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## NRCS, FSA, and USDA NAD adopt new appeal rules

The Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), USDA National Appeals Division (USDA NAD), Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service published interim final rules governing their respective appeal procedures on December 29, 1995. 60 Fed. Reg. 67,296-319 (1995). Most of the rules became effective on January 16, 1996, but they remain open for public comment until March 28, 1996.

The NRCS makes certain technical determinations with respect to programs administered by the FSA. For example, the NRCS determines whether land is highly erodible for "sodbuster" purposes and whether a site is a wetland for "swampbuster" purposes. Under the new NRCS appeal rules, such determinations initially will be made as preliminary technical determinations.

The new NRCS appeal rules specify the procedures under which a landowner or an affected farm program participant may mediate and appeal preliminary technical determinations made by the NRCS. Appealable determinations include those that are "adverse" to a program participant within the meaning of the USDA NAD rules and those that affect the "legal substantive status of the land," although not necessarily adverse. *Id.* at 67,313 (to be codified at 7 C.F.R. § 614.2). NRCS determinations regarding highly erodible land, wetland conservation, the Wetland Reserve Program, the CRP, and other programs administered by the FSA are covered by these procedures. *Id.* at 67,314 (to be codified at 7 C.F.R. § 614.100); *see also id.* at 67,314-15 (to be codified at 7 C.F.R. §§ 614.200-204) (specifying appeal procedures for the Great Plains Conservation Program and other programs not administered in conjunction with the FSA).

The new NRCS appeal rules require that all preliminary technical determinations made by the NRCS on or after January 16, 1996, must be in writing. *Id.* at 67,314 (to be codified at 7 C.F.R. § 614.101). The landowner must be told that the determination will become final in thirty days unless the landowner or the program participant requests a field visit or mediation or both. *Id.*

During the field visit the NRCS will gather additional information and discuss the facts and the preliminary technical determination with the landowner or the program participant. Usually the NRCS district conservationist will conduct the visit. At the local conservation district's option, a district representative may also participate. *Id.*

If mediation is requested, mediation will be conducted under a USDA-certified state mediation program. If the state does not have a certified mediation program, the mediator will be a qualified local conservation district representative or another individual selected by the NRCS and the affected parties. The mediator can only help the parties reach an agreement; the mediator cannot make a binding decision. Although no time limit is

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## Agricultural law on the Internet

Even a computer novice can discover a wealth of valuable agricultural law information on the World Wide Web of the Internet. This article reviews the author's recent search of the net for agricultural law sources. It in no way purports to be an exhaustive list and apologies are expressed to sponsors of relevant Internet sites that have been missed.

Many of the sites explored are linked, so once one finds a home page for a particular site, that page is likely to contain links to other topically related pages. This allows one to skip from one site to another without a final destination in mind. This was essentially the path that was followed in the preparation of this article, but after the fact, the sites discovered were grouped according to the following somewhat overlapping categories: Agricultural Policy, Agricultural and Other Laws, Agriculture, and USDA Sources. Please note that when a WWW address is provided at the end of a sentence, a period may follow the address. This period is not part of the address, but just signals the end of the sentence. All addresses are to sites on the World Wide Web (WWW).

### Agricultural Policy

There are a number of excellent resources for policy articles and information updates on agricultural policy discussions concerning the 1995 (1996?) Farm Bill. For example, the University of Nebraska, Institute of Agriculture & Natural Resources (IANR) has a home

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imposed on the mediation process, the parties have thirty days after mediation to reach an agreement consistent with applicable laws. *Id.* at 67,314-15 (to be codified at 7 C.F.R. § 614.102).

If neither the field visit nor the mediation produces a mutual agreement, the preliminary technical determination becomes final. *Id.* at 67,315 (to be codified at 7 C.F.R. § 614.103). If the appeal concerns a determination or decision related to a program administered by the FSA, the determination may then be appealed by the program participant to the appropriate FSA county or area committee. *Id.* at 67,315 (to be codified at 7 C.F.R. § 614.104). Under the FSA's appeal rules, the appeal must be made within thirty days after the final determination is mailed or made available to the landowner or the program participant. *Id.* at 67,318 (to be codified at 7 C.F.R. § 780.8). Appeals relating to programs administered only by the NRCS may be appealed to the State Conservationist or the USDA NAD. *Id.* at 67,315 (to be codified at 7 C.F.R. § 614.204).

The FSA county or area committee may hear testimony, receive evidence, and conduct a field visit. *Id.* (to be codified at 7 C.F.R. § 614.104). Under the FSA's appeal rules, if the committee agrees with the par-

ticipant, the committee must refer the case and the committee's findings to the NRCS State Conservationist. The final committee decision must be consistent with the State Conservationist's technical determination. *Id.* at 67,318 (to be codified at 7 C.F.R. § 780.9).

