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Sixth Annual Mid-South Agricultural and Environmental Law Conference

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CRS Report for Congress

Migrant and Seasonal Agricultural Workers: Protective Statutes

Updated August 29, 2007

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Migrant and Seasonal Agricultural Workers: Protective Statutes

Summary

Workers in agriculture, generally, have experienced a different pattern of labor-management relations and labor standards from those in the industrial workforce. In part, such disparity was related to the nature of the work and the characteristics of the workers. Some agricultural workers have tended to be migratory or seasonal. They have tended to be employed, more or less casually, for short periods by any single employer who, perhaps not surprisingly, did not want to be burdened by a regular employer-employee relationship. Some agricultural workers are skilled; the majority are probably marginally skilled or unskilled, though they perform necessary services.

Two pieces of legislation, sequentially, have dealt in a significant manner with migrant or seasonal agricultural labor. In 1964, Congress passed the Farm Labor Contractor Registration Act (FLCRA). For a decade, little attention was paid to the statute, but then, in 1974, it was amended, and suddenly, a storm of protest was heard. It was argued that the wrong people were being forced to register. Through the next nine years, various interests sought modification of the act to conform to their perceptions of the original intent of the Congress. In 1983, Congress repealed the FLCRA and replaced it with the Migrant and Seasonal Agricultural Workers' Protection Act (MSPA). With a very few exceptions, MSPA has operated without controversy. But, at the same time, some may ask, has the new enactment been effective?

The two statutes — FLCRA and MSPA — are intimately connected and have triggered similar reactions with respect to immigration policy, to the inability of agricultural workers to organize and to bargain collectively, and to more general labor standards. Some have suggested that practices under FLCRA and of MSPA have been unduly burdensome. Has the concept of *farm labor contractor* been defined with sufficient care? Have agricultural interests made effective use of their employees, providing them with training and with consistency of employment? Might better utilization of employees prove more productive and more profitable? And, might these changes, in turn, prove more attractive to domestic American workers?

This report is a summary and a survey, spelling out the considerations that Congress found were a part of the realities of agricultural employment in 20th (and 21st) Century America. It begins in the 1960s with the advent of FLCRA, and proceeds through the enactment of MSPA and to the end of the century. But, it is also a summary of developments in the history of the two statutes, written from the perspective of a labor economist. It may, from time to time, be revised as new developments occur.

Thus far, in the 110th Congress, no new legislation has been considered that would amend MSPA.

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Migrant and Seasonal Agricultural Workers: Protective Statutes

During the late 1950s, a general congressional interest had developed in the condition of migratory or seasonal farm workers in the United States. Several exploratory hearings had been held, but no new legislation had been adopted. Then, on a Friday evening, the day after Thanksgiving (1960), a television program aired: *Harvest of Shame*, with Edward R. Murrow.

> *Harvest of Shame* was a report on the plight of the migratory farm workers ... who as virtual peons kept the nation's larders stocked. The public reaction to it was one of surprised horror at the conditions portrayed. Farm organizations were horrified for other reasons, charging 'highly colored propaganda' and 'deceit.' Farmers' spokesmen demanded 'equal time'....[1]

The Murrow broadcast emphasized the risks and hazards associated with crew leaders and agricultural employment at large. Whatever the flaws of the film, it provided a context for various pieces of migrant and seasonal farmworker legislation that had been (and would continue to be) before the Congress.

Through the next several years, Congress would consider a number of pieces of remedial legislation focusing upon the farm environment. Two bills that became law are of special importance: the Farm Labor Contractor Registration Act (FLCRA: 1964-1983) and a successor statute, the Migrant and Seasonal Agricultural Workers' Protection Act (MSPA: 1983 ff.). The two statutes, sequentially, provide the basis for regulation of migrant agricultural and seasonal agricultural workers. A focal point of each of the statutes, however, has been the farm labor contractor.

Through nearly 50 years, intermittently, the Congress has debated the two statutes and their implications — for labor supply, for immigration, and for equity for the several parties involved. The issues have changed little, though their focus may have been altered. Initially (up to 1974), concern was voiced with respect to farm labor contractors and their alleged excesses. Then, after the 1974 amendments to FLCRA, concern moved away from contractors and toward those who used migrant and seasonal workers: essentially, the growers and their agents. In 1983, FLCRA was repealed and replaced with the Migrant and Seasonal Agricultural Workers Protection Act. The latter (MSPA), with few exceptions (notably, the case of *Adams Fruit*; see below), has remained as written. There have been numerous hearings on the act and, likely, more will follow. This report summarizes debate over the acts and, in that context, the evolution of agricultural labor.

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[1] Alexander Kendrick, *Prime Time: The Life of Edward R. Murrow* (Boston: Little, Brown and Company, 1969), p. 453.

PART I: The Farm Labor Contractor Registration Act, Origins, and Congressional Enactment (1964)

The farm labor contractor (or crew leader) "is the bridge between the farm operator and the migrant laborer." Farm operators would go south each year to "meet the crew leader" and arrange for migratory crews. A large majority of migrants belong to crews. In 1960, it was reported, the largest crew numbered 185 workers, the smallest 13 — with the usual size between 45 and 74 members. The crews grew out of "the need of inarticulate people to have someone to speak for them" and the farmer's problem "of recruiting and handling labor."[2]

In 1959, Senator Harrison Williams (D-NJ) introduced legislation seeking, through federal registration, "to eliminate the relatively few migrant labor contractors who are dishonest and immoral, and who exploit migrant workers and growers." A slightly different bill was introduced by Senators Jacob Javits (R-NY) and Kenneth Keating (R-NY). In the House, Representative James Roosevelt (D-CA) was an early sponsor of such legislation.[3] None of these early bills were approved. It would take hearings and subsequent refinement through three Congresses before their adoption.

The Various Roles of the Farm Labor Contractor

In theory, the crew leader is an "independent businessman" with varied tasks. Some crew leaders do little more than recruit for farm operators — but for a farmer several hundred (or several thousand) miles away from the areas of labor supply, that task is monumental. Others become more deeply involved in the management of the crew. The report to the Senate Subcommittee on Migratory Labor (1960) observed that:

> Some ... provide transportation for the migrant. Others oversee the work of the crew upon its arrival; manage the camps where the migrants are housed; provide the commissary and food facilities; pay the crew members; haul the produce from the fields to the packing sheds....

The profit for the farm labor contractor "lies in the differential between what they are paid by the farmer and [what they] pay to the worker." Some crew leaders work on a commission basis, taking a few cents from each item produced by crew members.[4]

The list of alleged abuses associated with the farm labor contractor appears to have been as long and varied as those engaged in the field. As the 1961 hearings commenced, William Batt, Pennsylvania's Secretary of Labor and Industry, noted:

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[2] U.S. Congress, Senate, Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare. 86th Cong., 2nd Sess. (1960). Committee Print, *The Migrant Farm Worker in America,* p. 34. Report by Daniel H. Pollitt, et al. Cited hereafter as Pollitt, *The Migrant Farm Worker in America.*

[3] Pollitt, *The Migrant Farm Worker in America,* pp. 36-38.

[4] Ibid., pp. 34-36.

"The good ones [crew leaders] say to me, 'I preach to the men to save their money.'" Of the less desirable crew leaders, Batt noted the then standard complaints:

> "Changing wage rates without explanation."
> "Exploitation of child labor."
> "Illegal sale of alcoholic beverages."
> "Charging the workers a rental fee on housing provided free by the grower."
> "Importation of prostitutes, with sharing of the 'take.'"
> "Food profiteering in crew-leader-operated commissaries."
> "Hunting deer out of season."
> "Shooting and beating up other crew leaders."
> "Rigged crew-leader-operated gambling games."
> "Paying crew members in 'scrip' in lieu of cash."
> "Charging exorbitant transportation fees."

Batt continued. "In the case of one crew leader who kept accurate wage records, the services of a prostitute were a payroll deductible item."[5]

Matt Triggs, speaking for the American Farm Bureau Federation and defending the contractors, suggested that stories of abuse were "told and retold" with a "misleading implication that there is more of this than there really is."[6] Another witness, with legislation in mind, argued that contractors "are educationally unequipped to perform the laborious clerical function this bill would impose."[7] A third stated that with their "limited education," the contractors would be "unable to fill out the necessary forms" that the act will require.[8] Yet another declared "They are not schooled.... Much recordkeeping, much bookkeeping is anathema to them. They are not trained for it."[9] Triggs asserted that "most leaders have previously been migratory workers. They are semi-literate."[10] And, Triggs affirmed, "You have got to realize that an awful lot of these crew leaders are very simple people...."[11]

Nonetheless, contractors may undertake relatively sophisticated responsibilities. Secretary of Labor Willard Wirtz pointed out that, in Oregon, it was "the general

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[5] U.S. Congress, Senate Committee on Labor and Public Welfare, Subcommittee on Migratory Labor. *Migratory Labor.* Hearings, 87th Cong., 1st Sess., April 12-13, 1961, pp. 45-46. (Hereafter cited as Hearings, Senate, 1961.) See also U.S. Congress, Senate, Subcommittee on Migratory Labor, Committee on Labor and Public Welfare. *Migratory Labor Bills*. 88th Cong., 1st Sess., April 10, 23, and 24, 1963, pp. 38-40. (Hereafter cited as Hearings, Senate, 1963.)

[6] Hearings, Senate, 1961, p. 53.

[7] James B. Moore, National Apple Institute, Hearings, Senate, 1961, p. l83.

[8] Charles M. Creuziger, Vegetable Growers Association of America, Hearings, Senate, 1961, p. 82.

[9] Carroll Miller, West Virginia State Horticultural Society, Hearings, Senate, 1961, p. 125.

[10] Hearings, Senate, 1961, p. 54. See U.S. Congress. House, Committee on Education and Labor, Subcommittee on Labor. *Migratory Labor*. Hearings, 87 Cong., 1st Sess., May 9-10, 1961, and May 19-20, 1961, p. 238 (Hereafter cited as Hearings, House, 1961.)

[11] Hearings, House, 1963, p. 15.

practice" of using the crew leader "as a paymaster."[12] The "crew leader acts as an intermediary between the grower and the workers," and in nearly "two thirds (63 percent) of the areas surveyed" nationally, the "workers were paid by the crew leaders...."[13] Similarly, "the crew leader is responsible in certain circumstances for making the necessary deductions and keeping payroll records" with respect to social security participation.[14] Sarah Newman, then of the National Consumers League, observed, "Because crew leaders are under no regulated responsibility to anyone, their many abuses have been able to flourish."[15]

Issues in the Early Debate

During three Congresses (from 1959 to 1964), numerous bills (not always labor-related) were introduced to ameliorate the conditions of agricultural workers. As these bills evolved, it was difficult to keep their implications separate. The following section analyses, in a general way, deal with issues and concepts common to many of these proposals.

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[12] Hearings, Senate, 1963, pp. 39-40. It would appear that the most frequent cause of concern, where farm labor contractors are involved, were problems associated in some manner with transportation. In the U.S. Congress, Senate, Committee on Labor and Public Welfare, 87th Cong., 1st Sess., Senate Report No. 695 to accompany S. 1162, August 9, 1961, p. 5, it is noted that "These abuses include overcharging workers for transportation advances, collecting for transportation expenses from both employers and workers, accepting transportation advances from employers and failing to report to work or reporting with a smaller crew than contracted for, abandoning a crew without means of transportation, and failure to return workers to their homes." (Cited hereafter as Senate Report No. 695, 1961.)

[13] Hearings, Senate, 1963, p. 39. The reference was to a brochure, "Summary of Farm Labor Crew Leader Practices," November 1962, prepared by the Farm Labor Service, Bureau of Employment Security, Department of Labor.

[14] Senate Report No. 695, 1961, p. 5. During Hearings, House, 1963, p. 97, there was a dialogue between Representative James Roosevelt and Edith E. Lowry, testifying on behalf of the National Advisory Committee on Farm Labor.

"Mr. Roosevelt: ... We would also, for social security purposes, have a better way of seeing whether the proper deductions were being made and forwarded to the Federal Government rather than having, as we now suspect, but have very little way of proving, many of them pay social security to the crew leader and yet get no credit for it by the social security headquarters."

"Would you consider this was too onerous a task for us to impose upon a crew leader?"

"Miss Lowry: I don't think so because it seems to me it is essential for anybody who carries the responsibility of handling the affairs for so many people that find difficulty in fitting into our society to be required to handle these things in an orderly way."

"I do know there is a real problem in the social security matter."

[15] U.S. Congress, House, Committee on Labor, House Committee on Education and Labor, 88th Cong., 1st Sess., *Hearing, Registration of Farm Labor Contractors,* April 3, 5, and 10, 1963, p. 70. (Cited hereafter as Hearings, House, 1963.) Newman, p. 69, notes: "Because of their dependency on the crew leader, migrant workers are particularly vulnerable to exploitation and abuse by these contractors. Migrants," she explained, "are usually isolated from the community, sometimes never even meeting the grower whose crop they pick. They are dependent on the crew leader for the next job, and for their daily living arrangements."

State Versus Federal. "We do not believe this bill would serve any useful purpose since most farm labor contractors are already registered with one or more State employment services," stated Charles Creuziger, spokesperson for the Vegetable Growers Association of America. "We believe, as a matter of principle, that regulation of the contractors can best be handled by the States."[16]

Industry and non-industry forces divided on the issue of federalism. J. Banks Young of the National Cotton Council urged that the issue was strictly local and that federal intervention "would adversely restrict the availability and mobility of such workers and unnecessarily increase farm costs."[17] Noting the alleged abuses under the current system, Richard O'Connell of the National Council of Farmer Cooperatives stressed the local character of the problem. Most states, he suggested, have "laws prohibiting gambling, prostitution, unlawful narcotics, and liquor sales." If so, "the crew leaders should be indicted under the appropriate laws" and, having "paid their debt," should not be harassed.[18] Triggs also thought local government could handle the issue. "Even if the 9 or 10 farm labor bills now before the Congress were to be enacted, we believe they would represent an ineffectual approach to the problem, and in some cases would be decidedly harmful to the interests of workers and farmers."[19]

Observing that the states already had regulations dealing with labor camps, Triggs stated that "... only a handful of these laws are really adequate." Crew leaders "can evade their regulations by ... going to other States with their crews that do not have licensing requirements." If the federal government were to act, it should focus on "the licensing of crew leaders or contractors of migratory labor."[20]

The problem "requires the leadership of the Federal Government," Secretary Wirtz advised, because of the movement of contractors across state lines. A person "... involved in malpractice in this area is simply likely not to be there when somebody charges him."[21] Others concurred. "A fellow who is fined or barred in one State will simply duck into another State and there perhaps commit the same practices," suggested Arnold Mayer of the Amalgamated Meat Cutters and Butcher Workmen of North America. "The migrant labor stream is an interstate stream and dealing with it needs interstate legislation."[22]

Authority for the Secretary. Industry spokespersons questioned the wisdom of granting new authority to the Secretary of Labor to manage agricultural labor

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[16] Hearings, Senate, 1963, p. 150. References to "this bill" or to "the bill" are generic. In some cases, it is not clear to which bill a speaker is referring or to an abstract bill. Further, reference is to a series of hearings with different bills.

[17] Hearings, House, 1963, pp. 141-142.

[18] Hearings, House, 1963, p. 22.

[19] Hearings, House, 1963, p. 8.

[20] Hearings, Senate, 1961, pp. 23-24.

[21] Hearings, House, 1961, p. 116.

[22] Hearings, House, 1963, p. 139.

supply. “Many of the terms used ... are not clearly defined,” stated Young, of the Cotton Council. As it stands, the “... power to issue regulations under the authority of the bill is extremely broad.”[23]

The authority granted to the Secretary, remarked James Moore of the National Apple Institute, would “inevitably result in control by the Secretary ... of the agricultural migratory labor market.”[24] The requirement “as to their financial responsibility would impose burdens which few individuals recruiting labor could meet.”[25] The proposed legislation would establish the Secretary “as judge, jury, and prosecutor,” stated Delmer Robinson of the Frederick County (Virginia) Fruitgrowers Association. “We do not feel that a man’s livelihood [the contractor’s] should depend on the benevolence of the Secretary of Labor.”[26] The Secretary, in accord with his own rules, can put out of business any contractor who has “‘failed without justification’” to comply with the regulations — but the proposal “is completely silent as to who would decide whether or not there was ‘justification.’ It is presumed the Secretary ... could arbitrarily decide this point.”[27]

Defining Terms. Through the hearings, concepts to be used in the act were gradually defined. Still, numerous concerns were voiced by industry with respect to the several bills that came before the committees.

Defining a Contractor. The Farm Bureau favored a narrow definition of *contractor* with registration “limited to crew leaders proper, and not extended to all persons who may recruit or transport workers.” But how might one distinguish between a labor contractor (to be registered) and *persons who may recruit or transport workers*?[28]

The National Cotton Council argued that the concept of contractor, thus far defined, “would require registration of fraternal, religious, social and other organizations which frequently provide temporary agricultural employment for their members” and processors “who provide workers to farmers.”[29] Others argued that the term might include “charitable and religious organizations” and “4-H advisers.”[30] The proposal, it was suggested, “seems to make a crew leader out of everyone who contacts more than nine people”[31] and could include groups such as “sugar

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[23] Hearings, Senate, 1963, pp. 302-303.

[24] Hearings, Senate, 1961, pp. 182-183.

[25] Statement from the National Cotton Council, Hearings, House, 1961, p. 216.

[26] Hearings, Senate, 1961, p. 63.

[27] Hearings, House, 1963, p. 141.

[28] Hearings, House, 1963, p. 10.

[29] Hearings, House, 1961, p. 216.

[30] Hearings, House, 1961, p. 206.

[31] Hearings, Senate, 1961, p. 129.

companies, canneries, and cotton gins" that provide labor only as "incidental to the main services they offer farmers." These, some felt, should be excluded.[32]

Even true crew leaders often work through "responsible employees" who should not have to register. It was argued "... that employees of any registered entity should not be required to register" but, rather, have "a single certificate of registration for the overall recruitment activity...."[33] The definition of contractor, it was urged, "... should be changed to cover the individual ... who gathers a crew of workers in one State and transports them to another State and *stays with them in a supervisory capacity* ... and is the actual crew leader."[34] Again: "We would strongly recommend that you eliminate at least the resident concern, the canner who recruits workers for farmers in the territory, the sugar companies, the cotton gins, ... labor associations, and others that are responsible financially...."[35]

Duration of Registration? "Registration should be permanent and continue in effect until revoked for cause," the Farm Bureau spokesman held. "We see no valid reason for the annual licensing of crew leaders."[36]

The Department of Labor (DOL), however, *did* recognize a need for annual licensing. "The common phrase, 'fly by night' applies, I suppose, more aptly to this economic situation than to almost any other which I can think of," observed Secretary Wirtz.[37] "All the evidence we have indicates that there is considerable turnover among the crew leader personnel," observed Robert Goodwin of DOL's Bureau of Employment Security, making it "necessary, really, to have an annual certification...." Goodwin took note of auto and other insurance.

> This would be issued on an annual basis and would require a determination as to whether the insurance had been purchased and was adequate, and only after that determination was made could the certification be completed. This would require the annual certification.[38]

The International Apple Association raised the issue of fees for service. While the current Secretary may not anticipate a significant fee, a future Secretary "might wish to put the contractors out of business" and could set an unreasonable sum.[39]

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[32] Hearings, House, 1963, p. l43.

[33] Hearings, House, 1961, p. 206.

[34] Hearings, House, 1961, p. 176. (Italics added.)

[35] Hearings, Senate, 1963, p. 161. On this issue, see Hearings, House, 1963, pp. 10-13, where there is a dialogue between Representative Roosevelt and Triggs of the Farm Bureau.

[36] Hearings, House, 1963, p. 10.

[37] Hearings, House, 1963, p. 120.

[38] Hearings, Senate, 1963, p. 144.

[39] Hearings, Senate, 1963, p. 227.

Senator Williams tended to agree. "My feeling is if there were a fee," he said, "it should be limited to taking care of the administrative costs...."[40]

Rulemaking Authority of the Secretary. "Eliminate the rulemaking authority...." stated a Farm Bureau spokesman. "The statute is complete in itself and requires no supplemental rulemaking authority."[41]

The rulemaking authority may have posed something of a dilemma for critics. On the one hand, many of the concepts "used in the bill are not clearly defined and will be given meaning only by regulation by the Secretary...." Conversely, the terms of the bill "... would permit the Secretary to require almost any kind of information he might desire" and "... could lead to the control of a large segment of domestic migrant farmworkers." This "broad ... grant of authority ... should be deleted."[42]

"We feel," asserted Robert Rea of the Virginia State Horticultural Society, "that it should be mandatory" for the Secretary to issue a certificate of registration as a migrant labor contractor to any person who files the required information and carries a reasonable amount of insurance. "The mere threat of withholding a certificate," Rea stated, "... places the labor contractor under direct control of the Secretary of Labor. This allows the Secretary to, in effect, dictate wage rates, housing and working conditions that the crew leader must agree to or be threatened with loss of the right to earn a livelihood." The proposal, "as written," he said, could "make the cure worse than the disease."[43]

Crossing State Boundaries. Concerning interstate commerce, Delmer Robinson's ranch straddled the Virginia-West Virginia frontiers. "You can almost figure that an employee of mine operating a wagon with 10 people on it going from one side of the orchard to the other is a migrant labor contractor, according to this definition. I am sure," he stated, "that is not what is meant" in the context of the legislation.[44]

The definition of contractor is so broad, stated Joseph Dorsey, Frederick County, Virginia, that it would "include any growers who hire and transport workers across State lines, which many of our members have to do daily in making use of labor within their various locations. Our association," by virtue of its location, "draws on several States for both regular and seasonal labor."[45] These definitions, stated another grower, are so broad that even a Greyhound bus would require registration if "10 or more" migrants were aboard.[46]

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[40] Hearings, Senate, 1963, pp. 227-228.

[41] Hearings, House, 1963, p. 10.

[42] Hearings, House, 1963, pp. 142-143.

[43] Hearings, Senate, 1961, pp. 199-200.

[44] Hearings, Senate, 1961, pp. 62-63.

[45] Hearings, Senate, 1961, p. 174.

[46] Hearings, House, 1961, p. 176. See also: Hearings, Senate 1961, pp. 62-63.

Financial Responsibility. During hearings in the House, Richard O'Connell, the National Council of Farmer Cooperatives, was asked,

> Is it not a fair and reasonable requirement to expect these crew leaders who transport families of workers from one State to another to be financially responsible to the migrant workers which they transport for personal injuries... and property damage?

O'Connell thought the requirement was appropriate if the question were, in fact, that explicit. However, O'Connell found the term "Financial Responsibility" to be obtuse and questioned whether it meant bonding. "This is one of these vague terms that if you start writing regulations on it it can mean anything."[47]

Braceros Versus Domestic Workers

During the hearings of 1961, C. H. Fields (of the Farm Bureau of New Jersey) was questioned by Representative Herbert Zelenko (D-NY).

> Mr. FIELDS. ... New Jersey farmers do not use migrant labor because they want to. They would much prefer not to use it if there were any other labor available at a wage they could afford to pay....
>
> Mr. ZELENKO. You said the New Jersey farmer would not engage migrant labor if he could help it, but that he could not get local labor at the price he wants to pay.
>
> Mr. FIELDS. At the price that he can afford to pay, I said.
>
> Mr. ZELENKO. Would you be good enough to give this Committee ... what the prevailing wage is in New Jersey for a farm laborer doing the type of work that a migrant would do ...?
>
> Mr. FIELDS.... $1.10 an hour.[48]

In the early 1960s, Congress had under consideration not only legislation dealing with farm labor contractors but, as well, with the braceros.[49] As it has evolved, the bracero program (and later, the H-2A program) has been based upon two premises.

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[47] Hearings, House, 1961, pp. 32-33.

[48] Hearings, House, 1961, p. 235. Mr. Fields went on to state that, in South Jersey, the prevailing wage was then $1.00.

[49] The term *bracero* has a number of translations; but, in general, it refers to Mexican workers brought into the United States under a guest worker program. The bracero is a documented worker and should not be confused with the undocumented worker who has entered the United States illegally and, if employed, is employed illegally. See Howard N. Dillon, "Foreign Agricultural Workers and the Prevention of Adverse Effect," *Labor Law Journal,* December 1966, pp. 739-748; and CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

> (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved ...
>
> (B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.[50]

An adverse effect wage rate was devised that must be paid to both foreign and domestic workers (where an effort has been made to employ the former), and which was intended, nominally, to prevent a negative impact from employment of braceros.

Comparing Braceros with Domestic Workers. Gradually, domestic employment and utilization of braceros became intertwined. "The documentation is clear," stated Vera Mayer, National Consumers' League, "that the massive importation of cheap foreign labor has lowered wages to American farmworkers and taken away job opportunities from them."[51] Labor Secretary Arthur Goldberg seemed to agree. "There is increasing evidence of the correlation between this large-scale use of foreign workers in agriculture and the employment situation of our own farmworkers." He stressed that the central problems of migrant farmworkers were the "lack of reasonably attractive employment opportunities" and "low wages."[52]

Here, the Secretary and Ms. Mayer were not alone. The Rev. John Wagner, associated with the National Council for the Spanish Speaking (of San Antonio), suggested that the impact of the bracero program "is very great." Father Wagner opined, "... it throws another large number of unskilled workers into a pool that is already overloaded with unskilled workers, and there becomes a mad scramble for jobs."[53] Meanwhile, Father James Vizzard, then associated with the National Catholic Rural Life Conference, posed the question: "What other group of farmers or workers have to compete in the marketplace with ... workers brought into this country by an agency of the Government, partly at taxpayers' expense?"[54]

Triggs of the Farm Bureau explained that the "... domestic worker is often severely disabled, physically, mentally, or psychiatrically or by reason of age. In such cases," he stated, "the employer should not be required to pay the same wages as for an able bodied man. Whereas," he added, "the Mexican workers are carefully screened, they are mostly young, vigorous, able bodied."[55] Twiggs added, "If the farmer prepays transportation for Mexican nationals it is with the assurance that the worker will not leave the job after he arrives to work for somebody else." Further, he stated, the Mexican workers "are unaccompanied by their families" and, as a

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[50] 8 U.S.C. 1188(a)(A) and (B). See also CRS Report RL32861, *Farm Labor: The Adverse Effect Wage Rate (AEWR)*, by William G. Whittaker.

[51] Hearings, House, 1961, p. 211.

[52] Hearings, House, 1961, p. 4.

[53] Hearings, Senate, 1963, pp. 125-126.

[54] Hearings, House, 1961, p. 145.

[55] Hearings, House, 1961, p. 101.

result, "they need barracks type housing." Finally, he stated, "... the hours of employment are generally uniform and standardized."[56]

Both labor and management witnesses seemed in agreement with respect to domestic and Mexican crews. Arnold Mayer, of the Amalgamated Meat Cutters and Butcher Workmen of North America (AFL-CIO), stated:

> In the first place, the bracero is very docile, more so than even the domestic migrants are. Over the bracero's head hangs the threat that he may be sent back to Mexico if he complains too much or if he kicks up too much of a fuss. He has left his family, he expects to come back with some money, so he does not want to be sent back without money.

Mayer agreed that the "bracero is carefully screened so that the workers that do come from Mexico are prime labor." As "single men," the braceros have an impact on housing. "The growers can erect barrack-type housing for them." American migrants "very often move with their families and housing and facilities for them are more expensive." Mayer stated, "... the growers know that this importation causes a surplus of labor and that this surplus is very, very useful in keeping wage rates down." And, rather than "compete for labor," the foreign workers are simply made available.[57]

Sorting Out the Workers. "There is a clear interrelationship between the administration of the migratory labor program and the administration of Public Law 78 [the bracero program]," stated Secretary Wirtz. If we can put domestic labor on a sounder administrative basis, "which this bill would help us very much to do, it would mean a lesser need for the use of Mexican nationals...." He referred to the "floating group of American migratory workers" and observed, "I feel quite strongly that the proper use of the crew leader can be of real advantage to the employing farmer as well as to the employees."[58]

During hearings in 1963, Representative Thomas Gill (D-HI) entered into a dialogue with Richard Shipman of the National Farmers Union. Gill observed that undocumented farm workers were sometimes cheated out of their earnings. Shipman replied, "Of course, if a person is in this country illegally, he is at the mercy of anybody, they have no rights...." Gill concurred: "... they are fair game for a shoddy operator."[59] In some parts of Oregon, Gill speculated, undocumented labor makes up

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[56] Hearings, House, 1961, p. 103.

[57] Hearings, House, 1963, pp. 136-137. Father Vizzard urged against the use of immigrant workers. On page 149, he suggested "... I don't think the way to help the Mexican economy or the individual Mexican people is by using them as, in effect, strikebreakers against our own people, for undercutting the wages and working conditions of our own citizens." See also comments of Senator Williams, Hearings, House, 1961, p. 53.

[58] Hearings, House, 1963, p. 124.

[59] Hearings, House, 1963, pp. 50-51.

about 20% of the workforce. In that particular region of Oregon, Representative Roosevelt stated, "practically all of the recruiting was done for a sugar company."[60]

Shipman concurred that the "wetback problem is of long standing." He stated: "In the total Spanish-speaking migrant group, approximately 20 percent enter the United States on 'border crosser permits' ... on forged documents, or in the old-fashioned wetback manner." Licensing would help. Roosevelt suggested that, under the current proposal, suspension would follow if the contractor "has recruited, employed or utilized the service of a person with knowledge that such a person is violating the provisions of the immigration and nationality laws." Such a person can be refused a license, but is also "subject to penalty under the Act." He further pointed to a provision allowing the Secretary, under authority to obtain information, to conduct a more specific investigation.[61]

Congressional Action on Contractor Registration

During the late 1950s and early 1960s, Senator Williams had sought controls on farm labor contractors, and, though the measures were not adopted, he kept trying. In 1963, legislation began to move. The contractor registration bill was called up for Senate consideration on June 11, 1963. Williams explained the nature of farm labor contracting, concluding that many contractors "perform their functions in [a] satisfactory and responsible manner" — but that others "have exploited both farmers and workers."[62]

At that point, Senator John Tower (R-TX) objected to passage of the bill, stating, "I do not believe the measure is needed." Tower agreed that there were "occasional instances of crew leaders who don't deal fairly with workers or farmers," but these cases "are disputable" and "exaggerated." Since many states already register farm labor contractors, the proposed legislation would be redundant, he stated.[63] No other Senator rose in opposition, and the Senate moved on to other business. A few minutes later, the Senate switched back to the farm labor contractor legislation and, following a brief discussion, passed the bill on a voice vote.[64]

It was more than a year before Representative Roosevelt called up the measure in the House. The bill, he declared, was "essentially noncontroversial."[65] Representative Gill, the author of the bill, agreed that the bill was "a very minimal piece of legislation" but "the need for this ... is very obvious." Gill stated,

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[60] Hearings, House, 1963, p. 51. Reference was to prior comments that sugar companies would not need to be covered since they were not involved (or only marginally involved) in recruitment, and they are fixed site employers.

[61] Hearings, House, 1963, pp. 51-53.

[62] *Congressional Record*, June 11, 1963, pp. 10619-10621.

[63] *Congressional Record*, June 11, 1963, p. 10621.

[64] *Congressional Record*, June 11, 1963, p. 10625.

[65] *Congressional Record*, August 17, 1964, pp. 19894-19895.

> These crew chiefs deal with a type of labor ... which is often undereducated or in many instances completely uneducated. The literacy level is generally low. Their ability to understand their rights is ... minimal.
>
> Many of these migrant laborers have no voting residence. They have no Congressman ... nor do they have access to other officials who may help them with their problems. Therefore, they are easy to victimize.

The bill "... would be of great assistance to the good crew leaders ... the vast majority. It will prevent them from being daubed with the same brush used on the bad."[66]

Indeed, the bill was noncontroversial. Representative Robert Griffin (R-MI) rose "in support of this legislation." Representative Charles Bennett (D-FL) similarly expressed his "strong support" of the bill. "The migrant laborer should no longer be neglected," stated Representative William Fitts Ryan (D-NY). "This bill is belated recognition of his plight."[67]

Thereupon, the House passed the farm labor contractor registration legislation by 343 yeas to 7 nays, though with several changes from the Senate-passed version.[68] As amended, the bill was taken up in the Senate, passed by voice vote, and sent to President Lyndon Johnson, becoming P.L. 88-582 on September 7, 1964.[69]

The Farm Labor Contractor Registration Act of 1964

Congress finds, the act began, that "certain irresponsible contractors," by their activities in the migrant labor field, have "impeded, obstructed, and restrained" the flow of interstate commerce. Thus, Congress mandates that "all persons engaged in the activity of contracting for the services of workers for interstate agricultural employment comply with the provisions of this act and all regulations prescribed hereunder by the Secretary of Labor."[70] In general, the act provided the following:

Definitions

- "The term 'farm labor contractor' means any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports ten or more migrant workers ... at any one time in any calendar year for interstate agricultural employment."
- "Such term shall not include (1) any nonprofit charitable organization, public or nonprofit private education institution, or

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[66] *Congressional Record*, August 17, 1964, p. 19895.

[67] *Congressional Record*, August 17, 1964, pp. 19895-19896.

[68] *Congressional Record*, August 17, 1964, p. 19896.

[69] *Congressional Record*, August 21, 1964, pp. 20874-20877.

[70] All quotations, here, are from P.L. 88-582. However, the reader is urged to consult the statute for more specific details.

similar organization; (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation; (3) any full-time or regular employee of any entity referred to in (1) or (2) above; or (4) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to (A) an agreement between the United States and such foreign nation, or (B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for in the United States by an instrumentality of such foreign nation."

- " 'State' means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam."

- " 'Migrant worker' means an individual whose primary employment is in agriculture ... or who performs agricultural labor ... on a seasonal or other temporary basis."

Certificate of Registration Requirement

- "No person shall engage in activities as a farm labor contractor unless he first obtains a certificate of registration from the Secretary, and unless such certificate is in full force and effect and is in such person's immediate possession."

- The act observes of a "full-time or regular employee" holding a valid certificate of registration: "Any such employee shall be required to have in his immediate personal possession when engaging in such activities such identification as the Secretary may require showing such employee to be an employee of, and duly authorized to engage in activities as a farm labor contractor for, a person holding a valid certificate of registration under the provisions of this Act."

- "Any such [regular or full-time] employee shall be subject to the provisions of this Act and regulations prescribed hereunder to the same extent as if he were required to obtain a certificate or registration in his own name."

Issuance of Certificate of Registration

- The Secretary shall issue a certificate of registration to any person who "has executed and filed with the Secretary" whatever documents "the Secretary may require in order effectively to carry out the provisions of this Act;" has filed with the Secretary documentation "satisfactory to the Secretary of the financial responsibility of the applicant" with respect to motor vehicles; and "has filed ... a set of his fingerprints."

- "The Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor" (inter alia):

  — knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agriculture employment

  — has failed, without justification, to perform agreements entered into or arrangements with farm operators

  — has failed, without justification, to comply with the terms of any working arrangement he has made with migrant workers

  — has failed to show financial responsibility satisfactory to the Secretary ... or has failed to keep in effect a policy of insurance required by subsection (a)(2) of this section

  — has recruited, employed, or utilized the services of a person with knowledge that such person is violating the provisions of the immigration and nationality laws of the United States

  — has been convicted of any crime under State or Federal law

  — has failed to comply with any of the provisions of this Act or any regulations issued hereunder."

- "A certification of registration ... shall be effective for the remainder of the calendar year during which it is issued, unless suspended or revoked by the Secretary as provided in this Act. A certificate of registration may be renewed each calendar year upon approval by the Secretary of an application for its renewal."

Obligations and Prohibitions

- The contractor will "ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief: (1) the area of employment, (2) the crops and operations on which he may be employed, (3) the transportation, housing, and insurance to be provided him, (4) the wage rates to be paid him, and (5) the charges to be made by the contractor for his services...."

- "Upon arrival at a given place of employment, post in a conspicuous place a written statement of the terms and conditions of that employment...."

- "In the event he manages, supervises, or otherwise controls the housing facilities, post in a conspicuous place the terms and conditions of occupancy...."

- In the event he pays migrant workers, to keep close and careful records of all transactions and to make them generally available.

Authority To Obtain Information

- "The Secretary or his designated representative may investigate and gather data with respect to matters which may aid in carrying out the provisions of this Act." He "... may investigate and gather data respecting such case, and may, in connection therewith, enter and inspect such places and such records (and make such transcriptions thereof), question such persons, and investigate such facts, conditions, practices, or matters as may be necessary or appropriate to determine whether a violation of this Act has been committed."

Agreements with Federal and State Agencies

- The secretary is allowed to enter into compacts with various state and federal agencies with respect to enforcement of the act and related activities.

Penalty Provisions

- A penalty of not more than $500 is prescribed for violations of the act.

Judicial Review

- A limited system of judicial review is prescribed under the act.

Rules and Regulations

- "The Secretary is authorized to issue such rules and regulations as he determines necessary for the purposes of carrying out" certain provisions of this act.

PART II: The First Years of the Farm Labor Contractor Registration Act (1964-1974)

From 1964 until 1974, the FLCRA was given institutional life. Administration of the act was set in motion and patterns of interpretation were developed. There was, however, some criticism of the act and a sense that it had not lived up to the hope and expectations of its authors.

The Inaugural Period

FLCRA focused upon one aspect of the issue of migrant and seasonal worker protections: the farm labor contractor. In late December 1964, Secretary Wirtz issued regulations under the act, and the Manpower Administrator, Bureau of Employment Security, was given the responsibility as the authorized designee of the Secretary.[71]

There followed a series of directives published in the *Federal Register* dealing with insurance and financial responsibility.[72] However, some terms used in the legislation seem to have lent themselves to vague patterns of interpretation. For example, see the definition of farm labor contractor.

> The term 'farm labor contractor' means any person ... [who] recruits, solicits, hires, furnishes, or transports ten or more migrant workers ... at any one time in any calendar year for interstate agricultural employment.

The official interpretation of the statute explores each of these concepts at some length but, seemingly, without resolution.[73]

In 1969, under Secretary George Shultz, DOL underwent administrative restructuring with FLCRA (and 28 other programs) assigned to the Assistant Secretary for Manpower.[74] Then, in 1972, under Secretary James Hodgson, a split was effected with the labor standards aspects of FLCRA assigned to the Wage/Hour

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[71] See *Federal Register*, December 22, 1964, p. 18157, and February 3, 1965, p. 1139. It was not until late 1972 that responsibility for FLCRA was shifted to the Wage/Hour Division which normally deals with labor standards issues. See *Federal Register*, January 17, 1973, p. 1636.

[72] See *Federal Register*, October 12, 1966, pp. 13174-13176, November 22, 1966, pp. 14772-14775, May 9, 1967, pp. 7025-7026, and July 20, 1967, p. l0649.

[73] *Federal Register*, March 6, 1965, pp. 2945-2950. For example, the rule states, "... if a person intends to recruit five (5) migrant workers one day for Farmer A and the next day is requested to recruit and does recruit eight (8) migrant workers for Farmer B, these are separate and independent acts and do not total up to thirteen (13) for purposes of the statutory requirement. However, if he has contracts to hire a total of eighteen (18) migrant workers for Farmers X, Y, and Z and he hires this number as a result of three days effort, the statutory amount of 'ten or more' would be present." But it concludes, "... the application of these principles to other situations will depend on all the facts."

[74] *Federal Register*, April 15, 1969, pp. 6502-6504.

Division in the Employment Standards Administration. For more general administration, authority was left with the Assistant Secretary for Manpower.[75] Under the act, the Secretary was permitted to enter into a cooperative agreement with state authorities where the states had roughly comparable laws. Where there might be a refusal to authorize (or re-authorize) issuance of a certificate of registration, a hearing would be scheduled before the Solicitor (after 1973, the Associate Solicitor) of DOL or his designee.[76] For a marginally educated farm labor contractor (if that assessment were true), one might expect the total impact to have been a little confusing.[77]

A Certain Dissatisfaction. FLCRA had not been entirely successful. "Complaints have grown through the years," observed Senator Gaylord Nelson (D-WI), "that this first effort of the Congress was lacking in several areas...."[78]

During 1973 and 1974, further hearings were conducted on the issue. The current system, some suggested, "... has been the source of massive abuse and exploitation of agricultural workers." Though Congress had recognized the problem with adoption of FLCRA, the abuses have shown "no signs of moderating."[79] No matter "how strong the vote in the Congress, it [farmworker legislation] usually seems to be filed away in some cubbyhole without any appropriations, without any committee staff, and the result in almost all cases has been nonenforcement." In the "9 years of the existence of this bill," it was suggested, there "has been no enforcement. It has been totally ineffective. It has been a dud."[80]

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[75] *Federal Register*, October 20, 1972, p. 22660.

[76] See *Federal Register*, January 17, 1973, pp. 1636-1637, and August 24, 1973, p. 22778.

[77] Father John Kelly, Our Lady of Lourdes Church, Seaford, Delaware, stated that there had been "a tremendous overlapping of intermeshing authorities...." He continued: "... we have federal regulations, we have state regulations and we have local county implementation." Kelly further observed, "When one has a problem you have to deal with the hour and wage [laws] and to deal with social security, you have to deal with health, education and welfare, you have to deal with the local labor office and no one in any of these departments is quite clear where" the migrant worker is located with respect to the several jurisdictions. "You can spend days trying to establish a relationship with any particular office and no one is sure at the end of the day whether he has a reason or not to handle your problem. Now for an illiterate perhaps non-English speaking person, the difficulty is multiplied 1,000 times. And the man who is supposed to solve all these problems is the crew leader." Representative William Ford (D-MI) would later concede, "We are painfully aware that it is very difficult to tie it all together because of the multitude of Federal agencies that have fragmented responsibilities in this area." See U.S. Congress, House, Subcommittee on Agricultural Labor, Committee on Education and Labor, *Farm Labor Contractor Registration Act Amendments of 1973*, pp. 179 and 183. (Cited hereafter as Hearings, House, 1973.)

[78] U.S. Congress, Senate, Subcommittee on Employment, Poverty, and Migratory Labor, Committee on Labor and Public Welfare. *Farm Labor Contractor Registration Act Amendments, 1974.* Fresno, Cal., February 8, 1974, and Washington, D.C., April 9, 1974, p. 2. (Cited hereafter as Hearings, Senate, 1974.)

[79] Hearings, Senate, 1974, p. 107.

[80] Hearings, Senate, 1974, pp. 152-153. The speaker was Father James Vizzard, then of the (continued...)

Problems Associated with FLCRA. New legislation may take time to work through various impediments: FLCRA was no exception. From the testimony before the House and Senate Committees, it was clear that problems were numerous.

A Lack of Penalties. The Departments of Labor and Justice seemed to feel "that present penalties are insufficient to deter repeated violations," and this "deters them from pressing prosecutions," a witness stated, urging "greater penalties."[81]

Representative Augustus Hawkins (D-CA) posed the question to a group of DOL Administrators: Bernard DeLury, Assistant Secretary for Employment Standards; Warren Landis, Acting Administrator, Wage/Hour Division; and Eugene Bonfiglio, Chief, Branch of Farm Labor Contractor Registration.

> Mr. HAWKINS. What is the penalty at the present time for failure to register?
>
> Mr. LANDIS. There is no specific penalty in the present law, unless there is a willful violation, and then the present law provides a fine of up to $500.
>
> Mr. HAWKINS. Has anyone been fined, and if so, how many?
>
> Mr. LANDIS. I think one....
>
> Mr. BONFIGLIO. Since the act became operative in January 1965, we have had four cases that went to criminal court for prosecution. Of those four, two were thrown out by the Justice Department, and two were finally prosecuted and fined $100 in each case, and in one of the cases the fine was lifted.
>
> Mr. HAWKINS.... I assume that under the law those who commit violations can either have their registration revoked or other penalties imposed. Can you give us any idea how many registrations have been revoked.
>
> Mr. DeLURY. None, sir.
>
> Mr. HAWKINS. None.
>
> Mr. DeLURY. None this year.
>
> What about last year?
>
> Mr. BONFIGLIO. Last year we revoked three certificates and suspended two, I believe. We had one employee who was denied based on a past criminal action.

A DOL spokesman stepped in to explain. The record "does not mean that crew leaders are not violating [the law] or that we are not attempting to enforce the law. Under the regulations ... the due process is required, we have to notify the crew leader that we intend to revoke this certificate and give him time to request a

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[80] (...continued)
United Farm Workers.

[81] Hearings, Senate, 1974, pp. 115-116.

hearing." Then, there is the time factor. "If he requests a hearing ... the time element usually goes beyond his stay in one place, and by that time he is gone or the end of the season is on us." Landis then observed that unless the violation "is pretty bad we think it is better to get him into compliance and let him continue his work...." The dialogue moved on.

> Mr. HAWKINS. Well, the problem itself is not evaporating though; is it?
>
> Mr. LANDIS. No sir. There still is a problem for the migrant workers, a big problem.[82]

Lack Of Staff. In response to Representative Hawkins, it was noted that there were probably about 5,000 interstate crew leaders and another 3,000 intrastate crew leaders. The figures "are not accurate," Landis observed. "They are the best estimates that we could make." And, Landis continued, "... a little under 2,000" are registered.[83]

With more than eight years of experience under the act, Mr. Hawkins queried, "Are you making any effort to see that those who are not registered become registered? Who does the job of enforcing that?" Landis replied, "Well, that is our job, of course, to register them and to call them to account when they are not registered." DOL was trying to deal with that "through investigations" and "through public service announcements on radio and TV ... in both English and Spanish."[84]

We are not here "to be critical of you gentlemen," Representative William Ford (D-MI) stated, when introducing the Department witnesses, but "to determine whether ... we can find a way to make the law finally do what it was originally intended to do."[85] However, a certain amount of criticism did emerge.

The 1963 Act "was never enforced because the bureaucrats who were given the responsibility to enforce it did not get out of the regional offices," argued Elijah Boone of the Community Action Migrant Program in Immokalee, Florida. He alleged that most of DOL's staff (where crew leaders were concerned) were recycled "from old rural manpower, which had already been shown to be ineffective."[86] Alcario Samudia, now with the Wisconsin Department of Labor, recalled that when the crew leader Act came into being in 1963, "... I registered ... but then we found out that the Government did not have anybody to enforce the new laws, so many of us did not even bother to register" after that.[87] "It is a law," explained Barbara Rhine, an

[82] Hearings, House, 1973, pp. 108-109.

[83] Hearings, House, 1973, p. 107.

[84] Hearings, House, 1973, pp. 107-108.

[85] Hearings, House, 1973, p. 60.

[86] Hearings, Senate, 1974, pp. 230-231.

[87] Hearings, Senate, 1974, pp. 217-218.

attorney for the United Farm Workers, "that everyone here claims and knows is not enforced."[88]

Was the act fatally flawed? Or were enforcement officials jaded? Might the problem have more to do with appropriations? According to Luke Danielson, a former investigator for the Colorado Migrant Legal Services Agency, DOL officials had advised him that "they lack[ed] sufficient investigative staff to process complaints" — which resulted in this "abominable enforcement record."[89] Again:

> Mr. FORD. How many field enforcement people were actually involved in trying to check registrations ... of crew leaders prior to October 1972?
>
> Mr. BONFIGLIO. We had five field men in 1972. In 1965, we had 40. In 1966, that dropped to 17, and each year after that it declined down to 1972 when we had 5.[90]

Elsewhere, Representative Ford concluded, "It would appear that if we were operating with five people throughout the country to enforce this, knowing that we have in excess of 6,000 possible people to be policed, that we have not very aggressively ..." gone about enforcement of the statute.[91]

Other Issues. Clearly, other problems dogged enforcement of FLCRA during its first 10 years rendering the act either unenforceable or, perhaps, innocuous. Among allegations were the following:

The Language Question. Investigators were not always fluent in the language spoken by the workers: Spanish, particularly in the West. Though some announcements appear to have been made in Spanish, the cultural division was such that, often, they were inappropriately positioned. Even in terms of payment and Social Security, the pay stub may have been written in English, which "people don't understand."[92]

Crew Leader Versus Grower. There had been, through the decade, an intermittent conflict between the grower and the crew leader. If we could just "make the grower responsible," Landis stated for DOL, "... this would be the biggest boost to getting these crew leaders registered."[93] Conversely, Daniel Boone of the United Farm Workers charged that labor contractors "are used by the real employers, the growers, to maximize the insecurity of the worker" by adding yet another level of authority. The grower (farmer or company) "by the use of the contractor has insulated itself from any responsibility" for payment, insurance, and related costs

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[88] Hearings, Senate, 1974, p. 36.

