. § 1508(b)(7)(A)(ii).**

Under the legislation, USDA is not permitted to deliver crop insurance from county offices except in states where the Secretary of Agriculture determines that catastrophic coverage from approved insurance providers is not “sufficiently available...” **Act § 193(a)(1).**

Under the 1996 act, the crop insurance program is to be administered by an independent Office of Risk Management. **Act § 194(a).**

Under the Noninsured Assistance Program, coverage is broadened to include seed crops and aquaculture. **Act § 196(a)(2)(B).** The Program is to be administered through the Farm Service Agency. **Act § 196(a)(1).**

The legislation authorizes the Secretary to make a prevented planting noninsured crop disaster assistance payment if the producer is prevented from planting more than 35 percent of the acreage intended for the eligible crop because of drought, flood or other natural disaster. **Act § 196(c)(2).**

Farm yields for noninsured crop disaster assistance are to be established based on the actual production history of the producer over a period of not less than the four previous consecutive crop years and not more than 10 consecutive crop years. **Act § 196(e).**

Title II — Trade

The 1996 legislation amends a number of trade and food aid programs with programs reauthorized through 2002.

Export Enhancement Program spending is capped at \$350 million for fiscal year 1996, \$250 million in fiscal year 1997, \$500 million in fiscal year 1998, \$550 million in fiscal year 1999, \$579 million in fiscal year 2000, and \$478 million in fiscal years 2001 and 2002. **Act § 245(a).** The Secretary may make available not more than \$100,000,000 for each fiscal year for the sale of “intermediate agricultural products” in sufficient quantities to attain the volume of export sales during 1986-1990 (the Uruguay Round base period years). **Act § 245(b).**

The Market Promotion Program is targeted toward small businesses, cooperatives and producer associations. **Act § 244(b).** The program is capped at \$90 million per year. **Act § 244(c).**

The Secretary of Agriculture is directed to establish a reserve stock of “wheat, rice, corn or sorghum” or any combination totaling not more than 4,000,000 metric tons to meet emergency humanitarian needs in developing countries. **Act § 225(a).**

The legislation contains a sense of the Congress resolution that the House and Senate Agriculture

Committees should conduct “a thorough review of agricultural export and food aid programs” not later than December 31, 1998. **Act § 241(b).**

The legislation reauthorizes agricultural trade and aid programs including P.L. 480. **Act § 217.** The concessional-loan part of P.L. 480 is reoriented toward greater market development. **Act § 203.**

The act places new emphasis on high-value products in the GSM-102 export credit guarantee program. **Act § 243.**

The 1996 legislation contains additional protection to farmers against unilateral export embargoes. **Act § 249.** The act provides for trade compensation assistance if exports are embargoed unilaterally for reasons of national security or foreign policy if, within 90 days, no other country “with an agricultural economic interest” agrees to participate in the suspension. *Id.* The program does not apply to suspension of trade “due to a war or armed hostility.” *Id.*

Title III — Conservation

The 1996 legislation extends a number of existing soil conservation and water quality programs, many with amendments. The act also creates new programs to focus on important environmental concerns.

Conservation Reserve Program (CRP). The Conservation Reserve Program (CRP) was enacted as part of the 1985 farm bill and was continued in 1990. *16 U.S.C. § 3831, added by P.L. 99-198, Sec. 1231, 99 Stat. 1508 (1985).* The 1996 legislation continues the program through 2002. **Act § 332.**

Enrollment in CRP is capped at 36.4 million acres. **Act § 332(b).**

Participants in CRP may terminate contracts entered into before January 1, 1995, provided the contract has been in effect for at least five years. **Act § 332(c).** The contract termination is effective 60 days after the notice is submitted by the owner or operator. *Id.* Some land is not eligible for the early termination provision — (1) filterstrips, waterways, strips adjacent to riparian areas, windbreaks and shelterbelts; (2) land with an erodibility index of more than 15; and (3) other lands of “high environmental value.” *Id.*

No higher conservation requirements could be imposed on land exiting CRP than on other land in conservation compliance plans. *Id.*

