VOLUME 17, NUMBER 10, WHOLE NUMBER 203 SEPTEMBER 2000

INSIDE

- The Agricultural Risk Protection Act of 2000: the Non-insured Crop Disaster Assistance Program, and the domestic commodity and other programs

Solicitation of articles: All AALA members are invited to submit articles to the Update. Please include copies of decisions and legislation with the article. To avoid duplication of effort, please notify the Editor of your proposed article.

IN FUTURE ISSUES

- GAO reports on GIPSA enforcement of Packers & Stockyards Act, the sugar program, and market loss assistance payments

Purchase of conservation easements program in Pennsylvania, part1: history and participants' experience

Pennsylvania's most visible farmland preservation technique is the Purchase of Conservation Easements (PACE) program. In the PACE program, farmland owners voluntarily sell an easement to prevent development on their farmland in exchange for a cash payment. The conservation easement is held in perpetuity by the local and state governments. Participation does not affect the landowner's ability to continue using his or her land for agricultural purposes. The land may be sold at any time or transferred to heirs.

Pennsylvania's program has been operating since 1989 and is currently one of the largest programs in the nation. Program funding originally came from a dedicated bond issue, but as those funds have been depleted new dedicated sources have been explored. As of February 2000, Pennsylvania's program had purchased conservation easements on 1,260 farms, for a total of 156,289 acres. The acreage saved constitutes about 4.8 percent of farmland in agricultural security areas (the area eligible for purchases), and 2.2 percent of Pennsylvania's total agricultural land.

PACE programs are a long-term or permanent way of preserving agricultural land. They come at a relatively high cost, however, compared to other farmland preservation alternatives. The cost and importance of agricultural preservation mean that careful evaluation of the program's use and effectiveness is vital. This two-part article discusses Pennsylvania's experience with its PACE program. The first part examines the history of Pennsylvania's PACE program, and then presents results from a survey of program participants. The second part of the article explores a variety of lessons from Pennsylvania's experience with the program.

Pennsylvania's PACE program

The Pennsylvania legislature has authorized a wide variety of farmland preservation programs, including preferential tax assessment, agricultural zoning, creation of agricultural security areas (sometimes known as agricultural districts), right-to-farm laws, review of eminent domain actions, and agricultural conservation easements. These programs generally enjoy strong public support; in a 1990 survey of over 3,600 Pennsylvanians, for example, 70 percent said that preservation of farmland should receive greater attention (Lembeck et al. 1991). Until recently, the predominant preservation techniques used in Pennsylvania were agricultural zoning and preferential tax assessment.

The concept of preserving Pennsylvania's farmland by government acquisition evolved over more than two decades prior to enactment of the agricultural conser-

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EPA announces proposed rule changes for animal feeding operations

Pursuant to Executive Order 13132 (Federalism), EPA released its *Outreach Document for the U.S. EPA's Proposed Regulatory Changes to the 1) National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation (CAFO) Regulations and 2) Effluent Limitation Guidelines for Feedlots* on July 18, 2000. According to EPA's Office of Wastewater Management (OWM) the proposed rule changes will be published in December of 2000.

If adopted, the proposed changes will drastically increase the number of animal feeding operations subject to the National Pollutant Discharge Elimination System

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vation easement program. In 1968 the Pennsylvania General Assembly approved Act 442 authorizing the Commonwealth and its counties to preserve, acquire, or hold land to preserve open space near urban areas, meet recreational needs, and protect natural resources (including farmland). While this act provided state- and county-level authority to acquire farmland for the public's benefit, no specific programs were outlined and the authorization went unused.

In 1975, Lancaster County adopted a plan that recognized the impact of population growth on highly productive farmland, identified more than 100,000 acres of nonagricultural land suitable for development, and called for the preservation of 278,000 acres of the county's farmland. The first direct action to acquire farmland was taken at the county level in 1980, when Lancaster County appointed a board to designate agricultural preserves and administer a voluntary deed restriction program. A deed restriction, as used in Lancaster County's program, is similar to a conservation easement in many respects. The program acquired conservation easements on 5,500 acres of farmland before it was merged with the statewide program in 1989 (Daniels 1991).