[89] Hearings, Senate, 1974, p. 110.

[90] Hearings, House, 1974, p. l09.

[91] Hearings, House, 1973, p. 55.

[92] Hearings, Senate, 1974, p. 50. See also Hearings, Senate, 1974, p. 110, and Hearings, House, 1973, p. 108.

[93] Hearings, House, 1973, p. 108.

associated with migratory employment.[94] Luke Danielson argued "If the crew leader is not in fact registered, make the farmer liable for the wrongdoings of the crew leader."[95]

Inflating Crew Levels. Guadalupe Murguia, a United Farm Worker rank-and-filer, testified that contractors exploit the growers by padding their payrolls with grandchildren and great-grandchildren. "As an example, we discovered that the contractors had people on their lists who had been dead for 4 or 5 years." Where there is contract work, the company "pays for the people that the contractor has on his payroll."[96] Pablo Espinosa, also a rank-and-filer, affirmed, "I used to work for a labor contractor where he used to come and tell me, put two or three more people on the books. Put so and so and so on. Well, so and so don't exist, I would say. Well, you put them on. Who pays for that? The grower."[97]

Inspector/Grower Collusion? There was a sense, among some workers, that inspectors had become an adjunct to the growers. They, the inspectors, were educated and, often, spoke a language different from the field workers. When abuses were complained of, the inspectors "let them know that they are coming" to inspect, which, from the workers' perspective, tended to stack the deck against honest inspection. "It doesn't do any good to report anybody," observed Jessie de la Cruz of the United Farm Workers. "Nothing is done about it."[98] It was only by contacting inspectors "on repeated occasions," Danielson noted, "that we were able to get them to take this complaint at all."[99] Again, "There is no incentive to understand the Act as contractors know that the Act is not being enforced."[100]

Amending the Statute

In some respects, FLCRA appeared to have had little impact. Demands for its repeal (during the early years) seem to have been few.

"... I think it is appropriate for me to express a kind of personal 'mea culpa,'" suggested Father James Vizzard, an early backer of FLCRA. In the early 1960s, he stated that "under the leadership of Senator Harrison Williams and his Senate Migratory Labor Subcommittee, we were able to formulate and pass this legislation...." But, he added: "Hindsight tells us now that, despite a great deal of good will and technical competence, we really didn't do a very good job of it." Father Vizzard opined,

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[94] Hearings, Senate, 1974, pp. 49-50.

[95] Hearings, Senate, 1974, p. 105.

[96] Hearings, Senate, 1974, p. 43.

[97] Hearings, Senate, 1974, p. 45.

[98] Hearings, Senate, 1974, p. 41.

[99] Hearings, Senate, 1974, p. 105.

[100] Hearings, House, 1973, p. 165. The speaker, Joe Alexander, is a former farm labor contractor from Homestead, Florida.

> First, at the time there was no organized grassroots body with sufficient knowledge and experience to advise us of the day-to-day realities of farm worker problems in all parts of our country. Despite extensive studies and hearings it still was principally a group of us here in Washington ... who did what we thought best, and as it turned out that wasn't good enough.
>
> Second, once a legislative battle had been won and a bill passed, our forces tended to disperse and forgot the second half of the battle, namely, appropriations. Almost every act we passed, therefore, was grossly underfunded and continues to be so even to this day.
>
> Third, and perhaps most important of all, we failed to build into the program adequate and continuous enforcement. Without any exception that I can recall, the agencies charged with enforcement have never done a satisfactory or, in very many cases, even an honest job of enforcing these laws passed by Congress.[101]

Amendments would bring forth a new phase (and, in some respects, a more turbulent phase) of the regulation of agricultural labor. As revision of the statute proceeded, a number of issues emerged: some old, others new.

Changing Character of the Farm Labor Contractor. During hearings in the early 1960s, the farm labor contractor had been somewhat disparaged. A decade later, that view had mellowed. There were still tales of "short-counts" and beatings of workers who ran into "disfavor" with the crew chief — but these were issues with which DOL did not seem to become involved.[102]

"The great majority of these people," suggested C. H. Fields of the Farm Bureau, "are responsible businessmen who have made a significant investment in their businesses and who make every effort to abide by the law." Again:

> ... these people are small businessmen; they operate under extremely difficult circumstances; they do not have the services of accountants, bookkeepers, or legal advisors; and the more paperwork that is required the more apt they are to call it quits and go out of business.[103]

Definitional elements entered the picture as well. Elijah Boone of the Community Migrant Action Program (Immokalee, Florida) said that there were different kinds of crew leaders. "A contractor might be a very well to do, upper middle-class white businessman, who has money to invest in necessary machinery that a farm worker would know of." The contractor might be the person in charge of the contract and "... then he would hire the crew leader who would recruit the labor...."[104] Who might be charged with the payment of the workers (and with making deductions for Social Security and related matters) seems to have been unclear.

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[101] Hearings, House, 1973, p. 63.

[102] Hearings, House, 1973, p. 155. See also Hearings, House, p. 118. DOL did have grower complaints concerning funds forwarded to cover transportation costs of farmworkers.

[103] Hearings, Senate, 1974, pp. 154-156.

[104] Hearings, Senate, 1974, pp. 323-324.

Defining a Labor Dispute or Strike. Immigration officials, argued Father Vizzard, appear "to be in the pocket of large-scale employers," while "notorious labor contractors have been allowed repeatedly to build up their strike-breaking crews with these known illegals recruited throughout the Southwest."[105] Dan Pollitt, now special counsel to the Subcommittee, questioned Vizzard. A contractor, Pollitt suggested, was required to explain to contract workers "where they are going, wages, housing conditions, and so on." Pollitt asked, "Do you think it would be helpful to add that you must also say whether or not there is a strike going on or whether a contract is at its last stages of negotiations." Father Vizzard responded: "Yes. I would."[106]

But again, there were problems. Guinn Sinclair, president, National Farm Labor Contractors Association, suggested an almost "complete lack of legislation" on labor-management relations in the agricultural field as to what "constitutes a labor dispute." Sinclair questioned: "Why should a contractor be the judge when our courts have issued conflicting decisions?" And: "Does a labor dispute exist when the United Farm Workers Union issues a boycott of lettuce and table grapes?" Or, again, when the Teamsters or the United Farm Workers, then in a contest for farmworker loyalties, "claim jurisdiction and yet no laws exist to determine the will of the workers themselves?" Sinclair protested, "... I don't think the contractor should be the one to decide that there is a dispute."[107]

The Farm Bureau argued that agriculture "is exempt from the National Labor Relations Act and farmers have no legal method to deal with labor disputes" and "unfair labor practices." Again, there were definitional issues: "... what constitutes a strike, slowdown or labor-management dispute," and when does "such a condition exist at a particular farm." Were a farmer to become engaged in such issues, the proposal "could have the effect of determining whether or not his crop would be harvested." The Bureau continued, "Fruits and vegetables tend to reach the harvest stage as determined by the inexorable laws of nature," and a farm "cannot wait around until someone," perhaps the state or the federal government, "decides whether there is a legally-constituted strike or labor dispute." The provision, it stated, "would seem to be an unworkable and unreasonable responsibility" to place upon contractors.[108]

DeLury of DOL took a cautious attitude, suggesting that the provision was "pretty broad" as written.[109] Later, Bruce Burkdoll, speaking for the Central California Farmers Association, charged that "a union or group of workers" could create "a labor dispute, even though the union does not represent" the workers

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[105] Hearings, House, 1973, p. 64.

[106] Hearings, House, 1973, p. 92.

[107] Hearings, Senate, 1974, p. 32-33.

[108] Hearings, Senate, 1974, p. 163.

[109] Hearings, Senate, 1974, p. 142.

involved. He concluded, "... just because a student or someone else that never saw you on your ranch stops in front and waves a flag, we just cannot live with that."[110]

The *Day Haul* and the *Shape-Up*. The *shape-up* exists in most regions from which growers or contractors recruit. "That is the place where the people gather to find out whether there will be work that day, sometimes as early as 2 a.m....." The shape-up varies from one locality to another. So does the nature of the work sought.[111]

"The contractor ... will have the pick of the lot," according to Barbara Rhine, United Farm Workers attorney. "He will choose the strong, the young, the healthy.... Or the attractive women who have to turn a pretty face and act at the driver's bidding ... Or the illegal alien, whom he can have taken back by the border patrol before he pays the day's wages." If the character of the work is marginal, "then the shape-up area will be filled with the local winos, the sad, stumbling men and women who are so abject that all it takes is the promise of wine to get them into the fields." Rhine stated,

> And so the people get on the buses and hard-seated trucks and try to sleep on their way to work. If they get miles into the fields and find that it's not the first picking that they have been promised, or that there are no toilets and drinking water, or that the gloves to protect their hands are torn, missing, or not provided at all, then their choice is to work anyhow or walk back to town and miss the whole day. If they complete the day's work, they frequently get paid less than the promise, and with deductions made for fees and transportation.

Further, she alleged that "If they get their slips showing the deductions for social security and disability, they find out later when they are old and sick that the money somehow never found its way to the proper State or Federal agency."[112]

Rhine's comments focused upon California, but, Theodore Dietz of the New Jersey Department of Community Affairs explained the conditions of *day-haul* workers in his part of the country — casual workers employed on a daily basis.

- Both federal and state minimum wage laws are consistently broken.
- "Many crew leaders go unregistered." They disguise their function as crew leaders by using a number of cars and "by carrying less than ten people per vehicle."
- The crew leader provides "either insufficient information or misinformation" to the worker. "Because there is no written contract between the crew leader and worker, the worker may agree to pick one crop and end up picking another at a different piece rate."

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[110] Hearings, Senate, 1974, p. 172.

[111] Hearings, Senate, 1974, p. 35.

[112] Hearings, Senate, 1974, p. 35. See also Hearings, Senate, 1974, p. 154, for an analysis by C. H. Fields of the Farm Bureau.

- "Social Security deductions are never made for day haul workers, eliminating many of them from eligibility when they reach 65."
- No statement of earnings, deductions or hours worked is provided to the worker.
- "Day haul workers rarely are provided toilet facilities in the field and occasionally no water...."
- Children of a very young age are a part of the system.
- "Arbitrary dismissals and blacklisting" are part of the day haul system.
- "No protective clothing against weeds, rain or pesticides are ever provided...."
- "No health or first aid services are available to day haul workers."[113]

Proposed amendments tended to exclude day haul workers. Father Vizzard (now of the United Farm Workers) expressed concern. "Our experience," he stated, "tells us that some of the grossest abuses against both farm workers and employers are perpetrated by day haulers." The rationale for this exemption is "'because there are so few inspectors.' We think that the proper response to this fact is ... a notable increase in enforcement staff."[114] David Sweeney, Political and Legislative Director for the Teamsters, agreed. "We concur with the statement made by the United Farm Workers in their testimony ... 'We think that the proper response to this fact is, as stated above, a notable increase in the enforcement staff.'"[115] Further, Dietz observed that exclusion of day hauling left him "in a word, dumbfounded."[116]

Even DeLury affirmed DOL's opposition to eliminating day haulers from coverage. "This exclusion would deprive laborers working for a day-haul contractor of guaranteed insurance protection and basic information about the job. These guarantees," DeLury stated, "are as important to the day worker as to the laborer who works for a contractor over an extended period."[117]

The Administration, however, was divided on the issue. Jack Donnachie, Rural Manpower Service, DOL, raised the issue of practicality. "We do have some points where we supervise day haul, as well as they can be supervised," Donnachie stated. But he cautioned that "... you are out on a public corner with a day haul" and you "cannot stop a man," he argued, when the recruitment takes place in a public space. "We received a lot of criticism ... for day haul operations and justifiably so," he

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[113] Hearings, House, 1973, p. 174.

[114] Hearings, House, 1973, p. 63.

[115] Hearings, House, 1973, p. 94. Sweeney proposed inclusion of day haulers in the bill.

[116] Hearings, House, 1973, p. 174.

[117] Hearings, House, 1973, p. 97. DeLury also stated: "In addition, some day-haul work is interstate; this activity is covered under the current act. We oppose a change which would exempt this interstate activity." See also DeLury, Hearings, Senate, 1974, pp. 117, 147-148.

stated, "... so we are getting out of the day haul business as fast as we can get out because we cannot control it."[118]

As the hearings progressed, Representative Ford noted a certain level of caution. If day haulers were included in the bill, "... it is obvious that we are going to be picking up ... a situation that for some period of time would require constant day-by-day monitoring." He continued:

> Mr. FORD. So we are talking about more manpower than we have heretofore been using. Do you have any idea about what your additional manpower needs would be, taking into account the additional enforcement power of the Act. Have you given that any thought.
>
> Mr. DeLURY. Yes, we have. Recently we went up before Mr. [Daniel] Flood's Appropriations Subcommittee and requested a supplemental budget for the Employment Standards Administration, and in the area of farm labor contractor registration work we ear-marked ... 10 additional positions for the coming years."[119]

In an aside to Father Vizzard, Ford stated that "... there was not any intent on the part of the authors of this bill to diminish our capacity to deal with the problem" of day haulers: "... we are just trying to deal in priorities with the resources we have."[120]

Interstate Versus Intrastate. The original labor contractor legislation focused upon interstate transportation of migrant and seasonal workers. Ben Robertson of the Wage/Hour Division explained that Florida crew leaders, under current law, "would not need to be registered ... until they indicated or got ready to move North. They would then come under the coverage of the act because of the interstate character of the work."[121]

An amendment to the act proposed to cover interstate intrastate operations. Fr. Vizzard applauded the new section, noting that "many — and I would say perhaps most — of the contractors operate wholly within one state. It is long overdue that they be covered by the provisions of the law."[122] DeLury was equally supportive.[123] And Alcario Samudia, the former crew leader from Wisconsin, urged that all crew leaders "who recruit interstate or intrastate[,] regardless of whether they only recruit for themselves or a combination of employers," be registered.[124]

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[118] Hearings, House, 1973, p. 23.

[119] Hearings, House, 1973, p. 102.

[120] Hearings, House, 1973, p. 86.

[121] Hearings, House, 1973, p. 23.

[122] Hearings, House, 1973, p. 63. David Sweeney and William Grami, both from the Teamsters, noted their support of intrastate coverage. See Hearings, House, 1973, p. 187.

[123] Hearings, House, 1973, p. 97.

[124] Hearings, Senate, 1974, p. 220. Under the 1964 legislation, growers who recruited "solely for his own operation," were not covered.

Fields of the Farm Bureau argued against this expansion. "We strongly urge that it be made clear ... that it is not the intent of Congress to cover the intrastate activities of farm labor contractors," he stated.[125] George Sorn, of the Florida Fruit and Vegetable Association, urged that FLCRA continue to apply "only to crew leaders who cross state lines." Sorn stated that registration of other workers would be a "needless expenditure of taxpayers' money." He continued: "We believe leaders who operate only on an intrastate basis should not become subject to the Federal Act in those states which have adequate crew leader laws of their own."[126]

Establishing Responsibility: Growers Versus Farm Labor Contractors. In FLCRA, as originally adopted, a "farmer, processor, canner, ginner, packing shed operator, or nurseryman who engaged in" farm labor recruitment "solely for his own operations," shall not be included within the concept of a *farm labor contractor*.[127] Under the proposed amendments, the issue was raised anew.

There was a sense, among advocates of a stronger FLCRA, that growers had, by use of the contractor, "insulated" themselves from responsibility for a diverse range of employer-associated responsibilities.[128] At the same time, it was argued that the farm labor contractor does not set policy but, rather, merely follows orders laid down by growers. In south Texas, it was explained, the contractor does not set the rate of pay or determine the hours of work. He merely follows established policy and is nothing more, in effect, "than a crew foreman."[129] Barbara Rhine of the United Farm Workers explained that "whoever recruits labor for the grower is nothing more or less than his employee...."[130]

Some were willing to assign the contractor the role of an employee of the grower. DeLury of Labor, however, supported a provision in the draft bill making "growers liable for damages resulting from acts or omissions of unregistered farm labor contractors with whom they have contracted for services." He also recommended "a provision to prohibit outright the use of unregistered crew leaders by growers."[131] Joseph McAuliffe of the Wage/Hour Division noted an absence of responsibility. Someone, "we don't care which," has to assume responsibility.[132]

This issue, grower versus contractor, would remain central to the debate on FLCRA through the next decade. Much agricultural work seems to have been conducted on a quasi-cash basis. Or, where there were more formal processes, it may

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[125] Hearings, Senate, 1974, p. 156.

[126] Hearings, House, 1973, pp. 190-191.

[127] See Section 3(b)(2) of P.L. 88-582.

[128] Hearings, Senate, 1974, p. 49.

[129] Hearings, Senate, 1974, p. 249.

[130] Hearings, Senate, 1974, p. 37.

[131] Hearings, Senate, 1974, p. 116. (Italics added.)

[132] Hearings, House, 1973, p. 104.

have been unrealistic to expect a worker, thirty years hence, to attempt to prove that he or she actually worked, for what period, and what was (or was not) taken out of his pay. Pay stubs may be written in English and may be basically unintelligible for non-English speaking workers. Given the migratory character of such workers, compensation information may well have been lost with the passage of time.[133]

Immigration and Adverse Effect. Section 5(b)(6) of FLCRA provided that the Secretary might "refuse to issue" or "suspend, revoke, or refuse to renew a certificate of registration" if the farm labor contractor had "with knowledge" hired workers in violation of the immigration and nationality laws of the United States.

As the 1974 amendment moved through the legislative process, there was an effort to restructure this provision. Everyone, it seems, knew that undocumented aliens were employed in American agriculture but, beyond that awareness, there seemed little agreement as to a course to follow. Father Vizzard concluded: "It is too easy for the crew leader or labor contractor to escape the impact of that section of the law by simply claiming innocence, and who can prove to the contrary?"[134]

Much of the discussion focused upon knowledge. Rudy Juarez, a former farm worker experienced with crew leading operations, suggested that "contractors and the farmers [they represent] are heavily recruiting illegals from Mexico. Many times we have reported this to the border patrol," Juarez stated, "but they do not seem to be interested until the harvest is over." Senator Nelson inquired of Juarez: "I understand you to say that the employers frequently pay transportation of the illegals." Juarez replied, "Yes, sir. For many years I was a contractor myself."[135]

With one witness after another, though from different perspectives, the issue of use of undocumented workers was raised. Identity papers, it was alleged, were easy to acquire; but, once armed with fraudulent documents, who was to judge? "Since the Border Patrol cannot determine who is an illegal in the United States," opined Guinn Sinclair, "we do not feel you should impose upon the contractor the absolute law that he should know." Sinclair and Nelson discussed the problem of identification. "You know," Sinclair suggested to Nelson, "that the magnitude of Mexicans working in the United States is much greater than I think is conceived here." Part of the problem, the farm labor contractor suggested, rests with the governments of the United States and of Mexico. But, notwithstanding the source of the problem, "the contractor has no way of knowing who should be here and who should not be here."[136]

Mabel Mascarenas, wife of a farm labor contractor, questioned the "should know" proposal. "Are people going to wear a sign that says 'I am an alien,' or are we expected to act as Immigration Officers and know all the details of immigration papers?" Much of the work on the farms deals with perishable commodities. "When

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[133] Hearings, Senate, 1974, pp. 49-50.

[134] Hearings, House, 1973, pp. 87-88. See also Hearings, Senate, 1961, p. 130.

[135] Hearings, Senate, 1974, pp. 226-227.

[136] Hearings, Senate, 1974, pp. 183-184. See also, ibid, pp. 170-172.

we need people, and people come to us seeking work,"she said, "we hire them. We are the most integrated business in America."[137]

"It is our view," suggested Joseph Phelan, National Council of Agricultural Employers, "that the imposition of the provision prohibiting the employment of illegal aliens would be tantamount to transferring to the employer a responsibility which correctly lies with the Immigration and Nationalization Service."[138] The Farm Bureau took a similar position. "On the surface," it noted, the premise, "'know or should know' to be in violation of the immigration laws," some may find appealing. But, "the question arises as to how a labor contractor is expected to know or determine whether a given worker is in this country illegally." The bill "is silent with regard to any procedure a contractor would be expected to follow." We urge "that this subsection be deleted." And it further stated: "The Immigration Service itself has not been too successful in stopping illegal entries or discovering those who enter illegally."[139]

Father Vizzard seemed unimpressed with arguments for use of illegals. He suggested that if one were "to raise the wages and improve the working conditions" under which aliens worked, American workers would be found. "When that happens traditionally in any part of American economic life, there are American workers to do the jobs." The system, he stated, "... is simply a fraud and the disguise has to be stripped back again and again and again."[140]

A New Statute through Amendment

Although the issues raised during hearings on revision of FLCRA were of substance, they seem to have attracted relatively little attention. With hearings concluded, the Congress moved on to enactment of the farm labor amendments of 1974.

Bipartisanship Emerges in the House. In March 1974, Representative Ford introduced a nonpartisan bill incorporating the findings of the hearings — at least as they were understood.[141] Ford thanked Earl Landgrebe (R-IN), especially, for helping to invoke "a spirit of bipartisanship" that has resulted in a "unanimous vote"

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[137] Hearings, Senate, 1974, pp. 245-246. (Italics added.)

[138] Hearings, Senate, 1974, p. 260. Phelan added: "Moreover, this provision poses the question of whether you are crossing jurisdictional lines with the Committee on the Judiciary. You will recall that this language was included in the proposed amendment to the Fair Labor Standards Act last year and was subsequently dropped for that reason."

[139] Hearings, Senate, 1974, p. 163.

[140] Hearings, House, 1973, pp. 89-90.

[141] *Congressional Record*, March 7, 1974, p. 5694. Original sponsors were: Earl Landgrebe (R-IN), Ella Grasso (D-CN), Frank Thompson (D-NJ), Gus Hawkins (D-CA), William Lehman (D-FL), James O'Hara (D-MI), Lloyd Meeds (D-WA), Albert Quie (R-MN), David Towell (R-NV), William Steiger (R-WI), John Erlenborn (R-IL), and Orval Hansen (R-ID).

in committee. The bill is "cosponsored by every member of the Subcommittee on Agricultural Labor" and by other members on each side of the aisle.[142]

Bipartisan support was evident. "H.R. 13342 provides," explained James O'Hara (D-MI), "for stiffer penalties ... A civil remedy is made available in Federal court for those aggrieved under the act."[143] Frank Thompson (D-NJ), with others, emphasized that day haul workers would now be under the act.[144] The bill "broadens the definition of those covered," stated William Lehman (D-FL), "to include crew leaders recruiting for work done in the same State...."[145] Landgrebe affirmed that the Secretary will now "have an affirmative duty to monitor and investigate violations of the law." Both he and Albert Quie (R-MN) stressed that the grower will need to "observe a certificate of registration in the possession." At present, Representative Quie stated, "the crew leader is required to display it, but no one is required to observe it." Quie reassured the growers: "We are not attempting to make the growers joint employers with the crew leaders, nor are we attempting to make them responsible for the crew leader's unlawful actions."[146]

At the end of the colloquy, the rules were suspended and the bill was passed on a voice vote.[147] The following day, the bill was dispatched to the Senate where it was assigned to the Committee on Labor and Public Welfare.[148]

The Senate Concurs. It was October, six months later, before the bill reached the Senate floor. Then, the Senate moved to strike everything after the enacting clause and to insert its own language. Only two speakers addressed the issue, each expressing disenchantment with the original FLCRA. Recent testimony, observed Senator Williams, "... indicates that the act of 1963 has failed to achieve some of its original objectives."[149] Similarly, Senator Javits noted: "After 10 years of experience, ... we find that this act has largely been ignored and cannot be effectively enforced."[150]

While the provisions of the bill were briefly discussed, Senator Williams took note of "one new provision which I deem to be of such importance, that I wish to discuss it in some detail." Williams explained that farm labor contractors

> ... will be subject to a criminal penalty of up to a $10,000 fine or a prison sentence of up to 3 years (or both), if such contractor has knowingly engaged the

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[142] *Congressional Record*, May 7, 1974, pp. 13402-13405.

[143] *Congressional Record*, May 7, 1974, p. 13405.

[144] *Congressional Record*, May 7, 1974, p. 13406.

[145] *Congressional Record*, May 7, 1974, p. 13406.

[146] *Congressional Record*, May 7, 1974, pp. 13408-13409.

[147] *Congressional Record*, May 7, 1974, p. 13409.

[148] *Congressional Record*, May 8, 1974, p. 13619.

[149] *Congressional Record*, October 3, 1974, pp. 33745-33746.

[150] *Congressional Record*, October 3, 1974, p. 33746.

> services of an illegal alien. Illegal alien has been defined to mean any person who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment....
>
> Illegal aliens have become an increasingly large source of farm labor in this country, and the services of a contractor are often utilized to procure this clandestine workforce. The existing act generally prohibits such activities by making it grounds for revoking or suspending the contractor's registration. However, if this tide of illegal immigration is to be stemmed, stricter enforcement and stronger penalties must be applied against those who violate the act. *These additional steps are necessary in light of the adverse effect such importation of illegal aliens has had on the wages and job security of our citizens, especially in times such as these of high unemployment*. (Italics added.)

Williams quoted Leonard Chapman of the Immigration and Naturalization Service. "'There are probably from six to 10 million illegal aliens in the country today. They are occupying jobs that unemployed Americans ought to have.'" No doubt, Williams asserted, "illegal farm labor would account for a sizable share."[151]

No one else spoke. Apparently regarded as routine, the bill was read a third time and passed on a voice vote, but in a form different from that of the House.[152]

Compromise Is Reached. The Senate-passed bill was sent back to the House where Representative Ford reported it. "Certain provisions in the Senate amendment," explained Mr. Landgrebe, "were very broad, would probably discourage registration, and possibly make the act more difficult to enforce." Landgrebe stated, "Since this is a 'crew leader' bill, *and not a bill covering farmers or growers*," certain adjustments seemed in order. (Italics added.) Representative Quie defended the growers. "The Senate version implicitly imposed upon growers and processors — all those with whom a labor contractor provided migrant workers — the obligation to enforce the act. In other words," Quie stated, "the Senate version held them responsible for the crew leaders' abuses and failures. We did not believe that it was necessary to hold a farmer criminally liable for the acts and omissions of another." He concluded, "... the responsibility for enforcing the act is where it belongs — on the Secretary of Labor and not on the farmer."[153] The new version retained the provisions concerning undocumented aliens.

Once again, the House voted to approve the measure on a voice vote and sent the new bill back to the Senate.[154] To this point, the two bodies had worked separately. No conference had been requested: none was deemed necessary. However, there now developed within the Senate a colloquy among Senators from the Pacific Northwest and from Florida.

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[151] *Congressional Record*, October 3, 1974, p. 33746.

[152] *Congressional Record*, October 3, 1974, p. 33747.

[153] *Congressional Record*, October 11, 1974, pp. 35468-35471.

[154] *Congressional Record*, October 11, 1974, p. 35471.

Senator Mark Hatfield (R-OR) commenced. Out in the Pacific Northwest, "... we have a number of row crops and berries which lean heavily upon the use of student labor.... This is usually under the leadership of school teachers or other public education employees who take the responsibility of acting as crew leaders for these students" or are under the supervision of parents who, collectively, act "as crew leaders." Hatfield asked a question: Does the bill "include or does it exempt such cases as I have indicated — namely, teachers and public education employees and parents who act as crew leaders?" Second, does the bill as, currently drawn, include (or exclude) the permanent employee of the farmer (or, perhaps, the farmer himself) who hired these people? Senator Nelson, for the subcommittee, concurred with Senator Hatfield — and with Senator Warren Magnuson (D-WA) — in affirming that the Department of Labor was "not to consider this type of activity" when enforcing the act.[155]

A second colloquy occurred with Senator Lawton Chiles (D-FL). In the bill, the contractor could be exempt if his "recruitment activity is solely for his employer on no more than an incidental basis." Chiles agreed that "registration should be required of the individual whose sole job is to hire and recruit migrant labor" but he had concerns about the term "incidental." He stated: "I do not feel that the committee intended that regular employees who may perform some duties for their employer relative to securing migrant labor are to be required to register. It is my understanding," he stated, "that the bill aims at those who on a full-time basis hire or recruit migrant labor." Senator Nelson noted that "the purpose of this provision is to prevent farm labor contractors from avoiding registration by becoming the employee of each and every grower for whom they recruit and hire migrant workers...." But, *it was not the intent* of the act to include the "regular employee" of the grower. Chiles was not yet entirely clear. "Even though this duty might be considered to be an important aspect of his job responsibility by his employer ... , if he were a permanent employee and continued to have other duties, he would not be considered to have to register," Chiles inquired. "The Senator is absolutely correct in the manner in which he has stated it," Nelson replied.[156]

Following a summary statement by Senator Williams, the Senate concurred in the House-passed version of the bill. The vote was a voice vote.[157]

On October 19, President Gerald Ford returned the bill with a veto message. "This bill contains provisions designed to strengthen the protections of migrant farm workers ... which I support." But he noted that the Senate has added certain extraneous materials to the bill dealing with the federal personnel system. He directed that Congress remove them and promised to "approve" the bill as

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[155] *Congressional Record*, October 16, 1974, pp. 35901-35902. Both Senators Hatfield and Magnuson specifically endorsed the day haul provisions of the bill. However, for the next several Congresses, that provision (in the context of youth labor under the Fair Labor Standards Act) would remain very controversial.

[156] *Congressional Record*, October 16, 1974, p. 35902.

[157] *Congressional Record*, October 16, 1974, p. 35903.

amended.[158] Senator Nelson had introduced S. 3202 in March 1974.[159] That bill was now resurrected, modified, and reported to the Senate on November 21[160] — and was adopted by a voice vote on November 22.[161] The House concurred (by a voice vote) on November 26.[162] On December 7, 1974, the bill was signed into law (P.L. 93-518).[163]

The 1974 FLCRA Amendments. The 1974 amendments represented a tightening up of the initial Farm Labor Contractor Registration Act. The focus was still primarily on the contractor. *Inter alia,* it provided the following:

- The concept of "interstate" was stricken, affirming by implication that the new act would apply as well to those persons operating within a state — but having an impact upon interstate commerce.

- The phrases "ten or more" and "at any one time in any calendar year" were deleted.

- It exempted from coverage any farmer or processor "who personally engages in any such activity."

- Similarly exempt was any full-time or regular employee "who engages in such activity solely for his employer *on no more than an incidental basis*...." (Italics added.)

- In order to deal with students and their elders (but to include day haul operators), there was added: "any person who engaged in any such activity (A) solely within a twenty-five-mile intrastate radius of his permanent place of residence and (B) for not more than thirteen weeks per year...."

- Added to the concept of agricultural employment was "the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state."

- "No person shall engage the services of any farm labor contractor ... unless he first determines that the farm labor contractor possesses a certificate from the Secretary that is in full force and effect at the time he contracts with the farm labor contractor."

- The applicant (contractor) must file a statement affirming that "each vehicle" and the "housing" to be used by migrants "conform to all applicable Federal and State safety and health standards" — to the extent that they are under "the applicant's ownership or control...."

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[158] *Congressional Record*, November 18, 1974, pp. 36246-36247.

[159] *Congressional Record*, March 20, 1974, p. 7383.

[160] *Congressional Record*, November 21, 1974, p. 36822.

[161] *Congressional Record*, November 22, 1974, pp. 37040-37042.

[162] *Congressional Record*, November 26, 1974, pp. 37372-37376.

[163] *Congressional Record*, December 11, 1974, p. 39005.

- The applicant (contractor) shall designate the Secretary as his agent to accept "service summons" where he has departed from his original address/ jurisdiction or "has become unavailable to accept service...."

- The contractor must make known to the farm workers "the existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment...."

- The contractor must "refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment...."

- Any agreement by an employee "to waive or to modify his rights" under the statute "shall be void as contrary to public policy" — except that a waiver to the Secretary for enforcement purposes is valid.

The rights and obligations of the several parties were spelled out in some detail.[164] Though certain segments of agriculture had reservations, the new amendments did not seem to represent a threat — and, indeed, they had been approved, repeatedly, with little debate and by voice vote.

PART III: Implementing a Revised Statute (1974-1983)

By nearly all assessments, FLCRA had not been entirely successful in alleviating problems associated with migratory labor.[165] Revisions crafted during the 1973-1974 hearings brought some refinement of the statute. Few voices in Congress had been raised against the statute. Still, the act was not perceived as threatening to users of migrant workers.

Pressures Begin to Mount

In October 1975, the House Subcommittee on Agricultural Labor conducted hearings on FLCRA. "As you may know," commenced Representative John McFall (D-CA), "my District in California includes the central part of the San Joaquin Valley. This is one of the most productive agricultural areas in the country, and as a result, agricultural labor is a vital part of the economic foundation of the area."[166]

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[164] See P.L. 93-518 for precise wording of the amendments.

[165] U.S. Congress, House, Committee on Education and Labor, Subcommittee on Agricultural Labor, *Oversight Hearings on the Farm Labor Contractor Registration Act*, Hearings, 94th Cong., 1st Sess., October 1 and October 11, 1975, pp. 113-136. (Hereafter cited as Hearings, House, 1975.)

[166] Hearings, House, 1975, p. 10.

McFall explained that DOL had failed "to adhere to ... clearly expressed Congressional intent" but had also failed "to provide its field personnel clear directions on the implementation of these [1974] amendments." It (DOL) had required "a farm or ranch foreman" to register as a farm labor contractor though he performed "many other duties" beyond worker recruitment. McFall had written to Labor Secretary John Dunlop but had not yet received a response. While he was "not opposed" to FLCRA or to the 1974 amendments ("I believe there is a need to ensure that farm labor is not exploited by labor contractors," he said.), his concern was over the DOL's failure "to provide an equitable and clearly defined implementation of the Act."[167]

Prior to the 1974 amendments, the focus had been on the plight of agricultural workers. Now, it shifted to employers and to the structure of the industry. The wrong people, it was argued, were being caught up in the Department's net.

General Problems of Administration

We have had "statements of concern" (and "some compliments") that DOL was "too vigorous in its administration of the act" — and, conversely, that it "is not vigorous enough," stated Chairman Ford of the House Agricultural Labor Subcommittee. The Congress has "used every device possible," he noted, "... to prod, criticize, and sometimes castigate the Labor Department to push for vigorous enforcement of laws." Still, the Committee does not want to "make compliance with the law so unpalatable" that we end up "litigating while farmworkers receive no real factual benefits from the enactment of the legislation."[168] Regulations had not yet been proposed, Ford reminded DOL: "We are, in fact, developing a considerable body of controversy in administration of this law because of the absence of these regulations."[169]

DOL intends to continue our "enforcement efforts and our multi-media information campaign," DeLury stated, "and will get as many farm labor contractors registered as possible so that the benefits of the law will be available" to the crews.[170] Then, he turned to administration. We have "a total of 19 man-years assigned to the

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[167] Hearings, House, 1975, pp. 10-11. On Congressional opinion, see pp.85 and 93-94.

[168] Hearings, House, 1975, p. 15.

[169] Hearings, House, 1975, p. 16. DOL's failure to publish regulations for the 1974 amendments seemed to permeate the entire proceedings. Robert Mills, Salinas Valley Independent Growers' Association (p. 284), stated: "I think the whole effort of the testimony here today is, please, may we have some definitive regulations from the Department of Labor and not try to define what we believe the intent of Congress is...." Similarly, Donald Dressler, Western Growers' Association (p. 273), taking note of litigation then before the courts, stated, "We would wish ... that the court would have required the Department to first draft regulations before they ran off in all these different directions."

[170] Hearings, House, 1975, p. 13. As of Sept 20, 1975, DeLury testified, "we had issued 3,718 certificates" — more than in prior years but less than expected with "approximately 10,000 or more" contractors that should be subject to coverage under the act.

activities under this Act" to cover the entire country.[171] As one of the later witnesses explained, "[m]ost of our [farm] workers are Spanish-speaking people."[172] As things then stood, "... we do not have a Spanish-speaking compliance officer."[173]

More Specialized Concerns with FLCRA

Older questions — whether dormant or never having been formally raised — assumed a sharper focus. Since the regulations had not been released at that time, there was a good bit of speculation about almost all aspects of FLCRA.

Internal Definitions. Representative Ford, speaking at the 1975 hearings on FLCRA, suggested that "that the lack of definitions and uniform regulations" seems to be the heart of complaints. He urged that the target date for release of the regulations (then, by the end of November) be moved up "so that we can start solving these problems before everybody ends up in court?"[174] Robert Chase, Deputy Assistant Secretary of Labor, assured Ford that regulations have received "priority attention" but that it was impossible, just then, to provide "an earlier date."[175]

For ten years under the act, it was assumed that everyone understood what was meant by *a crew leader* or *farm labor contractor* or *a migrant worker*. After 1974, however, definitions became more problematic. Some witnesses asserted that they "had no objections" to the act[176] and that FLCRA was "appropriate and reasonable"[177] — so long as it was not *their clients* who were affected. "In our wildest dreams we did not consider that the people which we represent," stated industry spokesman R. V. Thornton, "would be covered" under FLCRA.[178]

Who Is a Farm Labor Contractor? Representative McFall stated that he had received numerous inquiries concerning DOL's efforts to register a farm or ranch foreman as a farm labor contractor. Under the 1974 compromise, a foreman might be FLCRA-exempt if, *in his regular work*, he performs duties other than assisting his employer in acquiring migrant workers. But, how might one distinguish between primary and secondary duties? "Clearly," DeLury objected, "this language does not provide an exemption from the application of the law to all full-time employees."[179]

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[171] Hearings, House, 1975, p. 14.

[172] Hearings, House, 1975, p. 106.

[173] Hearings, House, 1975, p. 53.

[174] Hearings, House, 1975, p. 15.

[175] Hearings, House, 1975, p. 16. Regulations were proposed, December 8, 1975, *Federal Register*, pp. 57332-5733.

[176] Hearings, House, 1975, pp. 258-259.

[177] Hearings, House, 1975, p. 270.

[178] Hearings, House, 1975, p. 252.

[179] Hearings, House, 1975, p. 14. DeLury continued: "Certainly an employee of a grower, whether full-time or not, who devotes all of his time or the majority of his time *to farm labor*

(continued...)

The relationship of the contractor to the grower was critical and, it would seem, difficult to define. Does the contractor provide services (employees) to one employer or to several? What services does he provide to the employees? What records does the contractor keep? Guinn Sinclair observed of California:

> We have examples of where a contractor has been successfully prosecuted, his license has been revoked by the State, and the next day he is still with the same crews working the same ranches, only now he is an employee of the ranch. Clearly he is still a farm labor contractor....[180]

Conversely, if a grower provides farm hands to a series of farmers, when does he cross the line from grower to contractor? Suddenly, such questions become relevant — and, ultimately, perhaps, a subject of litigation.

And Who is a Migrant? How long might a migrant remain in one location before he or she ceased to be migratory? Some workers are engaged by a firm (or firms) in an area for two, three — ten months out of the year. Can a migrant also be seasonal? "They come back every year. You see ... we have county housing." "They come there and they live in those houses until the crops are over." "They are really not migrant because they only come from Texas to Patterson [California]"[181]

Another witness stated, "To my way of thinking, a migrant worker is one who travels away from his regular place of residence. A great many of these migrant workers who move throughout the United States in agricultural labor, live and make their homes in our immediate area ... ," he stated. "They come back to that area about this time of year and stay there, generally, until about May again."[182]

Representative Ford asked about the responsibility for transportation while recruiting. "The only time we ever go out and recruit anybody, we don't recruit them really, we just go down ... to Calexico. We have 23 foremen this year in cantaloups and those 23 foremen will go out."[183] This would seem to recall the initial question implied by Representative McFall: When is a foreman a regular employee and when is he really a farm labor contractor? Conversely, does it really matter so long as he or she is engaged in the work of a farm labor contractor?

Interpreting the Word "Personally". In 1974, the concept of *personally* was added to the list of exemptions. "While this language is clear with respect to sole proprietors," DeLury stated, "interpretative problems do arise with respect to partnerships, associations, joint stock companies, trusts and corporations." DeLury explained how it might apply to an individual with the responsibility of "a sole

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[179] (...continued)
contractor activities is not within the exemption and such an employee should register under the law." (Italics added.)

[180] Hearings, House, 1975, p. 261.

[181] Hearings, House, 1975, p. 280.

[182] Hearings, House, 1975, p. 68.

[183] Hearings, House, 1975, p. 280.

proprietor" if he "acts personally with respect only to farm labor contracting activities at the operation involved." But, he concluded, such an interpretation may raise problems of proof to be resolved on a "case-by-case basis."[184]

Ford responded that he was "loath to suggest that his committee would ever write anything that is ambiguous," stating: "What we are really trying to do is find the point at which we should ascribe responsibility for the employer/employee relationship." Again: "The farm labor contractor that we are trying to reach is the body broker."[185]

Reaching the *body broker*, however, proved difficult. Some in agriculture objected to DOL's interpretation of *personally*: i.e., "... a farmer who operates as an individual and performs all the activity ... without the assistance of any employee, agent or contractor...."[186] But firms have "a variety of arrangements" with the grower.

> A small grower may produce a crop to the point of harvest, then through one of several arrangements, have that crop harvested by a shipper. The shipper will harvest, pack and sell the crop, based on financial arrangements with the grower. We also have large cooperatives which provide harvesting, packing, and sales facilities for its [sic] grower members.

It was asserted that, in a large company, there could be "between 10 and 30 small growers for whom some agricultural work is done by the company's employees." Obviously, it was explained, "the owner does not personally engage in such activity" but allows the duties to be "delegated."[187]

In other cases, ownership itself becomes a factor. Where crops are harvested in the field by a client (non-grower) making use of migratory labor (but, with the crops still owned by a separate entity, the grower), who is the responsible party? If ownership changes hands while the crop is in the field, does responsibility follow the crops? There seemed, suddenly, a host of issues that may not have been considered when FLCRA was largely unenforced — but, after the 1974 amendments, became critical.

On an Incidental Basis. "A full time or regular employee of a farmer is exempt," wrote Dante Nomellini, a Stockton-based attorney for the growers, if he is engaged in farm labor contracting activity for his employer "on no more than an incidental basis." The term, "'incidental' is not defined," he declared, but the "plain meaning" would seem to render him exempt if his "labor contracting function was not his primary function or primary responsibility."[188]

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[184] Hearings, House, 1975, p. 14.

[185] Hearings, House, 1975, pp. 16-18.

[186] Hearings, House, 1975, p. 97.

[187] Hearings, House, 1975, pp. 258-259.

[188] Hearings, House, 1975, p. 100.

What was plain to Nomellini was less so to DOL. DeLury, with other Departmental witnesses, objected that the agency had received virtually no guidance from Congress. "Unfortunately," said Bobbye Spears, Associate Solicitor and charged with preparation of the regulations, "the act does not think in terms of the primary duty, nor does it tell us to look behind the subjective interest of the employer in hiring a particular person."[189]

Arguably, a case-by-case approach might have resolved the problem; but, in practice, such discretion may have been ill-advised. For example, "a farmer's or processor's operations manager, his personnel director, his foreman, or all of them, may find that they must, for a temporary period, devote an unusual amount of their time to soliciting, recruiting, or hiring workers." In the process (for a brief period), the amount of time expended might "substantially exceed" the time taken by a farm labor contractor for roughly similar tasks.[190]

'Who for a Fee ..'. Another aspect of FLCRA administration that caused concern was interpretation of *who, for a fee....* Perry Ellsworth (National Council of Agricultural Employers) argued that the term, as used under the act, had several potential meanings. A "fee" would seem to mean "a payment asked or given for a specific service." But DOL would argue that if a full-time employee "has any dealings with agricultural labor, a portion of the salary that employee receives is a 'fee.'"[191] On this matter, Representative Ford wrote to Secretary Dunlop: "... I would assume that the words 'for a fee' would not be construed to include any part of the salary of a full-time or regular employee who, as part of his job, is required to transport workers between a meeting place in the city and his employer's farm."[192]

As with many areas of labor policy, an answer may have been complex. For example, the Benita Packing Company, one of the firms in contention, "goes into the field with its own employees, harvests the crop, brings it to the packing shed, packs it for market and sells the commodity on behalf of the grower," stated attorney Donald Dressler. "*The grower pays a fee which covers the labor expense*...." Benita Packing "is in control of the workers at all times" and the "*grower has no control or involvement with them at all.*" (Italics added.) In this case, to whom would FLCRA apply — if, indeed, it would apply at all?[193]

Leon Gordon, counsel for the Agricultural Producers Labor Committee (a labor co-op serving Arizona and California), also addressed the issue of fees. The Committee is non-profit, but operates a series of worker-related activities.[194] "Its

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[189] Hearings, House, 1975, pp. 19-20.

[190] Comments of Perry Ellsworth for management, Hearings, House, 1975, pp. 89-93.

[191] Hearings, House, 1975, p. 82.

[192] Hearings, House, 1975, p. 94.

[193] Hearings, House, 1975, p. 270.

[194] Gordon testified, Hearings, House, 1975, p. 285: "They operate dining facilities, and in some cases provide hot meals in the orchards. These camps provide recreation facilities,
(continued...)

books are zeroed out at the end of the year, and each grower defrays his exact proportionate share of the cost of the labor and overhead expenses of the association determined on a volume basis." However, DOL "... has adamantly taken the position that *a fee is involved* even in the case of a cooperative labor association...." (Italics added.) The result was litigation — with Gordon drawn into court to protect the grower/co-ops.[195]

Insurance. Under FLCRA, insurance was to have been roughly on a par with common carriers used to transport passengers in interstate commerce. Several concerns were voiced here — some focusing upon the character of the farm labor contractor. [196]

The farm labor contractor "... is a small businessman. He has just one little truck that he is trying to make a living with.... If he owns two or three trucks, it is just that much more," one witness stated. "It is the recordkeeping, the details. He does not have a bookkeeper. *In most instances, he cannot read and write himself very well.* He is being required to keep all these records that he just does not have any way of doing." "In the first place, many of them cannot afford the insurance requirements even if they can find a company that will write the insurance." Finally, he concluded, "We do not quite understand why we should be required to furnish all of these buses and all these high insurance requirements to transport people 5 or 6 miles. Many of our workers are not transported more than just 10 or 15 or 20 miles."[197]

Bobbye Spears, with the Solicitor's Office, addressed the same issue — but with a somewhat different twist. She recalled a recent case in which a farmer said that "I have to have peas picked tomorrow and a neighbor farmer saying, I will be glad to round up a crew of people and transport them down to your farm and pick your peas tomorrow." Ms. Spears noted: "The helpful farmer took his truck, which, in this case, was an open truck, transported them down to the neighbor's farm, they picked the peas, and on the way back there was a wreck. There were several children under the age of 12. I believe that three were killed."[198]

Employment of Aliens

"Quite obviously, we anticipated that a central problem in dealing with this law would be the problem of illegal aliens," stated Representative Ford, "because it was

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[194] (...continued)
television rooms, chapels, and in some cases they provide counseling for the workers. This housing and attendant facilities are provided on a cost or below cost basis to the workers."