Wetlands Reserve Program (WRP). The Wetlands Reserve Program, which has been controversial in many agricultural areas, has been reauthorized through 2002 with numerous modifications. **Act § 333(b).** The Secretary of Agriculture is directed to enroll not more than 975,000 acres by 2002. **Act § 333(a).**

To the “maximum extent practicable,” the Secretary is to enroll into the WRP one-third of the acres through the use of permanent easements, one-third in 30-year easements and one-third through the use of restoration cost-share agreements. *Id.* After October 1, 1996, no new permanent easements may be enrolled until 75,000 acres are enrolled through the use of temporary easements. *Id.*

Environmental Quality Incentive Program (EQIP). The Environmental Quality Incentive Program has been created to assist crop and livestock producers in dealing with environmental concerns. **Act § 334.**

The act combines into a single program several provisions that have provided cost sharing and technical assistance to producers implementing practices to protect soil, water and related resources. *Id.*

Specifically, the program includes the agricultural conservation program, the Great Plains conservation program, the water quality incentives program and the Colorado River Basin salinity control program. *Id.*

The objective is for the various initiatives to be carried out in a manner that maximizes the environmental benefits per dollar expended, encourages environmental enhancement, provides assistance to producers in making cost-effective changes in their crop and livestock production systems and reduces administrative burdens on producers. *Id.*

As for funding, the Commodity Credit Corporation is to provide \$130 million in fiscal year 1996 and \$200 million per year thereafter in mandatory funding with one-half of the money going to crop producers and one-half to livestock producers. **Act § 341.**

The federal share of cost-share payments is not more than 75 percent of the projected cost, taking into consideration any payment from state or local governments. **Act § 334.**

A producer who owns or operates a “large confined livestock operation” is not eligible for cost share payments to construct an animal waste management facility. *Id.* The definition of “large confined livestock operation” is to be defined by the Secretary in regulations. *Id.*

The total amount of cost-share and incentive payments paid to a producer may not exceed \$10,000 for any fiscal year or \$50,000 for a multi-year contract. *Id.* Larger payments may be approved on a case-by-case basis. *Id.* the term “livestock” means dairy cattle, beef cattle, laying hens, broilers, turkeys, swine, sheep “and such other animals as determined by the Secretary.” *Id.*

Other environmental provisions. The Conservation Farm Option Pilot Program is to provide producers of wheat, feedgrains, cotton and rice a flexible, simplified approach to solving their farm conservation needs. **Act § 335.**

Owners and producers with contract acreage enrolled in the transition program are eligible to participate in the conservation farm option. *Id.*

Participants in the program are required to submit to the Secretary of Agriculture a conservation farm plan that becomes a part of the conservation farm option contract. *Id.* The contract is to be for a duration of 10 years and may be renewed for a period of not to exceed five years. *Id.*

The Commodity Credit Corporation is to make funds available to the program —

\$7,500,000	FY 1997
15,000,000	FY 1998
25,000,000	FT 1999
37,500,000	FT 2000
50,000,000	FY 2001
62,500,000	FY 2002

Act § 335.

Not more than 25 percent of the cropland in any county may be enrolled in the conservation reserve and wetlands reserve programs. **Act § 341.** Not more than 10 percent of the cropland in a county may be subject to an easement

under the act unless approved as an exception by the Secretary. *Id.*

Tenants and sharecroppers are to be protected under the various programs with an assurance of sharing, on a fair and equitable basis, in payments under the programs. *Id.*

A nonprofit foundation, the Natural Resources Conservation Foundation, is established to “promote innovative solutions to the problems associated with the conservation of natural resources on private lands....” **Act § 353(a), (b).**

Under the Flood Risk Reduction Program, producers on a farm with contract acreage under the transition program have the option of receiving a payment that is not more than 95 percent of projected contract payments under the transition program (if the producer agrees to forego any payment under the farm program, crop insurance and disaster programs) on “frequently flooded” land. **Act § 385(a), (b).**

Under a new program on conservation of private grazing land, the Secretary is authorized to establish a voluntary program of “technical, educational, and related assistance” to owners and managers of private grazing land and public agencies. **Act § 386(d).** The Secretary may also establish two grazing management demonstration districts. **Act § 386(e)(2).**