Serious discussion about how to design and finance a statewide conservation easement program in Pennsylvania began in 1986; a rudimentary program outline and a decision to fund the effort with a bond issue was made in 1987. In the following November general election, nearly 70 percent of Pennsylvania voters answered "yes" to a referendum question asking if they favored incurring a $100 million debt to purchase conservation easements from farmers. The program was enacted as an amendment to the Agricultural Security Areas Law, and final review and decision-making was assigned to a new State Agricultural Land Preservation Board. The first purchase of a conservation easement was made on December 26, 1989, from a farm in Lancaster County. The statute authorizing the program, administrative guidelines, and all subsequent policy make it abundantly clear that the purpose of the program is to preserve viable farmland, not merely open space.

Program administration

Eligibility to sell a conservation easement under Pennsylvania's program depends on meeting three basic requirements: (1) the farmland tract must be located in an agricultural security area established under state law by a local government, (2) 50 percent of the land must be in Natural Resource Conservation Service (NRCS) soil classes I through IV, and (3) 50 percent of the land must be harvested crop land, pasture, or grazing land. In addition to these basic requirements, county agricultural land preservation boards may add further eligibility requirements.

Farmland owners who are interested in selling a conservation easement apply to their county agricultural land preservation board. As of August, 1998, 44 of Pennsylvania's 67 counties had been certified to participate in the program, and 41 had made purchases. If the farmland meets the basic eligibility requirements, it is scored using land evaluation and site assessment criteria set up by each county and approved by the State Board. The highest scoring farms are then appraised to determine the market and agricultural value of the easement, and the process of negotiating the final sale price and other details is carried out.

The farmland owner receives a cash payment, which is considered a capital transaction for tax purposes, and the basis of the property is reduced accordingly. After a conservation easement has been sold on a tract of farmland, the current owner and future purchasers or heirs to the land hold all the property rights intact except the right to build on that land. Pennsylvania's program initially allowed purchases either to let the landowner buy back the conservation easement after 25 years, or to be held in perpetuity (with no option of buyback). Participating counties only purchased easements in perpetuity, however, leading to a state-level program change in 1994 formally removing the buyback option.

Many of the easements are sold by farmers at less than market value, for a variety of reasons. In some counties, the waiting list of farmers interested in selling is long enough that the county board has enough other potential sellers if they cannot reach agreement on price with a specific farmer. Other counties view sales at less than market value as a way to stretch county and state dollars, freeing funds to purchase additional easements on other farms. Farmers accepting less than market value are able to use the difference between what they accepted and market value as a charitable contribution on their federal income taxes.

The initial bond funding for the conservation easement program was virtually depleted by 1996, necessitating the finding of an alternative revenue source. To augment the bond authorization, the General Assembly earmarked two cents of the cigarette tax for the program, which generates approximately $20 million a year. The amount contributed by individual counties varies enormously.

Participant's experience

A 1995 Farm Economics article provided an overview of the PACE program and participants in the program's first three years. That study found farmers participating were older on average than the rest of the farming community and that personal convictions about farmland preservation appeared to be the dominant motivation for selling conservation easements. Participants during the program's first three years generally were using the program to support continuation of farm operations rather than to promote either expansion of or exit from agriculture.

The geographic scope of Pennsylvania's PACE program has expanded dramatically since those first three years of the program. During those early years, purchases were made in only 21 Pennsylvania counties, and tended to be clustered in the Commonwealth's primary agricultural areas. Lancaster County alone accounted for 38 percent of all purchases through December, 1992. Since that time, as more counties have become involved in the program, purchases have become more widely scattered across the Com-

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monwealth. As of February, 2000, purchases had been made in 42 Pennsylvania counties.

In the spring of 1998, more recent participants in the Pennsylvania PACE program were surveyed to see how the type of people participating and their experience might have changed as the program has matured. All 272 participants in the program between January 1, 1993 and December 31, 1997 were sent questionnaires in the spring of 1998. Responses were received from 131 of the 272 participants sent questionnaires, for an overall response rate of 48 percent.

Who participates

Like the earlier PACE participants, recent participants tended to be older than the general farm population. About 26 percent of the participants were aged 70 or more, while according to the Census of Agriculture only 14 percent of farmers were in that age range. About 51 percent of all participants were older than 59, compared to only 33 percent of all farmers falling within that age range.

A little over one third (37 percent) of the participant farms before the easement sale were dairy, 12 percent were other livestock, and 24 percent were cash grain. Participating farms were from a broad range of different gross incomes. About 33 percent of the farms grossed less than $50,000 a year, and 49 percent grossed less than $100,000 a year in sales (about 9 percent grossed less than $10,000 a year). Because these are revenues before expenses have been deducted, the net income to the farms would be much lower than this, leaving relatively little to contribute to family income. The large number of farms with low gross income may suggest that many of the PACE purchases are hobby or part-time farms. Indeed, the majority of farmers on these smaller farms reported working off-farm.