[195] Hearings, House, 1975, pp. 285-287.

[196] See Section 5(a)(2) of the act. The Secretary had some measure of discretion in this matter.

[197] Statement of Scott Toothaker, Texas Citrus & Vegetable Growers & Shippers, Hearings, House 1975, pp. 67-69. Italics added.

[198] Hearings, House, 1975, p. 20. See also section on *Adams Fruit* litigation, below.

one of the purposes we had in mind in amended the law."[199] Several factors were at issue: the bureaucracy, employer-employee relations, and the local reaction.

Dealing with the Bureaucracy. Warren Landis of the Wage/Hour Division affirmed that DOL had "worked very closely with ... Immigration and Naturalization" but suggested the issue was "quite thorny." Landis speculated,

> What, in fact, constitutes *knowing employment* of illegal aliens and what are the bona-fide efforts that a contractor would make so that he would be absolved of knowing employment of illegal aliens? (Italics added.)
>
> I wish we had a full answer this morning, but we do not. This is another situation that we are addressing on a case-by-case basis.

Landis stated that he had "one case where we denied a certificate ... because of a history of employment of illegal aliens" and we have "some other — perhaps similar — cases that are pending." John Silver of the Wage/Hour Division from Fresno noted that "... the Border Patrol indicates to us that they believe that 30 percent of the farm-workers who are harvesting crops in California are illegal aliens. So," he stated, "... you can see that our problems are great." Part of the problem may have been linguistic. "There are groups where very few of them speak English. They cannot communicate," observed Joe Fernandez, with the Wage/Hour Division from Raleigh, North Carolina, and "we have had difficulty locating a crew leader."[200]

Ford turned to Bobbye Spears of the Solicitor's Office. Do the contemplated regulations have "any specific requirements" to show that a grower or farm labor contractor actually "tried to know" the worker's status? Spears replied, "We have been working very closely with the INS lawyers and with the Attorney General's staff to see what would be reasonable within constitutional restraints." She added, "What could we require within the constraints of the Constitution? What sort of affirmative duty could we place on the grower?" Spears stated, "We think we have a reasonable set of requirements which we do intend to propose when the regulations come out." But, she added: "It is very tricky."[201]

Reaction from the Industry. "The burden placed ... on the employer," stated Dante Nomellini, attorney for the growers, "to be able to identify an illegal alien" is "unfair and in most cases the labor contractor or the farmer or any employer is not in a position to accomplish an adequate interrogation of the individual involved."[202]

Nomellini acknowledged that the statute says "knowingly," but that the act still placed an unfair burden upon the employer. An illegal, picked up and deported, may end up back on the same farm — without the employer-grower being aware.

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[199] Hearings, House, 1975, p. 52.

[200] Hearings, House, 1975, pp. 52-54.

[201] Hearings, House, 1975, p. 54. This conversation took place some twenty years after the end of the bracero program.

[202] Hearings, House, 1975, p. 106.

> You have to recognize that the farmer himself is not just one individual working on the farm and he is not the one who goes out and supervises the worker and he is not the one generally who has the contact. We have a language differential here ... most of the farmers are not fluent in Spanish nor are they capable, or their agents, of interrogating that man to find out if he is legal or illegal without violating that man's rights.

He suggested, after analysis, that it can be asked "if he is a lawful resident of the United States" and for "his name and social security number." "We don't have this capability to interrogate. The Border Patrol, a very sophisticated group of people who have been trained, even they have problems. The burden shouldn't be placed on industry."[203]

Nomellini's solution was direct. The State Department "ought to be asked to cooperate with Congress in coming up with a situation where the individual who is an illegal, once apprehended, is punished in a significant way so that ... he won't come back across the border." The problem, he stated, "has to be attacked at its roots and that is right at the border. If anything significant is going to be done to keep aliens out — *and I don't know whether we want to*, that's a matter of policy...." (Italics added.) It's a matter for the Congress and for those directly involved: "... not the farmers and not the labor contractors and not the general employers in industry."[204]

The Local Reaction. Scott Toothaker, a management attorney from Texas, lives right up against the Mexican border. And, that creates another dimension to the problem. Some Spanish-speakers may be illegal — but others may be local.

> How is this truck driver [picking up job applicants] with nothing more than a second, third, fourth, or fifth grade education, to pass on whether that guy is an illegal alien or not? They all have some kind of a card.... But I defy anyone in this [hearing] room to tell me whether he is an illegal alien.

Ford responded that regulations — which "have not yet been written" — provide ways through which to render an analysis. The presumption of knowingly employing an alien "would have to be overcome by proving actual knowledge, and while it is less than perfect, we do know that there are ... people who habitually rehire people."[205]

Guinn Sinclair, representative of the farm labor contractors, voiced similar concerns, suggesting that "the Department of State should be the one" to determine

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[203] Hearings, House, 1975, pp. 106-107.

[204] Hearings, House, 1975, p. 107. Nomellini questioned, p. 98, the ability of the "foreman and supervisors who are not sophisticated interrogators" to screen for illegal immigration. "If it is your desire to keep illegal aliens out of the country then cooperation from the State Department will be required and still penalties will have to be imposed upon the apprehended illegal alien himself." He added: "The slap on the hand and free transportation to Mexico is not an adequate deterrent." See also pp. 146-148.

[205] Hearings, House, 1975, p. 77.

who is in the country illegally. "Trying to get the businessman to enforce the laws of the United States just is not good."[206]

Zora Arredondo was equally direct. A self-described "hillbilly from Kentucky talking before all these lawyers," queried: "Do you know what it is to need to have your crops thinned, or weeded before you can irrigate and you have 1 or 2 days before you get the water? Have you ever seen fruit that was falling on the ground ready to be picked?" Moving on to policy implications:

> If you need people and some come to the field wanting to work, you are going to put them to work. The crop is the important thing, not who the man is or where he comes from. Besides, the place to stop the illegal aliens isn't there in the fields, it is at the port of entry. (...) Do we have the right to ask people if they are citizens? The Department of Labor doesn't know the answer.

Ms. Arredondo turned to the Members: "Do you? When we do ask people for papers, they tell you, 'I don't have to show you my papers.' How many of us have anything to prove we are U.S. citizens? I don't."[207]

New Regulations Released

On June 29, 1976, final regulations were published. Of 61 substantive comments, items of principal concern were (a) the increased amounts of insurance coverage, (b) the applicability of the amended act to include intrastate, as well as interstate, farm labor activities, and (c) the proposed regulations relating to illegal aliens.[208]

On insurance coverage, DOL "concluded that the increased amounts ... were necessary to protect workers." Coverage of intrastate farm workers was, of course, part of the 1974 Act and could not be changed without legislation.[209] Concerning employment of aliens, the farm labor contractor was to give evidence of "an affirmative showing of a bona fide inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States." The regulation provides a series of acceptable routes — birth certificate, certificate of naturalization, passport, certain INS forms — through which a determination might be made.[210]

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[206] Hearings, House, 1975, p. 262.

[207] Hearings, House, 1957, pp. 277-279.

[208] *Federal Register*, June 1976, p. 26820. See also *Federal Register*, December 8, 1975, pp. 57332-57339, for the proposed regulations.

[209] *Federal Register*, June 29, 1976, p. 26820.

[210] *Federal Register*, June 29, 1976, pp. 26825-26826.

Coverage and Controversy

With the passage of time, some Members of Congress, with others, began to reassess the impact of FLCRA and to urge modification of coverage. At least three areas stand out: custom combining, poultry harvesting, and detasseling of corn.

Custom Combining, Hay Harvesting, and Sheep Shearing. On March 4, 1976, Representative Larry Pressler (R-SD) introduced legislation to exempt from FLCRA "contractors of workers engaged in custom cutting or combine operations" and "contractors of workers engaged in the shearing of sheep."[211] Roughly comparable legislation was introduced on March 9 with two more bills on March 11.[212]

"In Nebraska, the major part of our extensive wheat acreage is harvested by 'custom cutters,'" stated Representative Virginia Smith (R-NE). "These operations do not involve migrant labor in the accepted sense of the definition," she stated, "... so all of the added precaution against abuses is not necessary." Smith suggested that these contractors and crew leaders "... should not be required to be registered, or to be certified, or to meet the other requirements for insurance, transportation, and housing." Seeking exemption, she stated: "Otherwise, we have placed a hardship on the agricultural equivalent of the small businessman and ... have subjected him to more of that over-regulation which strangles and can eventually destroy."[213]

Members from other grain growing states also suggested change. James Abourezk (D-SD) introduced a new bill (March 18), observing that the 1974 FLCRA amendments had "inadvertently expanded the scope of the law to cover sheep shearers and custom combine crews." Senators Lloyd Bentsen (D-TX) and Abourezk had met with Department officials on the issue; Senator Nelson and Representative Ford had written to DOL. These informal efforts, however, were of no avail.[214]

Senator Robert Dole (R-KS) explained the purposes of the exemption. FLCRA was intended "to end abuses against migrant workers and farmers" by farm labor contractors. While custom combining workers are migratory (starting in Texas and moving on to the far north), they were really not migratory in the sense that farm laborers might be. There was "no record of exploiting or abusing" of such employees. As for safety and health requirements, "custom operators are already meeting the standards necessary to protect their employees." Thus, Senator Dole saw "no need for the additional safety and health requirements" of FLCRA. He objected to "time-consuming paperwork" and to requirements for "higher insurance. FLCRA was intended for farmworkers "from a poverty-stricken environment," who have "little or

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[211] *Congressional Record*, March 4, 1976, p. 5571.

[212] *Congressional Record*, March 9, 1976, pp. 5955, 5956-5957, and March 11, 1976, p. 6192.

[213] *Congressional Record*, March 17, 1976, pp. 6802-6803.

[214] *Congressional Record*, March 18, 1976, p. 7108. See letter of Representative Ford and Senator Nelson to William Usery, Secretary of Labor, February 23, 2976, reprinted in *Congressional Record*, March 23, 1976, p. 7611.

no knowledge of the English language," and are moved in "unsafe transportation." Dole concluded, "There is no similarity in any respect between farm labor contractors and custom combine operators"[215] — or sheep shearing crews, for that matter.

On March 23, Representative Pressler introduced yet another version of his FLCRA-exemption bill — as did Representative Berkeley Bedell (D-IA).[216] Bedell had written to the Department on February 23, 1976, and, his request for exemption having been denied, he called DOL and spoke with Herbert Cohen of Wage/Hour. Cohen acknowledged receiving communications from Members involved in drafting the act.

> He [Cohen] then related that, despite this testimony, the Department decided to proceed with the implementation of the new requirements because its lawyers felt that the legislative history of the 1974 amendments did not specifically call for the exemption of such crews.[217]

Bedell called the incident "a classic example of the executive branch using its rulemaking authority to usurp the legislative function of the Congress" and of "attempting to legislate by fiat." Finally, he called upon the Congress "to thwart executive excesses in the rulemaking area" by enacting corrective legislation.[218]

On March 23, as the Senate considered the Rural Development Act of 1972, Senator Dole proposed FLCRA exemption of custom combine, hay harvesting, and sheep shearing workers. Senators Abourezk, Bentsen, and Nelson were supportive; without dissent, the amendment was adopted.[219] The following day, Representative Tom Foley, a Democrat from Washington state, called up the Rural Development Act with the Dole amendment. Mr. Foley explained that the problem was "technical" — that the issues were neither "labor contractors [n]or migrant laborers" but, rather, "independent contractors who until now have not been subjected" to the FLCRA.[220] The only other speaker was Representative Ford — who announced that, although the subject matter of the bill should have been directed to a subcommittee of the Committee on Education and Labor, he would not object.[221]

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[215] *Congressional Record,* March 18, 1976, pp. 7108-7110.

[216] *Congressional Record,* March 23, 1976, pp. 7719 and 7720.

[217] *Congressional Record*, March 23, 1976, p. 7689.

[218] Ibid. Representative Bedell explained: "The original act exempted crews employing less than 10 people from its registration requirements. However, in 1974, the statute was amended to include any group which 'recruits or transports' more than one employee. This numerical change technically brought small custom combiners and sheep shearers under the law despite the fact that there is no specific reference to these groups in the legislative history of the act."

[219] *Congressional Record*, March 23, 1976, pp. 7608-7612.

[220] *Congressional Record*, March 24, 1976, pp. 7785-7786.

[221] *Congressional Record*, March 24, 1976, p. 7786.

On April 5, 1976, the Rural Development Act (with the Dole amendment) was signed into law (P.L. 94-259).[222]

Poultry Services. During the spring of 1976, a seemingly uncontroversial bill was introduced dealing with internal Department of Agriculture administration. The measure was passed by the House[223] and was forwarded to the Senate. There, it was reported on September 30, 1976, considered later that same day, and passed with an amendment.[224]

Referred back to the House, Representative Tom Foley presented the measure and the clerk read the title of the bill and the Senate amendments. At the conclusion, a paragraph had been added amending FLCRA.

> (9) any custom poultry harvesting, breeding, debeaking, sexing, or health service operation, providing the employees of the operation are not regularly required to be away from their domicile other than during their normal working hours.

Representative Edward Madigan (R-IL) queried: "I wonder if the gentleman ... could explain the one amendment the Senate has placed on the bill." Foley responded: "...the Senate has placed on the bill a provision relating to the Farm Labor Contractor Registration Act." William Wampler (R-VA) added that the FLCRA amendment was the only change in the House-passed bill.[225]

The bill was approved, sent to the White House and signed into law on October 1976 (P.L. 94-561).

To Detassel and Rogue Hybrid Seed Corn. During hearings early in 1978, Representative Virginia Smith complained about the "narrowminded and ridiculous interpretations" of the "over-zealous bureaucrats at the Department of Labor who don't have anything better to do than harass our businessmen." Smith went on to discuss actions that "endanger yet another of the fragile freedoms that still exist for individuals in this country."[226] She observed that "thousands of farmers" have "come to Washington during the past few weeks in search of help to raise farm prices." To raise farm income, she seemed to suggest, farmers should be permitted to pay less to the "several thousand high school students" who are hired each year "to detassel seed corn, thin out test plots or rogue sorghum." She stated,

> ... in no way can the salary from this job be considered as their primary means of support. In many cases, it is more of a social event than a job. It also provides a

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[222] *Congressional Record,* April 6, 1976, p. 9554.

[223] *Congressional Record,* July 26, 1976, pp. 23735-23741. See H.R. 10133 (94th Congress).

[224] *Congressional Record,* September 30, 1976, pp. 33815-33816, 33866-33867.

[225] *Congressional Record,* October 1, 1976, pp. 35170-35171.

[226] U.S. Congress, House, Committee on Education and Labor, Subcommittee on Economic Opportunity. *Farm Labor Contractor Registration Act,* Hearings, 95th Cong., 2nd Sess., February 22-23, 1978, pp. 35-36. (Cited hereafter as Hearings, House, 1978.)

> good opportunity for a coach, high school teacher, or college student to pick up some extra money and for the students to keep in touch during part of the summer.

Ms. Smith stated, "I believe that unless this law is changed to stop the action proposed by the Department of Labor, we face a serious challenge to our freedom."[227]

On April 11, Representative James Leach (R-IA) introduced H.Res. 1124 expressing the sense of the House "that certain individuals employed in the detasseling of hybrid seed corn should not be considered to be migrant workers" for purposes of FLCRA.[228] Shortly thereafter, a bill was introduced by Leach that would have amended FLCRA to deal with the same issue.[229] No hearings were held: in legislative terms, the issue seemed to disappear. Momentum, however, was building.

In September, the "Perishable Agricultural Commodities Act" (PACA) was under consideration. Senator Richard Clark (D-IA) proposed an amendment to FLCRA to correct "an example of government out of control." The amendment would exempt "a portion of the seed industry" from FLCRA registration. "These are young people [with about 280,000 young persons who work seasonally] ranging in age from 14 to 16 years old who work for an average of 10 days to 2 weeks each summer," Clark stated, and who "detassel seed corn, eliminate 'rogue' plants, and perform other functions, related to seed production." The employees are from the local area, residing within a 30 to 40 mile radius, and who return to their home each evening, he suggested. These people are "clearly not migrants by any reasonable definition."[230] His constituents "are very much up in arms about this," he stated, "and ... I do not blame them."[231]

It had only been through the past year, it was stated, that DOL had sought to enforce FLCRA against the seed corn industry.[232] On February 23, 1978, Senator

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[227] Hearings, House, 1978, pp. 36-37. Rep. Charles Grassley (R-IA), p. 49, questioned the "loss of an important source of youth employment." Rep. Charles Thone (R-NE), p. 43, argued that "such stupid regulations" might force companies to turn "to mechanical methods of detasseling and then what would this do to our employment problems?" In a letter, February 28, 1978, pp. 40-41, later submitted for the record, Smith wrote to Secretary Marshall and explained: "We have thousands and thousands of workers who will be affected by this matter and are waiting to see if their government has the capacity to exercise some restraint in its authority, and some common sense in its actions." See testimony of Representative David Stockman (R-MI), ibid, pp. 45-48, and comments of Richard O'Connell, National Council of Farmer Cooperatives, Hearings, Senate, April 1963, pp. 199-200.

[228] *Congressional Record*, April 11, 1978, p. 9697.

[229] *Congressional Record*, April 25, 1978, p. 11363.

[230] *Congressional Record*, September 8, 1978, pp. 28565-28566. Senator Richard Lugar (R-IN) stated, p. 28568: "Activities exempted include detasseling but also include activities such as roguing and hand pollenation which are typically performed by young people."

[231] Congressional Record, September 8, 1978, p. 28566.

[232] See comments of Senator Williams (D-NJ), September 8, 1978, *Congressional Record*, (continued...)

Clark had addressed a letter to Secretary Marshall in which the issue was discussed and followed that up with a phone call to Marshall and a personal visit with Assistant Secretary Daniel Elisburg, but DOL "refused to change its position."[233] Senator Richard Lugar (R-IN) similarly wrote to Marshall in late July, but without apparent impact.[234] Now, with no objection having been heard, an amendment was added to PACA and a quarter-plus million workers were exempted from FLCRA.

The Clark amendment was accepted and approved by the Congress.[235] On November 1, 1978, the root bill was signed into law (P.L. 95-562).

The Lessening Coverage of FLCRA

Various segments of the agricultural industry had been eliminated from FLCRA coverage as, it was argued, the wrong people were brought under the act's purview. Senator David Boren (D-OK) would later observe: "We could go through the entire food and fiber industry, sector by sector, adopting amendments to clarify the act." He suggested that a wiser course would be to "enact legislation to clarify the act completely once and for all."[236]

Hearings in the House: 1978

In mid-1977, Representative McFall wrote once more to Secretary Marshall concerning registration under FLCRA. McFall stated that farmers in his district (part of the San Joaquin Valley) would be forced to register as farm labor contractors under the definition of *personally*.[237] Marshall's response was less than some Members had hoped, providing the context for the 1978 hearings.[238]

Starting from the McFall/Marshall correspondence, the hearings explored a variety of FLCRA definitions. Most critics followed the lead of Perry Ellsworth (National Council of Agricultural Employers). He did not seek to diminish worker protections, but, that having been said, he continued to argue against the "untold

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[232] (...continued)
pp. 28568-28569, about the seed corn industry.

[233] *Congressional Record*, September 8, 1978, p. 28566.

[234] *Congressional Record*, September 8, 1978, p. 28568.

[235] *Congressional Record*, October 13, 1978, pp. 36707-36709, 37113-37114.

[236] *Congressional Record*, June 25, 1978, p. 16748.

[237] See John McFall to Ray Marshall, June 30, 1977, reprinted in U.S. Congress, House, Committee on Education and Labor, Subcommittee on Economic Opportunity, *Farm Labor Contractor Act*, Hearings, 95th Cong., 2nd Sess., February 22-23, 1978, pp. 13-14. (Cited hereafter as Hearings, House, 1978.) Others joining McFall in his inquiry to Marshall were Robert Leggett, John Moss, B. F. Sisk, and Harold Johnson, all Democrats from California.

[238] Hearings, House, 1978, pp. 14-16.

harassment" of farmers and others — who were "by no stretch of the imagination crew leaders."[239] Many argued for the original intent of Congress.[240]

Day haul workers raised broader questions. Representative William Hefner (D-NC) acknowledged that such workers had not been "inadvertently included under the law." Still, he urged the Members to "reexamine those intentions" and to exempt workers living within a 75-mile radius of agricultural operations. "In North Carolina," he stated, "day haul workers are almost always, local, permanent residents of the area in which they work." They do not necessarily go through a labor contractor and, when they do, "... it is more a matter of convenience rather than economic necessity." He stated: "Day haul workers *are not migrant workers, as the term is commonly understood*.... And day haul operators, who transport these workers ... are not crew leaders in the usual sense of this term."[241] (Italics added.)

But, if not migratory, such workers may still have been subject to transportation provided by growers or contractors. "The gist of this problem seems to be in the insurance coverage required of anyone defined by the law as a farm labor contractor, whether he transports local day labor or true migrant labor," Hefner stated. No one suggests that day haul workers go unprotected, he stated, but they still have under state insurance laws requirements similar to "all other workers in the State."[242]

The issue was taken up by Representative B. F. Sisk (D-CA) in a letter to DOL. Elisburg replied that state coverage varied "in accordance with the mandate of the particular state legislation." Such laws are work-related and apply only where "the passengers are clearly 'employees' of the insured employer." Dependents of migrant workers are not covered, Elisburg continued. "In addition, liability under State workers compensation plans would not extend to the times migrant workers are being transported from one employer to a prospective employer."[243]

These several issues were joined with respect to shared worker arrangements. Representative David Stockman (R-MI) proposed that FLCRA should not apply to farmers who shared the services of agricultural workers and who receive "no monetary consideration" other than actual expenses. "The potential for abuse," Representative Stockman stated, "is in my view almost nil."[244] Elisburg responded that, "as an enforcement policy," DOL "would prefer to put our resources elsewhere" rather than

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[239] Hearings, House, 1978, p. 78.

[240] Hearings, House, 1978, pp. 13, 42-43, and 48.

[241] Hearings, House, 1978, pp. 21-28. Current radius was 25 miles.

[242] Hearings, House, 1978, p. 23.

[243] Hearings, House, 1978, p. 8. The correspondence between Rep. Sisk and Elisburg appears on pages 7-12. See also comments by Rep. McFall on this issue, pp. 18-19.

[244] Hearings, House, 1978, pp. 45-47. When introducing FLCRA legislation, Stockman referred to "predatory bureaucrats" that have turned the law into "a weapon against the farmer." He explained (*Congressional Record*, June 20, 1977, p. 19982): "In the Department of Labor's eyes, the expectation that the laborers would return to his farm became 'valuable consideration' to the farmer entering into a casual agreement with his neighbor. This play upon words turned the farmers, he said, into 'farm labor contractors.'"

come after small farmers who, on a local basis, share workers.[245] The response did not satisfy Stockman, and Representative William Goodling (R-PA) suggested: "He [Elisburg] is saying if we had more resources we would get after them, too...." But Elisburg stated, "... large or small, if we found abuses of the work force we would go wherever they are."[246]

Some urged that legislation exempt "nonprofit charitable organizations," "public or nonprofit private educational institutions," and "bona fide nonprofit agricultural cooperatives engaged in labor contracting for their own members." Elisburg suggested that such proposals were something of a ruse — and one that DOL would oppose — that they would "substantially narrow the act's coverage and would deny its protection to large numbers of agricultural workers." Elisburg stated,

> We have been told by those who support this exemption that such organizations are fixed and have assets which would be reachable in a law suit by their employees. I think that we all have to recognize, generally, agricultural workers do not have the financial resources to independently assert their rights against such organizations, and we question why this economically disadvantaged group should be placed in this position.

Further, Elisburg stated that "... employment by a nonprofit organization has nothing to do with a need to protect agricultural workers under FLCRA, particularly if the nonprofit venture consists of profit-making organizations."[247]

Concerns Grow

"These individuals," registered under FLCRA, are "not farmers; they were 'agents' who arranged to provide migrant labor to farmers," Representative Stockman affirmed. Many of them have "long criminal records. They stole from the workers, they stole from the farmers, and they needlessly endangered the health and safety of migrant workers."[248]

Yet, it was with these same, perhaps unscrupulous, middlemen that farmers dealt. The contractors, some alleged, provided the services of low-wage and, often low-skilled workers: some Native Americans, some foreign-born — and some ineligible to work in the United States. They broke strikes, some said, and prevented domestic workers from organizing. Further, critics suggested that they provided cover for their farmer/business partners.

DOL, some urged, had "consistently misinterpreted" the rules governing such contractors. Though he believed "that agricultural workers must be protected from abuse by unethical crew leaders" (a consistent sub-theme of FLCRA critics), Representative Leon Panetta (D-CA) protested that "family farmers" were "forced to

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[245] Hearings, House, 1978, p. 52.

[246] Hearings, House, 1978, p. 52.

[247] Hearings, House, 1978, pp. 54-55.

[248] *Congressional Record*, June 20, 1977, p. 19982.

comply with complicated registration forms, maintain detailed records, and are subject to a variety of investigations and inspections." Faced with "growing anger" from the farming community, Representative Panetta proposed a substantial restructuring of FLCRA.[249]

Relations with the Department of Labor. Under date of October 24, 1979, fifty-two Senators [led by J. Bennett Johnston (D-LA)] wrote to Secretary Marshall expressing "our increasing concern" over DOL's management of FLCRA.

The Johnston letter explained the purposes of the act (as the signers perceived them) and observed that "farmers and certain other agricultural employers" are being required to register — "a requirement we believe goes beyond any reasonable interpretation of the law." DOL's actions, "apparently based on its own extremely narrow interpretation" of the act, are "completely contrary to Congressional intent," and impose "an undue penalty and economic burden on those specifically exempted" by Congress. "... these actions have resulted in a misdirection of the Department's limited resources at the expense of those the law was intended to protect."[250]

Marshall's response, dated November 26, 1979, offered few accommodations. He agreed that enforcement of the act "be targeted on repeat and serious violations which jeopardize labor standards...." Marshall observed that the first ten years "under the Act" have not ended abuse. Thus, the 1974 amendments were enacted "to extend coverage and improve enforcement."

The Secretary acknowledged that a farmer (or other agriculturally-related person) would be exempt if he or she "'personally' recruited migrant labor for their own operation" and that "any full-time or regular employees of any incorporated farm or agricultural business" might also be exempt if the employee "only performed farm labor contractor-type activities on an 'incidental' basis." On both issues, DOL had been consistent.

> We believe ... that FLCRA applies where there is a crewleader hiring or transporting workers or where there are company employees substantially engaged in activities generally performed by crewleaders. We also believe that it is critical to enforce the Act in a way which discourages evasion of its provisions — *to deter farm labor contractors from being placed on payrolls and appearing to assume the status of full-time or regular employees.* This enforcement approach is consistent with both the letter and spirit of the Act. (Italics added.)

The Secretary conceded that "the term 'incidental'" may not have been defined "as specifically as possible." He therefore stated that, for the future, such a person would be one "who does not spend more than 20 percent of his time in farm labor contracting activities and performs that activity solely for his employer." These changes will

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[249] *Congressional Record*, May 21, 1979, p. 11996. The Panetta proposal was only one of a number of FLCRA-related bills that surfaced during the late 1970s and early 1980s.

[250] See J. Bennett Johnston, with 51 other Members of the Senate, to F. Ray Marshall, October 24, 1979, reprinted in the *Congressional Record*, November 14, 1979, pp. 32322-32323.

provide "clarity [to] our enforcement position while at the same time preserving important protections for farm workers under the Act."[251]

The Senators were not entirely pleased with Marshall's letter. On December 5, 1979, Senator Johnston [with Russell Long (D-LA)] concurred with Marshall's emphasis on "'traditional farm labor contractors'" — and requested "a copy of instructions being prepared for enforcement officers." But, they disagreed on the impact of such changes.

> First, in order to know if an employee is engaged on more than an incidental basis, he must be engaged less than 20 percent of some time period. Logically, the time period should be his total manhours of employment. The failure of your letter to specify a time period leaves open the possibility that '20 percent of his time' means 20 percent of any work week, any work day, or any pay period. Any one of these possible meanings would render the 20 percent standard ineffective as far as strengthening the exemption provided by Congress.
>
> Second, your letter is not specific about the meaning of farm labor contracting activities. As we understand the Department's interpretation of the Act, supervision is considered to be a farm labor contracting activity. Since your letter does not clarify this, the new definition of 'incidental' again becomes less significant.
>
> Third, your letter does not indicate what regulatory standing the new definition of 'incidental' would have. The Department's intent should have been set forth in formal regulations, subject to public comment. Similarly, the interpretative regulations for the Act itself are long overdue.[252]

Through the last year and a half that Marshall was in office, such correspondence took on a regular pattern as first one and then another Member of Congress became distressed with the provisions of FLCRA.

The Boren Amendment and the Panetta Bill (1980). During consideration of the Child Nutrition Amendments of 1980, Senator Boren proposed an amendment "to clarify the provisions" of FLCRA. "All of us," he commenced, "... want to see an end to any abuse of migrant farm workers. But, at the same time," he affirmed, "We very strongly want to assure that an additional regulatory burden is not placed upon the farmers, the farm co-ops, and others involving agriculture across the country."[253]

Senator Boren was critical of DOL administration of FLCRA. It had moved, he stated, "far from the intent of the Congress" and of those who spoke on the 1963 legislation. The Department has been "subjecting farmers and other agricultural employers, including their employees, to civil and criminal penalties for failing to

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[251] Labor Secretary Marshall to J. Bennett Johnston (with others), *Congressional Record*, December 18, 1979, pp. 36850-36851.

[252] Senators J. Bennett Johnston and Russell B. Long to Labor Secretary Marshall , reprinted in *Congressional Record*, July 24, 1980, p. 19561.

[253] *Congressional Record*, July 24, 1980, p. 19557.

comply with" the requirements of the act. Senator Boren listed organizations that had "joined in support" of his amendment. He called upon DOL "to quit harassing the farmers" and "to curb ... unnecessary abuse of authority by the bureaucracy.[254]

The Senate was split. Senator Gaylord Nelson noted that the bill was essentially similar to S. 2875, introduced with 39 cosponsors a month earlier. Nelson urged that Boren, having made his point, would "be willing to withdraw his amendment" and to wait for hearings that had already been scheduled by his (Nelson's) Committee. "As the Senator knows, this law is within the exclusive jurisdiction of the Labor and Human Resources Committee." There was yet another option: i.e., S. 2789, introduced by Senator Javits. Senator Nelson agreed that there have been "serious problems" since enactment of the 1974 amendments. "Numerous lawsuits have been filed, and both agricultural employers as well as farm workers have expressed dissatisfaction" with DOL's administration of this law — "and justifiably so, in my opinion." Senator Nelson noted that he had personally written to the Secretary "expressing my concern." But, he also affirmed that the proper place for consideration of "corrective legislation" was the Labor and Human Resources Committee.[255]

The Boren amendment, however, was not withdrawn and, on a vote of 57 yeas to 37 nays, the measure was passed.[256]

The House was similarly divided on the issue. Representative Panetta, who had earlier introduced general reform of FLCRA, was now joined by Representatives Foley (of Washington State, chair of the Agriculture Committee) and William Goodling of the Committee on Education and Labor, with numerous others.[257] Panetta affirmed,

> The Farm Labor Contractor Registration Act was passed in 1963 to protect migrant farmworkers from abuse by unscrupulous crew leaders. This act was also intended to protect farmers and other agricultural employers from the

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[254] *Congressional Record*, July 24, 1980, pp. 19557-19558. Among groups backing his amendment, Senator Boren listed: "The American Soybean Association; the American Farm Bureau Federation, with some 3 million farmers as members; the American Frozen Food Institute; the American Mushroom Institute; the American Seed Trade Association; the American Sod Producers Association; the American Sugar Beet Growers Association; the Florida Citrus Processors Association; the Florida Sugar Cane League; the International Apple Institute; the National Broiler Council; the National Institute of Wheat Growers; the National Cattleman's Association; the National Cotton Council; the National Council of Agricultural Employers; the National Council of Farmer Cooperatives; the National Food Processors Association; the National Grange, with more than 500,000 members, made up of farmers; the National Meat Association; the National Peach Council; the Pennsylvania Food Processors Association; the Rio Grande Valley Sugar Growers Cooperative; the Society of American Florists; the United Fresh Fruit and Vegetable Association; and the Western Growers Association."

[255] *Congressional Record*, July 24, 1980, pp. 19558-19564.

[256] *Congressional Record*, July 24, 1980, p. 19574.

[257] *Congressional Record*, December 18, 1979, p. 36851.

> irresponsible action of some crew leaders. I firmly believe that the act should continue to serve that purpose.[258]

But it may need a few changes. "Unfortunately, in spite of the request of a majority of the Senate, the problem has not been resolved," Representative Panetta observed, noting "misinterpretations by the Department," "ambiguities in the act," and "a particular interpretation of its statutory authority."[259] Representative Goodling (with John Ashbrook (R-OH), ranking Member on the Committee on Education and Labor) offered an amendment "to clarify the act." DOL, Goodling stated, has engaged in "unnecessary and unproductive harassment" of many Pennsylvania farmers.[260]

In early September, Representative Goodling again addressed the House. His amendments, he said, "except for technical improvements," basically parallel the Panetta and Boren proposals — which he urged his colleagues to support.[261] Goodling was not alone: "over 100 Members of the House" (including Panetta) endorsed the Boren option.[262] Representative Ford did not. "I strongly oppose the Boren amendment," he stated. "... it would effectively repeal the FLCRA, the only Federal legislation that protects migrant farmworkers against the most common abuses they endure in their hiring, transportation, housing, and employment in agricultural labor." Ford placed in the *Record* a letter from Ray Marshall in which he, too, expressed "my deep concern and strong opposition" to the Boren amendment."[263]

The Boren amendment, however, was caught up in parliamentary procedures and migrated to a series of proposals. In a report for 1980, the *CQ Almanac* noted: "An amendment restricting coverage of a 1963 law aimed at preventing exploitation of migrant farm workers was added to a continuing resolution (H.J.Res. 637) but later dropped."[264] For the present, FLCRA remained unchanged.

The Boren Bill and the Panetta Bill (1981). In the 97th Congress, critics of the Farm Labor Contractor Registration Act returned to the fray. On April 8, 1981, Senator Boren introduced S. 922, a measure designed "to provide for the proper administration and enforcement of" FLCRA. Conceding that one problem has been the "somewhat vague and ambiguous" language that had "resulted in gross misinterpretation," Boren's proposal sought "to clarify" the meaning of the act.[265]

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[258] *Congressional Record,* July 24, 1980, p. 19456.

[259] *Congressional Record,* July 24, 1980, p. 19457.

[260] *Congressional Record,* August 26, 1980, pp. 23411-23413.

[261] *Congressional Record,* September 9, 1980, pp. 28405-28406.

[262] *Congressional Record,* September 9, 1980, pp. 24805-24807.

[263] *Congressional Record,* September 10, 1980, pp. 25102-25103.

[264] *Congressional Quarterly Almanac* (1980), Washington: Congressional Quarterly Inc., 1981, p. 453.

[265] *Congressional Record,* April 8, 1981, p. 6941. As a result of the 1980 election, Ray Marshall was replaced as Labor Secretary by Raymond J. Donovan.

Senator Chiles, co-sponsor of the Boren bill, having "stressed my support" for the purposes of the act, stated that FLCRA's "vague language and convoluted format" allows DOL to "subvert ... the intent of Congress" and to take advantage "of these procedural defects in its unrelenting efforts to envelop farmers, packers, processors, and their employees within the regulatory scheme of the act." The result has been "widespread harassment" of agricultural interests with "little discernable effect" with respect to crew leaders. Farmers "face enough problems in today's economy without this one."[266]

On May 20, 1981, Representative Panetta introduced H.R. 3636, similar in some respects to his bill from the 96th Congress.[267] FLCRA remains, he stated, "a significant problem of unnecessary and burdensome regulation" which has "grown as more and more farmers and other fixed-base agricultural employers" have found that they are required to comply with its terms.[268]

In the interim between introduction of the Boren bill and Panetta bill, however, there had been a discernible change. The Education and Labor Committee, Representative Panetta announced, "is contemplating hearings" on the issue this year, and there is "no doubt in my mind that we can work out the problems that exist with the act." Panetta wrote into his bill several proposals which may have been viewed as the start of compromise. *First*: He proposed to eliminate the "distinction between 'full-time or regular'" and to make clear the distinction between "a bona fide employee and an independent contractor." *Second*: He proposed to allow the Secretary some discretion in causing "a cooperative to register," depending upon the purposes of the co-operative arrangement. *Third*: He proposed a modification in the definition of "day-haul worker" with the stated intention of securing their protection.[269]

"It is in this constructive spirit," Panetta affirmed, "that I look forward to working with my colleagues on the Committee on Education and Labor, and particularly with my good friend from California (Mr. Miller), who is chairman of the Subcommittee on Labor Standards."[270] But, negotiations would be long and intense.

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[266] *Congressional Record*, April 8, 1981, p. 6943.

[267] In the 96th Congress, the Panetta bill carried the names of 160 Members. See *Congressional Record*, May 20, 1981, p. 10353.

[268] *Congressional Record*, May 20, 1991, p. 10353.

[269] *Congressional Record*, May 20, 1981, pp. 10353-10354.

[270] *Congressional Record*, May 20, 2981, p. 10354. Both the Boren and Panetta bills were superceded by the Administration's bill, introduced by request by Representative Miller.

The Miller Hearings and Their Aftermath (1982)

From the spring of 1981 and into the fall of 1982, the several parties at interest met and reviewed proposals for revision of FLCRA. From all sides, there were serious concerns "with the existing law that they felt needed to be addressed," according to Representative George Miller. Negotiations, he stated, "were long and, at times, frustrating."[271] Finally, on September 1, 1982, Secretary of Labor Raymond Donovan sent to Congress a bill entitled the "Migrant and Seasonal Agricultural Worker Protection Act which was referred to the Committee on Education and Labor."[272]

The Hearing. On September 14, 1982, Miller called together for a single hearing the Subcommittee on Labor Standards. The bill at issue was H.R. 7102, an Administration proposal but with more generalized backing. Robert B. Collyer, Deputy Under Secretary of Labor, was the first witness. Reviewing the recent history of the Administration's bill, Collyer affirmed,

> This cooperative effort has now resulted in a consensus bill, endorsed by the AFL-CIO, the migrant legal action program, and by major agricultural employer organizations, such as the American Farm Bureau Federation, the National Food Processors Association, and the National Council of Agricultural Employers.
>
> While none of these groups believes the bill to be ideal from its individual standpoint, there is important agreement that the bill materially improves the law.[273]

The 1974 FLCRA amendments, Collyer explained, had resulted in "a great deal of litigation."[274] The essence of the new bill was compromise.

Representatives from industry and the AFL-CIO endorsed the changes in policy included within the new bill.[275] Representatives of farmworkers were more skeptical, but acquiesced.[276] As the hearing closed, Representative Miller thanked the witnesses

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[271] U.S. Congress. House. Subcommittee on Labor Standards, Committee on Education and Labor, *Hearings on the Migrant and Seasonal Agricultural Worker Protection Act,* September 14, 1982, p. 1. (Cited hereafter as Hearings, House, 1982.)

[272] U.S. Congress, House, Committee on Education and Labor, *Migrant and Seasonal Agricultural Worker Protection Act*, H.Rept. 97-885, September 28, 1982, p. 4. (Cited hereafter as House, Committee Report 97-885, September 28, 1982.)

[273] Hearings, House, 1982, p. 43.

[274] Hearings, House, 1982, p. 44. Collyer, p.50, proceeded to thank "all those persons and organizations who participated in the cooperative effort over the past 18 months to develop this legislation."

[275] See testimony of Jay Power, Legislative Representative, AFL-CIO, and of Perry Ellsworth, National Council of Agricultural Employers, Hearings, House, 1982, pp. 54-60.

[276] See testimony of William Beardall, staff attorney, Texas Rural Legal Aid, Marc Schacht of the Farmworker Justice Fund, and Garry B. Bryant, an attorney from Tucson with several (continued...)

for their support. "I take a great deal of pride in seeing that I am not the victim of testimony 5 years down the road, that it didn't work." Miller stated: "... I do recognize that a good number of your associates and clients are very skeptical about entering into this agreement." Again: "I don't know if this law is perfect or not. I think it's an improvement, and I gather from your testimony that you believe it is an improvement."[277]

Consideration and Floor Action. "The failure of current law to achieve its goal of fairness and equity for migrant workers," the House report stated, "combined with employer objections as to their treatment under the Act" gave the negotiations momentum and "made the attainment of legislative change obligatory."[278] FLCRA as amended, had "failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers" and, as a result, argued for a "new approach."[279] The Committee on Education and Labor reported the bill on September 28, 1982.[280]

On September 29, Representative Miller urged that the rules be suspended and H.R. 7102 be passed. Recounting the "months of negotiations and compromise," he noted the certainty that the legislation might bring.[281] John Erlenborn (R-IL), a co-sponsor, recalled that "for over 18 months the interested parties, including staff from the House and Senate majority and minority, have been engaged in negotiations" to work out a successor to FLCRA. Representative Panetta affirmed that the bill "eliminates undue red-tape and harassment for farmers ... while at the same time provides real protection to migrant and seasonal agricultural workers." Representative Goodling, for his part, cited the "unwarranted and overzealous tactics of the wage and hour division"but, at the same time, he acknowledged that the "long negotiations between all parties" had made the new bill possible. Finally, the debate closed. The rules were suspended: the bill was passed — on a voice vote.[282]

In the Senate, the bill was held at the desk (not referred to a committee)[283] until on December 19, 1982, Senator Howard Baker (R-TN) called up the measure for floor action. Senator Orrin Hatch (R-UH) remarked that the measure, now passed by the House, was "identical to the measure" that he had introduced in the Senate (S. 2930) — with Senators Boren and Edward Kennedy (D-Ma), among others, as co-

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[276] (...continued)
years representing agricultural employees, Hearings, House, 1982, pp. 60-173.

[277] Hearings, House, 1982, p. 174. See also Representative Panetta's statement, September 14, 1982, p. 23441. Panetta was a co-sponsor of the legislation.

[278] House, Committee Report 97-885, September 28, 1982, p. 1.

[279] House, Committee Report 97-885, September 28, 1982, p. 3.

[280] *Congressional Record*, September 28, 1982, p. 25609.

[281] *Congressional Record*, September 29, 1982, p. 25609.

[282] *Congressional Record*, September 29, 1982, pp. 26008-26010.

[283] *Congressional Record*, September 29, 1982, p. 25866.

sponsors. Senator Hatch reviewed the history of FLCRA and presented an analysis of H.R. 7102. As in the House, the bill was adopted by a voice vote.[284]

On January 14, 1983, H.R. 7102 was signed into law by President Ronald Reagan (P.L. 97-470). The new law "will result in substantially improved protection for migrant and seasonal agricultural workers," he said, "many of whom are disadvantaged minorities." Conversely: "We will continue our efforts to both reduce unnecessary regulatory burdens and at the same time, protect essential employment standards in America's workplaces."[285]

Part IV: A New Statute Emerges (1983 ff.)

With enactment of P.L. 97-470, FLCRA disappeared. In its place was a new statute: the Migrant and Seasonal Agricultural Workers Protection Act (MSPA). For more than twenty years, MSPA has been generally (though not entirely) free from controversy.

The Structure and Provisions of the New Law

MSPA has remained largely unchanged since its enactment.[286] Although its terms are spelled out in detail adapted to specific farmworker employment situations, its structure is relatively simple.

The introduction states the purposes of the act: i.e., to require that farm labor contractors register with the Secretary of Labor and to assure "necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." It then proceeds to a list of definitions used: *inter alia*, "agricultural association," "agricultural employer," "agricultural employment," "day-haul operation," "employ," "farm labor contracting activity," "farm labor contractor," "migrant agricultural worker," "person," and "seasonal agricultural worker."[287]

The act includes exemptions — i.e., some family farms and related agricultural industries. Also exempt are labor organizations, any "nonprofit charitable organization or public or private nonprofit educational institution," and any person "engaged in any farm labor contracting activity solely within a twenty-five mile interstate radius of such person's permanent place of residence and for not more than thirteen weeks per year." Custom combining, hay harvesting, or sheep shearing operations are exempt, as are persons engaged in custom poultry harvesting, breeding,

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[284] *Congressional Record,* December 19, 1982, pp. 32458-32466.

[285] Public Papers of the President of the United States. *Ronald Reagan, 1983. Book 1, January 1 to July 1, 1983*. Washington, U.S. Government Printing Office, 1984, p. 47.

[286] See the *Adams Fruit* case, discussed below.

[287] All language, where in quotation marks, in this section is taken from P.L. 97-470. However, some variation may result from codification and from subsequent amendments that impinge upon the act. This is a summary. The reader may want to consult the current text of MSPA.

debeaking, etc., where workers are not required to be away from their permanent place of residence overnight. Persons are exempt when their "principal occupation ... is not agricultural employment" and who provide "full-time students" to detassel corn, etc., when such students are not required to be away from their permanent place of residence overnight. Any "common carrier" who would be a farm labor contractor solely because the carrier is engaged in transporting migrant or seasonal agricultural workers is exempt.

Title l explains the conditions under which farm labor contractors are required to register and the process of registration. The registrant must be of good character (specified in the act), with right to appeal if he or she is denied registration. A certificate of registration may not be transferred or assigned and will normally cover a twelve-month period. Any change of address (or other material variation in registration) must be made known to the Secretary. Finally, the farm labor contractor is restricted from hiring aliens not authorized to work in the United States.

> (a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.
>
> "(b) A farm labor contractor shall be considered to have complied with subsection (a) if the farm labor contractor demonstrates that the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor had no reason to believe the individual was an alien referred to in subsection (a).[288]

Title II deals with *migrant agricultural worker*s.[289] Each "farm labor contractor, agricultural employer, and agricultural association" who employs a migrant agricultural worker shall disclose to the worker at the time of his or her recruitment: the place of employment, the wage rates to be paid, the crops and kinds of activities on which the worker may be employed, the period of employment, matters with respect to housing, transportation, and "any other employee benefit to be provided, if any," and "any costs to be charged for each of them." The existence "of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment" must be disclosed. Any commission arrangements must also be disclosed. At each place of employment, in a conspicuous place, a form from the Secretary "setting forth the rights and protections afforded" to such migrant

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[288] This section was subsequently repealed and its substance was moved to Title VIII, Aliens and Nationality, as part of the general restructuring under the Immigration Reform and Control Act of 1986.

[289] In the section on definitions, discussed above, it is stated: "(8)(A) Except as provided in subparagraph (B), the term 'migrant agricultural worker' means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence. (B) The term "migrant agricultural worker" does not include — (i) any immediate family member of an agricultural employer or a farm labor contractor; or (ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act."

workers must be posted. Where housing is provided, the terms and conditions under which such housing is made available shall be provided to the migrant worker.

Each "farm labor contractor, agricultural employer, and agricultural association" who employs migrant workers shall keep specified records of his or her employment — and shall provide a copy to the migrant. The basic information (terms and conditions of employment) shall be provided in English "or, as necessary and reasonable, in Spanish or other language common to migrant agricultural workers who are not fluent or literate in English."[290] No company store arrangement is permissible.