The activities of a grazing management district are to be scientifically sound activities. **Act § 386(e)(3)(F).**

The area proposed to be included in a grazing management district is to be determined by the Secretary on the basis of a petition by farmers or ranchers. **Act § 386(e)(3)(D).**

An amount of \$20,000,000 is appropriated for the program for FY 1996, \$40,000,000 for FY 1997 and \$60,000,000 for FY 1998 and subsequent fiscal years. **Act § 386(f).**

Under the Wildlife Habitat Incentive Program, cost-share assistance is to be provided to landowners to develop and protect wildlife. **Act § 387(a).**

A total of \$50,000,000 is to be made available for fiscal years 1996 through 2002. **Act § 387(c).**

Cost-share payments are to be made to landowners to develop “upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat approved by the Secretary.” **Act § 387(b).**

The Farmland Protection Program is established to purchase “conservation easements or other interests in not less than 170,000, nor more than 340,000, acres of prime, unique, or other productive soil that is subject to a pending offer from a state or local government for the purpose of protecting topsoil by limiting nonagricultural uses of the land. **Act § 388(a).**

Any highly erodible cropland for which a conservation easement or other interest is purchased is subject to the requirements of a conservation plan that requires the conversion of cropland to less intensive uses. **Act § 388(b).**

Up to \$35,000,000 of Commodity Credit Corporation funds are made available to the program. **Act § 388(c).**

An amount of \$200,000,000 is appropriated to carry out the provisions of the Everglades Ecosystem Restoration Program. **Act § 390(a).** The funds are to be used to conduct restoration activities and fund resource protection and

resource maintenance activities in the Everglades. **Act § 390(b).**

The legislation encourages the Secretary of Agriculture to continue to strengthen “vital research efforts related to agricultural air quality.” **Act § 391(b).** The sense-of-the-Congress provision refers to allegations that agriculture is the source of some types of emissions. **Act § 391(a).**

Title IV — Nutrition

The 1996 legislation reauthorizes the food stamp program through September 30, 1997, with several amendments. **Act § 401.**

Grants may be made to eligible private nonprofit entities to establish and carry out “community food projects.” **Act § 401(h).**

An amount of \$1,000,000 is made available for this purpose in FY 1996 and \$2,500,000 for each fiscal year 1997 through 2002.

The legislation reauthorizes the following programs for seven years —

The Puerto Rico Nutrition Assistance Program. **Act § 401(f).**

The Commodity Supplemental Food Program. **Act § 402(a).**

The Emergency Food Assistance Program. **Act § 403(a).**

The Soup Kitchen and Food Bank Program. **Act § 404.**
National Commodity Processing. **Act § 405.**

The Children Nutrition Programs (including school lunch and the Women, Infants and Children Program (WIC)) were reauthorized in 1994 and did not require legislative action in 1996.

Title V — Agricultural Promotion

Programs for the promotion of agricultural commodities funded by mandatory assessments on producers or processors are addressed in the legislation. **Act § 501.**

Each commodity board operating pursuant to a commodity promotion law is to authorize and fund an independent evaluation of programs not less than once every five years. **Act § 501(c).**

Title VI—Credit

The 1996 legislation reauthorizes farm lending programs of the US Department of Agriculture with new restrictions on the purposes for which loans can be made and imposes new restrictions on borrowers who have previously defaulted. **Act §§ 601-663.** The legislation also places new limits on the amounts that can be loaned to a borrower and implements new rules on the sale of forfeited property.

Direct ownership loans. Under the legislation, direct loans may be made to a farmer or rancher who has operated a farm or ranch for not less than three years and — (a) is a qualified beginning farmer or rancher, (b) has not previously received a direct farm ownership loan or (c) has not received a direct ownership loan more than 10 years before the date the new loan would be made. **Act § 601.** The operation of a farm by a youth is not considered the operation of a farm or ranch for this purpose. *Id.*

Direct loans may be used for — (a) acquiring or enlarging a farm or ranch; (b) making capital improvements to a farm or ranch; (c) paying loan closing costs related to acquiring, enlarging or improving a farm or ranch; or (d) paying for activities to promote soil and water conservation and protection. **Act § 602(a).**

A loan may not be made to a farmer or rancher unless the borrower has agreed to obtain hazard insurance on any real estate to be acquired or improved with the loan. **Act § 602(b).**

If a direct farm ownership loan is made as a part of a joint financing arrangement, and the amount of the direct farm ownership loan does not exceed 50 percent of the total principal amount financed, the interest rate on the direct farm ownership loan is to be at least four percent annually. Act § 604(2).