If only a NRCS technical determination is disputed, the participant may appeal the FSA county or area committee's decision to the USDA National Appeals Division (USDA NAD). *Id.* at 67,315 (to be codified at 7 C.F.R. § 614.104). If a FSA determination based on the NRCS technical determination is also disputed, the participant may appeal to the FSA state committee or to the USDA NAD. *Id.* at 67,317-18 (to be codified at 7 C.F.R. § 780.7). If adverse to the participant, the FSA state committee's decision may be appealed to the USDA NAD. *Id.*

The new FSA appeal rules provide that FSA determinations also may be mediated before an appeal is taken to the USDA NAD, although the new regulations do not clearly provide when that mediation must be requested or whether the FSA mediation will occur in conjunction with NRCS mediation if an NRCS preliminary technical determination is also at issue. *Id.* at 67,317 (to be codified at 7 C.F.R. § 780.8). Mediation is to be conducted under state programs certified by the Secretary for the program involved in the decision. *Id.*

In general, the new FSA appeal rules provide for reconsideration of county and state committee determinations and for review of county committee determinations by the state committee. *Id.* at 67,317-18 (to be codified at 7 C.F.R. § 780.7). Requests for reconsideration or review must be made within thirty days of the mailing or the making available of the adverse decision. *Id.* at 67,318 (to be codified at 7 C.F.R. § 780.8).

The new rules of procedure for the USDA NAD became effective on January 16, 1996, although certain rules relating to the USDA NAD Director's review of hearing officer decisions apply retroactively back to October 20, 1994. *Id.* at 67,298-99. No explanation is offered for applying only the Director review rules retroactively.

Created pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act enacted by Congress in 1994, the USDA NAD has been in operation since October 20, 1994. The new procedures, however, will change in several respects the way that the USDA NAD processes appeals.

For example, the new rules require program participants to appeal to their local FSA county or area committee before appealing to the USDA NAD if the adverse decision being challenged was made by an FSA official or employee, not the committee. *Id.* at 67,309 (to be codified at 7 C.F.R. § 11.5(a)). If the committee made the adverse decision, the program participant may appeal directly to the USDA NAD. Alternatively, the participant may appeal to the FSA state committee before appealing to the USDA NAD. *Id.* (to be codified at 7 C.F.R. § 11.5(b)).

The new rules make changes to the proce-

dures under which the USDA NAD Director will review hearing officer decisions. During the past year, when the FSA appealed hearing officer decisions it did not send a copy of its appeal documents to the program participant. Because the Director must decide agency appeals within ten days, program participants often learned of the appeal only a few days before the Director's decision was rendered. As a result, program participants had little or no opportunity to challenge statements made in the FSA's appeal documents.

Under the new rules, if either the agency or the program participant appeals a hearing officer's decision to the Director, the appealing party must provide the other party with a copy of the appeal documents. The other party will have five days from the receipt of the appeal documents to respond to the statements made in them. *Id.* at 67,312 (to be codified at 7 C.F.R. § 11.9).

The new rules also give the agency and the program participant an opportunity to request reconsideration of the Director's decision. This opportunity was not previously available. The request for reconsideration must be made within ten days of receipt of the Director's determination. It must be supported by a detailed statement setting forth the material factual or legal errors in the Director's determination. If the request meets these criteria, the other party has five days after receiving notice from the Director to respond. *Id.* at 67,313 (to be codified at 7 C.F.R. § 11.11).

Program participants who receive an adverse decision made by the FSA or another agency whose decisions may be appealed to the USDA NAD should review the new rules carefully. Time limitations apply to the exercise of various appeal rights, and the failure to abide by these limitations may result in the loss of appeal rights. Because these appeal rights must be exhausted before seeking judicial review, the failure to properly perfect an appeal at each level may also preclude judicial review as well.

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## Federal Register in brief

The following is a selection of matters that were published in the *Federal Register* from December 15, 1995 to January 19, 1996.

1. CCC; Agreements for the development of foreign markets for agricultural commodities; proposed rule; comments due 2/9/96. 61 Fed. Reg. 704.

2. PSA; Official/unofficial weighing service; final rule; effective date 12/19/95. 60 Fed. Reg. 65235.

3. IRS; Generation-skipping transfer tax; final and temporary regulations; effective date 12/27/95. 60 Fed. Reg. 66898.

4. USDA; NAD procedure rules; adverse decisions appeals procedure and jurisdiction; interim final rule; effective date 1/16/96; comments due 3/28/96. 60 Fed. Reg. 67298.