Title III deals with *seasonal agricultural worker* protections.[291] Each "farm labor contractor, agricultural employer, and agricultural association" who recruits seasonal agricultural workers shall ascertain "and, upon request, disclose in writing," the following: the place of employment, the wage rates to be paid, the crops and kinds of activities on which the worker may be employed, the period of employment, and the costs and terms of transportation. If there is a "strike or other concerted work stoppage, slowdown, or interruption of operations," such information shall be made known. Any commission arrangement or day-haul operation shall also be made known. The various protections shall be posted in a conspicuous place.

Records will be kept with respect to an individual worker and a copy will be provided to such worker. Information to be provided will be in English or, as reasonable, "in Spanish or other language common to seasonal agricultural workers who are not fluent or literate in English."[292] Wages are to be paid "when due." There will be no company store arrangement.

Title IV deals with *further protections for migrant and seasonal agricultural workers*. The title deals primarily with insurance.[293] It begins by specifying the type/mode of transportation in question.

> This section *does not apply* [italics added] to the transportation of any migrant or seasonal agricultural worker on a tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the

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[290] DOL will make available the necessary linguistic forms.

[291] In the section on definitions, it is stated, "(10)(A) Except as provided in subparagraph (B), the term 'seasonal agricultural worker' means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence — (i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or (ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation. (B) The term 'seasonal agricultural worker' does not include — (i) any migrant agricultural worker; (ii) any immediate family member of an agricultural employer or a farm labor contractor; or (iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii) and 214(c) of the Immigration and National Act."

[292] DOL will make available the necessary linguistic forms.

[293] See discussion, below, under *Adams Fruit.*

> planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

However, where this section does apply (to normal and/or regular vehicle usage), the "agricultural employer, agricultural association, and farm labor contractor" shall "ensure that the vehicle does comply" with "Federal and State safety standards," and ensure that "each driver has a valid and appropriate license." Such employer shall have in effect "an insurance policy or a liability bond" that insures the employer "against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker." The provision goes on to explain the various terms and conditions under which insurance may be applicable.

How might the individual employer confirm that the individual farm labor contractor has, indeed, complied with the terms of his or her craft?

> No person shall utilize the services of any farm labor contractor to supply any migrant or seasonal agricultural worker unless the person first takes reasonable steps to determine that the farm labor contractor possesses a certificate of registration which is valid and which authorizes the activity for which the contractor is utilized. In making that determination, the person may rely upon either possession of a certificate or registration, or confirmation of such registration by the Department of Labor. The Secretary shall maintain a central public registry of all persons issued a certificate of registration.

Title V, at the close of the act, provides for *general provisions*. These are divided into three sections and, appear, in part, as follows.

Enforcement Provisions. Any person "who willfully and knowingly" violates the act (or regulations under this act) shall be fined "not more than $1,000 or sentenced to prison for a term not to exceed one year, or both." However, any "subsequent violation of this act (or regulation) carries with it, potentially, a fine of "not more than $10,000" or a sentence of "not to exceed three years, or both." A special provision applies for farm labor contractors who violate section 106: the provision against the employment "with knowledge" of aliens. Hearings are permitted and the rights of the defendant are specified.

There is a private right of action. Any person "... may file suit in any district court of the United States having jurisdiction of the parties ... without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein." Limitations on damages and equitable relief are spelled out.

No person shall be discriminated against for having, "with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this Act...." Appeal can be made to the Secretary of Labor. Any waiver of rights (except to the Secretary of Labor for enforcement purposes) "shall be void as contrary to public policy...."

Administrative Provisions. The Secretary of Labor "may issue such rules and regulations as are necessary to carry out this Act," consistent with the U.S. Code.

As may be appropriate, the Secretary may "investigate, and in connection wherewith, enter and inspect such places (including housing and vehicles) and such records (and make transcriptions thereof), question such persons and gather such information to determine compliance with this Act...." The Secretary "may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations."

The Secretary may "enter into agreements with Federal and State agencies" in carrying out the program under MSPA.

Miscellaneous Provisions. "This Act is intended to supplement State law, and compliance with this Act shall not excuse any person from compliance with appropriate state law and regulation."

Adams Fruit Co., Inc. v. *Barrett*

Perhaps only a consensus bill (such as that creating MSPA) could have been enacted under the circumstances. Yet, that would not end complaints, both pro and con. Migrant farmworkers, observed Representative Mickey Leland (D-TX) in 1985, just two years after MSPA was adopted, "are among the most vulnerable workers in our Nation." The conditions under which they live and work has resulted in "... an infant mortality rate that is two and one-half times the national average."[294] During the late 1980s, several Members protested about the alleged tendency of some Legal Services offices "to represent, or, I suggest, misrepresent, some of these migrant workers" in bringing complaints against farmers.[295] And, in 1993, Representative Miller argued that "Working and living conditions for migrant agricultural workers remain deplorable and in some cases have deteriorated" — and he introduced a comprehensive revision of MSPA.[296] The most serious complaint (one that would result in amendment of MSPA) grew out of the *Adams Fruit* case.[297]

A Ruling from the Court. In 1990, the U.S. Supreme Court ruled in *Adams Fruit Co*. v. *Barrett* that migrant farmworkers, employed by Adams Fruit Company, Inc., having "suffered severe injuries in an automobile accident" in an Adams Fruit van while traveling to work, had two options available for redress. They could file a claim under the Florida workmen's compensation law *and* they could avail themselves under the private right of action provision of MSPA.[298]

At issue before the Court was the question of exclusivity (or dual coverage) under the state and federal acts: i.e., worker's compensation *and* MSPA. The Court

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[294] *Congressional Record*, September 1985, p. 22927.

[295] *Congressional Record*, September 30, 1986, pp. 27399-27401, March 6, 1987, pp. 5048-5049, and July 17, 1989, p. 14919.

[296] *Congressional Record*, March 2, 1993, pp. 3953 and 3937. See also H.R. 1173 of the 103rd Congress.

[297] *Congressional Record*, October 27, 1990, p. 37188.

[298] 494 U.S. 638, 640 (1989).

ruled that although Congress "may choose to establish state remedies as adequate alternatives to federal relief, it cannot be assumed that private federal rights of action are conditioned on the unavailability of state remedies absent some indication to that effect."[299]

In the view of the Court, no such alternative remedy was apparent. Adams Fruit argued that "in the absence of any explicit congressional statement regarding the preemptive scope" of MSPA, the Court should defer to the Department's position: i.e., a single remedy. The Court, however, rejected that view. It found that a "'gap' is not created in a statutory scheme merely because a statute does not restate the truism that States may not pre-empt federal law."[300] In summary, the Court held, "[o]ur review of the language and structure of AWPA [MSPA] leads us to conclude that AWPA does not establish workers' compensation benefits as an exclusive remedy...."[301]

Hearings on Workmen's Compensation. Representative Goodling branded the decision as "bad for employers" and "bad for workers" — allowing the worker "the ability to both recover workers' compensation *and* sue for compensatory and punitive damages." Goodling asserted: "As one who worked many long and hard hours in 1981 and 1982 to achieve the MSAWPA [MSPA] consensus[,] I intend to preserve it by pressing for early action next year ... to overturn the Adams Fruit decision."[302]

On September 15, 1993, Representative Austin Murphy (D-PA) called together at Fresno, California, a hearing by the Labor Standards Subcommittee. Two bills were on the table: H.R. 1173 (Miller) and H.R. 1999 by Victor Fazio (D-CA). The Miller bill was a comprehensive measure which, among other provisions, would have codified the *Adams Fruit* decision. The Fazio bill had for its sole purpose the overturning of that decision.[303] They had evolved, though from different perspectives, through "many months of unsuccessful negotiations aimed at producing consensus legislation to resolve the difficulties and concerns voiced by farmworker advocates and growers."[304]

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[299] 494 U.S. 638, 639 (1989).

[300] 494 U.S. 638, 649 (1989).

[301] 494 U.S. 638, 650 (1989).

[302] *Congressional Record*, October 27, 1990, p. 37188. At the close of the 102nd Congress, an amendment was added to the Legislative Branch Appropriations Act (H.R. 5427), suspending for a brief period the impact of the *Adams Fruit* decision. See *Congressional Record*, October 3, 1992, p. 31243, and October 5, 1992, p. 31598.

[303] See also S. 1450 (Feinstein) to overturn *Adams Fruit*. None of the bills was enacted.

[304] U.S. Congress, House, Subcommittee on Labor Standards, Occupational Health and Safety, Committee on Education and Labor, *Hearing on H.R. 1173 and H.R. 1999*. September 15, 1993, p. 1. (Cited hereafter as Hearings, House, 1993.) See also for general reaction to the MSPA, U.S. Congress, Subcommittee on Labor Standards, Committee on Education and Labor, *Oversight Hearings on the Migrant and Seasonal Agricultural Worker Protection Act*, July 13, 1987. The 1987 hearing was conducted in Biglerville, Pa.

As the Fresno hearings opened, several Members of Congress spoke. Richard Lehman (D-CA) and Calvin Dooley (D-CA) commenced with opposition to any new restrictions upon agricultural interests. They were followed by Howard Berman (D-CA) and by Miller, generally supportive of worker interests. The several Members emphasized the dichotomy existing over the prospective legislation. They were followed by representatives of organized labor, civil rights attorneys, and spokespersons for industry.[305]

On May 25, 1995, with a change in control in the House, Goodling became chair of the full Committee on Economic and Educational Opportunities. Cass Ballenger (R-NC) now chaired the Subcommittee on Workforce Protections with jurisdiction over agricultural labor. New hearings addressed the issues similarly. The Court, Ballenger stated, had interpreted MSPA "to provide for a private right of action for certain job related injuries, even if the individual was covered by workers' compensation at the time of the injury" leaving employers "exposed to potentially enormous liability for damages in spite of the fact that they have contributed into the workers' compensation system."[306] Conversely, Representative Major Owens (D-NY) suggested that "Instead of insuring work place protections, this committee is preoccupied with eliminating all inconveniences for the rich and privileged, at the expense of the working poor...."[307]

Bruce Wood, Senior Counsel for the American Insurance Association, argued that the Court's opinion was "not grounded on public policy" and that the Court had acted "narrowly and mechanically."[308] The "doctrine of exclusivity" was emphasized by Walter Kates, an industry representative. MSPA was "a consensus bill," he declared, with all parties in agreement that "the doctrine of workers' compensation exclusivity was a part" of the bill. The failure "to reverse the Adams Fruit decision," Kates stated, "could have adverse and unintentional consequences for both the farmer and the farmworker."[309] Steve Kenfield, a farm labor contractor from California, suggested that *Adams Fruit* "has complicated an already complex compliance situation." It "created frustration" in that payment of premiums for workers' compensation (mandatory in California) "is virtually meaningless." And, it suggested that "we could also face open-ended" liability. With others from industry, Kenfield called upon Congress to "reverse" the *Adams Fruit* decision.[310] Finally, David Moody, a former farmworker and the victim of an accident in Florida, testified about

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[305] Hearings, House, 1993, p. 48.

[306] U.S. Congress, House, Subcommittee on Workforce Protections, Committee on Economic and Educational Opportunities,. *Hearings on Adams Fruit Co., Inc. V. Barrett.* May 25, 1995, pp. 1-2. (Cited hereafter as Hearings, House, 1995.)

[307] Hearings, House, 1995, p. 2.

[308] Hearings, House, 1995, p. 5.

[309] Hearings, House, 1995, pp. 12-14. Kates is identified as representing the National Council of Agricultural Employers (as chairman of their Migrant and Seasonal Agricultural Worker Protection Act Committee), the Florida Fruit and Vegetable Association (as director of their Labor Relations Division), and the Workers' Compensatory Integrity, Stability, and Equity Coalition.

[310] Hearings, House, 1995, pp. 16-19.

the problems and complexities of securing redress solely under the worker's compensation system.[311]

The Goodling Bill (1995). On May 25, 1995, Representative Goodling introduced H.R. 1715, a bill dealing with workers' compensation benefits and MSPA. The bill was referred to the Committee on Economic and Educational Opportunities and passed.[312] Through the summer, discussions were conducted informally on the legislation and, in mid-October, Goodling was able to announce that a substitute would be offered for H.R. 1715 (with the same designation) that would carry with it the endorsement of Representatives Ballenger, Owens and William Clay (D-MO).[313]

The substitute version of H.R. 1715 provided that "where a State workers' compensation law is applicable and coverage is provided ... the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this Act in the case of bodily injury or death...." In effect, *Adams Fruit* was overturned. The bill went on to discuss the expansion of statutory damages, the tolling of the statute of limitations under state workmen's compensation laws, disclosure of coverage (and processes) to the workers involved, and other matters. Mr. Goodling explained that H.R. 1715 "clarifies the relationship between workers compensation benefits and the private right of action" available under MSPA.[314]

Mr. Owens rose in support of the bill and expressed his appreciation to Representatives Goodling, Clay, and Ballenger — and to others: Representatives Miller, Berman and Fazio. "The efforts of all three gentlemen have been instrumental in the development of the amendment before us" — which he regarded as a "compromise."[315] Mr. Fazio argued that the bill "... is the result of 5 years of discussions, but it is a bill that needed to be enacted...."[316]

At this juncture, the House suspended the rules and passed the compromise version of H.R. 1715.[317] The bill was promptly dispatched to the Senate where, under unanimous consent, it was adopted.[318] On November 15, 1995, the measure was signed into law (P.L. 104-49) by President William Clinton.

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311 Hearings, House, 1995, pp. 21-22.

312 *Congressional Record,* May 25, 1995, pp. 14444 and 14641.

313 *Congressional Record*, October 13, 1995, pp. 28027-28028. On October 17, 1995, p. 28126, Mr. Goodling explained that the original bill had been reported from the Committee on Economic and Educational Opportunities but, after several weeks of negotiations, he was now able to offer a consensus bill.

314 *Congressional Record*, October 17, 1995, pp. 28125-28127.

315 *Congressional Record*, October 17, 1995, p. 28127.

316 *Congressional Record*, October 17, 1995, p. 28128.

317 *Congressional Record*, October 17, 1995, p. 28129.

318 *Congressional Record*, October 31, 1995, p. 30907.

Part V: Agricultural Workers in the New Century

For the most part, since the 1983 amendments (with the emergence of the Migrant and Seasonal Agricultural Workers Protection Act), the statute has remained largely unchanged, with the exception of the *Adams Fruit* legislation.[319]

The history of FLCRA (and, now, MSPA) has been long and tedious. For almost ten years (1964 to 1974), legislation remained in place but was, largely, unenforced — or, perhaps, unenforceable. Revised in 1974, there were serious attempts to enforce the statute but these seem to have required that many of the wrong people register (i.e., fixed site farmers, growers, and a variety of other agricultural interests) and, generally to comply with the act's restrictions. In 1983, FLCRA was repealed, and Congress started over with a new statute: the Migrant and Seasonal Agricultural Worker's Protection Act. The latter remains in place.

Debate over FLCRA and, to a lesser extent, MSPA, seems to have been exhausting. It could well be that some may now be disinclined to revisit the statute and to raise new questions. However, the need for oversight would seem to remain a priority where agricultural policy is concerned.

Thus far, in the 110th Congress, no new legislation to amend MSPA has been considered.

[319] See U.S. Congress. House. Subcommittee on Workforce Protections, Committee on Education and the Workforce. *Field Hearing on Issues Relating to Migrant and Seasonal Agricultural Workers and Their Employers* (Newland, N.C.), 105th Cong., 1st Sess., September 12, 1997, 164 pp.; and U.S. Congress. House. Subcommittee on Workforce Protections, Committee on Education and the Workforce. 105th Cong., 2nd Sess., *The Effect of the Fair Labor Standards Act on Amish Families and H.R. 2028, The MSPA Clarification Act*. April 21, 1998, 167 pp.

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Agricultural Conservation in the 2018 Farm Bill

SUMMARY

R45698

April 18, 2019

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The Agriculture Improvement Act of 2018 (2018 farm bill, P.L. 115-334, Title II) included a number of changes to agricultural conservation programs, including reauthorizing and amending existing programs, directing existing program activities to specific resource concerns, shifting funds within the title, and authorizing a budget-neutral level of funding.

Debate over the conservation title in the 2018 farm bill focused on a number of issues in the different versions in the House- and Senate-passed bills (H.R. 2). These differences were resolved in a House-Senate conference to create the enacted bill, which is a mix of both versions that were passed by both chambers. The enacted bill reauthorizes and amends portions of most all conservation programs; however, the general focus is on the larger programs, namely the Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), and Conservation Stewardship Program (CSP).

Most farm bill conservation programs are authorized to receive mandatory funding and are not subject to appropriation. According to the Congressional Budget Office (CBO), the conservation title of the 2018 farm bill makes up 7% of the bill's total projected mandatory spending over 10 years, which is $60 billion of the total $867 billion. The conservation title is budget neutral over the 10-year baseline; however, the 2018 farm bill is projected to increase funding in the first five years (+$555 million over FY2019-FY2023) and decrease funding in the last five years (-$561 million over FY2024-FY2028). Generally, the 2018 farm bill reallocates mandatory funding within the conservation title among the larger programs.

The two largest working lands programs—EQIP and CSP—were reauthorized and amended under the enacted bill, but in different ways. The House-passed bill would have repealed CSP and created a stewardship contract within EQIP, whereas the Senate-passed bill would have reauthorized CSP and reduced program enrollment. The enacted bill creates a mix of both the House- and Senate-passed bills by reauthorizing CSP and reducing program enrollment, as well as creating a new incentive contract within EQIP. Funding for CSP is shifted away from an acreage limitation under prior law to limits based on funding. EQIP is expanded and reauthorized with increased funding levels.

The largest land retirement program—CRP—is reauthorized and expanded by increasing the CRP enrollment limit in annual increments from 24 million acres in FY2019 to 27 million by FY2023. To offset this increased enrollment level, the enacted bill reduces payments to participants, including cost-share payments, annual rental payments, and incentive payments. The 2018 farm bill also reauthorized and amended the Agricultural Conservation Easement Program (ACEP). Most of the changes to ACEP focus on the agricultural land easements by providing additional flexibilities to ACEP-eligible entities and authorize an increase in overall funding.

The Regional Conservation Partnership Program (RCPP) is reauthorized and amended by shifting the program away from enrolling land through existing conservation programs to a standalone program with separate contracts and agreements. Under the revised program, USDA is to continue to enter into agreements with eligible partners, and these partners are to continue to define the scope and location of a project, provide a portion of the project cost, and work with eligible landowners to enroll in RCPP contracts.

While the 2018 farm bill does not create new conservation programs, it does require that a number of existing programs direct a dollar amount or percentage of a program's funding to a resource-specific issue, initiative, or subprogram. Through these directed policies Congress has established a level of support, or required investment, to be carried out through implementation to target specific issues such as nutrient runoff or groundwater protection. The directed policy may also reduce the implementing agency's flexibility to allocate funding based on need, as well as reducing the amount available for activities under the larger program that may not meet a resource-specific provision.

High commodity prices in years past, changing land rental rates, and new conservation technologies have led over time to a shift in farm bill conservation policy away from programs that retire land from production (CRP) toward programs that provide assistance to lands still in production (EQIP and CSP). Much of this shift occurred following the 2008 farm bill (FY2009-FY2013) and continued under the 2014 farm bill (FY2014-FY2018) as the level of total mandatory program funding for CRP was reduced relative to EQIP and CSP. Funding for easement programs (ACEP) also declined somewhat under the 2014 farm bill, but is projected to level off under the 2018 farm bill. Partnership program (RCPP) funding has also increased in recent farm bills, but remains relatively small compared to the other categories of programs.

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The conservation title of the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334, Title II)[1] reauthorized and amended many of the largest conservation programs and created a number of new pilot programs, carve-outs, and initiatives. The House- and Senate-passed farm bills (H.R. 2) each included a number of amendments to existing conservation programs, many of which did not overlap. This generally resulted in the inclusion of a mix of amendments from each chamber being in the enacted bill.[2] The Congressional Budget Office (CBO) projects that total mandatory spending for the title will increase by $555 million during the first five years of the 2018 farm bill (FY2019-FY2023), compared to a continuation of funding levels authorized in the Agricultural Act of 2014 (2014 farm bill; P.L. 113-79). Mandatory spending for the title over 10 years (FY2019-FY2028) is projected by CBO to be reduced by $6 billion, relative to the 2014 farm bill authorized levels. Generally, the bill reallocates funding within the conservation title among the larger programs and pays for increases in the short term with reductions in the long term.[3]

Figure 1. Common Conservation Program Abbreviations

Acronym	Program Name
ACEP	Agricultural Conservation Easement Program
ALE	Agricultural Land Easement (easement within ACEP)
AMA	Agricultural Management Assistance program
CIG	Conservation Innovation Grants (subprogram of EQIP)
CLEAR	Clean Lakes, Estuaries, and Rivers (initiative of CRP)
CREP	Conservation Reserve Enhancement Program (subprogram of CRP)
CRP	Conservation Reserve Program
CSP	Conservation Stewardship Program
ECP	Emergency Conservation Program
EQIP	Environmental Quality Incentives Program
EWP	Emergency Watershed Protection program
FW	Farmable Wetlands program (subprogram of CRP)
GSWP	Grassroots Source Water Protection program
GLCI	Grazing Land Conservation Initiative
HFRP	Healthy Forests Reserve Program
RCPP	Regional Conservation Partnership Program
SHIPP	Soil Health and Income Protection Pilot
VPAHIP	Voluntary Public Access and Habitat Incentive Program
WFPO	Watershed and Flood Prevention Operations
WRE	Wetland Reserve Easement (easement within ACEP)

Source: CRS.

[1] Conference Report, H.Rept. 115-1072.

[2] For a larger discussion of the entire 2018 farm bill, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

[3] For additional analysis of the 2018 farm bill budget, see CRS Report R45425, *Budget Issues That Shaped the 2018 Farm Bill*.

Conservation Program Changes

The 2018 farm bill reauthorized and amended all of the major USDA agricultural conservation programs. Generally, farm bill conservation programs can be grouped into the following types based on similarities: working lands, land retirement, easement, conservation compliance, and partnership and grants (see **Figure 1** and **Figure 2** for a list of conservation programs). Most of these programs are authorized to receive mandatory funding (i.e., they do not require an annual appropriation), and include funding authorities that expire with most other farm bill programs at the end of FY2023.

Other types of conservation programs—such as watershed programs, emergency programs, and technical assistance—are authorized in legislation other than the farm bill. Most of these programs have permanent authorities and receive appropriations annually through the discretionary appropriations process. These programs are not generally addressed in the context of a farm bill and are not covered in detail in this report, except for cases where the 2018 farm bill made amendments to the program.

This section provides a general discussion of programmatic-specific amendments made to various conservation programs and subprograms. For a detailed section-by-section analysis of amendments in the 2018 farm bill, including statutory and U.S. Code citations, see **Appendix**.[4] Unless otherwise noted, conservation programs discussed in this section are authorized to receive mandatory funding through the borrowing authority of the Commodity Credit Corporation (CCC).[5] For additional analysis of conservation program funding, see the "Budget and Baseline" section.

Land Retirement

Land retirement programs authorize USDA to make payments to private landowners to voluntarily retire land from production for less-resource intensive uses. The primary land retirement program is the Conservation Reserve Program (CRP). CRP includes a number of subprograms, many of which were codified or reauthorized in the 2018 farm bill. The farm bill also authorizes a number of initiatives and pilot programs.

Conservation Reserve Program (CRP)

CRP was originally authorized in the 1985 farm bill and has been reauthorized and amended a number of times since. The program provides financial compensation for landowners, through an annual rental rate, to voluntarily remove land from agricultural production for an extended period (typically 10 to 15 years) to improve soil and water quality and wildlife habitat. CRP operates under two types of enrollment—general and continuous. General enrollment provides an opportunity for landowners to enroll in CRP through a nationwide competition during a specific period of time. Continuous enrollment is designed to enroll the most environmentally desirable land into CRP through specific conservation practices or resource needs. Unlike general enrollment, under continuous enrollment, land is typically enrolled at any time and is not subject to competitive bidding. Many of the 2018 farm bill amendments apply to continuous enrollment contracts, including the creation of new pilot programs and amendments to existing subprograms. A detailed analysis of amendments to CRP may be found in **Table A-2**.

[4] **Appendix** is organized according to the subtitle structure within the 2018 farm bill's conservation title (title II). This report is not organized as such and therefore references to various subtitle tables may not appear sequentially.

[5] For additional information on the CCC, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*.

Figure 2. USDA Agricultural Conservation Program by Type

(under enacted 2018 farm bill)

Type	Program(s)
Farm Bill Agricultural Conservation Programs	
Working Lands—programs allow private land to remain in production, while implementing various conservation practices to address natural resource concerns specific to the area.	• Environmental Quality Incentives Program (EQIP) • Conservation Stewardship Program (CSP)
Land Retirement—programs provide federal payments to agricultural landowners for temporary changes in land use or management to achieve environmental benefits.	• Conservation Reserve Program (CRP) • Conservation Reserve Enhancement Program (CREP) • Farmable Wetlands (FW) program • CLEAR30 • Soil Health Income Protection Pilot (SHIPP)
Easement—programs impose a permanent land-use restriction that is voluntarily placed on the land in exchange for a government payment	• Agricultural Conservation Easement Program (ACEP) • Healthy Forests Reserve Program (HFRP)
Compliance—prohibits a producer from receiving most federal farm program benefits (including conservation assistance) when conservation requirements for highly erodible lands and wetlands are not met.	• Highly erodible land conservation (sodbuster) • Wetland conservation (swampbuster) • Sodsaver
Partnership and Grants—programs that use partnership agreements to leverage program funding with non-federal funding or provide grants to states or research organizations.	• Regional Conservation Partnership Program (RCPP) • Conservation Innovation Grants (CIG) • Voluntary Public Access and Habitat Incentive Program (VPAHIP)
Other—programs and provisions that do not fit easily into the above categories. Authority is generally derived from farm bill legislation	• Grassroots Source Water Protection (GSWC) • Grazing Land Conservation Initiative (GLCI) • Desert terminal lakes • State technical committees
Non-Farm Bill Conservation Programs	
Technical Assistance—programs provide landowners with science-based conservation information and technical (e.g., engineering and biological) expertise unique to the region and land use type. Usually does not include financial assistance.	• Conservation Operations (includes Conservation Technical Assistance, Snow Survey, Soil Survey, and Plant Materials Centers)
Emergency—programs provide disaster assistance for private farm and forest land rehabilitation and impairments to watersheds. Programs are usually funded through supplemental appropriations acts.	• Emergency Conservation Program (ECP) • Emergency Watershed Protection (EWP) program (includes floodplain easements) • Emergency Forest Restoration Program (EFRP)
Other—programs that do not fit easily into the above categories. Authority is generally derived from non-farm bill legislation.	• Agricultural Management Assistance (AMA) • Water Bank program • Soil and Water Resources Conservation Act (RCA) • Resource Conservation and Development Program (RC&D)

Source: CRS.

Notes: Generally programs that are authorized under Title XII of the Food Security Act of 1985, as amended, are considered to be farm bill programs. Most nonfarm bill programs are authorized outside of farm bill legislation. Amendments to these program may occur in farm bills, but their program authority and funding authority is provided separate from omnibus farm bills.

Congressional debate over CRP in the 2018 farm bill centered on how to increase enrollment limits, while not increasing overall cost. As such, the enacted bill incrementally increases the enrollment cap while reducing various rental rates, cost-share payments, and incentive payments. The 2018 farm bill increases the enrollment limit in annual increments from 24 million acres in

FY2019 to 27 million acres in FY2023.[6] This increase in enrollment is partly offset by reducing rental rates for general contracts to 85% of the county average rental rate and to 90% of the county average rental rate for continuous contracts. Cost-share payments are limited to the actual cost of establishing the approved practices, including not more than 50% for seed mix costs. The enacted bill also establishes minimum enrollment levels for continuous contracts (8.6 million acres by FY2022) and grassland contracts (2 million acres by FY2021).

Conservation Reserve Enhancement Program (CREP)

CREP was originally created as a CRP initiative in 1997, but was not codified into statute as a CRP subprogram until the 2018 farm bill. The provision in the 2018 farm bill is similar to the original version of CREP in that it authorizes USDA to enter into agreements with states to target designated project areas with continuous CRP enrollment contracts. Projects are designed to address specific environmental objectives through targeted continuous, noncompetitive, CRP enrollment that typically provides additional financial incentives beyond annual rental payments and cost-share assistance.

The new language in the 2018 farm bill allows existing CREP agreements to remain in force, but allows them to be modified if mutually agreed upon. CREP agreements are generally with states, but the 2018 farm bill expands eligible partners to include nongovernmental organizations (NGO). The enacted bill formalizes agreement requirements with partners, including matching fund contributions (previously not less than 20% of the project cost) and possible waiver of such contributions. The enacted bill requires the matching fund contribution to be a negotiated part of the agreement, or not less than 30% if most of the funds are provided by an NGO. Payments from an eligible partner may be in cash, in-kind, or through technical assistance. Additional requirements for select cost-share payments, incentive payments, and maintenance payments are also included. Specific requirements are included related to grazing, forested riparian buffers, and drought and water conservation agreements.

Farmable Wetlands (FW) program

The FW program was created in the Farm Security and Rural Investment Act of 2002 (2002 farm bill; P.L. 107-171) as a pilot within CRP to enroll farmable or prior converted wetlands into CRP in exchange for additional financial incentives. The 2018 farm bill reauthorized FW program at the current 750,000 acre enrollment limit.

CRP Grassland Contracts

The 2014 farm bill authorized grassland contracts under CRP, which enrolls grassland, rangeland, and pastureland into 14 to 15 year CRP contracts. Only select grazing practices are allowed under the contract in exchange for annual and cost-share payments. The 2018 farm bill reauthorizes the contracts and increases the enrollment limit to not less than 2 million acres by FY2021 from the previous limit of not more than 2 million acres. USDA may not use unenrolled grassland acres for other types of CRP enrollment. The enacted bill also prioritizes the enrollment of expiring CRP land, land at risk of development, or land of ecological significance.

[6] CRP is authorized to spend such sums as necessary to enroll up to the maximum number of allowable acres. This funding is mandatory and average close to $2 billion annually.

Other CRP Initiatives

CLEAR 30

The 2018 farm bill creates a new pilot program referred to as CLEAR 30, which enrolls expiring CRP land into 30-year contracts devoted to practices that improve water quality. CLEAR refers to the Clean Lakes, Estuaries, And Rivers initiative that is authorized to enroll land in continuous contracts that would reduce sediment and nutrient loading, and harmful algal blooms. Under a CLEAR 30 contract, the landowner must maintain the land in accordance with an approved plan and adhere with the terms and conditions of the contract. Contract holders receive compensation in thirty annual cash payments similar to those calculated under general CRP contracts. Technical assistance is required for each contract and agreement. USDA must create the CRP plan for a contract, but management, monitoring, and enforcement may be delegated to another federal agency, state, or local government, or to a conservation organization.

Soil Health and Income Protection Pilot (SHIPP)

The 2018 farm bill also creates a new SHIPP pilot program under CRP to remove less productive farm land from production in exchange for annual rental payments and to plant low-cost perennial cover crops. Eligible land is limited to (1) land in states selected by the Secretary within the prairie pothole region, (2) land that has a cropping history in the three years prior to enrollment, but which was not enrolled in CRP during that time period, and (3) land that is considered to be less productive than other land on the farm. No more than 15% of a farm may be enrolled in the pilot and no more than 50,000 acres of the CRP may be used for the pilot. Under a SHIPP contract, a participant would be required to plant a USDA-approved, low-cost, perennial, conserving-use cover crop at the participant's expense. In return the participant would receive an annual rental payment that is 50% of the general CRP annual rental payment, or higher for beginning, limited-resource, socially disadvantaged or veteran participants. Contracts are three to five years in duration, but can be terminated early if considered necessary by USDA; or if the participant agrees to pay back the annual rental payments. Harvesting, haying, and grazing are allowed outside of the local nesting and brood-rearing period, subject to additional conditions.

Working Lands Programs

Working lands conservation programs allow private land to remain in production, while implementing various conservation practices to address natural resource concerns specific to the area. Program participants receive some form of conservation planning and technical assistance to guide the decision on the most appropriate practices to apply, given the natural resource concerns and land condition. Participants receive federal financial support to defray a portion of the cost to install or maintain the vegetative, structural, or management practices agreed to in the terms of the contract.

The two main working lands programs are the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP). Combined, both programs account for more than half of all conservation program funding. The 2018 farm bill amended both programs, but in different ways and to different degrees. A detailed analysis of amendments to EQIP and CSP is provided in **Table A-3** and **Table A-4**, respectively.

Environmental Quality Incentives Program (EQIP)

EQIP is reauthorized and expanded in the enacted bill. The program provides financial and technical assistance to producers and private landowners to plan and install structural, vegetative, and land management practices on eligible lands to alleviate natural resource problems. Eligible producers enter into contracts with USDA to receive payment for implementing conservation practices. Approved activities are carried out according to an EQIP plan approved by USDA and developed with the producer that identifies the appropriate conservation practice(s) to address identified resource concerns on the eligible land. The program is reauthorized through FY2023 with a graduating level of mandatory funding—$1.75 billion in FY2019 and FY2020; $1.8 billion in FY2021; $1.85 billion in FY2022; and $2.025 billion in FY2023.

The new law includes a number of amendments to EQIP that focus on water quality and quantity-related practices, soil health improvement, and wildlife habitat improvement. The law also reduces the funding allocation for livestock-related practices from 60% to 50%, and increases the allocation for wildlife-related practices from 5% to 10%.

One of the larger changes the 2018 farm bill makes to EQIP is that water conservation system payments are expanded to include irrigation and drainage entities that were previously ineligible. Eligible entities may be states, irrigation districts, groundwater management districts, acequias, land-grant mercedes, or similar entities. Practices must be implemented on eligible land of the producer, land adjacent to a producer's eligible land, or land under the control of the eligible entity. Adjusted Gross Income (AGI) and payment limits may be waived for eligible entities, but USDA may impose additional payment and eligibility limits. Priority is given to applications that reduce water use. It is unclear how this expansion in eligibility, compared with the previous producer-only policy, may affect implementation of the program.

Conservation Stewardship Program (CSP)

CSP provides financial and technical assistance to producers to maintain and improve existing conservation systems and to adopt additional conservation activities in a comprehensive manner on a producer's entire operation. CSP contracts must meet or exceed a *stewardship threshold* for at least two priority resource concern at the time of application and meet or exceed at least one additional priority resource concern by the end of the contract. The House-passed bill would have repealed CSP and created a stewardship contract within EQIP, whereas the Senate-passed bill would have reauthorized CSP and reduced program enrollment. The enacted 2018 farm bill creates a mix of both the House- and Senate-passed bills with amendments. The enacted bill reauthorizes CSP, but amends how the program limits future enrollment. The new law shifts CSP from a program limited by acres (10 million acres annually under prior law; approximately $1.4 billion in FY2018) to one limited by total funding ($700 million in FY2019 in mandatory funding, increasing to $1 billion in FY2023). CBO projects this change from prior law will reduce the program by more than $12.4 billion total over ten years (see **Table 2**) for a total cost of $5.1 billion. Reduced spending from this reduction offset increased mandatory spending in other conservation programs (see **Figure 3**).

In addition to the amended funding structure of CSP, the enacted bill also made a number of amendments to the program. CSP's ranking criteria is amended to focus on an application's actual and expected increase of conservation benefits, and to add a cost competitive selection criteria for similar applications. Contract renewal options are amended to require renewal applicants to compete with new applications, whereas previously their acceptance was guaranteed. Additionally, payments for adopting cover crops, grazing management, and comprehensive conservation plan development are amended to include higher and more comprehensive payment options.

Other EQIP and CSP Initiatives and Subprograms

Conservation Innovation Grants (CIG)

CIG is a subprogram under EQIP that awards competitive grants to state and local agencies, nongovernmental organizations, tribes, and individuals to implement innovative conservation techniques and practices. The 2018 farm bill expands project eligibility to include community colleges, urban farming, and monitoring practices. A new on-farm conservation innovation trial is authorized at $25 million annually from total EQIP funding. The new on-farm trial funds projects through producers or eligible entities that test new or innovative conservation approaches, such as those related to precision agriculture technologies, nutrient management, soil health, water management, crop rotations, cover crops, irrigation systems, and other USDA approved approaches.

EQIP Conservation Incentive Contract

The House-passed farm bill would have repealed CSP and created a stewardship contract within EQIP. While the 2018 farm bill retained CSP and also authorized a new Conservation Incentive Contract under EQIP. The new EQIP incentive contracts are limited to select priority resource concerns within specific geographic regions. No more than three priority resource concerns may be identified in each geographic region. EQIP incentive contracts extend for five to ten years and provide annual payments to incentivize increased conservation stewardship and the adoption, installation, management, and maintenance of conservation practices. In determining payment amounts, USDA is required to consider the level and extent of the practice being adopted, the cost of adoption, income forgone due to adoption, and compensation ensuring the longevity of the practice.

The new EQIP incentive contracts exhibit some similarities with CSP contracts, including addressing priority resource concerns; and providing annual payments for adopting, maintaining, and improving practices. The EQIP incentive contracts also include notable differences from CSP, including a no *stewardship threshold* for entry;[7] no comprehensive requirement for addressing resource concerns; no whole-farm enrollment; and no limit on payments. Pending implementation of EQIP incentive contracts, it is unclear what impact they may have on CSP enrollment or on general EQIP contracts.

CSP Grassland Conservation Initiative

Amendments under the commodities title (Title I) of the 2018 farm bill changed how base acres are used to calculate eligibility for certain commodity support programs.[8] Base acres not planted to a commodity program-eligible crop within the last ten years are ineligible for select commodity support programs. Under the 2018 farm bill, these acres are now eligible for a one-time enrollment into a new Grassland Conservation Initiative under CSP.

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[7] Under CSP, participants must meet or exceed a stewardship threshold for at least two priority resource concern at the time of application and meet or exceed at least one additional priority resource concern by the end of the contract.

[8] Base acres are historical program acres used to determine eligibility for certain farm bill commodity support programs. For additional information on farm commodity programs, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

While the new grassland initiative is within CSP, it has separate requirements from other CSP contracts. Unlike CSP, the grassland initiative would not require whole-farm enrollment. The initiative has no required stewardship threshold for entry, requiring the participant to only meet or exceed one priority resource concern by the end of the contract. Whereas CSP contracts must meet or exceed a stewardship threshold for at least two priority resource concern at the time of application and meet or exceed at least one additional priority resource concern by the end of the contracts. Grassland initiative contracts are short term—five years with no renewal or reenrollment option, and a participant may terminate the contract without penalty at any time. Payments under the initiative are not subject to the CSP payment limit, but cannot provide more than $18 per acre.

Easement Programs

Easement programs impose a permanent land-use restriction that is voluntarily placed on the land in exchange for a government payment. The primary conservation easement program is the Agricultural Conservation Easement Program, which provides financial and technical assistance through two types of easements (1) agricultural land easements (ALE) that limit nonagricultural uses on productive farm or grass lands, and (2) wetland reserve easements (WRE) that protect and restore wetlands. The other conservation easement program—the Healthy Forests Reserve Program (HFRP)—was reauthorized in the forestry title (Title VIII) of the 2018 farm bill and is not covered in this report.[9]

Agricultural Conservation Easement Program (ACEP)

The 2018 farm bill reauthorizes and amends ACEP. Most of the changes made to ACEP in the 2018 farm bill focus on the ALE. Under ALE, USDA enters into partnership agreements with eligible entities to purchase agricultural land easements from willing landowners to protect the agricultural use and conservation values of the land. The enacted bill provides additional flexibilities to ACEP-eligible entities, including the eligibility of "buy-protect-sell" transactions in which an eligible entity purchases land prior to the acquisition of an ALE, agrees to hold an ALE on the land, and then transfer the land within a select time period to a farmer or rancher. The bill also amends the nonfederal cost share requirements by removing the requirement that an eligible entity's contribution be equal to the federal share, or at least 50% of the federal share if the entity includes contributions from the private landowner. The nonfederal portion contributed by the eligible entity may include cash, a landowner's donation, costs associated with the easement, or other costs as determined by USDA. Other flexibilities provided eligible entities include the consideration of geographical differences, terms and conditions of easements, and certification criteria of eligible entities. Several amendments reduce the roll of USDA in the administration of ALE, including amendments to the certification of eligible entities, the right of easement enforcement, and planning requirements. For a detailed analysis of amendments to ACEP see **Table A-7**.

By comparison, the 2018 farm bill made fewer changes to WRE. Most of the amendments to WRE center on compatible use and vegetative cover requirements. Compatible use authorization is expanded to include consultation with the state technical committee, consideration of land management requirements, and improving the functions and values of the easement. Requirements for a WRE plan were amended to allow for the establishment or restoration of an

[9] HFRP is administered by NRCS, similar to other conservation easement programs, but authorized in the forestry title. For additional information about amendments to HFRP, see the Forestry section of CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

alternative vegetative community that is hydraulically appropriate on the entirety of the WRE if it would benefit wildlife or meet local resource needs.

In other amendments to ACEP, Congress specified new directions regarding USDA's handling of the subordination, exchange, modification, or termination of any ACEP easement. The enacted farm bill increases mandatory funding for ACEP from the FY2018 authorized level to $450 million annually for FY2019 through FY2023.[10]

Other Conservation Programs and Provisions

Regional Conservation Partnership Program (RCPP)

The 2014 farm bill created RCPP from four repealed programs. The 2018 farm bill reauthorized RCPP and made a number of amendments to the program (see **Table A-8** for a detailed analysis of RCPP amendments). Prior the 2018 farm bill, RCPP utilized 7% of existing conservation programs (referred to as *covered programs*[11]) through RCPP projects that were defined by eligible partners. Eligible partners would define the project's area, goals, and resource concerns to be addressed through the use of covered programs. Partners would enter into project agreements with USDA, in which they would provide a "significant portion" of the overall cost of the project. USDA issued no regulations for RCPP and instead utilized funding notices and operated it with the regulations of the covered programs.

Amendments enacted in the 2018 farm bill shift RCPP away from using contracts from covered programs to establishing RCPP as a stand-alone program with its own contracts. Prior to the 2018 farm bill, USDA would enter into agreements with a partner on a project that would target covered program contracts in an agreed upon area for a defined resource goal. The actual contract with the farmer or rancher, however, would be an EQIP, CSP, ACEP, or HFRP contract. The enacted bill no longer uses this framework; instead it requires USDA to use a contract specific to RCPP that will fund eligible activities similar to those available under covered programs, but not using the funds of those programs. The list of covered programs is also expanded under the bill to include EQIP, ACEP, CSP, HFRP, CRP, and Watershed and Flood Prevention Operations (WFPO).[12]

The 2018 farm bill maintains RCPP's broad partner-focused goal of creating opportunities to leverage federal conservation funding for partner-defined projects. Additionally, the revised program provides additional flexibilities to partners, including the make-up of a partner's project contribution, guidance and reporting requirements, agreement renewals, and in the application process.

Mandatory funding for the program is increased to $300 million annually for FY2019 through FY2023 from $100 million annually under prior law. However, RCPP no longer receives a percentage of funding from covered programs, which could change the overall scale of RCPP depending on how this change is implemented. The allocation of funding is also amended to

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[10] The 2014 farm bill authorized $400 million in FY2014, $425 million in FY2015, $450 million in FY2016, $500 million in FY2017, and $250 million in FY2018.

[11] Covered programs included EQIP, CSP, ACEP, and HFRP.

[12] Despite the inclusion of CRP and WFPO, CREP and Watershed Rehabilitation—subprograms of CRP and WFPO, respectively—are specifically excluded.

provide 50% to state and multi-state projects and 50% to projects in critical conservation areas (CCA) as selected by USDA.[13]

Watershed and Flood Prevention Operations (WFPO)

The WFPO program provides technical and financial assistance to state and local organizations to plan and install measures to prevent erosion, sedimentation, and flood damage and to conserve, develop, and utilize land and water resources.[14] Project costs are shared with local partners. Smaller projects may be authorized by the Chief of the NRCS, whereas larger projects must be approved by Congress. The 2018 farm bill made few amendments to WFPO, the most substantial being the authorization of permanent mandatory funding of $50 million annually. Historically, the program received discretionary funding through the annual appropriations process—most recently $150 million in FY2018.[15]

Conservation Compliance

Two farm bill provisions require that in exchange for certain USDA program benefits, a producer agrees to maintain a minimum level of conservation on highly erodible land and not to convert wetlands to crop production. These provisions were originally authorized in the 1985 farm bill as highly erodible land conservation (*Sodbuster*) and wetland conservation (*Swampbuster*). They are collectively referred to as *conservation compliance*.[16] The 2018 farm bill amends wetland conservation provisions to specify that (1) benefits cannot be denied if an exemption applies and (2) affected landowners must have the opportunity to be present during an on-site inspection. The enacted bill also authorizes annual discretionary appropriations for wetland mitigation banking. For a detailed analysis of amendments to the wetland conservation provisions, see **Table A-1**.

A third type of compliance requirement introduced in the Food, Conservation, and Energy Act of 2008 (2008 farm bill; P.L. 110-246) addressed crop production on native sod (*Sodsaver*). While Sodsaver is not included in the conservation title of the farm bill, it operates in a manner similar to conservation compliance requirements in that benefits are reduced if production occurs on native sod.[17]

Policy Issues That Shaped the Conservation Title

Beginning with the Agriculture and Food Act of 1981 (1981 farm bill; P.L. 97-98), agricultural conservation has been a stand-alone title in all farm bills. The breadth of the conservation title has grown with each passing omnibus farm bill. Debate over the 2018 farm bill focused on the differences within the conservation title of the House- and Senate-passed bills (H.R. 2). The conference agreement resolved these differences to create a final version of the title in the enacted law that represents a mix of proposals from the two versions. Overarching themes of the

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[13] Current CCAs include Chesapeake Bay Watershed, Great Lakes Region, Mississippi River Basin, Colorado River Basin, Longleaf Pine Range, Columbia River Basin, Prairie Grasslands Region, and California Bay Delta.

[14] The WFPO program consists of projects built under two authorities—the Watershed Protection and Flood Prevention Act of 1954 (P.L. 83-566) and the Flood Control Act of 1944 (P.L. 78-534). For additional information on WFPO, see CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*.

[15] For additional information, see CRS Report R45406, *FY2018 and FY2019 Appropriations for Agricultural Conservation*.

[16] For additional information, see CRS Report R42459, *Conservation Compliance and U.S. Farm Policy*.

[17] For additional information, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

conservation title include (1) targeting of funds or acres in existing programs, (2) a shifting of funds among the different types of conservation programs, including a continued emphasis on working lands programs, and (3) provisions that address environmental regulations through voluntary conservation measures.

Directed Policies Within Existing Programs

The 2014 farm bill focused on simplifying and consolidating programs within the conservation title. Conversely, the 2018 farm bill does not create new programs, but it does require that a number of existing programs direct a specific level of funding or acres, or percentage of a program's funding, to a resource- or interest-specific issue, initiative, or subprogram. **Table 1** highlights some of the directed policies created by the 2018 farm bill and compares them with prior law. Some of these policies existed prior to the 2018 farm bill, but did not include a specified funding or acreage level. Through these directed policies Congress has specified a level of support or required investment that USDA is to achieve through program implementation. One potential consequence of these directed policies may be reduced flexibility of the implementing agency to allocate funding based on need, as well as reduced total funds or acres available for activities of the larger program that may not meet a resource-specific provision. Most of the conservation programs in the 2018 farm bill are authorized to receive mandatory funding, so these directed policies also have funding, unless Congress subsequently directs otherwise.