Guaranteed loans. A farmer or rancher may use a guaranteed loan for — (a) acquiring or enlarging a farm or ranch; (b) making capital improvements to a farm or ranch; (c) paying loan closing costs related to acquiring, enlarging or improving a farm or ranch; (d) paying for activities to promote soil and water conservation and protection; or (e) refinancing indebtedness. *Id.*

In making or guaranteeing a loan for the purchase of a farm or ranch, preference is to be given to a person who — (a) has a dependent family; (b) to the extent practicable is able to make an initial down payment on the farm or ranch; or (c) is an owner of livestock or farm or ranch equipment necessary successfully to carry out farming or ranching operations. *Id.*

A contract of insurance or guarantee is specifically made an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation. **Act § 605.**

Amount of the guarantee —

- Beginning farmer loans may be guaranteed up to 95 percent of (1) a farm ownership loan for a borrower participating in the down payment loan program; or (2) an operating loan to a borrower who is participating in the down payment loan program made during the period that the borrower has a direct loan outstanding for acquiring a farm or ranch. **Act § 606.**

- Refinanced loans may be guaranteed at the 95 percent level of — (1) the principal and interest due on a loan that refinances a direct loan; or (2) the portion of a loan used for multiple purposes that refinances the principal and interest due on a direct loan that is outstanding on the date the loan is guaranteed. *Id.*

- Otherwise, the loan guarantee can be for not more than 90 percent of the principal and interest due on the loan. *Id.*

Operating loans. Under the 1996 act, direct loans may be made to a farmer or rancher who — (1) is a qualified beginning farmer or rancher who has not operated a farm or ranch or who has operated a farm or ranch for not more than five years, (b) has not received a previous direct operating loan, or (c) has received a previous direct operating loan made during six or fewer years. **Act § 611(a).** The term “direct operating loan” does not include a loan made to a youth. *Id.*, **Act § 611(b).**

A direct operating loan may be made for — (1) paying the costs involved in reorganizing a farm or ranch for more profitable operation; (2) purchasing livestock, poultry or farm or ranch equipment; (3) purchasing feed, seed, fertilizer, insecticide or farm or ranch supplies or to meet other essential operating expenses (including cash rent); (4) financing land or water development, use or conservation; (5) paying loan closing costs; (b) assisting in changing the

operation to comply with OSHA standards; (7) training a “limited resource” borrower in maintaining records of farming and ranching operations; (8) training a borrower under section 359 of the Consolidated Farm and Rural Development Act; (9) refinancing indebtedness if the borrower has refinanced a loan not more than four times previously and has suffered a Presidentially-declared natural disaster loss or is refinancing a debt obtained from another creditor; or (10) providing other “farm, ranch, or home needs, including family subsistence.” **Act § 612.**

An operating loan may be guaranteed for — (a) paying the costs in reorganizing a farm or ranch for more profitable operation; (b) purchasing livestock, poultry or farm or ranch equipment; (c) purchasing feed, seed, fertilizer, insecticide or supplies or to meet other “essential farm or ranch operating expenses” (including cash rent); (d) financing land or water development, use or conservation; (e) refinancing indebtedness; (f) paying loan closing costs; (g) complying with OSHA standards; (h) training a borrower under Section 359 of the Consolidated Farm and Rural Development Act; or (i) providing other farm ranch or home needs including family subsistence. **Act § 612(a).**

A condition of loans is that the farmer or rancher has or agrees to obtain hazard insurance on the property. *Id.*

The rules provide specifically that a portion of a loan may be placed in an unsupervised bank account that may be used at the borrower’s discretion for “basic family needs of the borrower and the immediate family of the borrower.” *Id.* The amount of the reserve is limited to the lesser of (a) 10 percent of the loan, (b) \$5,000 or (c) the amount needed for basic family needs of the borrower and immediate family for three calendar months.