According to respondents, about 76 percent of the properties were zoned at the time of the easement sale. About 89 percent of the properties were zoned agricultural, 25 percent were zoned residential, 1 percent were zoned commercial, and 5 percent were zoned other [this does not add to 100 percent because some farms had multiple zoning classifications].

The sale itself

Many farmers first heard about the PACE program from newspapers (35 percent of respondents), other farmers (10 percent), their county personnel (9 percent), and participants at local meetings (7 percent). Before deciding to sell the conservation easement, farmers typically discussed the possible sale with a variety of people, including spouses (82 percent), children (43 percent), and accountants (34 percent).

Due in part to the strong interest in the program and limited funds, many county boards typically will pay less than full appraised value for the easement. On their Federal taxes a farmer receiving less than full value can treat the difference between the value of the easement and what they actually received as a charitable contribution. About 35 percent of respondents indicated that they accepted less than full appraised value for their easement (note that 10.7 percent of respondents could not remember if they accepted full or partial value, so the actual percentage likely is higher). About 25 percent of these farmers received 90 percent of appraised value, and half received 80 percent or more of the appraised value.

Common reasons for accepting less than full value included because that is what was offered (35 percent), being misinformed (14 percent), thought selling was worthwhile (10 percent), and it was either the county's policy or not enough program money was available locally (18 percent). The vast majority of respondents (88 percent) accepted the county appraisal of the easement value. Only about 10 percent of the respondents hired their own independent appraisal.

The majority of the respondents received the sale proceeds as a lump sum payment (78 percent of respondents), with installment payments (14 percent) and like-kind-exchanges (8 percent) accounting for the rest of the sales. The majority of the like-kind-exchanges (78 percent) were for other farm property.

Surprisingly, about 80 percent of the respondents reported that the easement sale did not reduce their land's assessed value for property taxes, even though the sale presumably would reduce its market value. If these reports are accurate, this reduces the benefits of participating in the program and suggests that better coordination is needed between county program boards and county assessment offices.

Reasons for the sale

Participants identified a variety of reasons they sold the conservation easement. Preventing development was the most commonly cited reason, being mentioned by over 75 percent of respondents. Needing cash was the second most common reason, being cited by about 24 percent of respondents. Several other commonly mentioned reasons also related to financial concerns, such as cash flow (15 percent), farm maintenance (2 percent), and paying debt (9 percent).

Impact on the farms

How easement sales affect farms is an important issue. Six of the 131 farms were no longer owned by the families that sold the easement. Only two of the farms were reported as no longer being actively farmed, both of which are still owned by the original family.

The vast majority of farms did not change their type of operation after the easement sale. About 10 percent of the farms, however, do have a different main agricultural product now than they did previous to the easement sale (this compares to 9 percent of the participants in the program's first three years). Dairy farms were the most likely to change operations, with about 14 percent of dairy farms switching to cash grain production. Likely such farms simply sold their herd and have continued their normal field work.

Respondents used their sale proceeds for a variety of different purposes. The most common purpose was financial investments (such as savings, certificates of deposit, mutual funds, or stocks) (46.7 percent), but many other were directly related to improving the financial health of the farm. This included decreasing mortgage debt on the farm (45 percent), reducing debt from operating loans (26 percent), and purchasing farm machinery (19 percent) or livestock (3 percent). Twenty of the respondents (15.2 percent) reported using at least some of the sale proceeds to purchase a farm or farmland, which increases the farmland preserving impact of the PACE program. Seven of these farmers used all of their proceeds to purchase another farm. A total of 2,043 additional acres were purchased in this way by farmers with PACE funds.

Participants' satisfaction with the program

The respondents expressed overall satisfaction with the PACE program. Less than 4 percent of respondents were unsatisfied or very unsatisfied with the program or their experience with county program staff.

The implications of participants' experience with Pennsylvania's PACE program, and of recent developments, will be explored in the second part of this article, which will appear in the next issue of the *Agricultural Law Update*.