Table 1. Directed Policies in the 2018 Farm Bill

Grouped by Program

Provision	Prior Law (U.S. Code citation)	Enacted 2018 Farm Bill (section)
Conservation Reserve Program		
Grassland Contracts	No more than 2 million acres of total CRP enrollment (16 U.S.C. 3831(d)(2)(A)).	No less than 2 million acres of total CRP enrollment by FY2021. Prohibits uses of these acres for other CRP contracts (§2201(c)(2)).
CLEAR initiative	NA	40% of continuous enrollment contracts (§2201(c)(3)).
Continuous enrollment	None	No less than 8.6 million acres of total CRP enrollment by FY2022 (§2201(c)(3)).
FWP	No more than 750,000 acres of total CRP enrollment (16 U.S.C. 3831b(c)(1)).	No more than 750,000 acres of total CRP enrollment (§2203).
SHIPP program	NA	No more than 50,000 acres of total CRP enrollment (§2204).
Environmental Quality Incentives Program		
EQIP livestock practices	At least 60% of total EQIP funds to be used for payments related to livestock practices (16 U.S.C. 3839aa-2(f)(1)).	At least 50% of total EQIP funds to be used for payments related to livestock practices (§2304(c)).
EQIP wildlife practices	At least 5% of total EQIP funds to be used for payments to benefit wildlife habitat (16 U.S.C. 3839aa-2(f)(2)).	At least 10% of total EQIP funds to be used for payments to benefit wildlife habitat (§2304(c)).
EQIP air quality	Requires $25 million of EQIP funds annually be used to address air quality concerns (16 U.S.C. 3839aa-8(b)).	Requires $37 million of EQIP funds annually be used to address air quality concerns (§2307(2)).
CIG on-farm trials	NA	Requires $25 million annually be used for an on-farm conservation innovation trial (§2307(c))

Provision	Prior Law (U.S. Code citation)	Enacted 2018 Farm Bill (section)
Other Programs		
ECP	None	Require 25% of available discretionary funding be set aside until April 1st to repair and replace fencing (§2403(e)(6)).
VPAHIP	None	Requires $3 million of total funding provided be used to encourage public access on land covered by WRE under ACEP (§2406(4)).
Source water protection	NA	Requires 10% of all farm bill conservation program's funding each fiscal year (except CRP) be used to encourage conservation practices related to water quality and quantity that protect source waters for drinking (§2503(d)).
RCPP	Requires USDA to reserve 7% of EQIP, CSP, ACEP, and HFRP funds and acres for RCPP projects. (16 U.S.C. 3877d(c))	None.

Source: CRS based on provisions in P.L. 115-334.

Notes: NA indicates 'not applicable' because the provision did not exist under prior law. None indicates that while the program or provision was, or is, in existence that no carve-out of funding was, or is, required in law. For additional discussion on programs and provision in the table see the "Conservation Program Changes" section as well as **Appendix**.

Budget and Baseline

Most farm bill conservation programs are authorized to receive mandatory funding. According to CBO, the conservation title makes up 7% of the total projected 2018 farm bill spending over 10 years, which is $60 billion of the total $867 billion (see **Table 2** and **Figure 3**).[18] Historically, funding for the conservation title has experienced both increases and decreases within farm bills. The 2018 farm bill conservation title is budget neutral over the 10-year baseline; however, it is projected to increase funding in the first five years (+$555 million over FY2019-FY2023) and decrease funding in the last five years (-$561 million over FY2024-FY2028).[19] While most titles received an increase in authorized mandatory funding over the projected 10-year baseline, three titles, including conservation, did not.[20]

Conservation Baseline & Score

Most conservation programs receive an authorization (budget authority) for mandatory funding in omnibus farm bills. Generally, the bill authorizes and pays for the mandatory funding (expressed as outlays) with a multiyear budget estimate when the law is enacted. The Congressional Budget Office (CBO) determines the official cost/savings estimate when bills are considered based on long-standing budget laws and rules.[21]

[18] CRS Report R45425, *Budget Issues That Shaped the 2018 Farm Bill*.

[19] CBO, "Baseline Projections for Selected Programs," April 2018, https://www.cbo.gov/about/products/baseline-projections-selected-programs. The CBO baseline is an estimated projection at a particular point in time of what future federal spending on mandatory programs would be under current law. The CBO score is an estimate of the cost impact of a change in law in relation to the baseline. A neutral score implies that spending does not increase or decrease over the baseline amount.

[20] The other two titles reduced in the 2018 farm bill were Rural Development (-$2.5 billion) and Crop Insurance (-$104 million), over the 10-year baseline.

[21] For more information, see CRS Report 98-560, *Baselines and Scorekeeping in the Federal Budget Process*.

The budgetary impact of mandatory spending proposals is measured relative to an assumption that certain programs continue beyond the end of the farm bill. The benchmark is the CBO **baseline**—a projection at a particular point in time of future federal spending on mandatory programs under current law. The baseline provides funding for reauthorization, reallocation to other programs, or offsets for deficit reduction. Generally, most large conservation programs, such as CRP and EQIP, are assumed to continue in the baseline as if there were no change in policy and it did not expire. However, some of the smaller conservation programs are not assumed to continue beyond the end of a farm bill, such as VPAHIP.

The baseline used to develop the 2018 farm bill was the CBO baseline that was released in April 2018.[22] It projected that if the 2014 farm bill were extended, farm bill conservation programs would cost $60 billion over the next 10 years (FY2019-FY2028). Most of that amount, 93%, was in three programs—EQIP, CSP, and CRP.

When a new bill is proposed that would affect mandatory spending, CBO estimates the **score** (cost impact) in relation to the baseline. Changes that increase spending relative to the baseline have a positive score; those that decrease spending relative to the baseline have a negative score. Budget enforcement rules use these baselines and scores to follow various budget rules. When a new law is passed, the **projected cost at enactment** equals the **baseline** plus the **score**. This sum becomes the foundation of the new law, and may be compared to future CBO baselines as an indicator of how actual spending transpires as the law is implemented and market conditions change.

Table 2. Budget Projections for the Conservation Title of the 2018 Farm Bill

(outlays in millions of dollars, five- and ten-year totals)

	Five years (FY2019-FY2023)			Ten years (FY2019-FY2028)		
Program (Section Number)	**April 2018 CBO baseline**	**Score of P.L. 115-334**	**Projected cost at enactment**	**April 2018 CBO baseline**	**Score of P.L. 115-334**	**Projected cost at enactment**
CRP (2201)	10,507	-189	10,318	22,085	0	22,085
CSP (2301)[a]	8,764[b]	-3669	5,095	17,729[b]	-12,426	5,303
EQIP (2302) & CSP (2308)[a]	7,968[c]	2660	10,628	16,697[c]	8,451	25,148
Watershed pgms. (2401)[d]	0	95	95	0	317	317
GSWP (2405)	0	5	5	0	5	5
VPAHIP	0	50	50	0	50	50
Feral Swine (2408)	0	75	75	0	75	75
ACEP (2601)	1,347	786	2,133	2,597	1,779	4,376
RCPP (2701)	578	742	1,320	1,078	1,742	2,820
Other[e]	-485	NA	-485	-497	NA	-497
Conservation Title Total	28,679	555	29,234	59,689	-6	59,682

Source: CRS. Compiled from CBO, "Baseline Projections," April 2018, https://www.cbo.gov/about/products/baseline-projections-selected-programs, and at the title level in the table notes in CBO, "Cost Estimates for H.R. 2," https://www.cbo.gov/publication/54284, July 24, 2018.; and CBO cost estimate of the conference agreement for H.R. 2, https://www.cbo.gov/publication/54880, Dec. 11, 2018.

a. The CBO Score of the 2018 farm bill includes two entries for CSP; one for the CSP contracts entered into *before* enactment (under §2301) and those entered into *after* enactment (combined with EQIP; §2308).

b. The baseline for CSP in this table is reflected on the same line as the standalone CSP score (§2301) and not with the combined EQIP & CSP line (§2308).

[22] CBO, "Baseline Projections for Selected Programs," April 2018, https://www.cbo.gov/about/products/baseline-projections-selected-programs, and at the title level in the table notes in CBO, "Cost Estimates for H.R. 2 as passed by the House of Representatives and as passed by the Senate," https://www.cbo.gov/publication/54284, July 24, 2018.

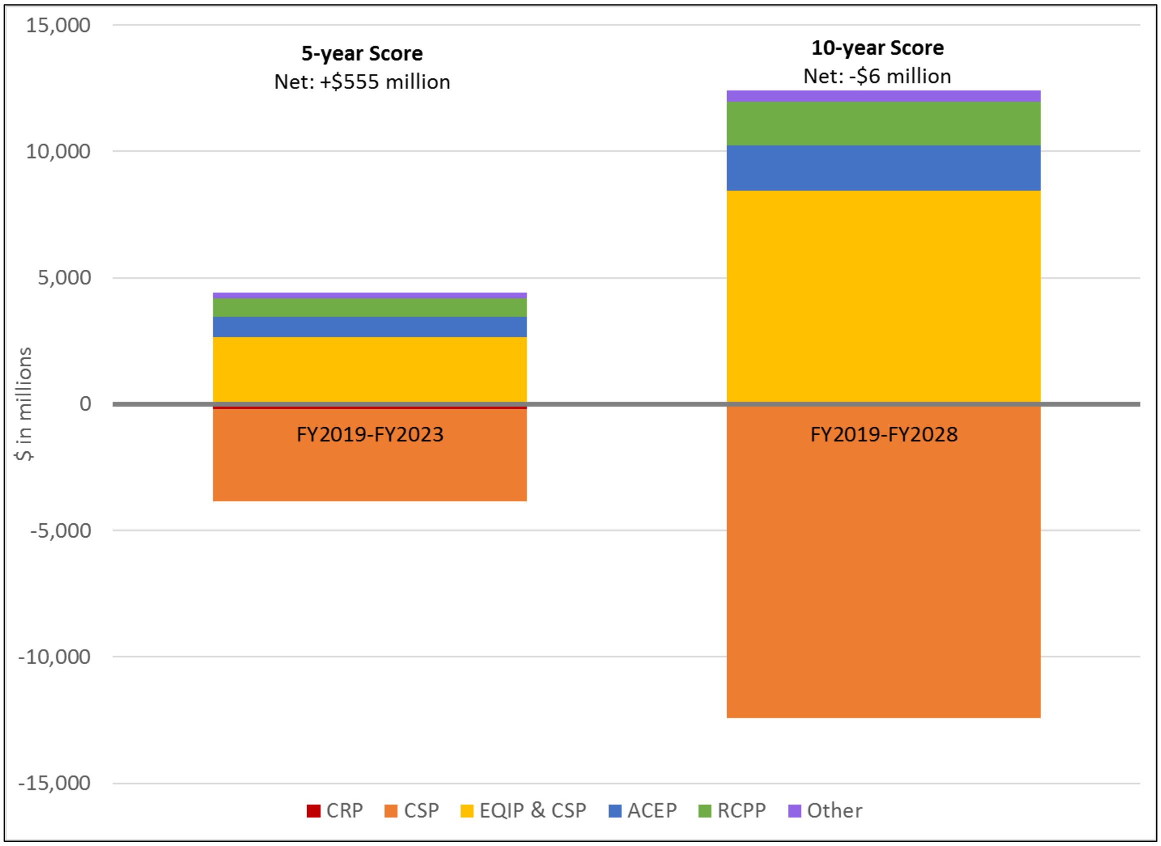
c. The baseline for the combined EQIP and CSP score (§§2302 and 2308, respectively) only reflects the EQIP baseline. See table note a, above, for additional explanation.

d. New, permanent, mandatory funding is authorized under section 2401 for the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.), as amended. This section can fund multiple watershed programs, including WFPO and Watershed Rehabilitation.

e. The April 2018 CBO baseline includes other small programs (e.g., AMA) and adjustments (e.g., sequestration) which are combined as Other in this table. These provisions did not affect the score of the 2018 farm bill and are not discussed in this report.

Figure 3. 2018 Farm Bill Conservation Title Score

(by program, dollars in millions)



Source: CRS using CBO cost estimate of the conference agreement for H.R. 2, https://www.cbo.gov/publication/54880, Dec. 11, 2018.

Notes: The chart includes the Conservation Reserve Program (CRP), Conservation Stewardship Program (CSP), Environmental Quality Incentives Program (EQIP), Agricultural Conservation Easement Program (ACEP), and Regional Conservation Partnership Program (RCPP). Other includes funding for Watershed Protection and Flood Prevention Operations (§2401), Grassroots Source Water Protection (§2405), Voluntary Public Access and Habitat Incentive Program (§2406), and Feral swine eradication and control pilot program (§2408). The CBO Score of the 2018 farm bill includes two entries for CSP; one for the CSP contracts entered into *before* enactment (under §2301) and those entered into *after* enactment (combined with EQIP; §2308).

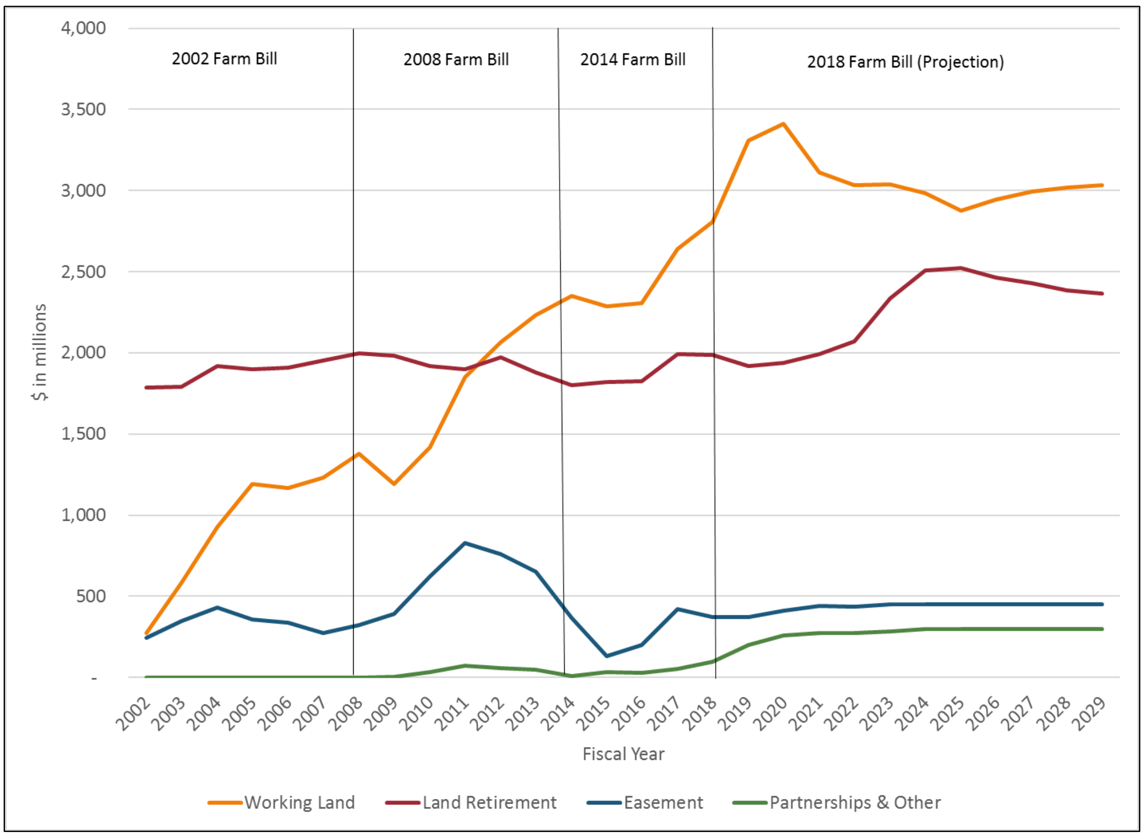
Historical and Programmatic Shifts in Conservation Funding

The bulk of mandatory spending for conservation is authorized for working lands and land retirement activities. While recent farm bills have increased funding for easement and partnership programs, they remain relatively small compared to three main programs—EQIP, CSP, and CRP (see **Table 2** and **Figure 4**). The 2018 farm bill conservation title is considered budget neutral over the ten-year baseline and generally reallocates funding among the larger existing programs.

Over time, periods of high commodity prices, changing land rental rates, and new conservation technologies have led to a shift in farm bill conservation policy away from land retirement and toward an increased focus on working lands programs. Much of this shift occurred following the 2008 farm bill and continued in the 2014 farm bill as the level of total mandatory program funding for land retirement programs declined relative to working lands programs (see **Figure 4**). Increasingly, the separation between land retirement programs and working lands programs has become blurred by an increase in compatible use allowances for grazing and pasture use under land retirement programs. Most conservation and wildlife organizations support both land retirement and working lands programs; however, the appropriate "mix" continues to be a subject of debate.

Figure 4. Farm Bill Conservation Program Mandatory Spending, FY2002-F2029

Outlays in millions of dollars



Source: CRS using CBO baseline data, FY2001-FY2019.

Notes: FY2002 through FY2018 include actual spending levels. FY2019 through FY2029 are projected spending levels. Chart does not include sequestration or savings from repealed programs. Working lands include the Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), Agricultural Management Assistance (AMA), and earlier programs; land retirement includes the Conservation Reserve Program (CRP) and subprograms; easement includes the Agricultural Conservation Easement Program (ACEP) and earlier programs; and other includes the Regional Conservation Partnership Program (RCPP) and other programs.

Additionally, some conservation program supporters are divided over the relative benefits of shorter-term land retirement programs (CRP) versus longer-term easement programs (ACEP).

Unlike land retirement programs, easement programs impose a permanent or longer-term land-use restriction that the land owner voluntarily places on the land in exchange for a government payment. Supporters of easement programs cite a more cost-effective investment in sustainable ecosystems for long-term wildlife and land preservation benefits. Supporters of short-term land retirement programs cite the increased flexibility and broader participation compared with permanent or long-term easement programs. The 2018 farm bill did not amend the duration of ACEP easements, but did create two new subprograms under CRP that would provide additional options for longer-term CRP contracts (30 years under CLEAR30) and shorter-term CRP contracts (3-5 years under SHIPP).[23]

In recent years, Congress has placed greater emphasis on programs that partner with state and local communities to target conservation funding to local resource concerns. These partnership programs leverage private funding with federal funding to multiply the level of assistance in a selected area. The 2014 farm bill repealed a number of these partnership programs and replaced them with RCPP. The 2018 farm bill amends and expands the number of partnering opportunities under RCPP, CREP, and CIG. However, based on available funding, these programs remain relatively small compared to others in the conservation title.

Environmental Regulation and Voluntary Conservation

USDA has cited voluntary conservation practices as a way to address environmental concerns and potentially reduce the need for traditional regulatory programs.[24] A number of provisions in the conservation title speak to the relationship between voluntary conservation measures and environmental regulation. One such provision is regulatory certainty. Regulatory certainty refers to using voluntary measures to address a specific resource concern in exchange for the "certainty" that additional measures will not be required under future regulations.[25] A new regulatory certainty section in the 2018 farm bill (§2503(f)) authorizes USDA to provide technical assistance under the farm bill conservation programs to support regulatory assurances for producers and landowners, under select conditions.

The 2018 farm bill also makes existing regulatory certainty measures permanent, including the Working Lands for Wildlife Initiative, which was created in 2012 as a partnership between NRCS and the U.S. Fish and Wildlife Service (FWS). Under this partnership agreement, private landowners who voluntarily make wildlife habitat improvements on their land through NRCS conservation programs, and agree to maintain them for 15-30 years, receive in return a level of certainty they will be exempted from potential future regulatory actions related to at-risk species under the Endangered Species Act.[26] The 2018 farm bill makes this partnership agreement permanent and allows for the initiative to be expanded to include CRP.

Another environmental regulatory-related provision in the enacted 2018 farm bill (§2410) is a sense of Congress statement encouraging watershed-level partnerships between nonpoint sources and regulated point sources to advance the goals of the Federal Water Pollution Control Act (Clean Water Act, 33 U.S.C. §1251 et seq.).

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[23] These subprograms are discussed further in **Table A-2** and the "Other CRP Initiatives" section.

[24] See for example, USDA, "EPA, USDA Encourage Use of Market-based and Other Collaborative Approaches to Address Excess Nutrients," press release, December 4, 2018, https://www.usda.gov/media/press-releases/2018/12/04/epa-usda-encourage-use-market-based-and-other-collaborative.

[25] Regulatory certainty is also referred to as regulatory assurance, regulatory predictability, or safe harbor protection.

[26] USDA, NRCS, "NRCS and FWS Reach Historic Agreement to Extend Wildlife Conservation Efforts on Working Agricultural Lands," press release, September 17, 2012, https://www.nrcs.usda.gov/wps/portal/nrcs/detail/me/home/?cid=stelprdb1048842.

Appendix. Comparison of Conservation Provisions Enacted in the 2018 Farm Bill to Prior Law

This appendix includes a series of tables, arranged by subtitle, included in Title II of the Agriculture Improvement Act of 2018 (P.L. 115-334). U.S. Code citations are included in brackets in the "Prior Law" column. Corresponding section numbers in the 2018 farm bill are included in brackets in the "Enacted 2018 Farm Bill" column. Funding for most Title II programs is covered in the "Funding and Administration" subtitle (Subtitle E, see **Table A-6**). Where appropriate, funding levels are repeated within a program's corresponding subtitle table. Tables are generally organized by section number of the 2018 farm bill, except where it is appropriate to cross-references relevant amendments to provide a complete picture of the program.

Table A-1. Subtitle A—Wetland Conservation (Swampbuster)

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2101—Wetland Conversion	
The wetland conservation or "swampbuster" provision denies various USDA program benefits to producers who plant program crops on wetlands converted after December 23, 1985, or who convert wetlands, making agricultural commodity production possible, after November 28, 1990. For a producer to be found out of compliance, crop production does not actually have to occur; production only needs to be made possible through activities such as draining, dredging, filling, or leveling the wetland. Exemptions for compliance violators may be granted following a review. **(16 U.S.C. 3821 *et seq.*)**	Requires that a producer cannot be denied program benefits if an exemption applies to that producer. **(§2101)**
Section 2102—Wetland conservation	
The Secretary is required to conduct an on-site visit before program benefits may be withheld for noncompliance. **(16 U.S.C. 3821(c))**	Requires that the on-site inspection be conducted in the presence of the affected person, except when a reasonable effort was made to include the affected person. **(§2102)**
Section 2103—Mitigation banking	
One option violators of wetland conservation have to mitigate the violation is through wetland mitigation banking. Wetland mitigation banking is a type of wetlands mitigation whereby a wetland is created, enhanced, or restored, and "credit" for those efforts is sold to others as compensation for the loss of impacted wetlands elsewhere. The 2014 farm bill created a permanent wetland mitigation banking program exclusively for farmers to comply with swampbuster. The program has a onetime authorization for $10 million in mandatory funding. **(16 U.S.C. 3822(k))**	Authorizes the appropriation of $5 million annually for FY2019 through FY2023. **(§2103)**

Source: CRS.

Table A-2. Subtitle B—Conservation Reserve Program

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2201—Conservation Reserve	
Authority. Conservation Reserve Program (CRP) is authorized through FY2018 to provide annual rental payments to producers to replace crops on highly erodible and environmentally sensitive land with long-term resource conserving plantings. **(16 U.S.C. 3831(a))**	Reauthorizes CRP through FY2023. **(§2201(a))**
Eligible land. Highly erodible land is considered eligible for enrollment in CRP if (1) left untreated could substantially reduce the land's future agricultural production capability or (2) it cannot be farmed in accordance with a conservation plan; and has a cropping history or was considered to be planted for four of the six years preceding February 7, 2014 (except for land previously enrolled in CRP). Eligible land also includes marginal pastureland, grasslands, cropland, and land devoted to buffer or filterstrips. **(16 U.S.C. 3831(b))**	Extends the six-year cropping history to include land planted for four of the six years preceding enactment of the bill. Adds land that would have a positive impact on water quality if devoted to water quality practices. Amends land established to new buffer practices to include salt tolerant vegetation or practices that benefit wellhead protection areas. Adds other expired CRP land. **(§2201(b))**
Maximum enrollment. CRP is authorized to enroll up to 27.5 million acres in FY2014, 26 million acres in FY2015, 25 million acres in FY2016, and 24 million acres in both FY2017 and FY2018. **(16 U.S.C. 3831(d)(1))**	Incrementally increases enrollment limits from 24 million acres in FY2019, to 24.5 million acres in FY2020, 25 million acres in FY2021, 25.5 million acres in FY2022, and 27 million acres in FY2023. **(§2201(c)(1))**
Grasslands enrollment. CRP grassland enrollment is capped at 2 million acres total for FY2014-FY2018. Priority is given to expiring CRP contracts and enrollment is continuous. **(16 U.S.C. 3831(d)(2))**	Requires a minimum CRP grassland enrollment of 2 million acres by the end of FY2021. Incrementally increases the minimum enrollment of grassland acres from 1 million acres in FY2019, 1.5 million acres in FY2020, and 2 million acres in FY2021 through FY2023. Allows CRP grassland enrollment to prioritize expiring CRP land, land at risk of development, or land of ecological significance. Enrollment is required on an annual basis. Includes a limit on using unenrolled grassland acres for other types of CRP enrollment. **(§2201(c)(2))**
No comparable provision.	**Clean Lakes, Estuaries, and Rivers (CLEAR) initiative.** Creates a new water quality incentive that gives priority under continuous enrollment to land that would reduce sediment and nutrient loading, and harmful algal blooms. Requires 40% of continuous enrollment contracts to be used to enroll land that would have a positive impact on water quality if devoted to water quality practices (not including grassland contracts). Includes monthly report requirements. **(§2201(c)(3))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
No comparable provision. CRP acres are enrolled based on the relative environmental benefits of the land offered.	**Minimum enrollment by state.** Requires USDA to annually allocate 60% of the available number of CRP acres to states based on historical enrollment. Enrollment rates must consider the average number of acres enrolled in each state during FY2007 through FY2016, the average number of acres enrolled in CRP during FY2007 through FY2016, and the acres available for enrollment for FY2019 through FY2023. Also requires that at least one noncontinuous sign-up be held every year. **(§2201(c)(3))**
No comparable provision. There are two types of enrollment into CRP: general sign-up and continuous sign-up. A general sign-up is a specific period of time during which USDA accepts offers and competitively enrolls acres. Land offered under continuous sign-up may be enrolled at any time and is not subject to competitive bidding. CRP grassland offers are accepted on a continuous basis with periodic ranking periods. All sign-ups are subject to available acres within the authorized limits. **(7 C.F.R. 1410.30)**	**Continuous enrollment procedures.** Requires CRP enrollment to be continuous for marginal pastureland, land that would have a positive impact on water quality if enrolled, select cropland, and Conservation Reserve Enhancement Program (CREP) contracts. Adds minimum enrollment targets for these continuous contracts of not fewer than 8 million acres by FY2019, 8.25 million acres by FY2020, 8.5 million acres by FY2021, and 8.6 million of acres by FY2022 and FY2023. **(§2201(c)(3))**
Reenrollment of expired land. All expiring CRP land is eligible for reenrollment in the program. **(16 U.S.C. 3831(h))**	Limits reenrollment for land devoted to hardwood trees to only one reenrollment, unless the land includes riparian forested buffers, forested wetlands, and shelterbelts. **(§2201(d))**
Section 2202—Conservation Reserve Enhancement Program	
No directly comparable provision. The Conservation Reserve Enhancement Program (CREP) is a subprogram of CRP in which USDA enters into agreements with states to target select areas and resource concerns in exchange for continuous CRP sign-ups and higher payments for enrollment. CREP was administratively established in 1997 and is regulated at **7 C.F.R. 1410.50**.	Adds a new provision codifying CREP as a permanent subprogram under CRP. Provisions are similar to the existing CREP. Limits eligible partners to a state, political subdivision of a state, Indian tribe, and nongovernmental organization. Allows USDA to enter into agreements with eligible entities to carry out CREP. Existing CREP agreements remain in force, but may be modified. Agreement requirements are further defined, including matching fund contributions and possible temporary waiver of matching funds. Payments from an eligible partner may be in cash, in-kind, or through technical assistance. Includes additional requirements for select cost-share payments, incentive payments, and maintenance payments. Includes drought and water conservation agreements that may enroll land critical to the purpose of the agreement, permit dryland farming, and ensure regionally consistent payment rates. Status reports are required 180 days after the end of each fiscal year following enactment. **(§2202)**
Section 2203—Farmable Wetland Program	
The Farmable Wetland Program (FW) is a subprogram under CRP authorized through FY2018 to enroll up to 750,000 acres of wetland and buffer acreage in CRP. USDA may, after a review, increase the number of acres enrolled in FW by 200,000 additional acres. **(16 U.S.C. 3831b(a)-(c))**	Reauthorizes FW through FY2023. Makes clarifying amendments. **(§2203)**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2204—Pilot Programs	
No comparable provision.	Creates a new pilot program referred to as **CLEAR 30**, that enrolls expiring CRP land into 30-year contracts (see the CLEAR initiative in **§2201(c)(3)**). Enrollment is restricted by the overall CRP enrollment limit. Under a CLEAR 30 contract the landowner must maintain the land in accordance with an approved plan and the terms and conditions of the contract, including the temporary suspension of base acres (used to calculate farm program payments). Terms and conditions are outlined for use and for prohibited activities. Compensation is made in thirty annual cash payments similar to those calculated under general CRP. Technical assistance is required for each contract and agreement. USDA must create the CRP plan for a contract, but management, monitoring, and enforcement may be delegated to another federal, state, or local government, or conservation organization. **(§2204)**
No comparable provision.	Creates a **Soil Health and Income Protection Pilot (SHIPP)** program under CRP to remove less productive farm land from production in exchange for annual rental payments and to plant low-cost perennial cover crops. Eligible land is limited to states selected in the prairie pothole region, was cropped but not enrolled in CRP in the previous three crop years, and is considered to be the least productive on the farm. Limits enrollment to no more than 15% of a farm and no more than 50,000 acres of total CRP. Participants are required to plant a USDA-approved, low-cost perennial conservation use cover crop at their own expense in return for an annual rental payment of 50% of the CRP rental rate. Higher annual rental rates of 75%, and cost-share assistance is available for beginning, small, socially disadvantaged, young, or veteran farmers and ranchers. Contracts are limited to 3-5 years, but can terminate early under certain conditions. Harvesting, haying, and grazing are allowed outside of the local nesting periods and subject to additional conditions. Requires annual reports to Congress. **(§2204)**
Section 2205—Duties of owners and operators	
In exchange for payments under CRP, owners and operators agree to a number of requirements and restrictions on the land under contract. These requirements are outlined in the CRP contract and conservation plan. **(16 U.S.C. 3832)**	Adds a requirement for hardwood and other trees, excluding windbreaks and shelterbelts, to carry out thinning and forest management practices. **(§2205)**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2206—Duties of the Secretary	
In return for a CRP contract, landowners are compensated for a percentage of the cost (cost-share) of carrying out conservation measures within the contract and an annual rental payment for 1) the conversion of highly erodible land and other agricultural land to less intensive uses, 2) permanent retirement of base history, and 3) development and management of grasslands. **(16 U.S.C. 3833(a))**	Adds the cost of fencing and water distribution practices to the list of possible cost-share assistance. Amends annual rental payments by adding marginal pastureland to the list of land converted to less intensive uses, and removes payments to permanently retire base history. **(§2206(a))**
Specified permitted activities. Certain specified activities (e.g., harvesting, grazing, or other commercial uses of the forage) are permitted on CRP land under select conditions. These activities are allowed without a reduction in the annual rental rate when in response to drought, flooding, or other emergency. Managed harvesting is allowed if it is consistent with soil conservation, water quality, and wildlife habitat (including primary nesting seasons) and in exchange for not less than a 25% reduction in annual rental rates for acres covered by the activity. Managed harvesting may occur at least every five years but not more than once every three years. Routine grazing is also permitted in exchange for not less than a 25% reduction in annual rental rate, subject to nesting season restrictions, vegetation management requirements and stocking rates, and routine grazing is limited to not more than once every two years (taking into consideration regional differences). **(16 U.S.C. 3833(b))**	Requires USDA to coordinate with state technical committees on the permitted uses of CRP land for certain activities or commercial uses. Permitted activities would not have a reduction in rental rate for emergency uses, mid-contract management practices, select uses of vegetative buffers, and grazing by beginning farmers or ranchers. A 25% reduction in annual rental rates may be approved for limited grazing and haying activities, and wind turbine installation subject to select limitations. Adds a new provision allowing USDA to determine years in which harvesting and grazing shall not be permitted if it would cause long-term damage to vegetative cover on that land. State Acres for wildlife Enhancement (SAFE) program and CREP acres may be grazed if permitted under the related agreement. **(§2206(b))**
No comparable provision.	Adds a new provision providing that when a natural disaster or adverse weather event has the same effect as a management practice required under a conservation plan, USDA cannot require a similar management practice if the natural disaster or adverse weather event achieved the same effect. **(§2206(c))**
Section 2207—Payments	
Cost-share payments. Land enrolled in CRP is eligible to receive cost-share assistance for practices implemented. Cost-share payments are limited to 50% of the actual or average cost of establishing the practice and no more than 100% of the total cost. Hardwood trees, windbreaks, shelterbelts, and wildlife corridors are eligible for additional cost-share payments. Owners are ineligible from receiving cost-share payments if assistance is provided under other federal programs **(16 U.S.C. 3834(b))**	Limits cost-share payments to the actual cost of establishing the practice. Cost-share for seed is limited to 50% of the actual seed mixture cost. No cost-share is available for contract management activities. Adds an exception to ineligibility for cost-share for CREP contracts. Adds a 50% limit on practice incentives for continuous enrollment practices. **(§2207(a))**
Incentive payments. Incentive payments are allowed for up to 150% of the total cost of thinning and other practices to promote forest management or enhance wildlife habitat. **(16 U.S.C. 3834(c))**	Reduces incentive payments to not more than 100% of the total cost of thinning and other practices to promote forest management or enhance wildlife habitat. **(§2207(b))**
Annual rental payments. Land enrolled in CRP is eligible to receive an annual rental payment. In determining the amount to be paid, the Secretary has discretion in determining the amount necessary to encourage enrollment. **(16 U.S.C. 3834(d)(1))**	Adds a requirement that when determining the amount of annual rental payments the Secretary must consider the impact on the local farmland rental market and other factors as determined by the Secretary. **(§2207(c)(1))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
CRP enrollment is conducted through the submission of bids by owners and operators of eligible land. Annual rental payments under CRP contracts are determined by the Secretary in accordance with the rental rate criteria (see below). **(16 U.S.C. 3834(d)(2))**	Reduces annual rental payments based on enrollment type. General enrollment contracts and continuous enrollment contracts are limited to not more than 85% and 90% of the average county rental rate, respectively. The reduction may be waived for CREP contracts. Adds a sign-up incentive for continuous enrollment of 32.5% of the first annual rental payment. **(§2207(c)(2))**
Enrollment of hardwood tree acres are to be considered on a continuous basis. **(16 U.S.C. 3834(d)(4))**	Deletes provision. **(§2207(c)(3))**
Rental rates. CRP rental rates are based on soil productivity and the county average rental rate. USDA may use the National Agricultural Statistics Service's (NASS) survey estimates relating to dryland cash rental rates when determining annual rental rates. NASS is required to conduct a survey no less than once a year on county average market dryland and irrigated cash rental rates. **(16 U.S.C. 3834(d)(5))**	Requires NASS to conduct a county average rental rate survey annually and publish the survey estimate not later than September 15 each year. Adds a requirement that USDA post the current and previous soil rental rates for each county online. Requires the Secretary to use the NASS survey estimates relating to dryland rental rates when determining annual rental rates. Creates a new provision allowing FSA state committees and CREP partners to propose alternative soil rental rates with acceptable documentation and with notification to congressional authorizing committees. The county average soil rental rate is limited to 85% of the estimated rental rate for general enrollment or 90% of the estimated rental rate for continuous enrollment. **(§2207(c)(5))**
Limits on rental payments. The total amount of rental payments received directly or indirectly may not exceed $50,000. Additional payments received under a CREP contract is not subject to the payment limit. USDA is allowed to enter into CREP agreements with states. **(16 U.S.C. 3834(g))**	Maintains the $50,000 rental payment limit. Authorizes USDA to waive payment limits and adjusted gross income (AGI) requirements for rural water district or association land enrolled for the purpose of protecting a wellhead. Deletes reference to CREP agreements. **(§2207(d))**
Section 2208—Contracts	
Transition Incentives Program. The transition option under CRP facilitates the transfer of CRP acres from a retiring owner to a beginning/socially disadvantaged/veteran producer to return land to production, and it allows the new owner to begin land improvements or start the organic certification process one year before the CRP contract expires. In exchange, the retiring owner receives up to two additional years of annual CRP rental payments following the expiration of the CRP contract. **(16 U.S.C. 3835(f))**	Amends the program to authorize the transfer of land from any CRP contract holder (not limited to retiring or retired farmer or rancher) to a beginning/socially disadvantaged/veteran producer. Extends the time available for the new owner to begin land improvements or start the organic certifications contract from one year to two years before the CRP contract expires. Amends participation requirements to allow short-term leases (less than 5 years) with an option to purchase. In addition, gives land enrollment priority into EQIP, CSP, and ACEP. Allows the new owners to reenroll a portion of the land into select practices under a continuous contracts. **(§2208(a))**
End of contract. Landowners may enroll in CSP and conduct activities required under CSP in the final year of the CRP contract without violating the terms of the contract. **(16 U.S.C. 3835(g))**	Amends the provision to allow for enrollment in EQIP or CSP and conduct EQIP or CSP practices in the final year of the CRP contract without violating the terms of the contract. Adds that landowners may begin the organic certification process three years prior to the end of a contract without violating the terms of the contract. **(§2208(b))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2209—Eligible Land; State Law Requirements	
Land is considered ineligible for CRP if the landowner has received written notice that the land is required to have a resource concern or environmental protection measure or practices in place in accordance with tribal, state, or other local law, ordinances, or other regulation. **(7 C.F.R. 1410.6(d)(4))**	Requires USDA to amend CREP regulations prohibiting enrollment of land with existing protection measures if FSA, in consultation with the state technical committee, considers the enrollment to be in the best interest of the program. **(§2209)**
Section 2501—Funding Authorization	
CRP Funding. Authorizes a total of $10 million for thinning activities and a total of $33 million for transition contracts for FY2014-FY2018. Total funding for CRP is limited by enrolled acres, not total dollars. **(16 U.S.C. 3841(a)(1))**	Increases forest management thinning payments to a total of $12 million for FY2019-FY2023. Increases funding for transition contracts to a total of $50 million and limits technical assistance to $5 million total. Total funding for CRP continues to be limited by enrolled acres, not total dollars. See **Table A-6** for full funding authority. **(§2501(a)(2))**

Source: CRS.

Table A-3. Subtitle C—Environmental Quality Incentives Program

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2301—Repeal of conservation programs	
No comparable provision.	Moves CSP under the EQIP chapter and makes conforming amendments. **(§§2301(a), (b), & (d))** See **Table A-4** for amendments related to CSP.
Section 2302—Purposes of Environmental Quality Incentives Program	
The purpose of the Environmental Quality Incentives Program (EQIP) is to promote production and environmental quality as compatible goals, and optimize environmental benefits by assisting producers with (1) compliance with regulatory requirements; (2) avoiding the need for regulation; (3) installing and maintaining conservation practices; and (4) making cost-effective changes to current production systems. **(16 U.S.C. 3839aa)**	Amends the 4^{th} purpose area to address identified, new, or expected resource concerns associated with changes to production systems. Adds nutrient management for crop production, adaptation and mitigation against weather volatility, and drought resiliency to the list of possible resource concerns that may be addressed under EQIP. **(§2302)**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2303—Definitions under Environmental Quality Incentives Program	
Five terms are defined under EQIP: *eligible land*, *organic system plan*, *payment*, *practice*, and *program*. *Eligible land* is defined as land that produces commodities, livestock, or forestry-related products, including cropland, grassland, rangeland, pastureland, nonindustrial private forest land, and other agricultural land as determined by the Secretary. *Practice* is defined as one or more improvements (e.g., structural, land management, or vegetative practice; forest management; and other practices defined by USDA) or conservation activities (e.g., comprehensive nutrient management plans and other plans as determined by USDA). **(16 U.S.C. 3839aa-1)** Under CSP, *priority resource concern* is defined as a resource concern that is identified at the national, state, or local level as a priority, is significant in a state or region, and could be addressed successfully under the program. *Stewardship threshold* is defined as a level of management required to conserve or improve the quality and condition of a natural resource. **(16 U.S.C. 3838d(5) and (7))**	Adds a definition for *conservation planning assessment* which may be developed by a non-USDA entity and incorporated into the required EQIP plan. Amends the definition of *eligible land* to include environmentally sensitive areas, and identified or expected resource concerns related to agricultural production. Adds definitions for *incentive practice* and *priority resource concern* similar to the *stewardship threshold* and *priority resource concern* definitions under CSP. Amends the definition of *practice* to include soil tests and soil remediation practices. Adds resource-conserving crop rotation planning, soil health planning, conservation planning assessments, and precision conservation planning to the list of eligible conservation activity plans. Adds a definition for *soil remediation* as a scientifically based practice that addresses soil contaminants and sustainability. Adds a definition for *soil testing* as an evaluation of soil health. **(§2303)**
Section 2304—Establishment and Administration of Environmental Quality Incentives Program	
Establishment. EQIP is authorized through FY2019. **(16 U.S.C. 3839aa-2(a))**	Reauthorizes EQIP through FY2023. **(§2304(a))**
Advanced payments. EQIP contracts are paid upon the completion of the approved conservation practice. USDA is authorized, however, to make up to 50% of the cost of the practice available in advance for a limited resource, socially disadvantaged, veteran, or beginning farmer or rancher. Advanced funds must be used to purchase materials within 90-days or the funds must be returned. **(16 U.S.C. 3839aa-2(d)(4)(B))**	At the election of the producer, advanced payments are increased to at least 50% of the total practice cost. Adds a required notification and documentation clause. **(§2304(b)(1))**
No comparable provision.	**High priority practices.** Allows states the option, in consultation with the state technical committee, to identify no more than ten high-priority practices that will be eligible for up to 90% of the practice cost. Practices must address nutrients in ground and surface water, conservation of water, identified wildlife habitat, or watershed-specific resource concerns. **(§2304(b)(2))**
Funding allocation. Requires that 60% of payments go to practices related to livestock production and that at least 5% of annual funds go to payments benefiting wildlife habitat through FY2018. **(16 U.S.C. 3839aa-2(f))**	Reauthorizes and reduces the carve-out for livestock related practices to 50% through FY2023 and clarifies that grazing management practices are included. Reauthorizes and increases the wildlife habitat payment minimum to 10% through FY2023. **(§2304(c))**
Wildlife habitat incentives program. Subprogram under EQIP that provides payments for conservation practices that benefit wildlife habitat. **(16 U.S.C. 3839aa-2(g))**	Limits wildlife contracts to ten years. Also adds specific requirements for seasonal wetland habitat practices. **(§2304(d))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Water conservation. EQIP may fund irrigation efficiency practices. Priority is given for applications that reduce water use on the operation or those in which the producer agrees not to use the water savings to bring new land into irrigation. **(16 U.S.C. 3839aa-2(h))**	Authorizes USDA to make EQIP payments to producers or selected eligible entities for water conservation or irrigation efficiency practices. Eligible entities may be a state, irrigation district, groundwater management district, acequia, land-grant mercedes, or similar entity. Practices must be implemented on eligible land of the producer, land adjacent to a producer's eligible land, or land under the control of the eligible entity. USDA may waive AGI and payment limits for eligible entities and impose additional limits. Priority is given to applications that reduce water use. **(§2304(e))**
Organic payment limits. Payments for conservation practices related to organic production are limited to a total of $20,000 per year or $80,000 during any 6-year period. **(16 U.S.C. 3839aa-2(i))**	Amends the payment limit to a total of $140,000 from FY2019 through FY2023. **(§2304(f))**
No directly comparable provision. Under CSP, contracts (five years in length with the option of renewal) are based on meeting or exceeding a stewardship threshold on the entire agricultural operation. Participants must meet two priority resource concerns upon entry and meet or exceed one additional priority resource concern by the end of the contract. Contract renewal participants must meet the threshold for two additional priority resources concerns or exceed the threshold for two existing priority resource concerns. CSP provides two possible payments: (1) an annual payment for installing new conservation activities and maintaining existing activities and (2) a supplemental payment for adopting a resource-conserving crop rotation. Enrollment is offered through a continuous sign-up and applications are accepted year-round. CSP payments are limited to not more than $200,000 total between FY2014 and FY2018. **(16 U.S.C. 3838d-3838g)**	Establishes a new **Conservation Incentive Contract** under EQIP. Limits application of the contracts to identified priority resource concerns within select geographic regions. No more than three priority resource concerns are identified in each state. Priority is provided for applications that address eligible priority resource concerns and are grouped by similar operations. Contract terms extend from five to 10 years and provide annual payments to incentivize increased conservation stewardship and the adoption, installation, management, and maintenance of conservation practices. In determining payment amounts, USDA must consider the level and extent of the practice, cost, income forgone, and longevity of the practice. Annual payments must be made at the beginning of each fiscal year and practice payments soon after implementation of the practice. Does not include payment limits or a specific percentage of EQIP funds to be used for incentive contracts. **(§2304(g))**
Section 2305—Environmental Quality Incentives Program Plan	
All EQIP contracts require an approved plan of operations. For confined livestock feeding operations, the plan provides for the development and implementation of a comprehensive nutrient management plan (CNMP). **(16 U.S.C. 3839aa-5(a)(3))**	Amends the EQIP plan of operation for confined livestock feeding operations to develop and *progressively* implement a CNMP. **(§2305)**
Section 2306—Limitation on Payments Under Environmental Quality Incentives Program	
An EQIP participant's payments are limit to an aggregate of $450,000 for FY2014-FY2018. **(16 U.S.C. 3839aa-7)**	Extends the EQIP aggregate payment limit of $450,000 for FY2019-FY2023. Exempts new Conservation Incentive Contracts from the EQIP payment limit. **(§2306)**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2307—Conservation Innovation Grants and Payments	
Conservation Innovation Grants and Payments (CIG) is a competitive grant program within EQIP. Grants are provided to governmental and nongovernmental organizations, on a matching basis, to implement innovative conservation projects. Projects must include EQIP producers, leverage federal funds, provide technology transfer, increase participation by specialty crop producers, facilitate on-farm research, and pilot the testing of new technologies and practices. **(16 U.S.C. 3839aa-8(a))**	Adds community colleges carrying out demonstration projects to the list of eligible EQIP producers that may be included in a project. Expands the list of projects to include urban agriculture and edge-of-field monitoring. **(§2307(a))**
Requires that $25 million of EQIP funds annually (through FY2018) be used to address air quality concerns. **(16 U.S.C. 3839aa-8(b))**	Reauthorizes and increases the air quality funding carve-out to $37 million annually through FY2023. **(§2307(2))**
No comparable provision.	Requires up to $25 million annually of EQIP funds for FY2019-FY2023 be used for an **on-farm conservation innovation trial** to test new or innovative conservation approaches either directly with producers or with eligible entities. Agreements (3 or more years in duration) may be entered into with eligible entities. AGI limits must be applied to participating producers and eligible entities must provide USDA with annual reports on payments made to participants. No funds may be used for administrative expenses for eligible entities. USDA must provide technical assistance to producers and eligible entities. Requires a **soil health demonstration trial** to be carried out under the on-farm conservation trial that provides financial assistance for soil health and carbon-related practices. A report to Congress is required. **(§2307(c))**
CIG Report. A report to Congress is required no later than December 31, 2014, and every two years thereafter, regarding CIG funding, project results, and technology transfer efforts. **(16 U.S.C. 3839aa-8(c))**	Adds a requirement that USDA use the required CIG reports to establish and maintain a public conservation practice database. Adds the soil health demonstration trial report to the list of reports required. **(§2307(c))**
Section 2501—Funding Authorization	
EQIP Funding. Authorizes $1.35 billion in FY2014, $1.6 billion in FY2015, $1.65 billion in each FY2016 and FY2017, and $1.75 billion in each FY2018 and FY2019. **(16 U.S.C. 3841(a)(5))**	Reauthorizes the authority for the CCC to fund EQIP, including: $1.75 billion in FY2019 and FY2020, $1.8 billion in FY2021, $1.85 billion in FY2022, and $2.025 billion in FY2023. See **Table A-6** for full funding authority. **(§2501(a)(4))**

Source: CRS.