The 1996 legislation provides specifically that loans or guarantees may be in the form of a line-of-credit loan of up to five years maturity. **Act § 614.** If a payment required on a line-of-credit loan is not paid on time, the borrower may not take an advance or draw on the line unless the failure to pay was attributable to “unusual conditions” the borrower “could not control” and the borrower will reduce the line of credit to the scheduled level at the end of the production cycle or by the marketing of the borrower’s agricultural products. *Id.*

The legislation repeals Section 317 of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1947) which dealt with insured operating loans.

In general, loans are not to be guaranteed for any year after the fifteenth year that a loan is made to, or a guarantee is provided with respect to, the borrower. **Act § 617.**

Emergency loans. The legislation imposes new limitations on emergency loans —

An emergency loan may not exceed the actual loss caused by the disaster and loans may not be made that would cause the borrower’s indebtedness for emergency loans to exceed \$500,000. **Act § 624.**

The act makes it clear that the value of assets for emergency loan purposes is to be the value as of the day before the occurrence of the disaster. **Act § 625.**

The authority to waive application of the “credit elsewhere” test is narrowed by reducing the “\$300,000 or less” requirement to \$100,000 or less. **Act § 622.** That

requirement relates to the loan level above which two written declinations are required. **7 U.S.C. § 1962(b)**.

Hazard insurance is required as a condition to receiving an emergency loan. **Act § 621(a)**. The amount of insurance is to be determined by the Secretary of Agriculture. *Id.*

Administrative provisions. The legislation authorizes USDA to use private collection agencies to collect on claims and obligations for claims and obligations under the Housing Act of 1949. **Act § 632, amending 7 U.S.C. § 1981(b)(5)**.

The act mandates an annual review of the credit history and business operations of borrowers. **Act § 635(a)**.

The 1996 law lays down new rules on disposing of acquired property. **Act § 638**.

Not later than 15 days after acquiring real property, the property is to be advertised for sale. **Act § 638, adding 7 U.S.C. § 1985(c)(1)(A)**.

Not later than 75 days after acquiring the real property, the land is to be offered for sale to a qualified beginning farmer or rancher at current market value based on a current appraisal. **Act § 638, adding 7 U.S.C. § 1985(c)(1)(B)**. If there is more than one qualified buyer, the selection is to be on a random basis. *Id.* A random selection or denial of a beginning farmer or rancher for farm inventory property is final and not administratively appealable. *Id.*

If no acceptable offer is received from a qualified beginning farmer or rancher within the 75 day period, not later than 30 days later the property is to be sold after public notice at a public sale. **Act § 638, adding 7 U.S.C. § 1985(c)(1)(C)**. If no acceptable bid is received, the property is to be sold at a negotiated sale at the best price obtainable. *Id.*

For acquired property that was not being leased on April 4, 1996, not later than 60 days after the date of enactment of the legislation (which was April 4, 1996), the property is to be offered for sale under the above rules. **Act § 638, adding 7 U.S.C. § 1985(c)(2)(B)**. For acquired property that was leased prior to April 4, 1996, the property is to be offered for

sale under the above rules not later than 60 days after the lease expires. **Act § 638, adding 7 U.S.C. § 1985(c)(2)(A)**.

Land conveyances are to include all interests in the land including mineral rights except that for conservation purposes an “easement, restriction, development right or other similar right” may be given to a state, political subdivision of a state or a private non profit organization. **Act § 638, adding 7 U.S.C. § 1985(c)(3)**.

In general, acquired property is not to be leased except that land may be leased or sold on contract to a beginning farmer or rancher if the borrower qualifies for a credit sale or direct farm ownership loan but credit sale authority for loans or direct farm ownership loan funds is not available. **Act § 638, adding 7 U.S.C. § 1985(c)(5)**.

Wetland conservation easements are not to be given on land held in inventory by USDA if the land was cropland on the date the property entered into inventory or was used for farming at any time during the five year period before entering into inventory. **Act § 639**.