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If you desire a copy of any article or further information, please contact the Law School Library nearest your office.

—Drew L. Kershen, University of Oklahoma, Norman, OK

## Environmental policy and the 1995 Farm Bill

By Michael R. Dicks

Although the 1995 Farm Bill went unwritten in 1995, the budget reconciliation bills and various conservation bills proposed by the House, Senate, and Administration make clear the policy boundaries. From these boundaries, the direction of the debate and the relative importance of various issues may be inferred.

In general, new agricultural legislation will most likely accelerate the ten-year trend of reducing government involvement in agricultural markets, shift the allocation of financial resources available to agriculture away from food programs for the first time, and hold a somewhat steady course in addressing the environmental consequences of agricultural production. The "farm" debate has, to this point, had little to do with allocating resources to increase either equity or efficiency in agriculture; rather the debate has been focused on determining how to modify existing programs to obtain a desired level of budget outlays (now \$43.4 billion over seven years).

The agricultural committees thus far have not sought to define a comprehensive agricultural policy that improves sector performance or compensates those that have been displaced or harmed by the rapid, technology-stimulated productivity growth. This is the real "revolution" in agricultural policy; not the elimination of government involvement. Farm policy began in the 1930s to assist agricultural producers by stabilizing farm prices and incomes. In the 1980s the goal of attaining increased environmental benefits was added. The 1995 debate focused almost entirely on commodity program outlays and any explicit goal for agriculture was absent. The debate was focused not on determining how to achieve well-defined goals and at what cost, but on determining the best way to cut the level of federal expenditures to agriculture. Unfortunately, determining the implications of the budget cuts is difficult without clearly defined policy goals.

The budget reconciliation bill acted on thus far is designed to achieve savings in federal expenditures, but will also change how the sector operates. The policies in the reconciliation bill now on President Clinton's desk will likely become part of the omnibus farm legislation that may be developed toward the end of the year. Numerous other bills dealing with the environment, food safety, trade, and labor may also find their way into the omnibus farm legislation. This paper will provide a general discussion of the 1995 farm debate, the current and future potential integration of conservation/

environmental (CE) policy into new farm legislation, and an overview of the CE bills offered during the 104th Congress and how they may be integrated into future omnibus farm legislation.

### Background

Since direct federal involvement in agricultural markets began in 1933, there have been several major ("revolutionary") changes in farm policy. One such major shift in agricultural policy occurred in 1985. For the first time in nearly six decades, government support for agriculture was reduced. Agricultural policy was refocused towards liberalizing commodity markets and providing environmental amenities in return for receiving government support. For the first time in this century, society expressed (through legislation) its desire to receive greater benefits from farm programs at lower costs. A growing number of members of Congress argued that it was time to remove government from agriculture and allow markets to work. They argued that agriculture would become more competitive and could achieve increased world market share if markets were allowed to allocate resources unfettered by the government. While one group in Congress sought to eliminate federal farm subsidies, another sought to increase the regulations necessary to insure that production agriculture meets specific environmental standards. Still others sought the status quo. Proposals aimed at setting higher grazing fees and imposing increasingly strict land use, waste management, and water use regulations were abundant.

The novel actions initiated during the 1985 farm bill debate have become mainstream in the 1995 farm bill debate. The action of Congress in the Budget Reconciliation Act of 1996 regarding agricultural programs will affect the environment indirectly through reform of commodity programs and directly through the modification of or absence of action to extend conservation programs. The combination of commodity and conservation programs will define how Congress views the relative importance of specific, agriculture-related environmental problems and how these problems may best be solved. At this point in the debate, the general theme appears to be that agriculture is a thriving industry and needs little assistance to continue to thrive. However, this general theme is marked with numerous exceptions that suggest an inability of agricultural markets to efficiently and equitably allocate resources. The market for CE amenities is one example where a perceived need for government involvement exists.

### CE programs

CE programs have been part of federal policy since the middle of the nineteenth century, but they did not become an active

strategy within agricultural policy until after the 1930s dust bowl, which led to the formation of the Soil Erosion Service (SES). The SES became the Soil Conservation Service in the late 1930s (now called the Natural Resource Conservation Service) and was charged with providing technical assistance to guarantee the continued productivity of America's vast farmland. The focus of conservation was on the improvement of production resources for the next five decades.