Table A-4. Subtitle C—Conservation Stewardship Program

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2301—Repeal of conservation programs	
No comparable provision.	Moves the Conservation Stewardship Program (CSP) under the EQIP chapter and makes conforming amendments. **(§§2301(a), (b) & (d))**
No comparable provision.	Terminates CSP as in effect on the day before enactment. Provides transition provisions allowing current contracts to remain in effect until completion and eligible for an extension in the fifth year of the original contract. Existing contracts may not be renewed unless certain conditions are met. Specific provisions are provided for RCPP agreements that include CSP acreage. CCC funding is to be made available to carry out current contracts. **(§§2301(c)(2)-(c)(5))**
Section 2308—Conservation Stewardship Program	
Definitions. Seven terms are defined under CSP: *agricultural operation, conservation activities, conservation stewardship plan, eligible land, priority resource concern, program,* and *stewardship threshold.* *Conservation activities* are defined as a conservation systems, practices, or management measures that can include structural, vegetative, and land management measures as well as planning. *Stewardship threshold* is defined as a level of management required to conserve or improve the quality and condition of a natural resource. **(16 U.S.C. 3838d(2) and (7))**	Amends the definition of *conservation activities* to include comprehensive conservation plans, soil health planning to increase soil organic matter, and activities that will adapt or mitigate against increasing weather volatility. Amends the definition of *stewardship threshold* to include measurable resource improvements through the use of tools, models, criteria, data, and other methods. **(§2308(a))**
Establishment and exclusions. The purpose of CSP is to encourage producers to address priority resource concerns in a comprehensive manner by undertaking additional conservation activities and improving, maintaining, and managing existing conservation activities. CSP is authorized through FY2023. Eligible land may not be enrolled in other retirement or easement conservation programs (e.g., CRP and ACEP) and must have a cropping history (4 of the 6 years preceding February 7, 2014). **(16 U.S.C. 3838e)**	Extends the program authorization through FY2023. Extends the cropping history requirement to 4 of the 6 years preceding the date of enactment. **(§2308(b))**
Ranking of applications. Applications are ranked based on the (1) level of conservation treatment at the time of application, (2) degree of proposed increased conservation performance, (3) number of proposed priority resource concerns to be treated, (4) extent of other priority resource concerns that will be addressed, (5) cost effectiveness of the offer, and (6) effect of priority resource concerns when transitioning from CRP to agricultural production. **(16 U.S.C. 3838f(b)(1))**	Amends the application ranking criteria to include (1) the conservation benefits on all applicable priority resource concerns at the time of application, (2) the degree of proposed increased conservation benefits, and (3) other consistent criteria, as determined by the Secretary. Requires that similarly ranked applications be determined based on the cost-effectiveness of the offer. **(§2308(c)(1))**
After a producer is determined eligible for CSP and the contract offer ranks high enough under the evaluation criteria, then a conservation stewardship contract is offered to enroll the eligible land into CSP. **(16 U.S.C. 3838f(c))**	Amends contracting language to include contract renewals as eligible for enrollment. **(§2308(c)(2))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Contract renewal. CSP contracts may be renewed for an additional 5 years if the producer is in compliance with the initial contract and agrees, at a minimum, to meet or exceed the stewardship threshold for at least two additional priority resource concerns, or exceed the stewardship threshold of two existing priority resource concerns. **(16 U.S.C. 3838f(e))**	Contract renewals may be offered in the first half of the fifth year if the producer is in compliance with the existing contract; adopts new and improved conservation activities for the additional 5-year period; and agrees to meet the stewardship threshold for at least two additional priority resource concerns, or to adopt or improve activities that could achieve higher levels of performance on not less than two existing priority resource concerns. **(§2308(c)(4))**
Acreage enrollment limitation. Total acreage enrollment is limited to 10 million acres annually from February 7, 2014 through September 30, 2028. Requires a national average rate of $18 per acre (to include all costs). **(16 U.S.C. 3838g(c))**	Deletes acreage limitation and national average payment rate. Makes conforming amendments limiting the program to a funding amount rather than to an acreage total. **(§§2308(d)(1)-(d)(3))**
No comparable provision.	**Cover crop payments.** Requires that payments for cover crop activities be at least 125% of the annual payment rate. **(§2308(d)(4))**
Crop rotation payments. Additional payments are authorized for the adoption of resource-conserving crop rotations. *Resource-conserving crop rotation* is defined and the rotation is required to provide a conservation and production benefit. **(16 U.S.C. 3838g(e))**	Authorizes additional payments for resource-conserving crop rotations and advanced grazing management. Defines *advanced grazing management* and *management-intensive rotational grazing.* Requires that payments for these additional payments be at least 150% of the annual payment rate. **(§2308(d)(5))**
No comparable provision.	**Comprehensive conservation plans.** Adds a new provision authorizing a one-time payment for the development of a comprehensive conservation plan. Payments are determined based on the number of priority resource concerns to be addressed and the number of land use types included in the plan. **(§2308(d)(6))**
Payment limit. CSP payments are limited to a total of $200,000 for all contracts entered into by a participant from FY2014 through FY2023. **(16 U.S.C. 3838g(f))**	Extends the payment limit aggregate of $200,000 for all CSP contracts entered into by a participant from FY2019 through FY2023. **(§2308(d)(7))**
Organic certification. USDA is required to establish transparent means by which CSP participants may initiate organic certification under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*). **(16 U.S.C. 3838g(h))**	Requires USDA to allocate CSP funding to states to support organic transition and production. Allocations must be based on the number of organic operations and organic acres within a state. **(§2308(d)(8))**
No comparable provision.	**CSP and EQIP coordination.** Requires that USDA streamline and coordinate CSP and EQIP. Requires USDA to manage CSP to enhance soil health. Requires annual reports on the program. **(§2308(d)(9))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2309—Grassland Conservation Initiative	
No comparable provision.	**Grassland Conservation Initiative.** Creates a new grassland conservation contract under CSP. Beginning in FY2019, USDA must offer a onetime sign-up for eligible land. Under a contract, the producer must meet or exceed the stewardship threshold for at least one priority resource concern. Contracts are limited to 5 years, with no renewal, but a producer can terminate a contract at any time with no repayment penalty. Payments are limited to $18 per acre and are not subject to the CSP payment limit. Land retains its base acre history while enrolled, but payments may not exceed the number of base acres on a farm. **(§2309)**
Section 2501—Funding Authorization	
CSP Funding. Total funding for CSP is limited by enrolled acres, not total dollars for FY2014-FY2018. **(16 U.S.C. 3841(a)(4))**	Authorizes CSP to enroll contracts limited by funding rather than acres. Authorizes the CCC to fund CSP, including $700 million in FY2019, $725 million in FY2020, $750 million in FY2021, $800 million in FY2022, and $1 billion in FY2023. **(§2501(a)(4))** Authorizes the CCC to carry out CSP contracts enrolled prior to enactment using such sums as necessary. **(§2501(a)(5))** See **Table A-6** for full funding authority.

Source: CRS.

Table A-5. Subtitle D—Other Conservation Programs

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2401—Watershed Protection and Flood Prevention (Watershed Operations)	
Watershed Operations program provides technical and financial assistance to states and local organizations to plan and install watershed projects. Such sums as necessary are authorized to be appropriated for the program. No watershed project may exceed 250,000 acres, and no structure may exceed more than 12,500 acre-feet of floodwater detention capacity, or 25,000 acre-feet of total capacity. Assistance is provided according to an approved watershed plan. **(16 U.S.C. 1001 *et seq.*)**	Waives the watershed planning requirements when considered unnecessary or duplicative. **(§2401(a))**
No comparable provision.	Adds a new section permanently authorizing $50 million annually in mandatory funding beginning in FY2019. **(§2401(c))**
Small Watershed Rehabilitation Program. Authorized to receive appropriations of up to $85 million annually for FY2008-FY2018 and $250 million in mandatory funding for FY2014 to remain available until expended. **(16 U.S.C. 1012(h)(2)(E))**	Extends annual authorization of appropriations of $85 million annually through FY2023. **(§2401(b))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2402—Soil and Water Resources Conservation Act of 1977 (RCA)	
The RCA provides USDA with broad natural resource strategic assessment and planning authority. USDA is required to conduct a nationwide *appraisal* of soil, water, and related resources. USDA is also required to develop a *national conservation program* to guide the department's administration of conservation activities. Appraisals and program statements are due to Congress on a fixed schedule. **(16 U.S.C. 2001 *et seq.*)**	Amends the RCA to require USDA to conduct a comprehensive appraisal of soil, water, and related natural resources (completed by year-end 2022). Also requires USDA to complete the soil and water conservation program update (completed by year-end 2023), to guide the future of USDA conservation activities. **(§2402)**
Section 2403—Emergency Conservation Program (ECP)	
ECP provides emergency funding and technical assistance to producers to rehabilitate farmland damaged by natural disasters. **(16 U.S.C. 2201)** Payments are made to individual producers based on a share of the cost of completing the practice. This can be up to 75% of the cost, or up to 90% of the cost if the producer is considered to be a limited-resources producer. Total payments may not exceed 50% of the agricultural value of the affected land. Payments are made following completion and inspection of the practice. **(7 C.F.R. 701.126)**	Adds a reference to wildfires to a list of natural disasters. Adds a new provision allowing producers the option of accepting a reduced payment for repairing or replacing fence rather than receiving a higher payment following the completion and inspection of the practice. Advanced payments for fence cannot exceed 25% of the total payment (based on cost) and must be expended after 60 days or be returned. Adds a new section similar to existing regulations limiting the cost-share to 75% of the total allowable cost, or up to 90% of the total allowable cost if the producer is considered limited resource, socially disadvantaged, or beginning farmer or rancher. Requires that total payments for a single event may not exceed 50% the agricultural value of the affected land. **(§§2403(a)&(b))**
No comparable provision.	Adds an ECP payment limitation of $500,000 for agricultural producers. **(§2403(c))**
Emergency Watershed Protection (EWP) program. Assists sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by natural disasters. EWP is authorized to be appropriated such sums as necessary, to remain available until expended. Facilities, services and authorities of the CCC may be used when funding is specifically appropriated. **(16 U.S.C. 2204)**	Amends funding authority to include a set-aside of 25% of all available funding to repair and replace fencing. **(§§2403(d)&(e))**
Section 2404—Conservation of Private Grazing Land Program	
Authorizes appropriations of $60 million annually through FY2018. **(16 U.S.C. 3839bb(e))**	Extends authorization of appropriations at $60 million annually through FY2023. Adds a provision requiring education and outreach through partnership with land-grant colleges and universities and nongovernmental organizations. **(§2404)**
Section 2405—Grassroots Source Water Protection Program (GSWP)	
Authorizes appropriations of $20 million annually through FY2018 and a one-time authorization for $5 million in mandatory funding to remain available until expended. **(16 U.S.C. 3839bb-2(b))**	Extends authorization of appropriations at $20 million annually through FY2023 and authorizes an additional $5 million in mandatory funding in FY2019 to remain available until expended. **(§2405)**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2406—Voluntary Public Access and Habitat Incentive Program (VPAHIP)	
VPAHIP provides grants to states and tribal governments to encourage private landowners to voluntarily make land available for public access hunting and fishing programs. Priority is given to grants that maximize participation; include appropriate wildlife habitat; improve habitat efforts on CREP acres; use additional funding to carry out the program; and make the land publically available. **(16 U.S.C. 3839bb-5(c))**	Amends the priority for funding under the program to include wildlife habitat improvement efforts on CREP acres and wetland reserve easements under ACEP. **(§2406(3))**
Authorizes $50 million in mandatory funds for FY2009-FY2012 and $40 million in mandatory funds for FY2014-2018. **(16 U.S.C. 3839bb-5(f))**	Authorizes $50 million in mandatory funding for FY2019-FY2023. Adds a $3 million set-aside to encourage public access on land covered by wetland reserve easements under ACEP. **(§2406(4))**
Section 2407—Wildlife Management	
No comparable provision. Under the **Working Lands for Wildlife Initiative**, USDA NRCS and the Department of the Interior (DOI) U.S. Fish and Wildlife Service (FWS), through a partnership agreement, provide voluntary targeted financial and technical assistance for wildlife habitat improvement on private land in exchange for regulatory predictability regarding the Endangered Species Act.	Codifies the Working Lands for Wildlife initiative as in effect on the day before enactment. Authorizes development of a similar agreement between FWS and FSA. The period of regulatory predictability may be extended if agreed to. **(§2407)**
Section 2408—Feral Swine Eradication and Control Pilot Program	
No directly comparable provision. **National Feral Swine Damage Management Program.** The Animal and Plant Health Inspection Service (APHIS) administers the program to manage damage caused by feral swine in the United States. APHIS works with states, tribes, federal agencies, universities, organizations, and public landowners and coordinates with Mexico and Canada on feral swine disease monitoring and control activities. **Feral Swine Initiative.** Administered by NRCS in select states through EQIP. The initiative offers conservation technical assistance planning and management practice implementation to affected landowners.	Creates a new **Feral Swine Eradication and Control Pilot Program**. USDA is required to study the extent of damage from feral swine, develop eradication and control measures and restoration methods, and provide cost-share funding to agricultural producers in established pilot areas. NRCS and APHIS must coordinate the pilot through NRCS state technical committees. Cost-share assistance is limited to 75% of the cost of eradication and control measures or restoration. Authorizes $75 million in mandatory funding for the period FY2019-FY2023. Requires funding to be split equally between NRCS and APHIS with no more than 10% for administrative expenses. **(§2408)**
Section 2409—Report on Small Wetlands	
No comparable provision.	Requires NRCS to submit a report to Congress describing the number of wetlands measuring less than one acre in size in North Dakota, South Dakota, Minnesota, and Iowa identified during FY2014 through FY2018. All wetlands included in the report must be described in 1/10 of an acre increments and be based on available science. **(§2409)**
Section 2410—Sense of Congress Relating to Increased Watershed-Based Collaboration	
No comparable provision.	Adds a sense of Congress statement encouraging partnerships at the watershed level between nonpoint sources and regulated point sources to advance the goals of the Federal Water Pollution Control Act (Clean Water Act). **(§2410)**

Source: CRS.

Table A-6. Subtitle E—Funding and Administration

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2501—Commodity Credit Corporation (CCC)	
Authorizes the use of funds (mandatory), facilities, and authorities of the CCC to carry out conservation programs for FY2014-FY2018, and through FY2019 for EQIP. **(16 U.S.C. 3841(a))**	Extends the CCC authority though FY2023. Specific funding levels for programs are outlined below. **(§2501(a)(1))**
CRP funding. Authorizes a total of $10 million for thinning activities and a total of $33 million for transition contracts for FY2014-FY2018. Total funding for CRP is limited by enrolled acres, not total dollars. See **Table A-2** for acre limits. **(16 U.S.C. 3841(a)(1))**	Increases forest management thinning payments to a total of $12 million for FY2019-FY2023. Increases funding for transition contracts to a total of $50 million and limits technical assistance to $5 million total. Total funding for CRP continues to be limited by enrolled acres, not total dollars. See **Table A-2** for acre limits. **(§2501(a)(2))**
ACEP funding. Authorizes $400 million in FY2014, $425 million in FY2015, $450 million in FY2016, $500 million in FY2017, and $250 million in FY2018. **(16 U.S.C. 3841(a)(2))**	Increases ACEP funding to $450 million annually for FY2019-FY2023. **(§2501(a)(3))**
Conservation Security Program funding. Authorizes funding for contracts (enrolled prior to FY2009) with such sums as necessary. **(16 U.S.C. 3841(a)(3))**	Deletes provision. **(§2501(a)(4))**
CSP funding. Total funding for CSP is limited by enrolled acres, not total dollars for FY2014-FY2018. See **Table A-4** for acre limits. **(16 U.S.C. 3841(a)(4))**	Authorizes CSP to enroll contracts limited by funding rather than acres. Authorizes mandatory funding includes: $700 million in FY2019, $725 million in FY2020, $750 million in FY2021, $800 million in FY2022, and $1 billion in FY2023. **(§2501(a)(4))** Authorizes the CCC to carry out CSP contracts enrolled prior to enactment using such sums as necessary. **(§2501(a)(5))**
EQIP funding. Authorizes $1.35 billion in FY2014, $1.6 billion in FY2015, $1.65 billion in each FY2016 and FY2017, and $1.75 billion in each FY2018 and FY2019. **(16 U.S.C. 3841(a)(5))**	Reauthorizes the authority for the CCC to fund EQIP: $1.75 billion in FY2019 and FY2020, $1.8 billion in FY2021, $1.85 billion in FY2022, and $2.025 billion in FY2023. **(§2501(a)(4))**
Availability of funds. Mandatory funding made available for CRP, ACEP, CSP, and EQIP for FY2014 through FY2018 (FY2019 for EQIP) are authorized to remain available until expended. **(16 U.S.C. 3841(b))**	Reauthorizes mandatory funding made available for CRP, ACEP, CSP, and EQIP for FY2019 through FY2023 to remain available until expended. **(§2501(b))**
Report on program enrollments and assistance. Reports are required for program enrollments and assistance under conservation programs, including significant payments, waivers, and exceptions. **(16 U.S.C. 3841(i))**	Reauthorizes reporting requirements through FY2023, and adds reports on annual and cumulative enrollment statistics. **(§2501(c))**
Allocations. Requires USDA to review all conservation program allocation formulas no later than January 1, 2012. Updates are required to reflect the cost of carrying out the programs. **(16 U.S.C. 3841(g))**	Amends the allocation review requiring, within one year following enactment of the bill, annual allocation formulas to account for local data and input. Adds requirements for USDA to consider when updating allocation formulas. **(§2501(d))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Assistance to certain farmers or ranchers for conservation access. Establishes an annual set-aside in EQIP and CSP from FY2014 through FY2018 of 5% to beginning farmers or ranchers and 5% to socially disadvantaged farmers or ranchers. Unobligated funds for EQIP and unobligated acres for CSP under this provision may be repooled and obligated in accordance with the respective program. Preference is provided for veteran farmers or ranchers eligible under the provision. **(16 U.S.C. 3841(h))**	Reauthorizes the EQIP and CSP set-asides through FY2023. Makes technical amendments regarding the repooling of CSP funds and preference for veteran farmers or ranchers. **(§2501(e))**
No comparable provision.	**Conservation standards.** Establishes NRCS as the lead agency for developing technical standards and requirements for farm bill conservation programs. Requires FSA to use standards consistent with NRCS. **(§2501(f))**
Section 2502—Delivery of Technical Assistance	
Delivery of technical assistance. All producers participating in conservation programs must be provided technical assistance either by USDA or through an approved third party. **(16 U.S.C. 3842(a))**	Adds a definition of *third-party provider* as a commercial entity, nonprofit entity, state or local government, or federal agency that has expertise in the technical aspect of conservation planning. **(§2502(a))**
Technical service providers (TSP). TSPs are third-party providers (individuals or businesses) that have technical expertise in conservation planning and design for a variety of conservation activities. Farmers, ranchers, private businesses, nonprofit organizations, or public agencies hire TSPs to provide these services on behalf of NRCS. NRCS certifies and approves TSPs. **(16 U.S.C. 3842(e))**	Adds a certification process requirement for TSPs through NRCS or a nonfederal entity approved by USDA to perform the certification. Requires USDA to streamline the certification process for TSPs that have an appropriate specialty certification, including sustainability certification. **(§2502(b))**
Review of conservation practice standards. USDA is required to periodically review all conservation practice standards. USDA must consult with eligible participants and expedite required revisions. **(16 U.S.C. 3842(h))**	Requires USDA to complete, within one year of enactment, a review of conservation practice standards in effect before enactment. Consultation requirements are expanded to include input from state technical committees. Expedited revisions are amended to include an administrative process for scientific and technological advancements; local flexibility in the creation of interim practice standards and partner-proposed techniques; and input from state technical committees. Requires a report to Congress every two years on the process, revisions, and considerations under the process. **(§2502(c))**
Section 2503—Administrative requirements for conservation programs	
Acreage limitations. No county may enroll more than 25% of cropland into CRP or wetland reserve easements under ACEP. Not more than 10% of a county may be enrolled as a wetland reserve easement under ACEP. In select situations, USDA may waive this limitation. **(16 U.S.C. 3844(f))**	Increases the percentage limitation on wetland reserve easements to 15%. **(§2503(a))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
No comparable provision.	**Review of practice costs and payment rates.** Adds a new section requiring review and guidance, within a year of enactment, of the cost effectiveness of cost-share rates and payment rates for all farm bill conservation programs. Requires USDA to issue guidance to states for an annual review and adjustment of rates. **(§2503(b))**
Funding for Indian tribes. USDA may use alternative funding arrangements with Indian tribes for CSP and EQIP contracts. **(16 U.S.C. 3844(l))**	Requires USDA to use alternative funding arrangements with Indian tribes for CSP and EQIP contracts if there is a sufficient number of eligible participants. USDA may waive program limits if authorized to do so under EQIP and CSP. **(§2503(c))**
No comparable provision.	**Source water protection carve-out.** Requires USDA to encourage conservation practices related to water quality and quantity that protect source waters for drinking water through all farm bill conservation programs. Producers can receive incentives and high payments (up to 90% of the practices cost) for such practices. USDA must collaborate with community water systems and NRCS state technical committees to identify local priority areas. Requires 10% of all annual funding for conservation programs (except CRP) be used for water protection practices for FY2019 through FY2023. **(§2503(d))**
No directly comparable provision. Most NRCS-administered conservation programs include a provision in regulations whereby NRCS asserts no interest on any environmental services that may be marketable and produced through participation in a conservation program. For example, see EQIP at **7 C.F.R. 1466.36(a)**, ACEP at **7 C.F.R. 1468.10**, and CSP at **7 C.F.R. 1470.37(a)**.	**Environmental Services Markets.** Adds a new section preventing USDA from limiting participation in environmental services markets for all farm bill conservation programs. **(§2503(e))**
No comparable provision.	**Regulatory certainty.** Authorizes USDA to provide technical assistance under the farm bill conservation programs to support regulatory certainty for producers and landowners, under select conditions. **(§2503(f))**
Section 2504—Temporary administration of conservation programs	
No comparable provision.	**Transition provisions.** Allows USDA to carry out CRP, EQIP, CSP, ACEP, and RCPP using funding, regulations, and policies in effect before enactment, consistent with amendments made in the bill, until September 30, 2019. **(§2504)**

Source: CRS.

Table A-7. Subtitle F—Agricultural Conservation Easement Program

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2601—Establishment and purposes	
The Agricultural Conservation Easement Program (ACEP) provides financial and technical assistance through two types of easements: (1) agricultural land easements that limit nonagricultural uses on productive farm or grasslands, and (2) wetland reserve easements that protect and restore wetlands. **(16 U.S.C. 3865)**	Amends the purpose of ACEP agricultural land easements by adding that the purpose of protecting agricultural use by limiting nonagricultural uses applies specifically for those uses that negatively affect agricultural uses and conservation values. For grasslands, the purpose is amended from protecting grasslands by restoring *and* conserving land to restoring *or* conserving land. **(§2601)**
Section 2602—Definitions	
Five terms are defined under ACEP: *agricultural land easement*, *eligible entity*, *eligible land*, *program*, and *wetland reserve easement*. *Agricultural land easement* is defined as an easement that protects the natural resources and the agricultural nature of the land while maintaining agricultural production. *Eligible land* is defined separately for agricultural land easements and wetland reserve easements. Agricultural land easements include land with a pending easement offer; with prime, unique, or productive soils; that contains historical or archaeological resources; that would protect grazing uses; that furthers a similar state or local policy; or that is cropland, rangeland, grassland, area historically dominated by grassland, pastureland, or nonindustrial private forest land. Wetland reserve easements include farmed or converted wetlands; cropland or grassland that has prior flooding from a closed basin lake or pothole if the state or other entity is willing to provide a 50% cost-share of the easement; wetlands that are enrolled in the CRP, have high wetland functions, and are likely to return to production after CRP; riparian areas that link protected wetlands; and wetlands determined by USDA to be significant. **(16 U.S.C. 3865a)**	Amends the definition of *agricultural land easement* by removing the requirement that landowners farm according to an approved agricultural easement plan. Adds a definition for *buy-protect-sell transaction* which allows land owned by an organization to be eligible for the program, subject to the transfer of ownership to a farmer or rancher within three years following the acquisition of the agricultural land easement. Amends the definition of *eligible land* to include reference to a buy-protect-sell transaction and to remove the requirement under wetland reserve easements that USDA consult with the Department of the Interior on the wildlife benefits and wetland functions and values. Adds a definition of *monitoring report* for agricultural land easements. **(§2602)**
Section 2603—Agricultural Land Easements (ALE)	
ACEP funds are provided for the purchase of agricultural land easements by eligible entities and for technical assistance pursuant to an agricultural land easement plan. **(16 U.S.C. 3565b(a))**	Amends the requirement that technical assistance be used pursuant to an agricultural land easement plan and instead be used to implement the program, including technical assistance for the development of a conservation plan. Also makes buy-protect-sell transactions eligible for funding. **(§2603(a))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
ALE Eligible entities are required to provide contributions equivalent to the federal share or at least 50% of the federal share if the entity includes contributions from the private landowner. Grasslands of special environmental significance are allowed up to 75% of the fair market for the federal share. USDA is authorized to waive any portion of the eligible entity cash contribution requirement for projects of special significance, subject to an increase of private landowner donation equal to the amount of the waiver if donation is voluntary. **(16 U.S.C. 3865b(b)(2)(B) & (b)(2)(C))**	Amends the nonfederal share of agricultural land easements by removing the requirement that an eligible entity's contribution be equal to the federal share or at least 50% of the federal share if the entity includes contributions from the private landowner. Allows the nonfederal portion used by the eligible entity to be cash, landowner donations, costs associated with the easement, or other costs determined by USDA. Deletes the exception authority for USDA to waive an eligible entity's cash contribution for projects of special significance. **(§2603(b)(1))**
The evaluation and ranking criteria for agricultural land easement applications is required to maximize the benefit of federal investment under ACEP. **(16 U.S.C. 3865b(b)(3))**	Adds a requirement that USDA adjust the evaluation and ranking criteria for geographic differences among states. **(§2603(b)(2))**
No comparable provision.	Adds a new provision allowing USDA to prioritize applications that maintain agricultural viability. **(§2603(b)(2))**
ACEP agricultural land easement enrollment is through eligible entities that enter into cooperative agreements of three to five years in length with USDA. The entities acquire easements and hold, monitor, manage, and enforce the easements. Entities agree to a minimum level of terms and conditions for agricultural land easements including the effect of a violation. **(16 U.S.C. 3865b(b)(4))**	Amends the minimum terms and conditions by limiting USDA's right of enforcement and by removing the requirement that an agricultural land easement be subject to an agricultural land easement plan unless the land is highly erodible. Adds the ability for eligible entities to add additional terms and conditions to an agricultural land easement, including allowing mineral development. **(§2603(b)(3))**
USDA certifies eligible entities through a certification process and according to specified criteria. **(16 U.S.C. 3865b(b)(5))**	Adds to the certification criteria to include land trusts accredited by the Land Trust Accreditation Commission with more than ten successful agricultural land easements under ACEP, or other easement program, and state agencies with more than ten successful agricultural land easements under ACEP or other easement program. Both must successfully meet program responsibilities. Allows certified entities to use their own terms and conditions for agricultural land easements. **(§2603(b)(4))**
USDA, if requested, may provide technical assistance for compliance with the terms and conditions of the easements and to implement an agricultural land easement plan. **(16 U.S.C. 3865b(d))**	Deletes reference to the agricultural land easement plan. **(§2603(b)(5))**
Section 2604—Wetland Reserve Easements (WRE)	
Priority is given to wetland reserve easements based on the value of protection and enhancement of wildlife and migratory bird habitat. **(16 U.S.C. 3865c(b)(3)(C))**	Adds water quality improvement to the wildlife and migratory bird habitat priority criteria. **(§2604(1)(A))**
ACEP wetland reserve easements may be used for compatible economic uses, including hunting and fishing, managed timber harvest, or periodic haying and grazing if such uses are permitted under the wetland reserve easement plan. **(16 U.S.C. 3865c(b)(5)(C))**	Adds 'water management' to the list of compatible economic uses. Specifies criteria for USDA to use to apply when authorizing a compatible use: requiring consultation with the state technical committee, consideration of land management requirements, and furthers the functions and values of the easement. **(§2604(1)(B))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
A wetland reserve easement plan is required for all eligible land subject to a wetland reserve easement. The plan must include all practices and activities required on the enrolled land. **(16 U.S.C. 3865c(f))**	Amends the wetland reserve easement plan to include management and monitoring functions. Associated practices and activities, including repair or replacement necessary to restore and maintain the functions and values of the easement, are also required. **(§2604(2)(A))**
No comparable provision.	Adds a new provision to allow for the establishment or restoration of an alternative vegetative community that is hydraulically appropriate on the entirety of the wetland reserve easement if it would benefit wildlife or meet local resource needs. Must be in coordination with the state technical committee. **(§2604(2)(C))**
Section 2605—Administration	
Certain land is ineligible for ACEP easements, including land owned by the federal government, land owned by a state, land subject to an easement or deed restriction, or land where an ACEP easement would be undermined due to on- and off-site conditions (e.g., hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land use). **(16 U.S.C. 3865d(a))**	Amends examples from *proposed* or existing rights of way to *permitted* or existing rights of way. **(§2605(1))**
USDA may subordinate, exchange, modify, or terminate any ACEP easement if it (1) is in the federal government's interest, (2) will address a compelling public need where there is no alternative or would further the administration of ACEP, and (3) will result in a comparable conservation value and greater or equivalent economic value to the United States. **(16 U.S.C. 3865d(c))**	Authorizes USDA to subordinate any interest in land, including for utilities and energy transmission services, if it will increase or have limited negative effect on conservation values, minimally affect acreage, and is in the public interest or practical administration of the program. Exchanges and modifications may be made if there is no reasonable alternative and it would result in increased conservation effect, and if they are consistent with the original intent of the easement and purposes of ACEP. Requires compensation for the termination of any easement. Adds a consent requirement for any subordination, exchange, modification, or termination. **(§2605(2))**
A CRP contract may be terminated or modified if the land is transferred into ACEP. **(16 U.S.C. 3865d(d))**	Limits the CRP transfer option to enrollment of an ACEP wetland reserve easement. Adds a new provision allowing land with an ACEP agricultural land easement to participate in CRP. **(§2605(3))**
Section 2501—Funding Authorization	
ACEP Funding. Authorized $400 million in FY2014, $425 million in FY2015, $450 million in FY2016, $500 million in FY2017, and $250 million in FY2018. **(16 U.S.C. 3841(a)(2))**	Authorizes ACEP funding at $450 million annually for FY2019 through FY2023. See **Table A-6** for full funding authority. **(§2501(a)(3))**

Source: CRS.

Table A-8. Subtitle G—Regional Conservation Partnership Program

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Section 2701—Establishment and purpose	
Establishes the Regional Conservation Partnership Program (RCPP). Combines the purposes of four repealed conservation programs to further conservation, restoration, and sustainability on a regional or watershed scale, and encourage partners to cooperate with producers in meeting or avoiding regulatory requirements and implementing projects. **(16 U.S.C. 3871)**	Expands the establishment of RCPP to include grant agreements with eligible partners. The purpose of RCPP is amended to carry out eligible activities rather than to use a covered program to accomplish conservation goals. Adds the flexible and streamlined delivery of conservation assistance and the engagement of eligible producers to RCPP's purpose. **(§2701)**
Section 2702—Definitions	
Six terms are defined under RCPP: *covered program*, *eligible activity*, *eligible land*, *eligible partner*, *partnership agreement*, and *program*. *Covered program* is defined as ACEP, EQIP, CSP, and HFRP. *Eligible activity* is defined as activities for water quality and quantity improvement, drought mitigation, flood prevention, water retention, air quality improvement, habitat conservation, erosion control and sediment reduction, forest restoration, and others defined by USDA. *Eligible land* is defined as land on which agricultural commodities, livestock, or forest-related products are produced, including cropland, grassland, rangeland, pastureland, nonindustrial private forest land, and other incidental land. *Eligible partner* is defined as producer groups, state or local governments, Indian tribes, farmer cooperatives, water district, irrigation district, rural water district or association, municipal water or waste treatment entity, institutes of higher education, and other nongovernmental entity or organizations with a history of working with producers on conservation projects. **(16 U.S.C. 3871a)**	Amends the definition of *covered program* by adding CRP and Watershed Protection and Flood Prevention operations and excluding the grasslands initiative under CSP and the watershed rehabilitation program. Replaces the definition of *eligible activity* to include any practice, activity agreement, easement or related measure under a covered program. Replaces the definition of *eligible land* by including all agricultural, nonindustrial private forest, or other associated land that would achieve a conservation benefit. Adds acequia, conservation districts, and eligible entities under ACEP to the definition of *eligible partner.* Adds a definition of *program contract* that does not include a contract entered into under a covered program. **(§2702)**
Section 2703—Regional conservation partnerships	
Under RCPP, USDA enters into partnership agreements with eligible partners for a period not to exceed five years with a possible one-year extension. **(16 U.S.C. 3871b(b))**	Amends the length of partnership agreements to include agreements longer than five years. Adds a renewal option of not more than five years and a onetime extension option of not more than one year. **(§2703(1))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Partners define the scope of RCPP projects, conduct outreach, act on behalf of producers to apply for assistance, leverage financial and technical assistance, conduct assessments, and report results. Partners must provide a "significant portion" of the overall cost of the project. **(16 U.S.C. 3871b(c))**	Amends the scope of the project to include a timeline for project implementation. Partner contribution requirements may be met through direct funding, in-kind support or a combination of both, and can include the salaries of staff required to develop the partnership agreement. Adds requirements for the Secretary that include (1) establishing a timeline for USDA under the partnership agreement, (2) appointing a designated USDA coordinator within each state to assist partners and producers with RCPP, (3) establishing guidance for assessments, (4) providing reports to partners, and (5) ensuring the effectiveness of eligible activities. **(§§2703(2)-(4))**
RCPP applications are competitive, and the selection criteria are publicly available. Priority is given to applications that assist producers in meeting or avoiding the need for regulation, and that also include a large percentage of producers in the project area, provide significant resource leverage, deliver a high percentage of applied conservation to address priorities or conservation initiatives, or provide innovative conservation methods and delivery. **(16 U.S.C. 3871b(d))**	Amends the application criteria to require a simplified application process. Adds priority requirements for stakeholder diversity, applied conservation, and consistency with existing watershed and habitat restoration plans. Adds a renewal option for projects that have met or exceeded the project's objectives. AGI requirements do not apply for eligible partners. **(§§2703(5)&(6))**
Section 2704—Assistance to producers	
Directs USDA to enter into contracts to provide technical and financial assistance to producers participating in projects with eligible partners, or producers within a project area or critical conservation area not working through an eligible partner. Program rules, requirements, and payments are to be consistent with the covered programs (ACEP, EQIP, CSP, and HFRP). Authorizes USDA to adjust the rules of a covered program, including operational guidance and requirements, in order to simplify the application and evaluation process. Prohibits the adjustment of statutory requirements for a covered program, including appeals, payment limits, conservation compliance, and prior irrigation history. Authorizes no more than 20 alternative funding arrangements with multi-state water agencies or authorities. **(16 U.S.C. 3871c(a) & (b))**	Amends the contracting and agreement language by requiring USDA to enter into program contracts with eligible producers to conduct activities on eligible land under conditions defined by USDA. Priority may be given to partnership applications that include bundles of program contracts with producers. **(§2704(1))**
Authorizes USDA to make payments to producers in accordance with the statutory requirements under covered programs. Five-year payments may be made for conversion to dryland farming and nutrient management. AGI limits may be waived to fulfill the objectives of the program. **(16 U.S.C. 3871c(c))**	Minor amendments referencing new funding language. **(§2704(2))**

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
No comparable provision.	Adds a new section for alternative funding arrangements and grant agreements. Allows USDA to enter into funding agreements directly with partners. USDA is limited to no more than 15 agreements with one or more partners each fiscal year. Activities through these agreements must carry out activities on a regional or watershed scale, such as infrastructure investment, restoration plan coordination with producers, innovative leveraging of federal and private funds, or other projects determined by USDA. Annual reports are required. **(§2704(3))**
Section 2705—Funding	
Authorized for RCPP $100 million in mandatory funding annually for FY2014-FY2018 to remain available until expended. The program utilizes a percentage of other conservation program funding (ACEP, EQIP, CSP, and HFRP). Annually reserves 7% of covered program funds and acres until April 1of each year, after which uncommitted funds are returned to the covered program. Allocates 25% for a state competition, 40% for a national competition, and 35% for critical conservation areas. Administrative expenses of eligible partners are not covered. **(16 U.S.C. 3871d)**	Increases mandatory funding to $300 million annually for FY2019-FY2023. Deletes the reserve of 7% of covered program funds. Amends allocations to 50% for state and multistate competitions and 50% for critical conservation areas. Allows for funding to be advanced to eligible partners for outreach activities and reimbursed for agreement development. Advanced funding for partners is to be used within 90 days. With the exception of advanced funding and alternative funding arrangements, administrative expenses of eligible partners are not covered. Adds new technical assistance requirements, including USDA reporting, limitation of expenses for USDA, and on third-party provider assistance. **(§2705)**
Section 2706—Administration	
USDA is required to make information on selected projects publicly available and report to Congress by December 31, 2014 (and every two years thereafter) on the status of projects funded. **(16 U.S.C. 3871e)**	Extends reporting requirement to December 31, 2019 (and every two years thereafter). Adds a prohibition on providing assistance to producers out of compliance with highly erodible cropland and wetland conservation compliance requirements. Adds a requirement to conduct outreach for historically underserved producers and requires USDA to issue regulations for RCPP. **(§2706)**
Section 2707—Critical Conservation Areas (CCA)	
USDA is required to use 35% of the funds and acres available for partnership agreements in no more than eight critical conservation areas; agreements expire after five years, subject to redesignation. Areas are selected based on several criteria: multi-state areas with significant agricultural production; existing agreement or plan in place; water quality concerns; or subject to regulatory requirements. Partner agreements and producer contracts are administered according to the applicable covered program and, where possible, complement existing water quality and quantity strategies. Allows the use of authorities granted under the Watershed Protection and Flood Prevention program in critical conservation areas. **(16 U.S.C. 3871f)**	Adds a definition of *critical conservation areas* and *priority resource concern*. Adds a requirement that USDA identify one or more priority resource concerns for each critical conservation area. Allows USDA to review critical conservation areas every five years and withdraw the designation if an area is no longer critical. Requires outreach to partners and producers in critical conservation areas. **(§2707)**

Source: CRS.

Table A-9. Subtitle H—Repeals and Technical Amendments

Prior Law	Enacted 2018 Farm Bill (P.L. 115-334)
Sections 2301; 2811-2817—Repeals	
Conservation Security Program. Authorized in the 2002 farm bill and replaced by the Conservation Stewardship Program in the 2008 farm bill. The program enrolls acres in five- to 10-year stewardship contracts, the last of which will expire in FY2018. **(16 U.S.C. 3838 – 16 U.S.C. 3838c)**	Repeals the program. **(§2301(c)(1))**
Conservation Corridor Demonstration Program. Authorized in the 2002 farm bill. Permits one or more states, along with local governments on the Delmarva Peninsula, to develop and implement over three to five years, a conservation corridor plan to improve the economic viability of agriculture and the environmental integrity of watersheds. Funding was never appropriated. **(16 U.S.C. 3801 note)**	Repeals the program. **(§2811)**
Cranberry Acreage Reserve Program. Authorized in the 2002 farm bill to purchase permanent wetland easements on and around cranberry-producing land. Funding was never appropriated. **(16 U.S.C. 3801 note)**	Repeals the program. **(§2812)**
National Natural Resources Foundation. Authorized in the Federal Agricultural Improvement and Reform Act of 1996 (1996 farm bill, P.L. 104-127) to establish a nonprofit corporation to promote and assist the conservation efforts of NRCS. Funding was never appropriated. **(16 U.S.C. 5801 *et seq.*)**	Repeals the program. **(§2813)**
Flood risk reduction. Authorized in the 1996 farm bill to contract with Market Transition Program participants to retire frequently flooded cropland. Related programs were repealed in subsequent legislation and funding was not appropriated. **(7 U.S.C. 7334)**	Repeals the program. **(§2814)**
Study of land use for expiring contracts and extension authority. Authorized in the Food, Agriculture, Conservation and Trade Act of 1990 (1990 farm bill, P.L. 101-624), requiring USDA to create a report on expiring CRP contracts. **(16 U.S.C. 3831 note)**	Repeals the program. **(§2815)**

Integrated Farm Management Program. Authorized in the 1990 farm bill to encourage producers to adopt integrated, multiyear, site-specific farm management plans by not reducing the farm program payments of participants who use a resource conserving crop as part of a rotation on payment acres. Related programs were repealed in subsequent legislation. **(7 U.S.C. 5822)**	Repeals the program. **(§2816)**
Definition of agricultural lands. The 1996 farm bill defined the term *agricultural lands* as related to a 1994 memorandum of agreement among USDA, the Environmental Protection Agency, and the Department of the Army (Corps) for the delineation of wetlands. USDA and the Corps withdrew from the agreement in 2005. **(110 Stat. 992)**	Repeals the program. **(§2817)**
Section 2821—Technical Amendments	
Watershed Protection and Flood Prevention (Watershed Operations). Under the program, projects with a federal share greater than $25 million or with a total structure capacity over 2,500 acre-feet must be submitted to various federal agencies for comment prior to submission to Congress. **(16 U.S.C. 1005(4))**	Corrects spelling and makes technical corrections to agency titles. **(§2821(a))**
Wetland determinations. Technical determinations, restoration and mitigation plans, and monitoring activities must be conducted by the Natural Resources Conservation Service. **(16 U.S.C. 3822(j))**	Corrects agency spelling. **(§2821(b))**
Desert terminal lakes. USDA is required to transfer $150 million of CCC funds to the Bureau of Reclamation to purchase water for at-risk desert terminal lakes. Includes a voluntary land purchase grant program authorized to receive $25 million through appropriations. Funds to remain available until expended. **(16 U.S.C. 3839bb-6)**	Adds a sunset date on the program of October 1, 2023. **(§2821(d))**
Section 2822—State technical committees	
Establishment of State Technical Committees. Requires each state technical committee to be composed of representatives from: NRCS, FSA, Forest Service, the National Institute of Food and Agriculture (NIFA), a state fish and wildlife agency, state forester, state water resources agency, state department of agriculture, state soil and water conservation district, agriculture producers, nonindustrial private forest landowners, nonprofit organizations working with producers, and agribusinesses. **(16 U.S.C. 3861(c))**	Adds state Cooperative Extension Service and land-grant colleges to the list of required representatives. **(§2822)**

Source: CRS.

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Farm Commodity Provisions in the 2018 Farm Bill (P.L. 115-334)

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Farm Commodity Provisions in the 2018 Farm Bill (P.L. 115-334)

SUMMARY

R45730

May 21, 2019

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The farm commodity program provisions in Title I of the Agricultural Improvement Act of 2018 (P.L. 115-334; the 2018 farm bill) include revenue support programs for major program crops and permanent agricultural disaster assistance programs for producers of most tree crops and livestock. Aside from dairy and sugar, which have their own specific programs, most grain and oilseed crops produced in the United States are eligible for two tiers of revenue support under Title I of the 2018 farm bill—specialty crops such as fruits, vegetables, and tree nuts are not covered. The first tier of support is provided by the Marketing Assistance Loan (MAL) program, which offers interim financing for production of "loan" commodities in the form of a nine-month nonrecourse loan at statutorily set prices. A producer must have a harvested crop to offer as collateral for the MAL loan. *Nonrecourse* means that, if forfeited, USDA must accept the crop pledged as collateral as full payment of an outstanding loan. Thus, the statutory loan rates serve as minimum price guarantees for eligible commodities.

The MAL program may be supplemented by a higher, second tier of revenue support comprised of (1) the Price Loss Coverage (PLC) program, which provides price protection at the national level via statutory fixed "reference" prices for eligible crops, or (2) the Agricultural Risk Coverage (ARC) program, which provides revenue protection via historical moving average revenue guarantees based on the five most recent years of national crop prices and county or farm average yields. Participation is free for both ARC and PLC. However, a producer must own or rent historical "base" acres of "covered" commodities. In addition, producers must sign up and elect either PLC or a county-coverage ARC program (ARC-CO) on a crop-by-crop basis or enroll all covered commodities together in a whole-farm revenue guarantee under an individual-coverage ARC program (ARC-IC).

The dairy and sugar sectors are supported by separate federal farm programs that are tailored more specifically to the physical differences associated with each of their products—liquid fresh milk and refined sugar—and their respective markets. For dairy, the Dairy Margin Coverage (DMC) program offers producers milk margin protection for a range of margin thresholds—the milk margin equals the difference between the all-milk farm price and the price of a formula-based feed ration—and for a producer-selected portion (ranging from 5% to 95%) of historical milk production. Milk producers must sign up, select both margin and milk production coverage levels, and pay a premium that varies with coverage levels. The U.S. dairy sector also benefits from tariff-rate quotas (TRQs) on selected dairy products. The sugar program provides revenue support through a combination of limits on domestic output sales (marketing allotments), nonrecourse MAL loans for domestic sugar production (but at the processor level), a sugar-to-ethanol backstop program (Feedstock Flexibility Program), and quotas that limit imports. The import quotas for dairy and sugar are authorized outside of the omnibus farm bill.

Disaster assistance is available for producers of most tree crops and livestock. The Noninsured Crop Assistance Program (NAP) is available for all agricultural production that is not covered by a federal crop insurance policy. All of these programs have permanent authority. However, the 2018 farm bill amends most of them.

The enacted 2018 farm bill continues a $125,000 per-person cap on combined PLC and ARC payments but excludes MAL program benefits from the limit. The limit applies to the total from all covered commodities except peanuts, which has a separate $125,000 limit. To be eligible for payments, persons must be actively engaged in farming (AEF). Payment limits are doubled if the farm operator has a spouse. On family farming operations, all family members 18 years or older are deemed AEF and eligible for payments, including cousins, nephews, and nieces. The 2018 farm bill retains the adjusted gross income (AGI) limit for payment eligibility of $900,000.

The Congressional Budget Office (CBO) projects outlays for Title I provisions of the 2018 farm bill for the five-year period (FY2019-FY2023) to average $6.3 billion compared with an estimated $7.2 billion in annual outlays under the 2014 farm bill. Based on projected market-price-to-PLC-reference price ratios, producers are expected to shift their preference toward PLC over ARC under the 2018 farm bill, resulting in a shift in program outlays concentrated more on PLC than ARC.