The legislation redefines “debt forgiveness” as to direct or guaranteed loans to include (a) writing down or writing off the loan; (b) compromising, adjusting, reducing or charging off a debt or claim (under the Consolidated Farm and Rural Development Act, Sec. 331); (c) paying a loss on a guaranteed loan; or (d) discharging a debt as a result of bankruptcy. **Act § 640(2)**. The term “debt forgiveness” does not include consolidation, rescheduling, reamortization or deferral. *Id.*

Borrowers who have received debt forgiveness on a guaranteed or direct loan —

May not receive a direct or guaranteed loan other than a farm operating loan for paying annual farm or ranch operating expenses of a borrower. **Act § 648(b)**.

May not receive more than one debt forgiveness on a direct loan. *Id.*

Amount authorized for loans. The legislation sets the following limits on loans —

	Total Amount	Direct Loans		Guaranteed Loans	
		Farm Ownership	Operating	Farm Ownership	Operating
FY 1996	3,085,000,000	85,000,000	500,000,000	600,000,000	1,900,000,000
FY 1997	3,165,000,000	85,000,000	500,000,000	630,000,000	1,950,000,000
FY 1998	3,245,000,000	85,000,000	500,000,000	660,000,000	2,000,000,000
FY 1999	3,325,000,000	85,000,000	500,000,000	690,000,000	2,050,000,000
FY 2000	3,435,000,000	85,000,000	500,000,000	750,000,000	2,100,000,000
FY 2001	3,435,000,000	85,000,000	500,000,000	750,000,000	2,100,000,000
FY 2002	3,435,000,000	85,000,000	500,000,000	750,000,000	2,100,000,000

Act § 641

The legislation mandates that a specified percentage of the direct farm ownership and operating loans and guaranteed loans be reserved for beginning farmers or ranchers. **Act § 641**.

Credit study. The legislation mandates a study on the demand for and availability of credit in rural areas for agriculture, housing and rural development. **Act § 650(a)**.

The study is to focus particularly on the role of the Farm Credit System, banks and USDA. **Act § 650(b)**.

The legislation authorizes the electronic filing of financing statements under the Food Security Act of 1985

(7 U.S.C. § 1631(c)(4)) if the state allows electronic filing. **Act § 662**.

Title VII — Rural Development

The title repeals several provisions in the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. § 2007 et seq.) —

Rural Investment Partnerships. **Act § 701**.

Water and Waste Facility Financing. **Act § 702**.

Rural Wastewater Circuit Rider Program. **Act § 703**.

Telemedicine and Distance Learning. The legislation amends the provisions in the 1990 farm bill to encourage

and improve telemedicine services and distance learning services in rural areas. **Act § 704.**

The act authorizes grants or cost-of-money loans or both to finance the construction of facilities and systems to provide telemedicine services and distance learning services in rural areas. *Id.*

The Secretary is to establish the minimum amount of financial assistance to be made available to individual recipients not more than 45 days after funds are made available for the fiscal year. *Id.*

Loans may be made for not more than 10 years. *Id.*

An amount of \$100,000,000 is appropriated for each of the fiscal years 1996 through 2002. *Id.*

Alternative Agricultural Research and Commercialization Corporation. The legislation amends the provisions in the 1990 farm bill creating the Alternative Agricultural Research and Commercialization Corporation. **Act § 722.**

An amount of \$75,000,000 is appropriated for each of the fiscal years 1996 through 2002. **Act § 728.**

Consolidated Farm and Rural Development Act. The maximum amount for water and waste disposal projects is increased from \$500,000,000 to \$590,000,000. **Act § 741(a)(1), amending 7 U.S.C. § 1926(a)(2).**

The definition of “rural” and “rural area” is amended to include a city, town or unincorporated area with a population of no more than 10,000 inhabitants. **Act § 741(a)(2).**