The Conservation Title was created in the food Security Act of 1985. Two subtitles provided a distinct change from past policy and crossed grounds previously held sacred — private property rights. The Highly Erodible Lands Conservation (HEL) subtitle and Wetlands Conservation subtitle were the first semi-regulatory land use restrictions in agricultural policy. The implementation of these provisions has led to controversy that remains on the public agenda today. The Conservation title initiated the shift in focus of the conservation efforts within farm legislation to ameliorating the adverse consequences of agricultural production on the nation's air, water, and soil resources. These efforts would no longer attempt to achieve this goal by providing positive incentives alone. The HEL and Wetlands provisions were the opening salvo in the battle over property rights.

Property rights are defined in terms of the initial ownership (allocation) of rights and the rules under which they may be exchanged. J.B. Braden, *Some Engineering Rights in Agricultural Land*, 64(1) *Am. J. Agric. Econ.* 19-27 (1982). Agriculture has always enjoyed fee simple ownership of land. The rules under which property may be exchanged can be summarized under three options: ordinary property rules, liability rules, and inalienability. G. Calabresi and A.D. Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 *Harv. L. Rev.* 1089-1128 (1972). With ordinary property rules, consent to an exchange of rights must be given in advance by all parties at an acceptable price, like normal market transactions. Under liability rules, prior consent to an exchange is not required, and prices are set by an "objective" (e.g., federal government) third party. With inalienability, the exchange of rights is disallowed under some or all circumstances.

The Food Security Act of 1985 (FSA) introduced a very subtle change in property rights. Prior to the FSA, the rights to exchange property in agriculture was conducted under ordinary rules. Voluntary soil conservation programs provided cost sharing for farmers to reduce soil erosion. Thus, the right of the farmer to lose soil was implied and the price of exchange was negotiated through cost share and technical assistance. The Conservation title used liabil-

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ity rules rather than property rules to minimize environmental disturbances. Congress placed specific requirements on how highly erodible lands and wetlands are managed. The price for failing to comply was the loss of all commodity program benefits.

The Food, Agriculture, Conservation and Trade Act of 1990 (FACTA90) provided for a further shift in the rules of exchange. The wetlands provision was changed to revoke commodity program benefits when wetlands are altered rather than when an agricultural commodity is produced on altered wetlands. While this may not be considered as a move from liability rules to inalienability rules because of the nature of the fine (loss of commodity program benefits), it comes very close. However, under the new meaning applied to section 404 of the Water Quality Act, Congress provided the federal government with the right to control any alterations or pollution in wetlands, invoking inalienability as the rules of exchange.

In just five years, the rules governing the exchange of rights had shifted from property rules to liability rules for most agricultural property (e.g. land, soil), while for others (e.g. wetlands), the shift has been far more significant, from property rules toward inalienability. This subtle change in the rules of property exchange has led to numerous battles over "takings," the loss of freedom to use land or water resources as the owner of these resources desires. Several court cases have refined previous takings definitions and numerous attempts have been made to legislate new rules regarding takings.

FACTA90 further reduced federal subsidies to agriculture and limited the penalty for failure to comply with the requirements of the HEL Conservation subtitle. In addition, the 1990 Farm Act added several new conservation oriented programs and requirements (e.g. mandatory pesticide record-keeping).

The Conservation title provisions have been criticized by environmentalists, academics, federal agencies, Congress, agricultural producers, and rural businesses as being too expensive, ineffective, and/or burdensome. These complaints, coupled with the new Republican promise of reducing unfunded mandates and regulatory burdens on American business and the reduction in federal farm subsidies, have led to many proposed changes in the Conservation title and other environmental laws. Several of the proposals for changes in the Conservation title have been introduced by the House and Senate. However, most of the bills introduced to date deal almost entirely with the Conservation Reserve Program (CRP).

The importance of CRP in the debate stems from its sheer size and budget relative to all other commodity and conservation programs. The CRP contains roughly 36 million cropland acres and requires annual expenditures of \$1.8 billion. The total federal outlays through agricultural programs on conservation are roughly \$2 billion. [This includes the direct expenditures only on the

Conservation Reserve Program, Agricultural Conservation Program, Great Plains Conservation Program, Rural Clean Water Program, Colorado River Salinity Control Program, Forestry Incentives Program, and other minor programs.] In addition, acreage idled under commodity programs to assist in stabilizing prices has averaged 25-30 million acres for the last two decades. However, only 5 million acres are now idled under annual land retirement programs (e.g., Acreage Reduction Program — ARP). Thus, the CRP, which pays landowners a per acre annual payment to idle land has been substituted for ARP, which offers no direct payment for the idled acres. The lucrative annual rental payments for the CRP participants, the potential for providing increased environmental amenities, and the positive price (and thus negative budget) impact of the program has led to its sustained popularity. Several bills have been introduced to extend and modify the CRP and other provisions of the Conservation title.