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The Agricultural Risk Protection Act of 2000: the Non-Insured Crop Disaster Assistance Program, and the domestic commodity and other farm programs

By Christopher R. Kelley

On June 20, 2000, President Clinton signed the Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, 114 Stat. 358. The Act makes significant changes to the federal crop insurance program and to the Non-Insured Crop Disaster Assistance Program (NAP). It also provides for direct financial assistance to producers of various crops; makes certain changes to the USDA's nutrition, commodity, and credit programs; funds biomass research and development; and establishes the Plant Protection Act as an omnibus means for regulating the movement of plant pests, plants, plant products, biological control organisms, noxious weeds, and related matters.

This article describes the major changes made to NAP and the domestic commodity and other farm programs. Citations are omitted because of space limitations. An electronic version with citations is available from the author at <crkelley@mindspring.com>.

The Non-Insured Crop Disaster Assistance Program (NAP)

The Non-Insured Crop Disaster Assistance Program (NAP) provides assistance to producers of crops that are not covered by federal crop insurance. It is, in effect, a disaster assistance program, not an insurance program. Because it is not an insurance program, it is administered by the USDA Farm Service Agency rather than the FCIC. The assistance it provides is equivalent to the coverage provided under federal crop insurance at the catastrophic risk protection (CAT) level.

The Agricultural Risk Protection Act makes several changes to NAP, including the elimination of the "area loss" requirement and the assessment of "service fees" for the receipt of NAP benefits. These changes will take effect beginning in the 2001 crop year.

The Act eliminates the "area loss" requirement. Under the law as it existed previously, an individual producer who had suffered a qualifying individual loss could not receive NAP benefits unless other producers in the geographic area in which the producer was located had suffered, in the aggregate, a qualifying loss.

The Act also requires producers to submit a service fee with their application for NAP that is equal to the lessor of $100.00 per crop per county or $300 per producer per county, but not to exceed a total of $900 per producer. This fee will be waived for limited resource farmers.

Under the Act, the loss of the non-insured commodity must still have been caused by a drought, flood, natural disaster as provided in section (a)(3) of the pre-existing statute. The Act's loss requirement provision, however, changes the loss requirement by repealing the pre-existing loss requirement that included an area loss requirement. The Act's loss requirement provision provides as follows:

(1) Cause.–To be eligible for assistance under this section, a producer of an eligible crop shall have suffered a loss of a noninsured commodity as the result of a cause described in subsection (a)(3).

(2) Assistance.–On making a determination described in subsection (a)(3), the Secretary shall provide assistance under this section to producers of an eligible crop that have suffered a loss as a result of the cause described in subsection (a)(3).

(3) Prevented Planting.–Subject to paragraph 1, the Secretary shall make a prevented planting uninsured 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, as determined by the Secretary.

(4) Area Trigger.–The Secretary shall provide assistance to individual producers without any requirement of an area loss.

The Act amends the NAP statute in other respects, including the following:

- The provisions relating to eligible crops are expanded to include, at the option of the Secretary, all types or varieties of an otherwise eligible crop. Such types and varieties are to be considered a single eligible crop for NAP purposes.
- Producers must make an application for NAP "not later than 30 days before the beginning of the coverage period, as determined by the Secretary."
- As a condition of eligibility for NAP benefits, a producer "must provide annually to the Secretary records of crop acreage, acreage yields, and production for each crop, as required by the Secretary."

Domestic commodity programs and other farm programs

Many of commodity and other farm program provisions of the Agricultural Risk Protection Act of 2000 directly affect agricultural producers. Of special importance to producers are the Act's provisions for direct financial assistance to producers of various crops. The most significant of these are direct payments to persons who are parties to production flexibility contracts and to producers of certain crops not covered by production flexibility contracts. Other assistance is provided to producers of certain crops through surplus crop purchases, low interest rate loans, or both. While most of this assistance is intended to at least partially compensate its recipients for market losses caused by low prices, some of it is intended to offset losses caused by natural disasters or plant or animal diseases.

The Act also changes some Farm Service Agency (FSA)-administered commodity and credit program rules. Some of these changes are for a single crop year or other limited period.

Various research projects are authorized and funded under the Act. While these projects are not discussed here because they do not directly involve agricultural producers, a grant program relating to value-added agricultural product market develop is described because that program makes funds available directly to producers.

Finally, the Act provides financial assistance for farmland protection and on-farm conservation measures. This assistance, along with the market loss assistance measures, program changes, and the value-added grant program, are described below.