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On December 20, 2018, President Trump signed into law a new five-year omnibus farm bill, the Agricultural Improvement Act of 2018 (P.L. 115-334; the 2018 farm bill). The U.S. Department of Agriculture (USDA) will implement the provisions, most of which take effect in calendar year 2019. The 2018 farm bill includes 12 titles covering different program areas.[1] The first title, Title I—Commodities, authorizes several major revenue support and disaster assistance programs (see shaded box below).

2018 Farm Bill: Title I—Commodities

Subtitle A—Commodity Policy (See Table A-1 for provisions)

Section 1101. Definition of effective reference price.
Section 1102. Base acres.
Section 1103. Payment yields.
Section 1104. Payment acres.
Section 1105. Producer election.
Section 1106. Price loss coverage (PLC).
Section 1107. Agriculture risk coverage (ARC).
Section 1108. Repeal of transition assistance for producers of upland cotton.

Subtitle B—Marketing Loans (See Table A-2 for provisions)

Section 1201. Extensions.
Section 1202. Loan rates for nonrecourse marketing assistance loans (MAL).
Section 1203. Economic adjustment assistance for textile mills.
Section 1204. Special competitive provisions for extra-long staple cotton.
Section 1205. Availability of recourse loans.

Subtitle C—Sugar (Provisions not included)

Section 1301. Sugar policy.

Subtitle D—Dairy Margin Coverage and Other Dairy Related Provisions (Provisions not included)

Section 1401. Dairy margin coverage.
Section 1402. Reauthorizations.
Section 1403. Class I skim milk price.
Section 1404. Dairy product donation.

Subtitle E—Supplemental Agricultural Disaster Assistance (See Table A-3 for provisions)

Section 1501. Supplemental agricultural disaster assistance.

Subtitle F—Noninsured Crop Assistance (See Table A-4 for provisions)

Section 1601. Noninsured crop assistance program.

Subtitle G—Administration (See Table A-5 for provisions)

Section 1701. Regulations.
Section 1702. Suspension of permanent price support authority.
Section 1703. Payment limitations.
Section 1704. Adjusted gross income limitations.
Section 1705. Farm Service Agency accountability.
Section 1706. Implementation.
Section 1707. Exemption from certain reporting requirements for certain producers.

Source: The Agriculture Improvement Act of 2018 (P.L. 115-334), H.R. 2.

[1] For details, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy.

This report briefly describes the major revenue support programs in Title I of the 2018 farm bill. In addition, it reviews changes to key administrative provisions such as program eligibility and signup, payment acres and yields, payment limits, and cost projections. Appendixes at the end of this report (**Table A-1** to **Table A-5**) provide side-by-side comparisons of the provisions for five of the subtitles of Title I with prior law (as indicated in the shadow box above—Subtitle C, sugar, and Subtitle D, dairy, are discussed elsewhere).[2]

Background on Title I Support Programs

Aside from dairy and sugar, which have their own specific programs, most grain and oilseed crops produced in the United States are eligible for two tiers of revenue support under Title I of the 2018 farm bill. Specialty crops such as fruits, vegetables, and tree nuts are not covered.[3] The first tier of support is provided by the Marketing Assistance Loan (MAL) program, which offers a minimum price guarantee for production of "loan" commodities in the form of a short-term loan at statutorily set prices (**Table 1**). The MAL program may be supplemented by a higher, second tier of revenue support comprised of two other programs: (1) the Price Loss Coverage (PLC) program, which provides price protection via statutory fixed "reference" prices for eligible crops, or (2) the Agricultural Risk Coverage (ARC) program, which provides revenue protection via historical moving average revenue guarantees based on the five most recent years of crop prices and yields.[4] PLC and ARC are available for producers that own or rent historical "base" acres of "covered" commodities.

The sugar and dairy sectors are supported by separate federal farm programs that are tailored more specifically to the physical differences associated with each of their products—refined sugar and liquid fresh milk—and their respective markets. Disaster assistance is available for producers of most tree crops and livestock. The Noninsured Crop Assistance Program is available for all agricultural commodities that are not covered by a federal crop insurance policy.

All of these Title I programs existed under the previous 2014 farm bill. The 2018 farm bill extends their authority through crop year 2023 but with some modifications to most of them.[5]

Occasionally, agricultural producers may receive federal support under programs authorized outside of the farm bill. The Secretary of Agriculture has broad latitude under the authority of the Commodity Credit Corporation (CCC) Charter Act[6] to make direct payments in support of U.S. agriculture. Two such programs implemented in recent years under CCC authority are the Cotton Ginning Cost Share program and the Market Facilitation Program.[7]

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[2] For side-by-side comparison of sugar and dairy provisions, see footnote 1.

[3] Eligible program commodities, "Loan Commodities," "Covered Commodities," and "Base Acres" are described later in this report.

[4] A reference price is meaningful only within the context of the PLC or ARC programs. Under the PLC program, when the national annual market price for a covered commodity is below its associated reference price, payments are triggered. Within the ARC program, when a covered commodity's market price is lower than its reference price, the reference price is used in lieu of the market price for calculating average revenue.

[5] The agricultural disaster assistance programs are permanently authorized with no expiration date.

[6] See CRS Report R44606, *The Commodity Credit Corporation: In Brief*, by Megan Stubbs.

[7] For more information on these two programs, see Farm Service Agency (FSA), "Cotton Ginning Cost Share," March 2018, https://www.fsa.usda.gov/news-room/fact-sheets/index; and CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*, by Randy Schnepf et al.

Separately, under the federal crop insurance program, Title I program commodities—along with more than 100 other crops including fruits and vegetables—are also eligible for subsidized crop insurance, which provides within-year yield (or revenue) protection. The federal crop insurance program is permanently authorized outside of the omnibus farm bill by the Federal Crop Insurance Act (7 U.S.C. §1501 *et seq.*).[8] The 2018 farm bill includes Title XI—Crop Insurance, which makes minor adjustments to program implementation but does not alter the underlying authority of the federal crop insurance program. Neither the federal crop insurance program nor programs authorized under the CCC Charter Act are discussed in this report.

What Is a Marketing Year and How Does It Compare to a Fiscal Year?

A **marketing year** is the 12-month period that begins after a crop is harvested. It represents the 12 months prior to the next harvest, during which a harvested crop is either sold into domestic or international markets or kept on the farm to be used as feedstuffs or stored for future sale or use. Crops with different planting and harvesting schedules have different marketing years. For example, the marketing year for the U.S. wheat, barley, and oat crops starts on June 1; the marketing year for cotton and rice starts on August 1; and the marketing year for corn, soybeans, and sorghum starts on September 1. The marketing year may be identified jointly as 2019/20 for crops harvested in 2019 or simply as the 2019 marketing year (MY2019). The PLC and ARC programs rely on marketing year data in their payment formulations.

A **crop year** is generally the year that a program crop is planted and harvested.[9] For example, the corn crop planted and harvested in 2019 is referred to as the 2019 crop year. The marketing year for this same crop (as described above) is also referred to as the 2019 marketing year even though it spans parts of 2019 and 2020. Thus, the crop year corresponds directly with the marketing year for program crops, and the two are often used synonymously.

A **fiscal year** is the 12-month period starting with October 1 of one year and running through September 30 of the following year. The fiscal year may be identified by both years jointly, for example, as fiscal year 2019/20, or by the second year as fiscal year 2020 (FY2020). A fiscal year is the budget year for calculating federal program budget authorities and their respective outlays. The Congressional Budget Office (CBO) reports its federal program spending projections on a fiscal-year basis (**Table 2**).

Policy Rationale for Farm Commodity Subsidies

Federal farm support began in the 1930s through Depression-era efforts to raise farm household income when commodity prices were low because of prolonged weak consumer demand. While initially intended to be a temporary effort, the commodity support programs have continued. However, several of them have been modified away from supply control and management of commodity stocks (which was designed to prop up prices) that directly linked support payments to farm production activities into decoupled revenue support[10] that makes payments on historical program acres—referred to as base acres.[11]

Proponents of farm revenue support programs argue that federal involvement in the sector is needed to stabilize and support farm incomes by shifting some of the production risks to the

[8] For information, see CRS Report R45193, *Federal Crop Insurance: Program Overview for the 115th Congress*, by Isabel Rosa.

[9] An exception to this rule is the winter wheat crop, which is planted during the fall of the previous year, lies dormant over the winter, grows out in the spring, and is harvested in late spring or early summer. Thus, winter wheat is identified with the year that it is harvested.

[10] *Decoupled* means that payments are not linked to current producer behavior and, instead, are based on some other measure outside of the producer's decisionmaking sphere, such as historical acres planted to program crops. Decoupling of payments is intended to minimize their incentives on producer behavior.

[11] See the "Base Acres" section later in this report. The shift to greater reliance on decoupled support programs is associated with U.S. commitments under the World Trade Organization. For details, see CRS Report R45305, *Agriculture in the WTO: Rules and Limits on U.S. Domestic Support*, by Randy Schnepf.

federal government. These risks include short-term market price instability often due to weather or international events—both of which are outside the farmer's control. Proponents see the goal of farm policy as maintaining the economic health of the nation's farm sector so that it can use its comparative advantage in supplying domestic demand and competing in the global market for food and fiber. Critics argue that farm revenue support programs waste taxpayer dollars, distort producer behavior in favor of certain crops, capitalize benefits to the owners of the resources, encourage concentration of production, and comparatively harm smaller domestic producers and farmers in lower-income foreign nations.

Authorizing Legislation

The authority for USDA to operate farm revenue support programs comes from three permanent laws, as amended: the Agricultural Adjustment Act of 1938 (P.L. 75-430), the Agricultural Act of 1949 (P.L. 81-439), and the CCC Charter Act of 1948 (P.L. 80-806). Congress typically alters these laws through multi-year omnibus farm bills to address current market conditions, budget constraints, or other concerns.

If a new farm bill is not enacted when an old one expires, farm programs would revert to the permanent laws mentioned above for most of the major program crops. Under permanent law, eligible commodities would be supported under a parity-price formula at levels much higher than they are now, and many of the currently supported commodities might not be eligible.[12] Since reverting to permanent law is incompatible with current national economic objectives, global trading rules, and federal budgetary policies, pressure builds at the end of each farm bill for policymakers to enact another.

The 2018 farm bill (P.L. 115-334) contains the most recent version of the farm commodity support programs. It supersedes the commodity provisions of previous farm bills and includes a provision (Section 1702) that suspends the relevant price support provisions of permanent law for the crop (and marketing) years 2019-2023.

Eligible Commodities

Federal support exists for about two dozen farm commodities representing about one-third of gross farm sales. During the five marketing years of 2014 through 2018, six crops (corn, wheat, soybeans, peanuts, cotton, and rice) accounted for an estimated 92% of farm commodity program payments.[13]

Covered Commodities

The 2018 farm bill continues to define *covered commodities* as the crops eligible for the farm revenue support programs PLC and ARC: wheat, oats, barley (including wheat, oats, and barley used for haying and grazing), corn, grain sorghum, long-grain rice, medium-grain rice, seed cotton (unginned upland cotton that contains both lint and seed), pulse crops (dry peas, lentils, small chickpeas, and large chickpeas), soybeans, other oilseeds (including sunflower seed,

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[12] For more on consequences of reverting to permanent law, see CRS Report R45341, *Expiration of the 2014 Farm Bill*, by Jim Monke, Randy Alison Aussenberg, and Megan Stubbs.

[13] The remaining 8% of payments are attributed to sorghum, barley, other oilseeds, pulse crops, and dairy. Compiled by CRS using data from USDA's Farm Service Agency and projections from the Congressional Budget Office's January 2019 baseline for farm programs. For commodity-level detail on program payments, see CRS Report R44914, *Farm Safety-Net Payments Under the 2014 Farm Bill: Comparison by Program Crop*, by Randy Schnepf.

rapeseed, canola, safflower, flaxseed, mustard seed, crambe, and sesame seed), and peanuts (7 U.S.C. §9011). Each of these commodities has a statutorily defined PLC reference price (listed in **Table 1**).

Upland cotton was removed from eligibility as a covered commodity by the 2014 farm bill (P.L. 113-79). However, it indirectly regained its status as a covered commodity, via seed cotton, under the Bipartisan Budget Act of 2018 (P.L. 115-113).[14]

Loan Commodities

"Loan commodities" include all of the "covered commodities" plus upland cotton, extra-long-staple cotton, wool, mohair, and honey. These commodities have statutory loan rates (**Table 1**) and are eligible for the MAL program.

Fresh Milk

Support for milk production is available in the form of subsidized protection for producer milk margins (milk prices minus feed costs) under the Dairy Margin Coverage program.[15]

Sugar Cane and Sugar Beets

Sugar support is indirect through import quotas, processor price guarantees, and domestic marketing allotments. No direct payments are made to sugar growers or processors.[16]

Agricultural Products Without a Title I Revenue Support Program

Livestock, poultry, fruits, vegetables, nuts, hay, and nursery products (about two-thirds of U.S. farm sales) are not eligible to participate in a Title I revenue support program under the 2018 farm bill. However, livestock and fruit tree producers may qualify for partial relief from losses related to natural disasters under one of the four permanently authorized agricultural disaster assistance programs under Title I of the 2018 farm bill.[17]

Also, subsidized federal crop insurance is available for more than 100 crops, including fruits, vegetables, and selected livestock activities that are not supported by Title I farm programs. Crop insurance is designed primarily to cover losses from natural disasters or disease and within-season price or revenue declines.[18] Another Title I farm bill program—the Noninsured Crop Disaster Assistance Program—is available for crops not currently covered by crop insurance.[19]

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[14] For details, see CRS Report R45143, *Seed Cotton as a Farm Program Crop: In Brief*, by Randy Schnepf.

[15] For more information, see CRS In Focus IF10750, *Farm Bill Primer: Dairy Safety Net*, by Joel L. Greene.

[16] For more information, see CRS In Focus IF10689, *Farm Bill Primer: Sugar Program*, by Mark A. McMinimy.

[17] Described in section "Agricultural Disaster Assistance Programs" of this report. See also CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

[18] Federal crop insurance is permanently authorized outside of the farm bill by the Federal Crop Insurance Act of 2000, as amended (7 U.S.C. §1501 *et seq*). See CRS Report R45193, *Federal Crop Insurance: Program Overview for the 115th Congress*, by Isabel Rosa.

[19] See CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

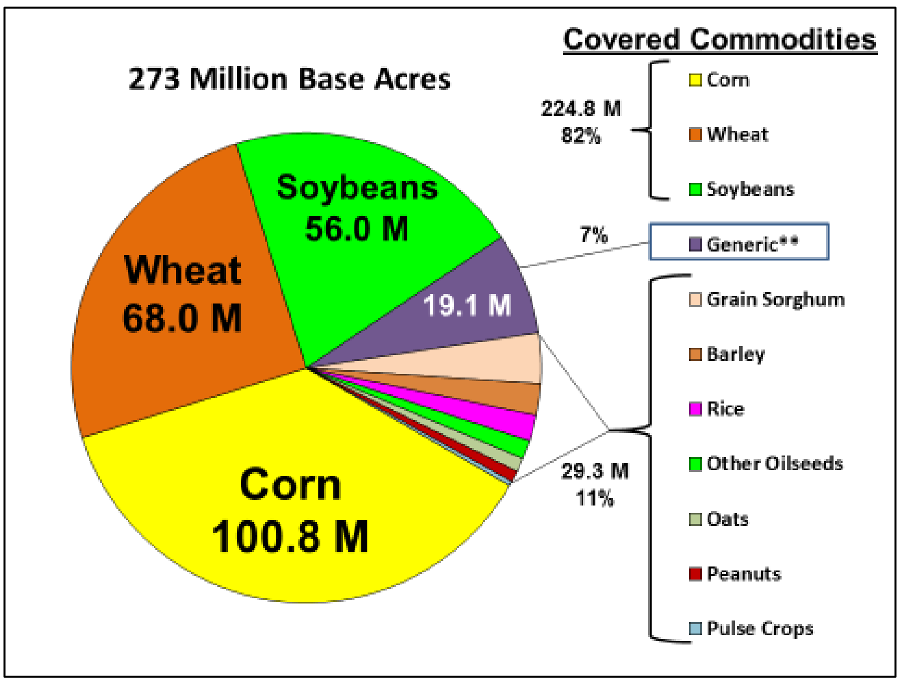
Definition of *Farm*

The definition of *farm* used to administer the revenue support programs is different from common perception or statistical definitions of *farm* based on size or output. Under USDA's Farm Service Agency (FSA) regulations, a "farm" for program payment purposes is one or more tracts of land considered to be a separate operation.[20] A producer must register each farm operation with USDA and identify the resources (land, labor, equipment, capital, and management) associated with it.[21] Land in a farm does not need to be contiguous. However, all tracts within a farm must have the same operator and the same owner (unless all owners agree to combine multiple tracts into a single FSA farm). Thus, one producer may be operating several "farms" if he or she is renting land from several landlords or has purchased land in several tracts.

Base Acres

Base acres describes the historical planted acreage on each FSA farm using a multi-year average from as far back as the 1980s, for purposes of calculating program payments under one of the two revenue support programs—PLC or ARC.[22] As of crop year 2015, USDA reported 273 million base acres, of which 254 million acres were enrolled in either ARC or PLC (**Figure 1**).

Figure 1. Base Acres for Crop Year 2015



Source: Compiled by CRS from FSA data. The most recent crop year with published base acre data is 2015 (as of March 1, 2019) at https://www.fsa.usda.gov/programs-and-services/arcplc_program/index.

[20] 7 C.F.R. §718.2.

[21] See CRS Report R45659, *U.S. Farm Program Eligibility and Payment Limits Under the 2018 Farm Bill (P.L. 115-334)*, by Randy Schnepf and Megan Stubbs.

[22] Base acre provisions since 1981 through the 2002 farm bill are described in Edwin Young et al., *Economic Analysis of Base Acre and Payment Yield Designations Under the 2002 U.S. Farm Act*, USDA Economic Research Service (ERS), September 2005, pp. 36-41.

Notes: Base acres are historical average acres on a farm that have been planted to program crops, which are defined under the 2002 farm bill (P.L. 107-171, §1101). Each base acre is associated with a particular program crop. Not all base acres are enrolled in ARC and PLC programs. In 2015, 254.3 million base acres were enrolled.

**Generic base is former upland cotton base that was removed from eligibility for the ARC and PLC programs under the 2014 farm bill. In 2018, seed cotton was added as a covered commodity but not as a loan commodity by the Bipartisan Budget Agreement (BBA) of 2018 (P.L. 115-123). Under the BBA, producers were given a choice of how to allocate their generic base acres—either as base acres assigned to seed cotton or to another covered commodity and thus eligible for either ARC or PLC payments or into an unassigned pool where they would be ineligible for ARC or PLC program payments. However, USDA data on the BBA allocation of generic base acres are not yet available. For details see CRS Report R45143, *Seed Cotton as a Farm Program Crop: In Brief*, by Randy Schnepf.

Base acres are calculated for each covered commodity and remain with the land when real estate is sold, thus making the new landowner eligible for farm programs. A farm's base acres may increase from year to year if base acres expire from a conservation contract or easement[23] or a producer has eligible oilseed acreage as a result of the Secretary of Agriculture designating a new oilseed eligible as a covered commodity. Similarly, base acres may decline from year to year if some base acres are enrolled in a conservation easement; are converted to certain nonfarm or residential uses and are unlikely to return to agriculture; or are planted to fruits, vegetables, or wild rice in excess of certain planting flexibility rules.

Under the PLC and ARC program payment-acre provisions (7 U.S.C. 9014; **Table A-1**), planting flexibility rules allow crops other than the program crop to be grown, but eligible payment acreage is reduced when fruits, vegetables (other than mung beans and pulse crops), or wild rice are planted in excess of 15% of base acres (or 35% depending upon a farmer's program choice discussed below). The reduction to payment acres is one-for-one for every acre in excess of these percentages for that year.

A farm with base acres is not obligated to participate in farm programs. For those farms that do participate, once a farm's base acres are enrolled in either ARC or PLC, the farm does not have to plant a particular program crop to be eligible for a program payment. This is because ARC and PLC payments are decoupled from actual crop plantings.[24] However, all participating producers must maintain conservation compliance, which requires planting a cover crop on highly erodible land.[25]

Under both the 2014 farm bill (P.L. 113-79) and the Bipartisan Budget Act of 2018 (P.L. 115-113), the calculation of base acres underwent several changes. These are briefly discussed next.

2014 Farm Bill: Updating Base Acres, Creation of Generic Base

Because a farmer's actual plantings may differ from farm base acres, program payments may not necessarily align with financial losses associated with market prices or crop revenue. To better match program payments with farm risk, the 2014 farm bill provided farmers with a one-time opportunity to update individual crop base acres by reallocating acreage within their current base portfolio to match their actual crop mix (plantings) during the crop years 2009-2012. Farmers could also choose to not reallocate their base acres if they expected payments to be maximized under their then-current base acres. Even after the opportunity to update base acres to better match actual farm plantings, disparities remained between base and planted acres (**Figure 2**).

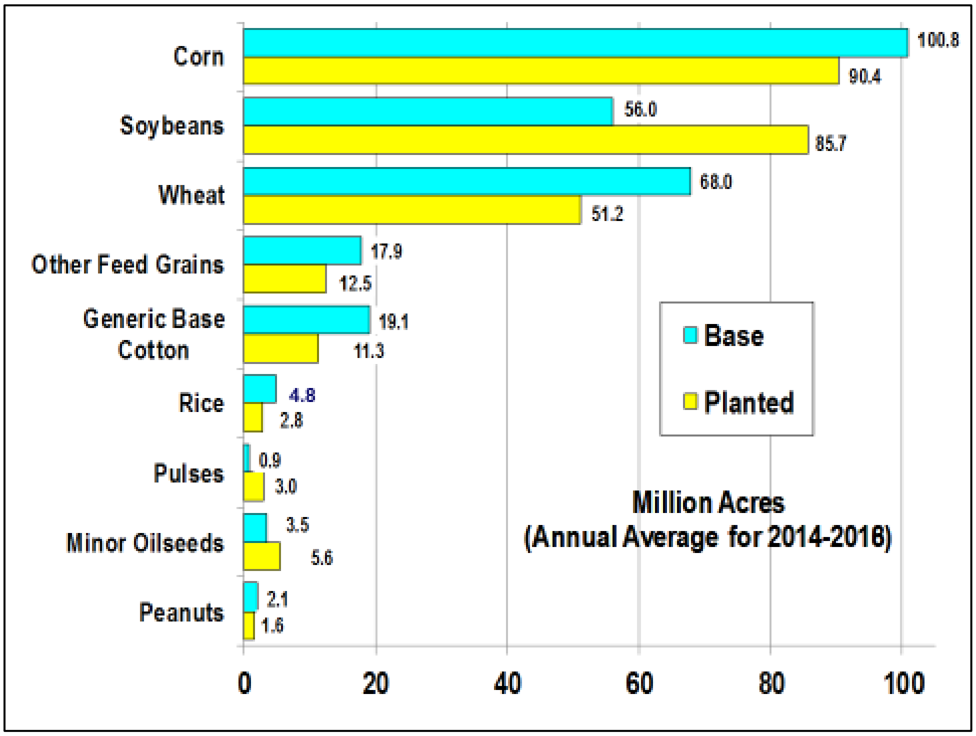
[23] For example, a Conservation Reserve Program contract or a wetland reserve easement.

[24] For an explanation of how this decoupling is applied, see "Decoupled Payments Made on Base Acres".

[25] See the "Eligible Producers" section of this report for more on conservation compliance and other requirements.

The 2014 farm bill also removed upland cotton from eligibility for the ARC and PLC programs due to a ruling from a World Trade Organization dispute settlement case successfully brought by Brazil against U.S. cotton support programs.[26] Former cotton base acres were renamed "generic base" and added to a producer's base for potential payments if a covered commodity (now excluding upland cotton) was planted on the farm.[27] However, upland cotton remained eligible for the MAL program.

Figure 2. Base Versus Planted Acres, 2014-2018



Source: Compiled by CRS from Farm Service Agency data on base acres as reported for 2014 and 2015 and National Agricultural Statistics Service data on planted acres as reported for crop years 2014-2018.

Bipartisan Budget Agreement of 2018: Seed Cotton as a Covered Commodity

In 2018, seed cotton was added as a covered commodity, but not as a MAL loan commodity, by the Bipartisan Budget Agreement (BBA) of 2018 (P.L. 115-123).[28] Under the BBA, producers were given a choice of how to allocate their generic base acres—either as base acres assigned to seed cotton or to another covered commodity and thus eligible for either ARC or PLC payments or into an unassigned pool where they would be ineligible for ARC or PLC program payments.[29]

[26] See CRS In Focus IF10193, *The WTO Brazil-U.S. Cotton Case*, by Randy Schnepf.

[27] Specifically, for each crop year, generic base acres were attributed to (i.e., temporarily designated as) base acres to a particular covered commodity base in proportion to that covered commodity's share of total plantings of all covered commodities in that year. Thus, generic base acres were coupled to actual plantings.

[28] Seed cotton is the harvested, but un-ginned cotton boll that includes both lint and cottonseed. See CRS Report R45143, *Seed Cotton as a Farm Program Crop: In Brief*, by Randy Schnepf.

[29] As described in the notes to **Figure 1**, USDA data on the BBA-designated allocation of generic base acres are not available as of May 10, 2019.

2018 Farm Bill: Base Acres Retained from Prior Law with Potential Reduction

The 2018 farm bill retained base acres as defined on September 30, 2018, under the 2014 farm bill and inclusive of the BBA changes. Thus, upland cotton remains ineligible for PLC or ARC but is so indirectly via seed cotton. The 2018 farm bill also added a provision (Section 1102(b)) regarding base-acre eligibility for ARC or PLC program payments. If base acres were planted continuously to grass or pasture (including fallow acres) during the nine-year period extending from January 1, 2009, through December 31, 2017, then those affected base acres are not eligible for ARC or PLC payments during the life of the 2018 farm bill—that is, during crop years 2019-2023. However, these acres would remain eligible to be counted as base acres for a future farm bill.[30]

Eligible Producers

The 2018 farm bill defines *producer* (for purposes of revenue support program benefits) as an owner-operator, landlord, tenant, or sharecropper who shares in the risk of producing a crop and is entitled to a share of the crop produced on the farm. Participation in revenue support programs is free. However, an individual must comply with certain requirements to be eligible for most program payments.[31] These requirements include:

- **Actively engaged in farming (AEF).** Each individual must provide a significant contribution of capital (land or equipment) and personal labor or active personal management to the farm operation, share in the risk of loss from the farm operation, and receive a share of the output as compensation.[32] Legal entities can be actively engaged if members collectively contribute personal labor or active personal management. Special classes allow landowners to be considered actively engaged if they receive income based on the farm's operating results without providing labor or management (as described below).
- **Conservation compliance.** A producer agrees to maintain a minimum level of conservation on highly erodible land and not to convert or make production possible on wetlands.[33]
- **Adjusted gross income (AGI) threshold.** Persons with combined farm and nonfarm AGI in excess of $900,000 are ineligible for most program benefits. Average AGI is measured from the three tax years prior to the most recent taxable year. The AGI limit may be waived on a case-by-case basis to protect environmentally sensitive land of special significance.
- **Minimum farm size.** A producer on a farm may not receive farm program payments if the sum of the base acres on the farm is 10 acres or less. Two producer groups are excluded from this prohibition: beginning farmers and ranchers and veteran farmers and ranchers.

[30] In addition, these specific base acres are eligible for up to an $18 per acre payment under the Grassland Conservation Initiative under the Conservation Stewardship Program of Title II (Section 2309) of the 2018 farm bill. See CRS Report R45698, *Agricultural Conservation in the 2018 Farm Bill*, by Megan Stubbs.

[31] See CRS Report R45659, *U.S. Farm Program Eligibility and Payment Limits Under the 2018 Farm Bill (P.L. 115-334)*, by Randy Schnepf and Megan Stubbs.

[32] See the discussion under "Payment Limits" regarding the AEF status of members of a family farm. See also CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf.

[33] See CRS Report R42459, *Conservation Compliance and U.S. Farm Policy*, by Megan Stubbs.

Eligibility and Tenancy

A farm operation usually involves some combination of owned and rented land. The amount of total land in farms rented by farm operators has ranged between 34% and 43% of farmland during 1964-2012.[34] In 2014, an estimated 39% of farmland was rented—80% of rented farmland is owned by non-operator landlords. Two types of rental arrangements are common: cash rent and share rent.

Cash Renting Base Acres

Under cash rental contracts, the tenant pays a fixed cash rent to the landlord. The landlord receives the same rent irrespective of market conditions, bears no risk in production, and thus fails to meet the AEF criteria and is not eligible to receive program payments. The tenant bears all of the risk, takes all of the harvest, and receives all of the program payment.

Even though tenants might receive all of the government payments under cash rent arrangements, they might not keep all of the benefits if landlords demand higher rent. Economists widely agree that a large portion of government farm payments passes through to landlords, since government payments boost the rental value of land.[35]

Share Cropping Base Acres

Under share rental contracts, the tenant usually supplies most or all of the labor and machinery, while the landlord supplies land and perhaps some machinery or management. Both the landlord and the tenant bear risk in producing a crop and receive a portion of the harvest.[36] In most cases, both meet the AEF criteria and are eligible to share in the government subsidy.

Farm Commodity Revenue Support Programs

The farm revenue support program provisions from Title I of the 2014 farm bill are largely preserved under the 2018 farm bill but with some modifications, as identified below.[37]

The Marketing Assistance Loan (MAL) Program

The MAL program has been in existence, in one form or another, since the 1930s. Its longevity as a farm program derives from its utility at providing both short-term financing and a guaranteed floor price.[38] This is done by offering producers a nonrecourse nine-month loan—valued at a commodity-specific, statutorily-fixed loan rate—for all harvested production of qualifying crops.

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[34] ERS, "Farmland Ownership and Tenure," accessed on April 5, 2019, https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-ownership-and-tenure/.

[35] The concept of "capitalization" of agricultural subsidies into land values is taught in most agricultural policy classes and is a frequent subject of empirical work. See Todd Kuethe, "The Link Between Farm Policy and Farmland Values," *Policy Matters*, University of Illinois, August 20, 2014.

[36] For example, a typical share rental arrangement in some regions is a one-half/one-half split of the crop harvested, with the landlord supplying all of the land and the cost of certain inputs such as fertilizer and seed. The tenant supplies all of the labor and pays the remaining share of the input costs such as machinery and fuel. Management decisions, such as crop diversification, are usually made jointly.

[37] See CRS In Focus IF11164, *2018 Farm Bill Primer: Title I Commodity Programs*, by Randy Schnepf.

[38] See CRS In Focus IF11162, *2018 Farm Bill Primer: Marketing Assistance Loan Program*, by Randy Schnepf.

These qualifying crops are referred to as loan commodities (**Table 1**).[39] Because MAL benefits are directly linked to the harvested output, benefits are said to be "coupled."

No Signup, but Participation Requires a Harvested Crop

No pre-planting signup is necessary to participate in the MAL program, and a producer does not need to own or rent base acres to be eligible. However, a producer must have a harvested crop to use as collateral for the loan. Thus, if a producer suffers a crop failure due to a natural disaster and has no marketable crop, the MAL program is not available as a program option.

How the MAL Program Works

At harvest time, crop prices are usually at their lowest point for the year because of the large supply of harvested crops entering the marketplace at the same time. To avoid selling into a weak market, the MAL program offers producers the option to put a harvested loan commodity under a nine-month nonrecourse loan valued at a statutorily fixed, per-unit commodity loan rate (**Table 1**) using the crop as collateral. Thus, MAL benefits are coupled to the harvested crop.[40] *Nonrecourse* means that USDA must accept the pledged crop (i.e., the collateral) as full payment of an outstanding loan if the collateral is forfeited.[41]

During the nine-month loan period, producers will consider whether market prices are above or below the MAL loan rate. If they are above the loan rate, producers will pay off their loans and reclaim their collateral crops to sell into the higher priced marketplace. However, if market prices are below the loan rate, then producers may consider forfeiting their crop to USDA and keeping the loan value as payment. Thus, the statutory loan rate, in effect, establishes a price guarantee. Under the 2018 farm bill a producer has additional choices besides forfeiture in claiming MAL benefits when market prices are low (see "Policy Evolution of the MAL Program" section below).

Policy Evolution of the MAL Program

In the 1960s, 1970s, and 1980s, during extended periods when commodity prices were below the MAL loan rates, many producers chose to forfeit their crops to USDA rather than repay their MAL loans at the higher loan rate. These forfeitures led to large accumulations of grain and oilseed stocks by USDA. These government-held stocks were costly to taxpayers and contributed to market conditions of oversupply.

In the 1980s and 1990s, Congress redesigned the MAL program to avoid government stock accumulation by offering alternative repayment prices to the statutory loan rates (see box below). Under current law, prior to loan maturity, producers may compare the repayment prices announced by USDA for their localities with the statutory MAL loan rates for each eligible commodity before selecting from among several potential MAL program benefits.

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[39] In the cited table, commodities with MAL loan rates are referred to as "loan" commodities. Commodities with PLC reference prices are known as "covered" commodities.

[40] This is in contrast to the other two Title I farm programs (PLC and ARC described below) that make payments on historical acres and yields and therefore are not dependent on current production.

[41] A few crops are eligible for recourse loans (i.e., they must be repaid at principal plus interest), including extra-long-staple cotton, seed cotton, and high-moisture grains—that is, grains having a moisture content in excess of CCC standards for storability. Recourse loans are not eligible for MAL benefits but do offer low-interest financing.

USDA-Announced, Alternative MAL Repayment Prices

USDA regularly announces alternative MAL loan repayment prices that may vary with market conditions above or below the statutory loan rates.[42] The periodicity varies with the loan commodities. For example, for most grain and oilseed crops, USDA announces daily the alternative loan repayment rate as a posted county price—that is, average wholesale terminal prices adjusted for transportation costs from the terminal to the county. For upland cotton and rice, USDA collects international reference prices, which are converted to a U.S. location by adjusting for transportation costs. These "adjusted world prices" are announced weekly for operating the cotton and rice MAL repayment provisions. USDA announces a weekly national posted price for peanuts, wool, and mohair and a weekly national or regional posted price for pulse crops. For honey, a monthly survey prices is announced.

A Producer Has Four Potential Repayment Choices Under an MAL Loan

Under current law (as continued by the 2018 farm bill), a producer with a commodity under an MAL loan has several repayment options. If the USDA-announced repayment rate is at or above the loan rate, the farmer repays the loan principal and interest and reclaims the commodity. In contrast, when the announced repayment rate is below the loan rate, the farmer may choose from among four potential options:

1. **Loan deficiency payment (LDP).** Rather than putting the harvested crop under an MAL, a farmer may request an LDP with the per-unit payment rate equal to the difference between the loan rate and loan repayment rate. The farmer receives the LDP payment and keeps the crop to sell or use on farm.
2. **Marketing loan gain (MLG).** A participating farmer with a crop under an MAL loan can repay the loan at the USDA-announced repayment price and pocket the difference (between the loan rate and the repayment rate) as an MLG. The farmer keeps the MLG and the crop to sell or use on farm.
3. **Commodity certificate exchange.** A farmer may use commodity certificates—paper certificates with a dollar denomination that may be exchanged for commodities in USDA inventory—to repay an MAL loan at the lower USDA-announced price and keep the associated price gain. The farmer keeps the gain and the crop to sell or use on farm.
4. **Forfeiture.** A producer can forfeit the pledged crop to USDA at the end of the loan period. The producer may keep any price gains associated with forfeiture but relinquishes access to the crop.

Higher MAL Loan Rates for Some Commodities Under the 2018 Farm Bill

The level of revenue support provided by the MAL program varies with market conditions and the relationship between MAL loan rates and market prices. The 2018 farm bill raised MAL loan rates for several loan commodities, including barley, corn, grain sorghum, oats, extra-long-staple cotton, sugar, rice, soybeans, dry peas, lentils, and small and large chickpeas.[43] The MAL program's usefulness as a risk management and marketing tool varies widely across program crops depending on the relationship between farm prices and the statutory loan rates.

Under the 2018 farm bill (Section 1703):

[42] USDA's FSA publicly releases the MAL repayment rates at https://www.fsa.usda.gov/programs-and-services/price-support/Index.

[43] For a comparison of MAL loan rates under the 2014 and 2018 farm bills, see CRS In Focus IF11162, *2018 Farm Bill Primer: Marketing Assistance Loan Program*, by Randy Schnepf.

- MAL benefits are no longer subject to annual payment limits (this includes MLG and LDP benefits, as well as any gains under commodity certificates and forfeiture).[44]

Under the previous 2014 farm bill:

- MLG and LDP benefits combined with payments under PLC and ARC were subject to a payment limit of $125,000 per person for all covered commodities (except peanuts, which has a separate limit of $125,000).
- However, MAL gains under commodity certificates and forfeiture were excluded from payment limits.

[44] In the past, commodity certificates and forfeiture were used to avoid Title I program payment limits. They may be less useful now that all MAL benefits are excluded from payment limits.

Table 1. Farm Prices, Marketing Assistance Loan Rates, and PLC Reference Prices

(2014 farm bill versus 2018 farm bill)

Program Commodities[a]	Unit	Recent Farm Price (FP)[b]	Market Assistance Loan Rates			PLC Reference Prices	
			2014FB		2018FB	2014FB + 2018FB	
		$/unit	$/unit	% FP	$/unit	$/unit	% FP
Corn	bu.	$3.52	$1.95	55%	$2.20	$3.70	105%
Soybeans	bu.	$9.25	$5.00	54%	$6.20	$8.40	91%
Wheat, all	bu.	$4.92	$2.94	60%	$3.38	$5.50	112%
Peanuts	cwt.	$21.06	$17.75	84%	$17.75	$26.75	127%
Sorghum	bu.	$3.29	$1.95	59%	$2.20	$3.95	120%
Barley	bu.	$4.95	$1.95	39%	$2.50	$4.95	100%
Oats	bu.	$2.45	$1.39	59%	$2.00	$2.40	98%
Rice, long-grain	cwt.	$11.35	$6.50	57%	$7.00	$14.00	123%
Rice, medium-grain	cwt.	$16.15	$6.50	40%	$7.00	$16.10	100%
Dry peas	cwt.	$11.90	$5.40	45%	$6.15	$11.00	92%
Lentils	cwt.	$27.20	$11.28	36%	$13.00	$19.97	73%
Chickpeas, large	cwt.	$31.35	$11.28	45%	$14.00	$21.54	69%
Chickpeas, small	cwt.	$25.00	$7.43	40%	$10.00	$19.04	76%
Cotton, upland[c]	cwt.	$65.97	$52.00[d]	79%	$52.00[d]	n.a.	n.a.
Cotton, extra-long-	cwt.	$137.00	$79.77	58%	$95.00	n.a.	n.a.
Seed Cotton[e]	cwt.	$33.37	n.a.	n.a.	n.a.	$36.70	110%
Sugar, refined beet	cwt.	$32.69[f]	$24.09	74%	$25.37	n.a.	n.a.
Sugar, raw cane	cwt.	$25.97[g]	$18.75	72%	$19.75	n.a.	n.a.
Wool, graded	cwt.	$146.33[h]	$115.00	79%	$115.00	n.a.	n.a.
Wool, nongraded	cwt.	$146.33[h]	$40.00	27%	$40.00	n.a.	n.a.
Mohair	cwt.	$501.67	$420.00	84%	$420.00	n.a.	n.a.
Honey	cwt.	$213.75	$69.00	32%	$69.00	n.a.	n.a.
Minor oilseeds[i]	cwt.	n.a.	$10.09	58%[j]	$10.09	$20.15	115%
Sunflower	cwt.	$18.07	$10.09	56%	$10.09	$20.15	112%
Flaxseed	cwt.	$16.67	$10.09	61%	$10.09	$20.15	121%
Canola	cwt.	$16.62	$10.09	61%	$10.09	$20.15	121%
Rapeseed	cwt.	$30.05	$10.09	34%	$10.09	$20.15	67%
Mustard	cwt.	$32.70	$10.09	31%	$10.09	$20.15	62%
Safflower	cwt.	$24.50	$10.09	41%	$10.09	$20.15	83%

Source: Compiled by CRS. MAL loan rates and PLC reference prices are from the 2014 and 2018 farm bills; monthly price data are from National Agricultural Statistics Service (NASS) and ERS.

Notes: FB = farm bill, n.a. = not applicable, bu. = bushel, cwt. = hundredweight or 100 lbs.

a. Commodities with MAL loan rates are referred to as "loan" commodities; commodities with PLC reference prices are known as "covered" commodities.

b. The Olympic average (excluding high and low data years) for crop years 2014-2018 of market-year average farm prices (MYAPs). Average adjusted world prices are used for comparison of upland cotton and rice MAL loan rates instead of farm prices.

c. Upland cotton was removed from eligibility for the ARC and PLC programs by the 2014 farm bill due to a ruling from a World Trade Organization dispute settlement case successfully brought by Brazil against U.S. cotton support programs (see CRS In Focus IF10193, *The WTO Brazil-U.S. Cotton Case*, by Randy Schnepf). However, upland cotton remains eligible for the MAL program.

d. The loan rate for upland cotton is the average MYAP for the preceding two years but within a range of \$45/cwt. and \$52/cwt.

e. Seed cotton was added as a covered commodity, but not a loan commodity, by the Bipartisan Budget Act of 2018 (P.L. 115-123).

f. U.S. wholesale refined beet sugar price, Midwest markets, Milling and Baking News, as reported by ERS.

g. U.S. raw sugar price, Contract No. 14/16, duty fee paid New York, as reported by ERS.

h. Average farm price received, with no distinction for graded or ungraded, as reported by NASS.

i. Minor oilseeds include the six listed oilseeds (sunflower, flaxseed, canola, rapeseed, mustard, and safflower), as well as crambe and sesame—but these latter two are excluded from the price calculation due to insufficient data.

j. Weighted average based on 2018 production as reported by NASS.

PLC and ARC Programs

A second tier of revenue support is available under the PLC and ARC programs. PLC and ARC provide income support to covered commodities at levels above the price protection offered by the MAL program's loan rates.

ARC and PLC were first authorized under the 2014 farm bill (P.L. 113-79). The 2018 farm bill extends both programs but with several modifications intended to increase producer flexibility in their use. Participation is free. However, a producer must own or rent base acres to participate. In addition, a producer must elect ARC or PLC for the farm's historical base acres and enroll his or her farm operation in the elected program.[45] Unlike MAL payments, which are coupled to harvested crops, PLC and ARC payments are decoupled and made proportional to base acres.

Producer Election

Producers choose between PLC and ARC depending on their preference for protection against a decline in (a) crop prices or (b) crop revenue, respectively. Payments under the PLC program are triggered when the national market-year average farm price (MYAP) for a covered commodity is below its "effective reference price" (**Figure 3**). In contrast, ARC payments are triggered when crop revenue is below its guaranteed level based on a multi-year moving average of historical crop revenue (**Figure 5**). Producers can elect ARC at either the county (ARC-CO) or individual farm (ARC-IC) level. PLC and ARC-CO choices can vary by "covered" commodities (for a list of covered commodities, see **Table 1**), whereas ARC-IC includes all "covered" commodities on a farm under a single whole-farm revenue guarantee.

Under the 2014 farm bill, producers had a one-time choice between ARC and PLC, on a commodity-by-commodity basis that lasted for five crop years (2014-2018). In contrast, the 2018 farm bill allows producers to alter their program choices more frequently. In 2019, producers may

[45] Enrollment (or signup) is not the same as program election. Under the 2014 farm bill, producers made a one-time program election, then had to enroll—using a CCC-861 contract for PLC or ARC-CO, or a CCC-862 contract for ARC-IC—by August 1 of the crop year involved for each contract year. In contrast, the 2018 farm bill allows for a multi-year enrollment. The enrollment deadlines for program election and signup up under the 2018 farm bill have not yet been announced as of this report.

select ARC or PLC coverage, on a commodity-by-commodity basis, effective for both crop years 2019 and 2020. If no initial choice is made, then the default is whichever program was in effect during crop years 2015 through 2018 under the 2014 farm bill. Then, beginning in 2021, producers may again choose (i.e., make a new election) between ARC and PLC annually by covered commodity for each of crop year 2021, 2022, and 2023. In addition, producers now may remotely and electronically sign annual or multi-year contracts for ARC and PLC.

Price Loss Coverage (PLC)

PLC price protection is based on a statutorily fixed reference price (**Table 1**) that may be temporarily increased under certain conditions. Under the 2014 farm bill version of the PLC program, producers received payments on a portion of their enrolled base acres when the national MYAP for the enrolled covered commodity was below its reference price set in statute. This option was attractive if farmers expected farm prices to drop below the reference price for a covered commodity.

The 2018 farm bill added a provision (Section 1101) that replaced the statutory reference price with an "effective reference price" that may increase to as much as 115% of the statutory PLC reference price based on market conditions. The effective reference price is determined by a formula as the higher of the statutory reference price or 85% of the five-year Olympic average[46] of the national MYAP for the five preceding years.

PLC Payment Formula

Under the 2018 farm bill, the PLC program will make a payment when the MYAP for a covered commodity is less than the effective reference price. See **Figure 3** for a graphical interpretation of the formula and **Figure 4** for a hypothetical example for rice. The farm's total PLC payments for a covered commodity may be calculated as follows:

- The **PLC per-unit payment rate** equals the difference between the effective PLC reference price and the higher of the MYAP or the MAL loan rate.
- The **PLC per-acre payment rate** equals the PLC per-unit payment rate times the program yield (described below).
- The **PLC total payment** equals the PLC per-acre payment rate times 85% of base acres signed up for the respective covered commodity.[47]

PLC Payment Yield

PLC payment yields are similar to base acres in that they are historical farm-level, crop-specific measures that are used to determine program payments under the PLC program.[48] Producers were given the option of updating their payment yields under the 2002, 2014, and 2018 farm bills.[49]

[46] The Olympic average excludes the high and low data years from the average.

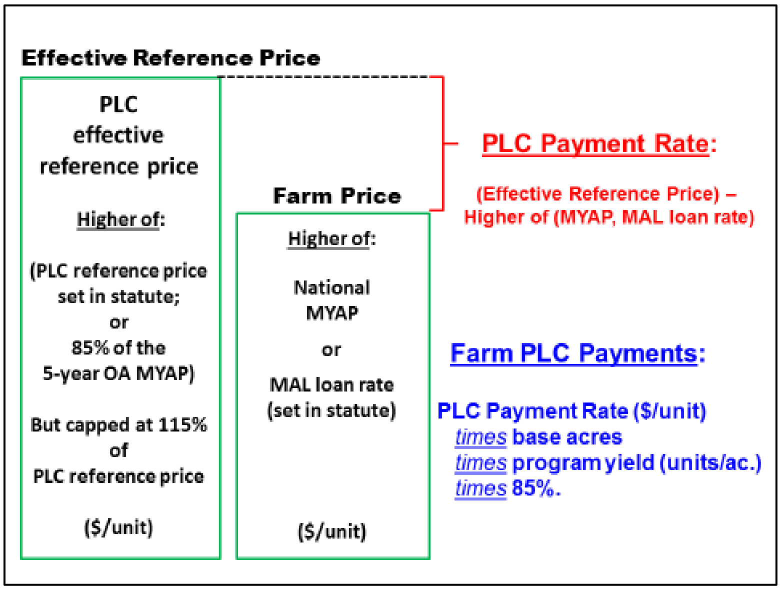
[47] The concept of payment acres equal to 85% of base acres originated with a provision in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508, §1101) that was intended to score budget savings. See ERS, *Provisions of the Food, Agriculture, Conservation and Trade Act of 1990*, AIB 624, June 1991, p. 35.

[48] Under the 1996, 2002, and 2008 farm bills, payment (or alternately, program) yields were used to determine payments under the now-repealed direct payment and counter-cyclical payment programs.