#### *Lugar-Leahy (S. 854)*

The Agricultural Resources Conservation Act of 1995 amended Subtitle D (Agricultural Resources Conservation Program) and Subtitle E (Administration) of the Food Security Act of 1985. The program shifted the focus of the CRP to provide equal emphasis on water quality, soil erosion, and wildlife benefits. Between 1985 and 1990, the CRP emphasized soil erosion and soil erodibility. Between 1990 and 1995, the CRP emphasized soil erosion, soil erodibility, and water quality. The level of expenditures was curbed from \$1.805 billion in fiscal year 1996 to \$1.221 billion for fiscal years 2000 through 2005.

The Environmental Quality Incentives Program (EQIP), was an amendment to the 1985 Act included in the 1990 Farm Act. Under the Lugar-Leahy proposal, the EQIP provides for a comprehensive conservation program that combines the Agricultural Conservation Program, Great Plains Conservation Program, Water Quality Incentives Program, and Colorado River Salinity Control Program into a single program. The purpose of this program was to have provided flexible and cost-effective technical assistance and cost share and incentive payments to farmers and ranchers engaged in crop and livestock production for various conservation practices, instead of retiring land from production. The new program was to have emphasized assistance to farmers and ranchers in complying with conservation compliance, swampbuster, and other state and federal environmental laws. While combining the programs may provide simplification in administration, little more would have been gained.

#### *Freedom to Farm Act (H.R. 2195)*

One of only two farm bills proposed by the members of the House Agricultural Committee, the Freedom to Farm Act (FFA), was not an omnibus bill. The bill contained only the provisions necessary to obtain required

budget savings. However, the FFA does continue the HEL and Wetlands conservation requirements and CRP. The CRP is authorized under the FFA to extend contracts to cap the CRP at 34.6 million acres but to pay only 75 percent of the current annual rental payment. Budget outlays are estimated to be reduced by \$570 million over seven years as a result of this change. This bill, offered by the House Agriculture Committee chairman, was developed to meet the two requirements dictated by the House leadership: "real reform" and \$13.4 billion seven-year savings.

#### *Agricultural Competitiveness Act (H.R. 2330)*

The second bill proposed in the House obtained the necessary budget reductions by increasing normal flexibility from 15 to 30 percent. The only conservation measure included in the bill was the reduction in spending to the CRP. The total for annual rental payments would have been reduced to \$753 million by 2002. This reduction, from \$1.2 billion to \$753 million, while attempting to shift the acreage enrollment to acreage with higher levels of environmental benefits would require that fewer than the projected (with \$1.2 billion) 15-20 million acres may be enrolled.

This bill was offered by Mr. Emerson (R-Mo.) and Mr. Combest (R-Tx.) as an alternative to Chairman Roberts' FFA. The National Cotton Council was adamantly opposed to any changes in the structure of the cotton program and sought the assistance of the representatives of the Southern cotton producing areas to oppose changes as found in the FFA. The two sponsors supported by Mr. Baker (R-La.) and Mr. Chambliss (R-Ga.) were joined by the twenty-two Democrats on the House Agriculture Committee to insure the FFA would not be passed out of Committee during mark-up of the House Agriculture Reconciliation bill. This event has undermined the leadership of the House Agriculture Committee chairman and the strength of the committee in avoiding future changes in agricultural policy brought from members outside the committee.

#### **Commodity programs**

Since 1933, grain, cotton, sugar, and peanut producers have received federal price and income assistance in the form of direct payments. Commodity programs have always been intricately intertwined with conservation efforts. Commodity program payments affect land use, input use, profitability, technology adoption, and, ultimately, the environment. Increased net income or increased income stability resulting from commodity program payments may lead to less intensive management systems and greater environmental benefits. Further land retirement programs used to manage stocks and lower government outlays may reduce soil erosion and increase water quality and wildlife habitat on the acres removed from production, but may also lead to increased soil erosion and chemical use on the lands

*Continued on page 6*

remaining in production. The tight land supplies resulting from the high commodity prices of the early 1970s brought intensive and extensive use of land resources leading to reduced environmental quality. Low prices associated with increasing excess capacity also lead to increased chemical input use as these inputs offer the greatest return on investment compared to all other agricultural inputs.

The link between commodity programs, program benefits, and the environment has not been overlooked by environmentalists. For many years, environmentalists have maintained that farm programs forced crop producers to plant continuous crops, which led to intensive chemical use and tillage. To maintain commodity program payments, producers of program commodities are required to maintain a planting history or crop base. Since the crop base is determined from a five-year moving average, failure to plant in any year would mean a twenty percent reduction in the acreage eligible for commodity program payments.