Market loss, natural disaster, and disease assistance

<u>Market Loss Assistance for Production Flexibility Contract Payment Recipients</u>

Since 1996, production flexibility contract payments have been the primary mechanism for supporting the income of persons who own or operate land that historically had been enrolled in one or more of the acreage reduction programs for feed grains, wheat, upland cotton, and rice. These payments originated under a title of the Federal Agricultural Improvement and Reform Act of 1996 known as the "Agricultural Market Transition Act" (AMTA). These payments, therefore, are sometimes called "AMTA payments." The payment delivery mechanism, however, is a standardized production flexibility contract (PFC) between the Commodity Credit Corporation and eligible landowners and producers. For this reason, this article refers to these payments as "PFC payments."

PFC payments were controversial in 1996, and they remain so today. When

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the AMTA was first enacted, Congress authorized expenditures in excess of $35 billion for PFC payments over the seven-year term of the contracts from fiscal year 1996 through fiscal year 2002. One of the touted virtues of these payments was the budgetary certainty a seven-year stream of fixed annual payments provided.

This virtue has turned out to be illusory. Although the originally established PFC payment sums have not changed, Congress has supplemented them in 1998, 1999, and 2000 with additional payments known as "market loss assistance payments." As a result, the amount of direct income support payments to farmers and landowners has changed from year to year for three fiscal years.

The Agricultural Risk Protection Act provides for market loss assistance payments to landowners and producers who are eligible to receive production flexibility contract payments in fiscal year 2000. As a result of the supplementation of PFC payments for fiscal years 1998, 1999, and now 2000, an additional amount totaling in excess of $13 billion will have been paid to contract holders as of the fifth year of the PFC program.

More specifically, in 1998 Congress appropriated $3.057 billion to supplement PFC payments for fiscal year 1998. This appropriation effectively provided a 50 percent increase in PFC payments for fiscal year 1998. In fiscal year 1999, the total amount of the PFC supplements was approximately $5.5 billion. This amount effectively doubled the amount of PFC payments in fiscal year 1999.

The amount appropriated by the Agricultural Risk Protection Act follows the formula used for the 1999 fiscal year. Therefore, in fiscal year 2000 individual PFC payments will be doubled so that the total amount of the PFC payments in fiscal year 2000 will exceed $10 billion. The payments will be made between September 1 and September 30, 2000.

Market loss assistance for producers of oilseeds

The Agricultural Risk Protection Act authorizes $500 million in payments to producers of the 2000 crop of oilseeds who are eligible to obtain a marketing assistance loan. Individual payment amounts will be determined by multiplying the producer's acreage and yield of oilseeds by a payment rate determined by the Secretary.

For purposes of the individual payment formula, a producer's acreage will be "equal to the number of acres planted to the oilseed by the producer[] on the farm during the 1997, 1998, or 1999 crop year, whichever is greatest, as reported by the producer[] on the farm to the Secretary (including any acreage reports that are filed late)." A producer who planted oilseeds in the 2000 crop year, but not in 1997, 1998, or 1999, will have an acreage equal to the reported acreage in the 2000 crop year, including the acreage shown on any late-filed acreage reports.

A producer's yield, for purposes of the payment formula, will depend on whether the crop planted is soybeans or another oilseed. For soybeans, the yield for producers other than "new producers" will be equal to the greatest of either of the following yields:

(A) the average county yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or

(B) the actual yield of the producers on the farm for the 1997, 1998, or 1999 crop year.

The yield for producers of other oilseeds, except for "new producers," will be equal to the greatest of either of the following yields:

(A) the average national yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or

(B) the actual yield of the producers on the farm for the 1997, 1998, or 1999 crop year.

"New producers" are those who planted an oilseed in the 2000 crop year, but who did not plant an oilseed in the 1997 through 1999 crop years. The yield for these producers will be equal to the greater of the following yields:

(A) the average county yield per harvested acre for each of the 1995 through 1999 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or

(B) the actual yield of the producers on the farm for the 2000 crop.

Market loss and disease assistance for specialty crops

The Agricultural Risk Protection Act authorizes the Secretary to spend $200 million "to purchase specialty crops that have experienced low prices during the 1998 or 1999 crop years, including apples, black-eyed peas, cherries, citrus, cranberries, onions, melons, peaches, and potatoes. In addition, the Secretary is directed to spend $25 million to compensate certain growers whose crops were affected by plum pox virus, Pierce's disease, or, with respect to commercial producers only, citrus canker. Another $5 million is made available for low-interest loans for terms of up to three years to apple producers who are suffering economic loss as the result of low prices for apples. With the exception of the funds made available for loans to apple producers, these funds are to be expended in the 2001 fiscal year.