Rural Business Opportunity Grants may be made, not to exceed \$1,500,000 annually, to public bodies, private nonprofit community development corporations or entities or other agencies approved by the Secretary to — (a) identify and analyze business opportunities that will use local rural economic and human resources; (b) identify, train and provide technical assistance to existing or prospective rural entrepreneurs and managers; (c) establish business support centers and otherwise assist in creating and financing new rural businesses; (d) conduct regional, community and local economic planning and coordination and leadership development; and (e) establish centers for training, technology and trade to provide training to rural businesses in using interactive communications technologies to develop international trade opportunities and markets. **Act § 741(a)(3).** A total of \$7,500,000 is appropriated for each of the fiscal years 1996 through 2002. *Id.*

An amount of \$35,000,000 is appropriated for the Emergency Community Water Assistance Grant Program. **Act § 742.** The Emergency Community Water Assistance Grant Program for Smallest Communities is repealed. **Act § 742.**

The provision authorizing Insured Watershed and Resource Conservation and Development Loans is repealed. **Act § 746.**

The Rural Industrialization Assistance Program is amended. **Act § 747.**

Language has been added to include facilitating economic opportunity for industries undergoing adjustment from terminated federal farm price and income support programs or increased competition from foreign trade. **Act**

§ 747(a)(1). Grants may be made to facilitate those types of projects. **Act § 747(a)(3).**

Grants may be made to nonprofit institutions to establish and operate centers for rural cooperative development. **Act § 747(a)(4).** An amount of \$50,000,000 is appropriated for this purpose. *Id.*

Loans may be guaranteed to individual farmers for the purpose of purchasing start-up capital stock of a farmer cooperative established for the purpose of processing an agricultural commodity. **Act § 747(a)(7).**

The legislation establishes a Rural Development Certified Lenders Program for the guarantee of rural development loans. **Act § 752.**

The act establishes a National Sheep Industry Improvement Center. **Act § 759.**

Rural Community Advancement Program. The legislation creates a new program, the Rural Community Advancement Program. **Act § 761.** The purpose of the program is to provide grants, loans, loan guarantees and other assistance to meet the rural development needs of local communities. *Id.*

For this purpose, “rural” and “rural area” includes a city, town or unincorporated area with a population of 50,000 or less (other than an urbanized area immediately adjacent to an area with a population of more than 50,000). *Id.*

The national objectives of the program are to —

- Promote strategic development activities and collaborative efforts by state and local communities and federally recognized Indian tribes to maximize the impact of federal assistance;
- Optimize the use of resources;
- Provide assistance in a manner that reflects the complexity of rural needs including the needs for business development, health care, education, infrastructure, cultural resources, the environment and housing.
- Advance activities that empower and build the capacity of state and local communities to design unique responses to the special needs of the state and local communities, and federally recognized Indian tribes, for rural development assistance; and
- Adopt flexible and innovative approaches to solving rural development problems. *Id.*

A Rural Development Trust Fund is established to hold funds to be used in the program. *Id.* The Fund has five accounts —

- Rural community facilities,
- Rural utilities,
- Rural business and cooperative development,
- National reserve, and
- Federally recognized Indian tribe. *Id.*

Up to 10 community development venture capital organizations may be designated to demonstrate the utility of guarantees to attract increased private investment in rural private business enterprises. *Id.*

The Secretary of Agriculture is to develop a streamlined, simplified and uniform application for an array of federal programs. **Act § 762.**

A Community Facilities Grant Program is authorized to make grants, up to \$10,000,000 for any fiscal year, to associations, units of local government, nonprofit corporations and federally recognized Indian tribes to

provide the federal share of the cost of developing specific essential community facilities in rural areas. **Act § 763.** The amount of a grant may not exceed 75 percent of the cost of developing the facility. *Id.*

Rural Electrification Act of 1936. Numerous amendments are made to the Rural Electrification Act of 1936. **Act § 771.**

The legislation specifically prohibits conditioning assistance under any rural development program on any requirement that the recipient of the assistance accept or receive service from any particular utility, supplier or cooperative. **Act § 778.**

Fund for Rural America. An account is established to be known as the Fund for Rural America. **Act § 793(a).** The account is to be funded with \$100,000,000 on January 1, 1997, October 1, 1998 and October 1, 1999. **Act § 793(b).**