The farm legislation in the 1970s allowed considerable "planting flexibility," the ability to plant a program crop other than the program crop for which the crop base is established, without losing the crop base. This is referred to as a "whole farm base." The farm legislation of 1981 and 1985 severely limited planting flexibility in an attempt to gain control of crop surpluses. Planting flexibility made a partial return in the FACTA90. Producers were allowed to plant up to twenty-five percent of their crop base to other program crops without losing crop base, but would lose the commodity program payments for that crop base. The Agricultural Reconciliation Act of 1990 reduced payment acres to eighty-five percent of base, thus splitting the twenty-five percent planting flexibility into "normal flex" (fifteen percent of eligible base) and "optional flex" (ten percent of eligible base). The trend in the 1995 debate is again toward a whole farm base, allowing producers to plant anything they wish (except for fruits and vegetables) on their crop base and still receive commodity program payments. Farmers would then be able to use crop rotations, which assist in increasing yields and reducing the need for pesticides and chemical nutrients.

Both the House and the Senate passed agricultural budget reconciliation bills increasing planting flexibility. Whether these bills induce producers to use crop rotations, which offer increased environmental benefits, will depend on the profitability of these new crop rotations, compared with the current crop rotations. Certainly, the use of new technology or farming practices that offer greater environmental benefits will be less likely if the sector receives \$13.4 billion less and these new innovations require increased capital outlays or provide lower economic returns.

#### **Integration of CE legislation into new omnibus farm legislation**

With greater freedom and more stable income, farmers can plant crop rotations

that reduce crop pests (e.g., insects and weeds). However, faced with lower prices or lower income resulting from reduced government payments, farmers may be forced to maximize output by intensifying land use. Because agricultural chemicals are the cheapest source of increased output, farmers faced with lower incomes may attempt to increase output through the use of more inputs and attaining a larger size of operation.

While lowering government subsidies will reduce profitability in the short run, reducing the federal deficit, taxes and regulations will increase profitability. Further, federal subsidies that are decoupled from production (as with the FFA) may increase producers' incomes in years of high prices brought on by surges in demand or sharp declines in supply (e.g., weather-related disasters). Decoupled subsidies will provide greater stability to incomes but less stability to prices.

At the time of this writing, the House has proposed cuts in funding to EPA of \$1.7 billion, while the Senate has proposed cuts of \$1 billion most of which come from Superfund and water and sewer projects. Proposals for budget cuts to EPA are likely to increase in size and number during the 104th Congress. These cuts are aimed at reducing the role of EPA in commercial markets. Cuts are being proposed to numerous other regulatory agencies to assist businesses in reducing costs.

Changes are also being proposed to regulatory laws affecting agriculture such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Clean Air Act, Federal Water Pollution Control Act (Clean Water Act), and the Endangered Species Act (ESA). For instance, H.R. 1900 and S. 490 seek to amend the Clean Air Act to exempt agriculture-related facilities from permitting requirements. Many feed and flour mills and grain elevators have been fighting with EPA for nearly six years over applicability of clean air standards to this business.

The Endangered Species Conservation and Management Act of 1995 (H.R. 2775 and S. 768) would amend the ESA of 1973 to provide for feasible and practical means to conserve endangered species consistent with the rights of property owners. The amendment further requires that any program for the conservation or management of endangered species shall not use or limit the use of privately owned property that diminishes the value of that property without payment of fair market value for that property.

The Comprehensive Wetlands Conservation and Management Act of 1995 (H.R. 1268) mandates that each federal agency with authority under section 404 of the Federal Water Pollution Control Act does not act to limit the use of privately owned property so as to diminish its value.

New acts are also being proposed to reduce the impact of federal regulations on agribusiness. One of many examples of these new acts is the Regulatory Accountability Act of 1995 (S. 100). This act seeks to reduce the burden of federal regulations on individuals, businesses, and state and local governments to promote economic growth, productivity, competitiveness, and general wel-

fare. The act is designed to: (1) insure the regulations fulfill the requirements of legislation in an efficient, effective, rational and well-reasoned manner; (2) increase agency accountability for regulations issued; (3) improve coordination and minimize duplication and conflict among agency regulations; and (4) improve the effectiveness of opportunities for public participation in the rule-making and regulatory review process.

Still other changes affecting agriculture are being initiated through other mechanisms such as being tied to appropriation and budget resolution bills. An example is the move to place a change in the definition of wetlands from "saturated for seven days" to "inundated for 21 days" on the 1996 agricultural appropriations bill. Further, the language will remove restrictions on farmed wetlands. Wetlands that are currently being farmed when weather permits, would be allowed to be drained to increase the frequency of farming.