Market loss assistance for peanuts

The Agricultural Risk Protection Act requires the Secretary to make payments to producers of quota or additional peanuts for the 2000 crop year to partially compensate them for low prices and increased costs of production. The amount paid to producers on a farm will be equal to the product obtained by multiplying the following:

(A) the quantity of quota peanuts or additional peanuts produced or considered produced by the producers; and

(B) a payment rate equal to–

(i) in the case of quota peanuts, $30.50 per ton;

(ii) in the case of additional peanuts, $16.00 per ton.

Market loss assistance for tobacco

The Agricultural Risk Protection Act authorizes the expenditure of $340 million to make payments to producers of certain varieties of tobacco. Eligible producers are those whose farm's quota was reduced from the 1999 crop year to 2000 crop year and who use the farm to grow eligible tobacco during the 2000 crop year. Eligible tobacco are types 11, 12, 13, and 14 of flue-cured tobacco; type 21 of fire-cured tobacco; type 31 of burley tobacco; and cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 54, and 55.

The available funds are to be allocated among the tobacco-growing states in amounts specified in the Act and then further allocated among the farms in each state based on each farm's "quota of eligible tobacco available to each farm of an eligible person for the 2000 crop year." The funds available to each farm are then divided among the eligible persons who are quota owners, quota lessees, and tobacco producers on farms in the state under a formula that takes into account whether the state is a party to the National Tobacco Grower Settlement Trust. Payments to eligible producers in Georgia are conditioned on the state paying eligible producers an equal amount in the same manner as the federal funds would be paid in Georgia, but not to exceed $13 million.

Market loss assistance of honey producers

The Agricultural Risk Protection Act requires the Secretary to make recourse loans available to producers of the 2000 crop of honey. The loan rate will be "equal to 85 percent of the average price of honey during the 5-crop year period preceding the 2000 crop year, excluding the

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crop year in which the average price of honey was the highest and the crop year in which the average price of honey was the lowest in the period."

Market loss assistance for wool and mohair producers

The Agricultural Risk Protection Act directs the Secretary to make payments to wool and mohair producers for the 1999 marketing year at the rate of 20 cents per pound for wool and 40 cents per pound for mohair.

Market loss assistance for producers and first-handlers of cottonseed

The Agricultural Risk Protection Act provides for $100 million to assist producers and first-handlers of the 2000 crop of cottonseed.

Crop and pasture flood compensation program

The Agricultural Risk Protection Act provides for $24 million to compensate producers whose land was rendered unusable as the result of long-term flooding during the 2000 crop year. In addition to being unusable for agricultural production during the 2000 crop year because of flooding, the land must have been used for agricultural production during at least one of the 1992 through 1999 crop years, be a contiguous parcel of at least one acre, and be located in a county in which producers were eligible for assistance under the 1998 Flood Compensation Program.

Certain lands are excluded. These excluded lands include those for which the producer had federal crop insurance; those for which the producer applied for non-insured crop disaster assistance program (NAP) benefits or any crop disaster program established for the 2000 crop year; and those that were enrolled in the Conservation Reserve Program, the Wetland Reserve Program, "any emergency watershed protection program or Federal easement program that prohibits crop production or grazing ...[,] or any other Federal or State water storage program, as determined by the Secretary." Payments under this program are limited to $40,000 per person.

Animal disease assistance

The Agricultural Risk Protection Act makes available $7 million to cover pseudorabies vaccination costs incurred by pork producers. Another $6 million is authorized to respond to bovine tuberculosis in Michigan. These funds are to be expended in the 2001 fiscal year.

Loans for seed producers affected by the AgriBiotech bankruptcy

The Agricultural Risk Protection Act authorizes over $35 million to make and administer loans to producers of the 1999 crop of grass, forage, vegetable, and sorghum seed who have not received payments because of the bankruptcy of AgriBiotech. The loans are interest-free and become due on the earlier of the distribution of the assets in the bankruptcy proceeding or eighteen months after the loan was made. However, if a borrower receives less than the loan amount in the final distribution of assets in the bankruptcy proceedings, the balance of the loan can be "converted, but not refinanced, to a loan that has the same terms and conditions as an operating loan under subtitle B of the Consolidated Farm and Rural Development Act...." The funds for these loans are to be expended in the 2001 fiscal year.