The Fund may be used for several rural development activities —

- Authorized under the Housing Act of 1949 for (1) direct loans to low income borrowers, (2) loans for financial assistance for domestic farm laborers, (3) financial assistance for housing for domestic farm laborers, (4) payments for elderly not now receiving rental assistance, (5) grants and contracts for mutual and self-help housing, (6) grants for rural housing preservation; or

- Conducted under any rural development program. **Act § 793(c).**

The Under Secretary of Agriculture for Rural Economic and Community Development has been renamed the Under Secretary of Agriculture for Rural Development. **Act § 794, amending 7 U.S.C. § 6941.**

Title VIII — Research, Extension and Education

(This title contains funding guidelines and appropriation authority for work in research, extension and education.)

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

EXEMPTIONS

IRA. In 1991, the debtor rolled over funds from a terminated pension plan to an IRA. The debtor filed for Chapter 7 in 1994 and claimed \$286,000 in the IRA as exempt under Mass. Gen. Law, ch 235, § 34. The trustee objected to the exemption to the extent the rolled-over amount exceeded 7 percent of the debtor's total income for the five years before the bankruptcy filing. The debtor argued that the 7 percent limit did not apply to rolled-over funds but only applied to new deposits. The court held that the statute was unambiguous and limited the IRA exemption to an amount equal to 7 percent of the debtor's income for the five pre-petition years. *In re Goldman*, 192 B.R. 1 (D. Mass. 1995), *aff'g*, 182 B.R. 622 (Bankr. D. Mass. 1995).

GRAIN STORAGE FACILITY. The debtor's business consisted primarily of purchasing grain for conditioning and resale as seed, either to third parties or the producer of the grain. The debtor also sold farm equipment and various farm inputs. Several creditors sought a fifth priority under Section 507(a)(5)(A) for their claims against the debtor as a grain storage facility. The court held that claims from creditors who purchased, but did not receive, farm equipment and farm inputs were not entitled to the priority because the claims did not involve grain or the proceeds of grain. The court also denied fifth priority to claims for unpaid wages. The court denied a fifth priority to claims for the prepayment for seed which was not delivered to creditors who were not producers of grain but who sold the seed to third parties. The last group of creditors was grain producers who sold grain to the debtor and who were not paid. Some of the grain was processed for seed but some was resold to third parties to the extent not needed for the seed inventory. The court held that Section 507(a)(5)(A) was not intended to apply to situations where grain was sold

to the storage facility with title passing to the facility. The court assumed that the debtor qualified as a grain storage facility, although doubted that the debtor qualified as a grain storage facility. The court held that in order for a producer to be entitled to the fifth priority, the producer must have retained title to the grain while the grain was in the storage facility. *In re Mickelson*, 192 B.R. 516 (Bank. D. N.D. 1996).

PLAN. The debtor filed for Chapter 13 and one of the secured claims was held by the FmHA (now the FSA). The debtor's plan provided for payment of the claim at 6.5 percent interest. The debtor argued that the FmHA offered 5 percent loans to new farmers and 8 percent loans to established farmers. The debtor argued that if the FmHA had been able to foreclose on the debtor's property, the land would have been offered to new farmers first at the 5 percent rate and, only if no new farmers were found, would the 8 percent rate be applied for a loan to purchase the debtor's land. Therefore, the debtor proposed a rate halfway between the two rates as a reasonable compromise. The Bankruptcy and District Courts held for the debtor; however, the appellate court reversed, holding that the plan was to provide a market rate of interest and by definition, the 5 percent rate was not a market rate of interest but a subsidized rate. In addition, the debtor was not a new farmer and could not qualify for the lower rate; therefore, the lower rate should not have been considered in determining the market rate of interest to be paid during the plan. *In re Roso*, 76 F.3d 179 (8th Cir. 1996).

CHAPTER 12-ALM § 13.03[8].*

DISCHARGE. The debtor was divorced in 1984. A 1986 amendment to the property settlement gave the former spouse a judgment lien against the debtor's farm real and personal property to the extent of the unpaid property settlement. In April 1995, the former spouse obtained a monetary judgment for the unpaid property settlement and in May 1995, the debtor filed for Chapter 12. Soon after the