Probably the greatest change during this past year was the inability of Congress to pass a comprehensive or omnibus farm legislation. The omnibus farm legislation will now likely have to wait until 1997, the next "off-election" year. If major cuts in commodity program benefits are made this year, passing any new environmental restrictions or requirements on agriculture in 1997 will be extremely difficult, but cost share or green programs (benefits offered for increased environmental amenities) may be more likely.

#### **Summary**

The philosophy of the majority party in Congress is defined by the legislative actions last year: reduce federal expenditures to lower interest expenses and lower operating costs; cut back on regulations that are increasing the cost of doing business; and enable businesses, including agriculture, to confront the market more directly. The omnibus farm legislation may not be concluded until the end of 1997. The current debate on the budget reconciliation legislation will define commodity policy and important parts of conservation expenditures in agriculture. The ideas put forth by the numerous bills on the floor of both houses to reign in environmental regulations will inevitably find their way into the farm bill debate, especially given the level of cuts to direct federal subsidies.

The intricate relationship between farm profitability, land use, and environmental quality will assure that the environment will be affected given the proposed legislative changes. While we liberate agriculture from subsidies and regulations the consumer may pay a higher price in more volatile food prices and decreased environmental benefits. Farm policy is certainly complex and few understand the interactions between consumer prices, farm incomes, balance of trade and environmental quality. Change even one part of the omnibus farm legislation will affect the structure and performance of the industry. Increasing flexibility for farms may or may not increase environmental quality. In the past, the level of

page that provides an easy link to 1995 Farm Bill Information. The IANR home page is at <http://ianrwww.unl.edu/index.html>. The IANR 1995 Farm Bill Information page (found directly at <http://ianrwww.unl.edu/farmbill/farmb.htm>) allows one to choose articles related to the topics Ag Policy Update, Farm Bill Review, and Farm Bill Policy Papers. Numerous excellent articles on these topics are available for browsing, downloading, or direct printing. Moreover, the articles are quite timely.

For another source for agricultural policy articles, one can select the 1995 Farm Bill page set up by Hillnet. This is found at <http://www.hillnet.com/farmbill>. Topic choices here include: Congress (with a listing of members of the relevant committees); Budget Process and Policy; Quotes of the Week; Major Reform Proposals (summaries of each is provided here); Cutting Edge Issues; and, Other Sources of Information.

For a critical analysis of the structure of current farm program payments, see *The Cash Croppers*, a series run by the Environmental Working Group. This series can be found at [http://www.ewg.org/Croppers/Cash\\_Croppers.html](http://www.ewg.org/Croppers/Cash_Croppers.html). This series focuses on the top two percent of America's farm subsidy recipients and even does a state by state analysis.

#### Agricultural and other laws

The National Center for Agricultural Law Research and Information (NCALRI) has a home page that provides links to numerous other sources. It also provides a listing of NCALRI publications as well as information about the Center. This home page is found at <http://law.uark.edu/arklaw/aglaw/>.

Our own American Agricultural Law Association has a home page at <http://law.uark.edu/arklaw/aglaw/aala.html>, although one can access it through the NCALRI page. Information on last year's annual conference is there, and hopefully, new information will be provided at some point in the future.

The Washington AgLaw Report, published by Arent Fox Kitner Plotkin & Kahn in Washington, D.C. is available online from the firm's home page at <http://www.arentfox.com/>.

The new Journal of Agricultural Law to be published by Drake Law School has a home page at <http://www.drake.edu/public/lawlib/index.html>.

Clark Consulting International, Inc. operates a bulletin board service for agricultural attorneys and academic professionals to exchange ideas. Their home page can be found at <http://www.agpr.com/consulting/aglinks.html>. To get to the agricultural law topic, you can just click on Agricultural Law.

Although not limited to "agricultural" law, there is an ever increasing amount of legal research available on the Internet. One of

the best sites is *GPO Access*, *GPO Gate* at <http://ssddc.ucsd.edu/gpo/glossary/info.html>. This site provides access to the Federal Register (1994-96); the Congressional Record (1994-96); the Congressional Bills Database for the 103rd and 104th Congresses); the Congressional Directory (1995-96); Congressional Documents from the 104th Congress, the Congressional Record Index (1992-96); Congressional Reports for the 104th Congress; Economic Indicators; GAO Reports; GILS Record; the Government Manual; History of Bills (1994-96); the Senate and House current calendars; Privacy Act Issuances; Public Laws (104th Congress); the Unified Agendas (1994-95); and the United States Code. Although search techniques and results are not on a par with the commercial legal research services, this access to government documents is a particularly valuable service. Moreover, it is very current; for example the new Federal Register is on line daily.