This is at least the second time in recent years that Congress has provided assistance to producers who suffered losses as the result of the bankruptcy of a purchaser or warehouseman of their products. In 1999, Congress contributed $5 million dollars to a indemnity fund established by the State of Georgia to compensate cotton producers for the loss of stored cotton as the result of the bankruptcy of a warehouse where the cotton had been delivered.

Changes to domestic commodity programs

Payments for grazed wheat, barley, and oats

Beginning with the 2001 crop year, producers who would be eligible for a loan deficiency payment (LDP) for wheat, barley, or oats but who elect to use their acreage planted to one or more of these crops for livestock grazing may receive a payment if they agree not to harvest any of the wheat, barley, or oats on the acreage used for grazing. The payment amount will be equal to the amount determined by multiplying the following:

(1) the loan deficiency payment rate determined [under existing law] in effect, as of the date of the agreement, for the county in which the farm is located; by

(2) the payment quantity determined by multiplying–

(A) the quantity of the grazed acreage on the farm with respect to which the producer elects to forgo harvesting of wheat, barley, or oats; and

(B) the greater of–

(i) the established yield for the crop on the farm;

or

(ii) the average county yield per harvested acre of the crop, as determined by the Secretary.

These payments are to be made at the same time and in the same manner as LDP payments, but not later than September 30, 2001. The Secretary is required to establish an availability period for these payments that is consistent with the availability period for marketing assistance loans for wheat, barley, and oats.

Expanded eligibility for loan deficiency payments

The Agricultural Risk Protection Act expands the availability of loan deficiency payments (LDP) for the 2000 crop year by making such payments available to producers who are not parties to a production flexibility contract but who nonetheless produce a commodity that would be covered by such a contract if they were parties to one. In effect, this provision suspends, for the 2000 crop year, the rule that only producers who have entered into a production flexibility contract can obtain LDP payments for feed grains, wheat, upland cotton, and rice.

Producers who apply for an LDP payment must have a "beneficial interest" in the commodity. In light of the Act's provision expanding the availability of LDP payments for the 2000 crop year, the Act provides that a producer who seeks the benefits of this expanded availability of LDP payments is excepted from the beneficial interest requirement for a 30-day period after the promulgation of regulations implementing the provision. Otherwise, the beneficial interest requirement applies to all producers who seek an LDP payment.

Tobacco quotas

The Agricultural Risk Protection Act eliminates the ten-acre limitation on transfers of allotments or quotas on fire-cured, dark air-cured, or Virginia sun-cured tobacco. It also gives the Secretary the authority to forego making a downward adjustment in the inventories of the producer associations of burley tobacco for any of the 2001 or subsequent crop years if the Secretary determines that the non-committed pool stocks are equal to or less than the established reserve stock level.

Other changes include the imposition of a limit of 15 percent of the quota on the transfer of the total quantity of burley quota due to natural disasters. In addition, persons who own a farm that has a burley tobacco marketing quota are required to file an annual acreage report for the farm's burley tobacco, and the Secretary is required to establish a computer recording system for this information. The Act also requires the Secretary to permit the parties to a sale of a farm with a burley tobacco marketing quota to determine the percentage of the quota that is transferred with the acreage.

Finally, the Act responds to recent court decisions that invalidated statewide referenda in Indiana and Kentucky

relating to the lease and transfer of burley tobacco quotas within those states. These decisions construed the statutory language authorizing the referenda as requiring the approval of a majority of all active burley tobacco growers within the state, not just a majority of those voting in the referenda. While these decisions applied only to the referenda in Indiana and Kentucky, the same language is found in the statutory authorizations for referenda in Ohio, Tennessee, and Virginia. In response to these decisions, the Act permits the Secretary to permit the lease and transfer of burley tobacco quota within the states of Tennessee, Ohio, Indiana, Kentucky, and Virginia "if, in a statewide referendum conducted by the Secretary, a majority of the active burley tobacco producers voting in the referendum approve the use of that type of lease and transfer."

Provisions relating to credit programs, 1999 crop loss assistance, and USDA Field Office combinations

Farm Service Agency credit programs: temporary direct loan priorities and temporary suspension of graduation requirements

The Agricultural Risk Protection Act requires the FSA, during the period from the Act's date of enactment to December 31, 2002, to give priority in the making of direct loans to a qualified beginning farmer or rancher who either has not operated a farm or ranch or who has not done so for more than five years in making direct farm operating loans.