Another way to access law on the Internet is through *Thomas*, the service of the U.S. Congress. This contains the full text of legislation, the Constitution, and the Congressional Record, as well as the Congressional Record Index, a Bill Summary and Status report, and special information on "hot" legislation. One can also access an explanation of how laws are made, the House web site, the Senate web site, and the C-SPAN Web Server from this location. *Thomas* is found at <http://thomas.loc.gov/>.

There are numerous other legal resources on the Internet, far too many to reference here. A number of the law schools provide access to case law, statutes, and other legal sources. An increasing number of states are attempting to put their own law on line as well. Anyone interested in pursuing legal research on line should consider spending time exploring these options, perhaps beginning with a topical search.

#### Agriculture

Given the information available at colleges of agriculture across the country and the use of the Internet by the academic community, one is not surprised to find almost unlimited information about agriculture available on the Internet. Clark Consulting International, Inc. provides the *ag-links Index* as a good starting point for topic research (<http://www.agpr.com/consulting/aglinks.html>). Here, for example, one can click on the word *sheep* and access a full page of links to sheep resource articles. In addition, many land grant universities provide access to excellent agricultural and agricultural economics articles, e.g. IANR, *supra*. The National Agricultural Library (NAL) developed a listing of agricultural based services and products available on the Internet in December 1994, and this listing may have been updated since then. For information on this, contact the NAL Educa-

tional Programs Unit at 301-504-5204 (telephone) or [randerso@nal.usda.gov](mailto:randerso@nal.usda.gov) (e-mail).

A number of agricultural organizations and companies are also on the Internet. For example, the National Pork Producers Council has a home page at <http://www.npc.org/>. Successful Farming has set up *Agriculture Online*, a gateway to numerous other agriculturally-related sites. This is found at <http://www.agriculture.com>.

#### USDA sources

In addition to the NAL reference listed above, the USDA has a number of other resources available on the Internet. A Gopher USDA site provides electronic information for many USDA agencies including extension service, the Economic Research Service, and the Agricultural Research Service. The Gopher menu for this is at [gopher://es.usda.gov/](http://es.usda.gov/), although it can also be accessed through a link set up with the NCALRI.

The USDA itself has a decorative home page complete with the seal of the Department of Agriculture and photographs of USDA personnel. This is found at <http://www.usda.gov/>. In addition to a message from Secretary Glickman and general information about the department, most agencies within the USDA can be reached. For example, one can download a picture of Grant Buntrock by visiting the Farm Service Agency (FSA) home page. There, in addition to viewing his photo, one can e-mail Mr. Buntrock. Unfortunately, it does not appear that he has placed the FSA Handbooks on line yet, but perhaps the author (or her husband, Chris Kelley) will so request. For complete ease of use, there is hypertext highlighted for one to click on to send e-mail. Moving further into the FSA home page site, there is a Farm Service Agency Internet Gateway. This page provides links to market reports and agricultural statistics, environmental and other agricultural sites, extension service sites, U.S. government agricultural sites, and international agricultural sites.

There is also easy access to news releases, fact sheets, and transcripts of speeches with a link to USDA News and Current Information. This link can be accessed from the USDA home page. *USDA News*, an electronic employee news publication of the USDA is also available. This can be accessed through the USDA home page or directly at <http://www.usda.gov/news/newslett/cover.htm>.

There are many, many more resources on the Internet that may be relevant to agricultural law. If readers of this article know of additional sites that should be mentioned, or if errors in the access addresses are found, please contact the author at [jtgs24A@prodigy.com](mailto:jtgs24A@prodigy.com) and an update to the article will be forthcoming.

—Susan A. Schneider, Hastings, MN

#### 1995 Farm Bill/Continued from page 6

environmental performance in agriculture was directly related to the society's contribution to the effort. Under the proposed legislation, environmental performance will

be more dependent on exogenous factors such as weather and foreign demand. Thus, in this case freedom for the pike may not guarantee death for the minnow, but should

provide a considerable increase in its reason to worry.

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# AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

## *1996 Membership Renewal Notice*

Membership dues for 1996 are currently due. Thank you to all who have already responded to the renewal notice. If you have not received a renewal notice in the mail, please let us know so that we may check our mailing list and make corrections as necessary.

We also ask that you pass along the buff colored membership invitation, sent with the renewal notice, to a colleague whom you think may benefit from membership in our Association.

The 1996 dues remain:

Regular membership - \$50

Sustaining membership - \$75

Institutional (up to 3 members) - \$125

Student membership - \$20

Overseas - \$65

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