The Act also suspends, for the period from the Act's date of enactment to December 31, 2002, the graduation requirements applicable to borrowers with direct or guaranteed operating loans. It accomplishes this by suspending the force and effect of 7 U.S.C. §§ 1941(c) and 1949 during this period.

1999 crop loss assistance: non-recognition of change in producer's legal status

In 1998 and 1999 Congress passed "ad hoc" crop disaster assistance programs known as "crop loss assistance programs." With respect to the 1999 crop loss assistance program, some producers were deemed ineligible because, as of the time for applying for benefits, they were no longer in existence as a result of a subsequent change in the legal structure of the entity. The Agricultural Risk Protection Act provides that such producers are eligible for benefits they would have received had they not changed their legal structure, minus any benefits they actually did receive directly or indirectly based on the acreage eligible for assistance.

Temporary suspension of authority to combine certain USDA field offices

The Agricultural Risk Protection Act suspends for the period beginning on the date of the Act's enactment and ending on June 1, 2001, the authority of the Secretary to combine at the state level the offices of the Farm Service Agency, the Natural Resources Conservation Service, the Rural Utilities Service, the Rural Housing Service, and the Rural Business-Cooperative Service. The Secretary must also describe in a report to Congress to be submitted by April 1, 2001, any proposed combination of these offices and must include in the report a certification that the proposed combination "would result in the lowest cost to the Federal Government over the long term."

Conservation assistance

The Agricultural Risk Protection Act authorizes the appropriation of $10 million to make payments to state and local governments and Indian tribes, including farmland protection boards and resource councils, and certain private organizations to carry out the farmland protection programs authorized by the Federal Agriculture Improvement and Reform Act.

The Act also appropriates $40 million to provide financial assistance in the form of cost-share or incentive payments to farmers and ranchers for the following purposes:

(A) addressing threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat;

(B) complying with Federal and State environmental laws; and

(c) making beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management land uses, or other measures needed to conserve and improve soil, water, and related natural resources.

Value-added agricultural product market development grants

The Agricultural Risk Protection Act makes available $15 million for the Secretary to make competitive grants to independent producers of value-added agricultural commodities and the products of agricultural commodities. These grants are to be for the purpose of assisting the grant recipients with the development of business plans and marketing strategies. Individual grants are limited to $500,000. The funds for these grants are to be expended in the 2001 fiscal year.

CAFOS / *Continued from page 1*

(NPDES) permitting process under the Clean Water Act. OWM reports that relatively few existing CAFO's have applied for NPDES permits. This resulted mostly from a regulatory provision allowing those operations otherwise meeting the CAFO designation to avoid the permitting process if discharge resulted only from a 25-year/24-hour storm event. The proposed rule would remove the catastrophic or chronic storm provision so that any operation meeting the regulatory definition of a CAFO would be deemed in violation of the Clean Water Act if it had not at least applied for a permit.

Other major CAFO rule changes proposed by EPA include: 1) revising the vegetative cover criterion for dirt lot operations; 2) removing the discharge requirement for operations above a certain number of head; 3) changing from an animal unit basis to a per head basis for CAFO designation and lowering the current size threshold; 4) adding dry litter poultry operations as a new category subject to permitting; 5) including immature animals in the threshold calculations for CAFO designation; 6) changing the criteria for CAFO's designated under a case-by-case basis by eliminating the requirement for on-site inspection prior to designation; 7) requiring that integrators be co-permitted with CAFO operators; 8) modifying the CAFO definition to include land application areas used for manure spreading and requiring a nutrient plan as part of the permit; 9) imposing record keeping and reporting requirements; and 10) insuring proper closure by imposition of a bonding requirement.

EPA's Outreach document also includes several proposed changes to the Effluent Limitation Guidelines (ELG). These changes generally comport with those proposed for CAFO's. The proposals can be briefly summarized as follows: 1) applying ELG to all designated CAFO's rather than just those with 1000 or more animal units; 2) applying ELG to dry manure handling for poultry operations; 3) maintaining a zero discharge standard while incorporating: application rates and setback requirements for manure spreading; monitoring requirements; dry manure handling requirements, and methane capture requirements for liquid manure systems; and 4) imposing New Source Performance Standards on new operations.

It is still too early to tell whether all of the changes advanced by EPA will be incorporated into the final rules. Practitioners with clients who may be affected by the outcome should keep abreast of the process as it develops.

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