[49] For details on the 2002 farm bill (P.L. 107-171) yield update, see the reference in footnote 22.

Figure 3. The Price Loss Coverage (PLC) Program Formula

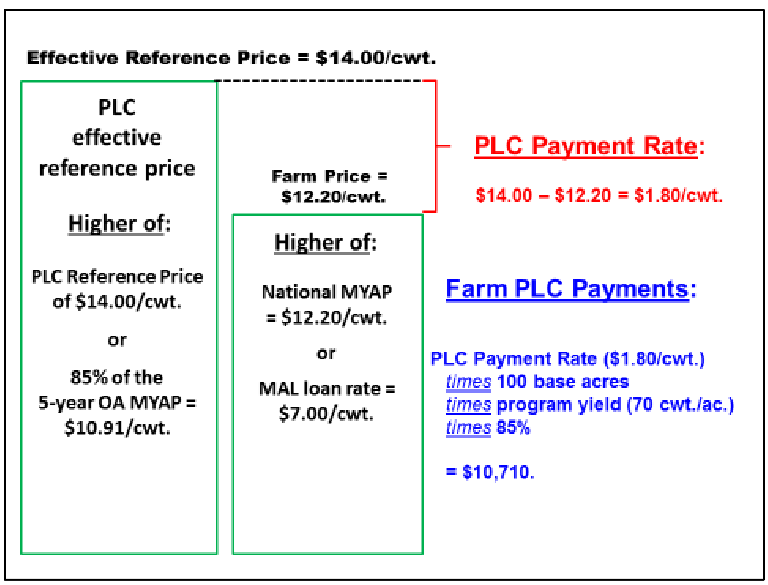
(makes payment when national MYAP drops below the effective reference price)



Source: Compiled by CRS based on the 2018 farm bill (P.L. 115-334).

Note: MYAP = market-year average farm price; MAL = Marketing Assistance Loan program; OA = Olympic average (excluding the high and low years). In a declining market, the per-bushel payment rate increases until the farm price drops below the loan rate, when benefits under the MAL program may become available.

Figure 4. PLC Low-Price Scenario for Rice



Source: Compiled by CRS based on the 2018 farm bill (P.L. 115-334).

Notes: MYAP = market-year average farm price; MAL = Marketing Assistance Loan program; OA = Olympic average (excluding the high and low years). This example assumes a farm with 100 base acres enrolled in the rice PLC program, a program yield for rice of 70 cwt./acre, and national OA for MYAP for 2013-2018 of $12.20 per cwt. In a declining market, the per-unit payment rate increases until the farm price drops below the loan rate ($7.00/cwt. for rice), at which point the PLC payment rate is fixed at $14.00 - $7.00 = $7.00/cwt. If market prices decline further, benefits under the MAL program may become available.

Under the 2014 farm bill, producers were given an opportunity to update payment yields, on a covered-commodity-by-covered-commodity basis, using 90% of average yields for the 2008-2012 crop years—excluding any year in which acreage planted to the covered commodity was zero. Producers could also use a "plug" yield in the update calculation, equal to 75% of the five-year average county yield for a covered commodity, if the farm-level yield for any of the 2008-2012 crop years was less than 75% of the average county yield during that period. The yield update election had to be made so as to be in effect beginning with the 2014 crop year.

Under the 2018 farm bill, producers could again update program yields, on a covered-commodity-by-covered-commodity basis, using 90% of the average of the yield per planted acre for the 2013-2017 crop years. However, unlike the 2014 farm bill yield update which used the simple average for the data period, the 2018 farm bill yield update was subject to a commodity-specific adjustment factor to account for any national increase in trend yield.[50]

Producers could again use a "plug" yield in the update calculation, equal to 75% of the average county yield for a covered commodity during the 2013-2017 crop years, if the farm-level yield for any year was less than 75% of the average county yield during that period. Any year in which planted acreage to the covered commodity was zero could be excluded from the calculation. The yield update election must be made so as to be in effect beginning with the 2020 crop year.

Agriculture Risk Coverage (ARC)

Producers more concerned about declines in crop revenue (i.e., yield times price) than price can select the county ARC program (ARC-CO) as an alternative to PLC for each covered commodity. Under ARC-CO, payments are triggered when the annual county revenue for a covered commodity is less than 86% of its recent five-year average revenue.[51] If farmers prefer farm-level revenue protection based on farm-level yields, then they could choose to combine all covered commodities into a single, whole-farm revenue guarantee under the farm-level "individual" ARC (ARC-IC) program.

County ARC (ARC-CO)

The ARC-CO program has a county revenue guarantee, and only a crop revenue loss at the county level triggers a payment. The ARC-CO crop revenue guarantee equals 86% of the county benchmark revenue (**Figure 5**). The benchmark revenue is the product of the five-year Olympic average of county yields (measured as units of output per acre) and the five-year Olympic average of the higher of the national MYAP or the PLC effective reference price. An ARC-CO payment is made if the current-year county revenue (calculated as the product of county yield and national MYAP) is below the ARC-CO revenue guarantee. The ARC-CO payment rate, which

[50] The adjustment factor is equal to the ratio of the 2008-2012 national average yield over the 2013-2017 national average yield. Thus, each farm-level yield update would be adjusted by the rate of national yield growth for that crop. This adjustment favors farms (and crops) whose yields grew at a faster rate than the national average growth rate.

[51] The county refers to the county where the farm operation is located.

equals the difference between the per-acre county revenue guarantee and the actual county per-acre crop revenue, is capped at 10% of benchmark revenue.

With the revenue guarantee set at 86% of the benchmark revenue, the producer absorbs the first 14% of any shortfall, and the government absorbs the next 10% of revenue shortfall.[52] Remaining losses may be backstopped by crop insurance if purchased at sufficient coverage levels by the producer and by the MAL program.

Similar to PLC, the ARC-CO payment formula for a particular covered commodity is the ARC-CO payment rate *times* 85% *times* the number of base acres enrolled in ARC-CO. See **Figure 5** for a graphical interpretation of the formula and **Figure 6** for a hypothetical example for corn.

County Yield Data Changes

Under the 2014 farm bill, USDA's National Agricultural Statistics Service (NASS) was the primary source for the county yield estimates used in the ARC-CO formulas. However, when USDA announced its first ARC-CO payments under the then-new program in 2015, significant discrepancies in county-level payments were discovered. These discrepancies appeared to be due, in part, to how average county yield calculations were being made. If a county lacked sufficient NASS data, then USDA would use Risk Management Agency (RMA) yield data based on crop insurance program participation. A comparison of the two estimates suggested that RMA yields were frequently higher than NASS yields at the county level. As a result, payments to producers in counties where RMA yields were used could be substantially lower than payments in counties using NASS yields. Congress showed interest in minimizing such discrepancies.[53] Since RMA yield data were more widely available at the county level than NASS yield data, there was considerable debate about switching yield data prioritization for ARC-CO calculations to the RMA data.

Under the 2018 farm bill (Section 1107), yield data from RMA are made the primary source for county average yield calculations for the ARC-CO benchmark revenue. Where RMA data are not available, USDA is to determine the data source considering data from NASS or the yield history of representative farms in the state, region, or crop-reporting district. Also, ARC-CO is to use a trend-adjusted yield to calculate the benchmark revenue, as is done by RMA for the federal crop insurance program. Finally, the five-year Olympic average county yield calculations are to include a yield plug (equal to 80% of the 10-year average county yield) for each year where actual county yield is lower than the estimated plug.

Other 2018 farm bill (Section 1107) modifications to ARC-CO include allowing yields used in ARC-CO revenue calculations to be calculated separately for irrigated and non-irrigated land in each county and basing ARC-CO payments on the physical location of the farm—farms that cross multiple counties are prorated for each county. Finally, up to 25 counties nationwide may subdivide for ARC-CO yield calculations to reflect significant yield deviations within a county. Such subdivision is to be based on certain criteria: A county must be larger than 1,400 square miles and have more than 190,000 base acres.

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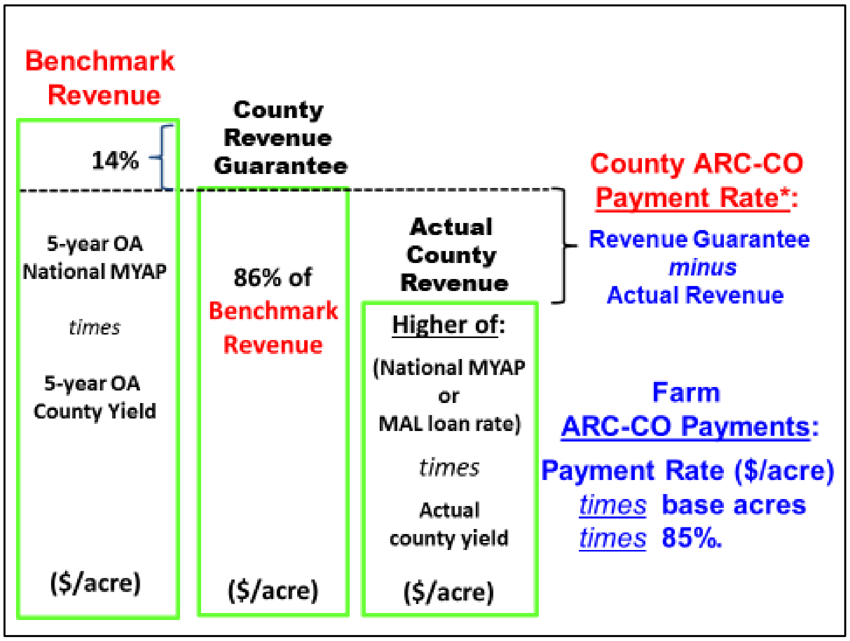
[52] The 86% of benchmark revenue as the revenue guarantee and the 10% of benchmark revenue as a cap on per-acre payments were determined by policymakers.

[53] The FY2017 (Section 772), FY2018 (Section 752), and FY2019 (Section 748) appropriations acts—with fiscal years that correspond with the payment period for the 2016, 2017, and 2018 crop years (respectively) of the 2014 farm bill—have tried to address this issue with a pilot program funded at $5 million annually that gives the Secretary of Agriculture authority to make supplemental payments to participants of the ARC program located in counties that had insufficient NASS data to calculate county yield estimates and instead had to rely on alternate county yield determinations, which generated smaller payments than they would otherwise have received.

Figure 5. Agriculture Risk Coverage, County (ARC-CO) Formula

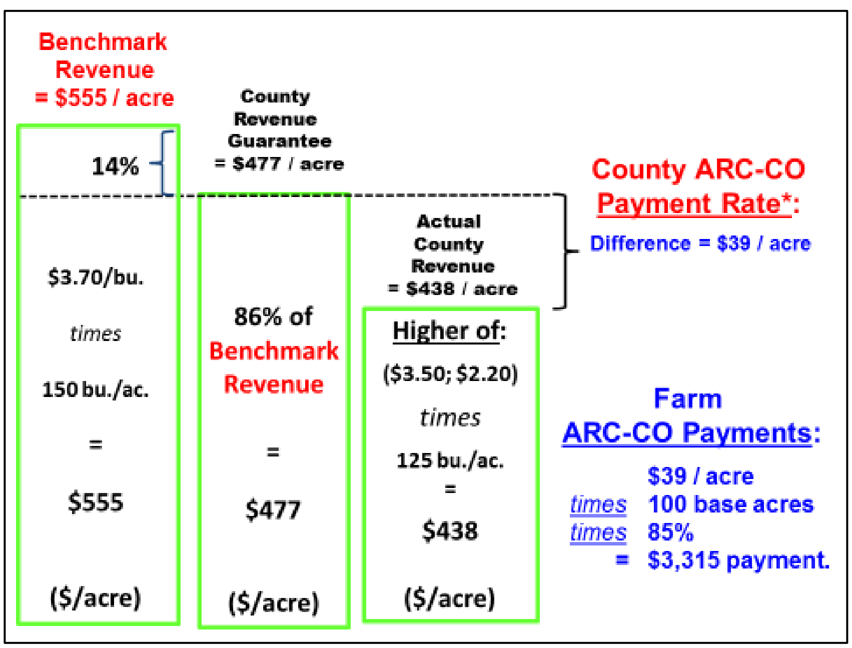
Payment triggered when actual county revenue drops below 86% of county revenue guarantee



Source: Compiled by CRS based on the 2018 farm bill (P.L. 115-334).

Notes: MYAP = market-year average farm price; MAL = Marketing Assistance Loan program; OA = Olympic average (excluding high and low years). The ARC-CO payment rate is capped at 10% of the benchmark revenue.

Figure 6. ARC-CO: Low Revenue Scenario for Corn



Source: Compiled by CRS based on the 2018 farm bill (P.L. 115-334).

Notes: Assumes five-year average price (excluding high and low years) is $3.70 per bushel and five-year average yield (excluding high and low years) is 150 bushels per acre. In this example, the maximum potential ARC-CO payment rate is $55.50 per acre (10% of the benchmark revenue of $555 per acre).

Individual ARC (ARC-IC)

Instead of an ARC-CO revenue guarantee on a crop-by-crop basis, farmers could select a farm-level guarantee that includes all covered commodities on a farm under one revenue guarantee. The farm-level revenue guarantee is again based on a five-year moving average of farm-level yields for each crop year, multiplied by the higher of the reference price or the MYAP, that aggregates all crop revenue into a single, whole-farm guarantee.

The individual ARC payment formula is 65% *times* the number of total base acres for the farm *times* the difference between the whole-farm revenue guarantee and the actual whole-farm crop revenue. The calculation for the guarantee and actual revenue are based on the aggregation of all covered commodities on the farm using individual farm yields instead of county yields.[54]

Decoupled Payments Made on Base Acres

A participating farmer does not have to plant or harvest a covered commodity to receive a PLC or ARC payment. However, a portion of the farm's base acres must be enrolled in either PLC or ARC for that covered commodity. This is because ARC-CO, ARC-IC, and PLC payments are decoupled: Payments are made on a portion of a crop's enrolled base acres rather than actual production. If ARC-CO or PLC program payments are triggered, then they are made on 85% of the producer's base acres that were enrolled for that covered commodity irrespective of actual plantings. ARC-IC payments are made on a reduced 65% of base acres.

Payments are made with a lag of approximately one year, as a full 12-month marketing year must be completed to compile the annual price and yield data necessary for USDA's calculations. According to statute (Section 1106 for PLC, Section 1107 for ARC), USDA is to announce payments no later than 30 days after the end of each marketing year. However, the actual payments may not be made prior to October 1 after the end of the applicable marketing year for the covered commodity. The marketing year varies by crop. For example, the marketing year for corn or soybeans harvested in fall 2019 ends on August 31, 2020. Thus, corn and soybean payments must be announced by September 30, 2020, but may not be made before October 1, 2020.

Payment Limits

The enacted 2018 farm bill sets a $125,000 per-person cap on the total combined payments of PLC and ARC for all covered commodities on a farming operation except peanuts, which has a separate $125,000 limit. In addition, a provision in the 2018 farm bill (Section 1603) specifies that any reductions in PLC and ARC payments due to sequestration must be applied before evaluating payment limit criteria.[55] The 2018 farm bill (Section 1703) removed MAL program payments from any payment limit criteria.

Payment limits may be doubled if the farm operator has a spouse. On family farming operations, all family members ages 18 or older are deemed to meet AEF criteria and are eligible for a separate payment limit. Prior to the 2018 farm bill, family membership was based on lineal

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[54] An example of ARC-IC is available in FSA, "2014 Farm Bill Fact Sheet: Base Acre Reallocation, Yield Updates, Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC)," September 2014.

[55] Sequestration is a process to reduce federal spending through automatic, largely across-the-board reductions that permanently cancel mandatory and/or discretionary budget authority. See Appendix A in CRS Report R45230, *Agriculture and Related Agencies: FY2019 Appropriations*, by Jim Monke.

ascendants or descendants but was also extended to siblings and spouses. The 2018 farm bill (Section 1703(a)(1)(B)) expands the definition of *family farm* to include cousins, nephews, and nieces.[56]

Miscellaneous Payment Programs

Producers of upland cotton may also benefit from payments under two 2018 farm bill provisions: Section 1203(b), which provides economic adjustment assistance to users of upland cotton, and Section 1201(b)(2), which authorizes cotton storage cost reimbursements under certain market conditions.

Economic adjustment assistance payments are made to domestic users for all documented use of upland cotton on a monthly basis, regardless of the origin of the upland cotton (imported or domestic). The payment rate is $0.03 per pound. Although the payments are made to cotton users, at least a portion of the payment is likely returned to producers in the form of higher prices associated with the increased demand from domestic users.

The cotton storage cost reimbursement is generally referred to as a storage credit, since it is used to reduce the loan repayment rate by a portion of the accrued storage costs for upland cotton that has been placed under a MAL loan. It does not involve any actual CCC budgetary outlay but rather is a reduction in potential receipts from the CCC budget. The availability of a cotton storage credit is determined by the relationship between the MAL rate for upland cotton, the weekly announced average world price, and the accrued interest and storage charges specific to each bale of cotton placed under the MAL program.

Interaction with Federal Crop Insurance

Federal crop insurance directly intersects with farm programs when producers choose between the ARC and PLC programs. For producers who select the PLC, additional price protection is available by purchasing Supplemental Coverage Option (SCO). SCO is a crop insurance product that was permanently authorized under the 2014 farm bill (Section 11003). SCO is designed to cover part of the deductible on a producer's underlying crop insurance policy. SCO is not available for base acres enrolled in ARC.

Dairy and Sugar Programs

The sugar (Subtitle C) and dairy (Subtitle D) programs are essential parts of Title I of the 2018 farm bill. However, their programs differ markedly from the MAL, PLC, and ARC programs. Neither dairy nor sugar program benefits are subject to any per-person payment limit. In addition, the commodities themselves differ from the other Title I commodities (primarily grain and oilseed crops) in the nature of their output—fluid milk and refined sugar, how these commodities are processed and stored, and the markets that they are sold into. As a result, the dairy and sugar programs are briefly discussed below but are described in more detail in other reports.[57]

[56] For a discussion of program eligibility criteria and payment limits, see CRS Report R45659, *U.S. Farm Program Eligibility and Payment Limits Under the 2018 Farm Bill (P.L. 115-334)*, by Randy Schnepf and Megan Stubbs.

[57] For details on changes to these programs under the 2018 farm bill, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy; and CRS In Focus IF11188, *2018 Farm Bill Primer: Dairy Programs*, by Joel L. Greene.

The Dairy Margin Coverage Program

The current U.S. dairy program—known as the Dairy Margin Coverage (DMC) program—was first authorized by the 2014 farm bill under the previous name of Margin Protection Program (MPP). The DMC offers milk producers a range of milk price margin protection levels based on their historical milk production. The milk margin is defined as the difference between the farm price per hundred pounds (cwt) of milk and the price of a representative feed ration based on USDA-announced prices for milk and major feed ingredients (corn, soymeal, and alfalfa hay). The DMC pays participating dairy producers the difference (when positive) between a producer-selected DMC margin protection level and the actual national milk margin. Producers must sign up for the program and pay an administrative fee of $100. Producers choose coverage either at the free $4.00/cwt margin or pay a premium that increases for higher milk production coverage levels and higher margin protection thresholds.

The 2018 farm bill significantly revised the margin program, including renaming it as the DMC. Premium rates for the first 5 million pounds of milk coverage were lowered; the range of margin protection for the first 5 million pounds of production was expanded (the previous range was $4.50/cwt to $8.00/cwt; the new range is $4.50/cwt to $9.50/cwt); the range of margin protection available for the production beyond the first 5 million pounds retains the previous $4.50-$8.00/cwt range of choices but with slightly higher premiums; and producers may now cover a larger quantity of milk production (up to 95% of their historical base production). DMC is authorized through December 31, 2023.[58]

Also, under the 2018 farm bill, dairy producers may receive a 25% discount on their premiums if they select and lock in their margin and production coverage levels for the entire five years (calendar years 2019-2023) of the DMC program. Otherwise, producers may select coverage levels annually. Also under DMC, dairy producers may apply to USDA for reimbursement of MPP premiums paid, less any payments received, during calendar years 2014-2017.

Unlike MPP, the DMC program allows dairy producers to participate in both margin coverage and the Livestock Gross Margin-Dairy insurance program that insures the margin between feed costs and a designated milk price.[59]

The Sugar Program

Current law mandates that raw cane and refined beet sugar prices are supported through a combination of limits on domestic output that can be sold (marketing allotments), nonrecourse marketing assistance loans for domestic sugar (but at the processor level), quotas that limit imports, and a sugar-to-ethanol backstop program (Feedstock Flexibility Program).[60] These sugar program features result in essentially no federal outlays. The only change to the sugar program under the 2018 farm bill was a 5% increase in the MAL rate for raw cane and refined beet sugar (**Table 1**).

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[58] For a description of the dairy program prior to the 2018 farm bill, see CRS In Focus IF10833, *Dairy Provisions in the Bipartisan Budget Act (P.L. 115-123)*, by Joel L. Greene; CRS Report R45044, *Federal Milk Marketing Orders: An Overview*, by Joel L. Greene; and CRS In Focus IF10750, *Farm Bill Primer: Dairy Safety Net*, by Joel L. Greene.

[59] RMA offers the Livestock Gross Margin-Dairy program under the federal crop insurance program. For more information, see RMA's Livestock Gross Margin at https://www.rma.usda.gov/en/Topics/Livestock.

[60] For a description of the sugar program prior to the 2018 farm bill, see CRS In Focus IF10689, *Farm Bill Primer: Sugar Program*, by Mark A. McMinimy.

U.S. producers of both sugar and milk receive important price support via import protection from international competitor products under tariff-rate quotas (TRQs).[61] Such TRQ support does not incur a direct cost to the federal government. Instead, domestic consumers bear the costs. For example, despite incurring no federal outlays, the U.S. government notifies sugar TRQ protection annually to the World Trade Organization as market price support (valued at over $1.4 billion in 2014).

Agricultural Disaster Assistance Programs

Four disaster assistance programs that focus primarily on livestock and tree crops were permanently authorized in the 2014 farm bill. These disaster assistance programs provide federal assistance to help farmers and ranchers recover financially from natural disasters, including drought and floods.[62] Participation is free.

- The **Livestock Indemnity Program (LIP)** compensates producers at a rate of 75% of market value for livestock mortality or livestock sold at a loss. Eligible loss conditions may include (1) extreme or abnormal damaging weather that is not expected to occur during the loss period for which it occurred, (2) disease that is caused or transmitted by a vector and is not susceptible to control by vaccination, and (3) an attack by animals reintroduced into the wild by the federal government or protected by federal law.
- The **Livestock Forage Disaster Program (LFP)** provides payments to eligible livestock producers who have suffered grazing losses on drought-affected pastureland (including cropland planted specifically for grazing) or on rangeland managed by a federal agency due to a qualifying fire.
- The **Tree Assistance Program (TAP)** provides payments to eligible orchardists and nursery growers to replant or rehabilitate trees, bushes, and vines damaged by natural disasters, disease, and insect infestation. Eligible losses must exceed 15% after adjustment for normal mortality. Payments cover 65% of the cost of replanting trees or nursery stock and 50% of the cost of rehabilitation (e.g., pruning and removal).[63]
- The **Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP)** provides payments to producers of livestock, honey bees, and farm-raised fish as compensation for losses due to disease, adverse weather, feed or water shortages, or other conditions (such as wildfires) that are not covered under LIP or LFP.

The 2018 farm bill amended the permanent agricultural disaster assistance programs by expanding the definition of *eligible producer* to include Indian tribes or tribal organizations. It also expanded payments under LIP for livestock losses caused by disease and for losses of unweaned livestock that occur before vaccination. It increased replanting and rehabilitation payment rates for orchardists who are beginning farmers or veterans under TAP. Finally, it

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[61] For a discussion of the cost of TRQ protection, see CRS Report R43817, *2014 Farm Bill Provisions and WTO Compliance*, by Randy Schnepf.

[62] See CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs; and CRS In Focus IF10565, *Federal Disaster Assistance for Agriculture*, by Megan Stubbs.

[63] Beginning and veteran producers receive 75% of the cost of replanting and 75% of the cost of rehabilitation.

removed payment limits on ELAP. Of the four disaster assistance programs, only the LFP is now subject to the $125,000 per-person payment limit.

Noninsured Crop Disaster Assistance Program (NAP)

NAP is available for production of all agricultural commodities that are not covered by a federal crop insurance policy.[64] NAP was permanently authorized by the 1996 farm bill (Federal Agriculture Improvement and Reform Act; P.L. 104-127). The 2018 farm bill (Section 1601) amended NAP by increasing the per-crop signup fee to $325 per crop, or $825 per producer per county, but not to exceed $1,950 per producer. Also, NAP eligibility was expanded to include crops that may be covered by select forms of crop insurance but only under whole farm plans or weather index policies. The 2018 farm bill also amended the payment calculation to consider the producer's share of the crop.

NAP offers both catastrophic coverage (a crop loss of at least 50% valued at 55% of the average market price) and additional buy-up coverage (ranging from 50% to 65% of established yields and 100% of the average market price). The 2018 farm bill made buy-up coverage permanent, added data collection and program coordination requirements, and created separate payment limits for catastrophic ($125,000 per person) and buy-up ($300,000 per person) coverage.

Estimated Cost of the Commodity Title

CBO projects USDA spending for Title I farm commodity and disaster programs under the 2018 farm bill at $31.3 billion for the five-year 2019-2023 period.[65] This translates to $6.3 billion annually, including projected annual outlays of $4.1 billion for PLC and $1.2 billion for ARC (**Table 2**). This contrasts with estimated annual outlays on Title I programs under the 2014 farm bill of $7.2 billion, including $1.8 billion for PLC and $3.3 billion for ARC.

Under the 2014 farm bill, most acres of corn, soybeans, and wheat—the three largest crops produced annually in the United States—were enrolled in ARC (93%, 97%, and 56%, respectively). This preference for enrollment in ARC contributed to larger annual payment outlays under ARC ($3.3 billion per year on average) than PLC ($1.8 billion per year) under the 2014 farm bill. CBO's spending projections assume that a large proportion of producers will switch from participating in ARC to PLC under the 2018 farm bill (**Figure 7**). The assumed shift in participation between the two programs is driven by projections of farm prices for major program crops to track near or below PLC reference prices throughout the 10-year projection period, thus implying greater potential for PLC payments.

The substantial projected shift in participation from ARC to PLC is projected to result in significantly larger annual outlays under the PLC program ($4.1 billion per year) than under the ARC program ($1.2 billion per year) under the five-year life of the 2018 farm bill, crop years 2019-2023 (**Table 2** and **Figure 8**). Annual program outlays can be highly variable. This is because spending on the farm revenue support programs—MAL, PLC, and ARC—is market-driven, and disaster assistance payments are associated with unpredictable acts of nature. Given the counter-cyclical design of the PLC and ARC programs, if commodity prices turn out to be higher than projected, then outlays will be lower than projected levels (and vice versa).

[64] See CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

[65] For a discussion of CBO's score and spending projections for all 12 titles of the 2018 farm bill, see CRS Report R45425, *Budget Issues That Shaped the 2018 Farm Bill*, by Jim Monke.

Table 2. Historic and Projected Annual Outlays for Title I: 2014 and 2018 Farm Bills

Annual averages in millions of dollars

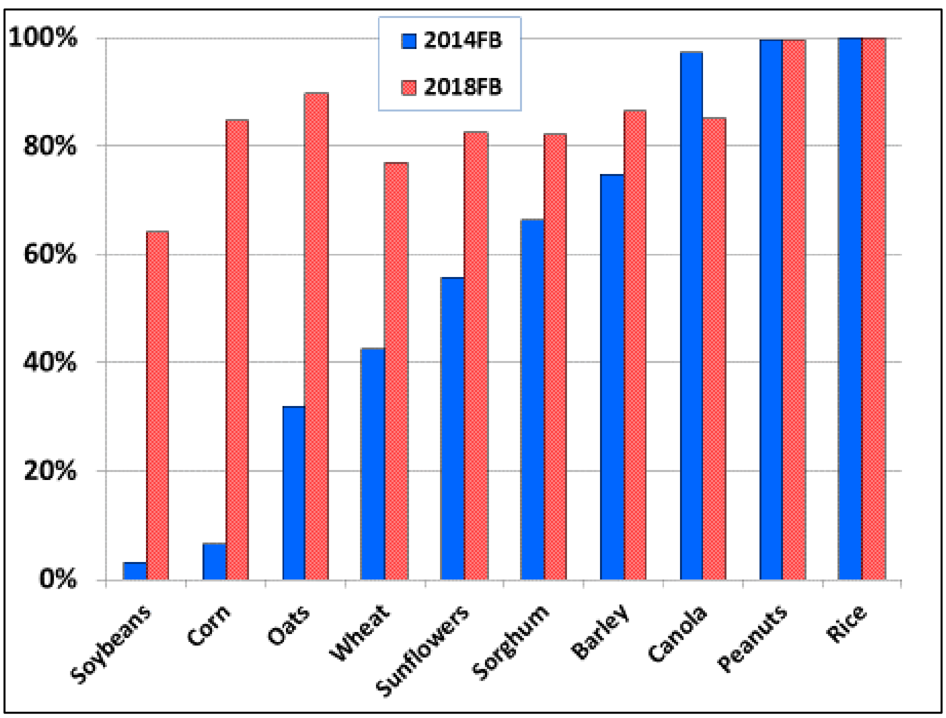
Title I Program Category	2014 Farm Bill: 2014-2018	2018 Farm Bill: 2019-2023
Price Loss Coverage Program	$1,787	$4,140
Agricultural Risk Coverage Program	$3,295	$1,231
Nonrecourse Marketing Assistance Loan Program	$200	$51
Dairy Margin Coverage program	$75	$171
Agriculture Disaster Assistance	$1,802	$379
Other	$62	$296
Total Cost of Title I	**$7,222**	**$6,268**

Source: Data for the 2014 farm bill are compiled by CRS from FSA. Data projections for the 2018 farm bill are from the CBO January 2019 baseline for farm programs.

Note: Farm program outlays under the 2014 farm bill are not finalized (as of April 19, 2019), in part, due to the long delay associated with collecting the full marketing year of data needed for the calculations of both PLC and ARC payments.

Figure 7. PLC Participation Rate: Pre- and Post-2019

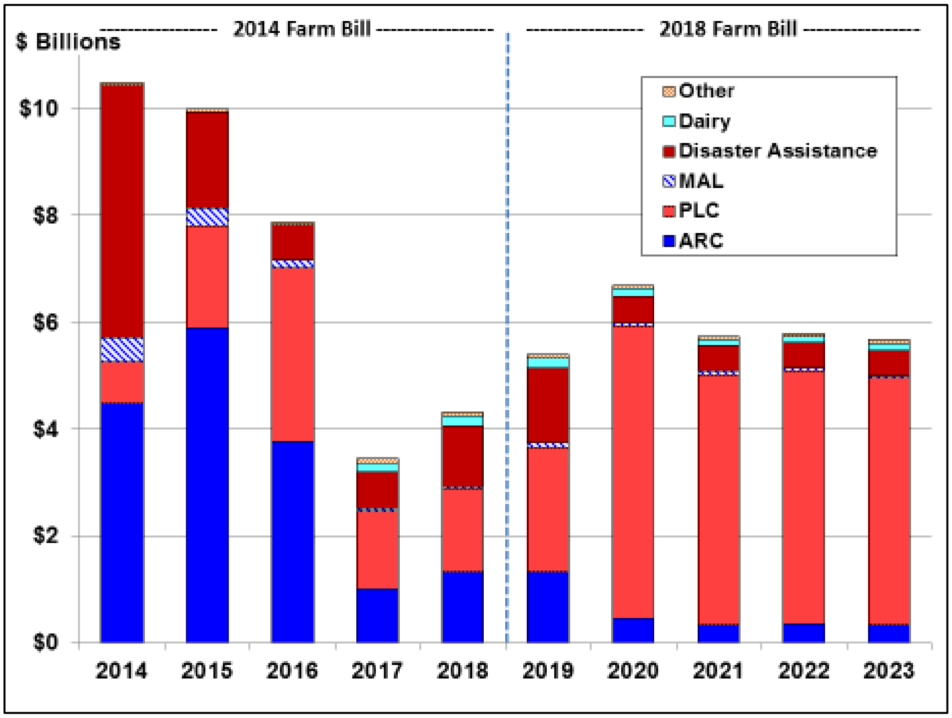
Percentage of base acres enrolled in PLC



Source: Compiled by CRS from CBO, January 2019 baseline for farm programs.

Notes: PLC participation for rice and peanut base acres is projected to remain near 100%. ARC-CO participation is implied as the difference between 100% and the projected PLC participation rate. ARC-IC participation under the 2014 farm bill averaged less than 1% of base acres per covered commodity.

Figure 8. Annual Outlays for Title I Farm Revenue Support Programs, 2014-2023



Source: Compiled by CRS, using historical data (2014-2018) from ERS farm income and projections (2019-2023) from CBO, baseline for USDA mandatory programs, January 2019.

Notes: Farm program outlays under the 2014 farm bill are not finalized (as of May 13, 2019). Also, the timing of payments complicates year-to-year comparisons. For example, the large disaster assistance payments ($4.8 billion) paid in 2014 were associated with production losses from previous crop years and prior to implementation of the 2014 farm bill. The "other" category includes economic adjustment assistance to users of upland cotton, general program implementation costs, and miscellaneous programs. It does not include payments made by USDA under CCC authority (see CRS Report R44606, *The Commodity Credit Corporation: In Brief*, by Megan Stubbs) such as Cotton Ginning Cost-Share payments and Market Facilitation Program payments (see CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*, by Randy Schnepf et al.).

Appendix. Comparison of Major Title I Provisions in Prior Law and the Enacted 2018 Farm Bill, by Subtitle

This appendix provides a side-by-side comparison of provisions from Title I (the Commodity title) of the 2018 farm bill with prior law—that is, provisions from Title I of the 2014 farm bill (P.L. 113-79) as amended by subsequent law including the Bipartisan Budget Agreement (BBA) of 2018 (P.L. 115-123).

The BBA made substantial changes to both the dairy program and the treatment of cotton under the PLC and ARC programs.[66]

Each subtitle (A-G) is individually examined in a separate table with the exception of Subtitle C (Sugar) and Subtitle D (Dairy), which are examined in more detail by other CRS products. This appendix includes the following tables by subtitle.

- Table A-1. Subtitle A—Commodity Policy
- Table A-2. Subtitle B—Marketing Loans
- Table A-3. Subtitle E—Supplemental Agricultural Disaster Assistance
- Table A-4. Subtitle F—Noninsured Crop Assistance
- Table A-5. Subtitle G—Administration

For information on the dairy and sugar programs and their explicit legislative text, see:

- CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy;
- CRS In Focus IF10750, *Farm Bill Primer: Dairy Safety Net*, by Joel L. Greene;
- CRS In Focus IF10833, *Dairy Provisions in the Bipartisan Budget Act (P.L. 115-123)*, by Joel L. Greene;
- CRS In Focus IF10223, *Fundamental Elements of the U.S. Sugar Program*, by Mark A. McMinimy; and
- CRS Report R43998, *U.S. Sugar Program Fundamentals*, by Mark A. McMinimy.

[66] For more information on the BBA and the associated changes to the dairy program and the treatment of cotton under the PLC and ARC programs, see CRS In Focus IF10833, *Dairy Provisions in the Bipartisan Budget Act (P.L. 115-123)*, by Joel L. Greene; and CRS Report R45143, *Seed Cotton as a Farm Program Crop: In Brief*, by Randy Schnepf.

Table A-1. Subtitle A—Commodity Policy

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Definitions:	
Actual crop revenue. The amount determined by the Secretary under the Agriculture Risk Coverage program for each covered commodity for a crop year. **(7 U.S.C. §9011(1))**	Continues prior law.
Agriculture Risk Coverage (ARC): "shallow loss" revenue coverage provided under the ARC program. **(7 U.S.C. §9011(2))**	Continues prior law.
ARC guarantee. The amount determined by the Secretary under the ARC program for each covered commodity for a crop year. **(7 U.S.C. §9011(3))**	Continues prior law.
Base acres. For purposes of calculating farm program payments, individual crop-specific base acreages are the number of historical program acres of a specific covered commodity on a farm as established under the 2008 farm bill as in effect on September 30, 2013 (except upland cotton), subject to adjustments (see 7 U.S.C. §9012 below). The term *base acres* includes any generic base acres planted to a covered commodity (see 7 U.S.C. §9012 below). **(7 U.S.C. §9011(4))**	Continues prior law.
County coverage. Type of coverage under the ARC program to be obtained by the producer at the county level. **(7 U.S.C. §9011(5))**	Continues prior law.
Covered commodities. Wheat, oats, barley (including wheat, oats, and barley used for haying and grazing), corn, grain sorghum, long-grain rice, medium-grain rice, pulse crops, soybeans, other oilseeds, and peanuts. Effective beginning with the 2018 crop year, the term *covered commodity* includes seed cotton. **(7 U.S.C. §9011(6))**	Continues prior law.
Effective price. The price calculated by the Secretary under the Price Loss Coverage (PLC) program for each covered commodity for a crop year to determine whether PLC payments are required to be provided for that crop year. **(7 U.S.C. §9011(7))** The effective price is the higher of (1) the national market-year average price (MYAP) received by producers during the 12-month marketing year for the covered commodity, as determined by the Secretary, or (2) the national average loan rate for a marketing assistance loan. The effective price for barley is the all-barley price.	Continues prior law.
No comparable definition.	**Effective reference price.** The term *effective reference price*, with respect to a covered commodity for a crop year, means the lesser of the following: (A) 115% of the reference price for such covered commodity or (B) the greater of (i) the reference price for such covered commodity or (ii) 85% of the average of the MYAP of the covered commodity for the most recent five crop years, excluding each of the crop years with the highest and lowest MYAP. **(§1101)**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Extra-long-staple (ELS) cotton. Cotton that is (A) produced from pure strain varieties of the Barbadense species or any hybrid of the species, or other similar types of ELS cotton, designated by the Secretary, having characteristics needed for various end uses for which U.S. upland cotton is not suitable, and grown in irrigated or other designated U.S. cotton-growing regions; and (B) ginned on a roller-type gin or other authorized gin for experimental purposes. **(7 U.S.C. §9011(8))**	Continues prior law.
Generic base acres. The number of cotton base acres in effect under Section 1001 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. §8702), as adjusted pursuant to Section 1101 of such act (7 U.S.C. 8711), as in effect on September 30, 2013 **(7 U.S.C. 9011(9))**, subject to any adjustment or reduction. **(7 U.S.C. 9012(d))**.	Continues prior law.
Individual coverage. Type of coverage under the ARC program to be obtained by the producer at the farm (not county) level. **(7 U.S.C. §9011(10))**	Continues prior law.
Medium-grain rice: Includes short-grain rice and temperate japonica rice. **(7 U.S.C. §9011(11))**	Continues prior law.
Other oilseed. A crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or, if designated by the Secretary, another oilseed. **(7 U.S.C. §9011(12))**	Continues prior law.
Payment acres. The number of acres determined for a farm, as determined under 7 U.S.C. 9014, that are eligible for payments under the PLC or ARC programs. **(7 U.S.C. §9011(13))**	Continues prior law.
Payment yield. For a covered commodity, the yield used to make counter-cyclical payments under the 2008 farm bill as in effect on September 30, 2013, or the yield established under the PLC program. (7 **U.S.C.9011(14))**	Continues prior law, but with a one-time option to update payment yields (see **(7 U.S.C. §9013)** for details).
Price Loss Coverage (PLC). Coverage provided under the PLC program. **(7 U.S.C. 9011(15))**	Continues prior law.
Producer. Generally, an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing a crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. For a grower of hybrid seed, the existence of a hybrid seed contract and other program rules shall not adversely affect the ability to receive a payment. **(7 U.S.C. §9011(16))**	Continues prior law.
Pulse crop. Dry peas, lentils, small chickpeas, and large chickpeas. **(7 U.S.C. §9011 (17))**	Continues prior law.
Reference prices. With respect to a covered commodity for a crop year: • For wheat, $5.50 per bushel (bu.).	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
• For corn, \$3.70 per bu. • For grain sorghum, \$3.95 per bu. • For barley, \$4.95 per bu. • For oats, \$2.40 per bu. • For long-grain rice, \$14.00 per hundredweight (cwt). • For medium-grain rice, \$14.00 per cwt. • For soybeans, \$8.40 per bu. • For other oilseeds, \$20.15 per cwt. • For peanuts, \$535.00 per ton. • For dry peas, \$11.00 per cwt. • For lentils, \$19.97 per cwt. • For small chickpeas, \$19.04 per cwt. • For large chickpeas, \$21.54 per cwt. • For seed cotton, \$0.367 per lb. **(7 U.S.C. §9011(18))**	
Secretary. The Secretary of Agriculture. **(7 U.S.C. §9011(19))**	Continues prior law.
Seed cotton. Unginned upland cotton that includes both lint and seed. **(7 U.S.C. §9011(20))**	
State. Each of the U.S. states, the District of Columbia, the Commonwealth of Puerto Rico, and any other U.S. territory or possession. **(7 U.S.C. §9011(21))**	Continues prior law.
Temperate japonica rice. Rice that is grown in high altitudes or temperate regions of high latitudes with cooler climate conditions in the Western United States, as determined by the Secretary, for the purpose of the reallocation of base acres, the establishment of a reference price and an effective price, and the determination of the actual crop revenue and ARC guarantee. **(7 U.S.C. §9011(22))**	Continues prior law.
Transitional yield. Defined in Section 502(b) of the Federal Crop Insurance Act **(7 U.S.C. §1502(b)(11))** as the maximum average production per acre or equivalent measure that is assigned to acreage for a crop year by the Federal Crop Insurance Corporation whenever the producer fails to certify that acceptable documentation of production and acreage for the crop year is in the possession of the producer or present the acceptable documentation. **(7 U.S.C. §9011(23))**	Continues prior law.
United States. When used in a geographical sense, all of the states. **(7 U.S.C. §9011(24))**	Continues prior law.
United States premium factor. The percentage by which the difference in the U.S. loan schedule premiums for Strict Middling 1 1/8-inch upland cotton and for Middling 1 3/32-inch	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
upland cotton exceeds the difference in the applicable premiums for comparable international qualities. **(7 U.S.C. §9011(25))**	
Base Acres	
One-time reallocation of base acres among covered commodities. Crop-specific base acres were subject to a producer's one-time choice to retain base acres or undertake a reallocation of total farm base acres among covered commodities based on average shares of planted base by commodity during the 2009-2012 period. Generic base acres are retained and may not be reallocated. **(7 U.S.C. §9012(a))**	No comparable provision. Base acres are included through the retention of crop-specific base acres under prior law.
Seed cotton base acres. Not later than May 10, 2018, the Secretary shall require the owner of a farm to allocate all generic base acres based on whether the farm has a recent history of covered commodities (including seed cotton) being planted or prevented from being planted during the 2009-2016 crop years. If a farm has no such recent history, then the farm owner allocates the farm's generic base to unassigned crop base for which no ARC or PLC payments may be made. If a farm has such a recent history, then the farm owner allocates the farm's generic base among seed cotton and other covered commodities as (A) to seed cotton base acres in a quantity equal to the greater of 80% of generic base acres or the average of seed cotton acres planted or prevented from being planted on the farm during the 2009-2012 crop years (not to exceed the farm's total generic base acres) or (B) to commodity-specific base acres in proportion to each crop's share of planted (or prevented from being planted) acreage during 2009-2012. Following the base allocation under either (A) or (B), any residual generic base acres shall be allocated to unassigned crop base for which no ARC or PLC payments may be made. If a farm owner fails to make an election for generic base, then the farm owner shall be deemed to have elected to allocate all generic base acres in accordance with formulation (A) above. **(7 U.S.C. §9014(b)(4))**	Continues prior law.
Adjustments to base. Base acres are increased/decreased when land leaves/enters conservation programs. **(7 U.S.C. §9012(b))**	Continues prior law.
Prevention of excess base acres. Base is reduced if the sum of the base acres for the farm (including any new oilseed acreage and generic base acres) plus any acreage in the Conservation Reserve Program or the Wetlands Reserve Program (or any other federal conservation program that makes payments in exchange for not producing a crop) exceeds the actual cropland acreage on the farm. An exception shall be made in the case of certain double-cropped acreage as determined by the Secretary. The owner of the farm shall be given an opportunity to select the base acres that will be reduced. **(7 U.S.C. §9012(c))**	Continues prior law with technical correction to add specificity on updating reference to wetlands reserve program to wetland reserve easements under the Agricultural Conservation Easement Program. **(§1102(a))**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Reduction of base acres. The farm owner may reduce, at any time, base acres for any covered commodity. Such reduction shall be permanent. Base is reduced proportionately when acreage has been subdivided and developed for multiple residential units or other nonfarming uses. **(7 U.S.C. §9012(d))**	Reduction of base acres is the same as prior law of **(7 U.S.C. §9012(d)(1-2))**, but with two new conditions below. **(§1102(b))**
No comparable provision.	**Treatment of base planted to grass or pasture.** If all cropland on a farm (including idled or fallow land) was planted to grass or pasture during January 1, 2009, to December 31, 2017, then all base acres and payment yields on that farm are retained, but no payment shall be made to those base acres under ARC or PLC during the 2019-2023 crop years. Furthermore, the producers on such a farm are not eligible to change their election option of ARC or PLC. **(§1102(b))**
No comparable provision.	**Prohibition on reconstitution of farm.** The Secretary shall ensure that a farm may not be reconstituted to void or change the treatment of base acres. **(§1102(b))**
Payment Yields	
Payment yields. For making PLC program payments, all covered commodities must use a program yield to derive a per-acre payment rate. In this regard, the Secretary shall establish a program yield for each farm for any designated oilseed for which a payment yield was not established under Section 1102 of the 2008 farm bill. **(7 U.S.C. §9013(a))**	Continues prior law.
Payment yield for designated oilseeds. For designated oilseeds, such a payment yield on a farm equals the product of the average yield per planted acre for the 1998-2001 crop years (excluding years in which acreage planted was zero) and the ratio of the national average yield for the 1981-1985 crops and the national average yield for the 1998-2001 crops. If the yield per planted acre for a designated oilseed for any of the 1998-2001 crop years was less than 75% of the county yield for that designated oilseed, the Secretary shall assign a yield "plug" for that crop year equal to 75% of the county yield. **(7 U.S.C. §9013(b))** For other covered commodities, see the discussion under **7 U.S.C. §9013 (c)-(e)**.	To make PLC payments, this provision continues the Secretary's authority to establish payment yields for each farm for any designated oilseed that does not have a payment yield under the 2014 farm bill. For any oilseed that is designated on or after the date of enactment of the 2018 farm bill, the payment yield shall be calculated as 90% of the most recent five-year-average yield (excluding any year in which the yield was zero). **(§1103(a))**
Absence of payment yield. In the case of a covered commodity on a farm for which base acres have been established or that is planted on generic base acres, if no payment yield has been established, the Secretary shall establish an appropriate payment yield by taking into consideration the farm program payment yields applicable to that covered commodity for similarly situated farms. The use of such data in an appeal, by the Secretary or by the producer, shall not be subject to any other provision of law. **(7 U.S.C. §9013(c))**	Continues prior law.
Updating payment yields for PLC. The owner of a farm was given a one-time opportunity to update, on a covered commodity-by-covered-commodity basis, the payment yield used in calculating PLC payments for each covered commodity for which the PLC	**Single opportunity to update yields.** Provides a one-time opportunity for a farm owner to update program yields on a covered-commodity by covered-commodity basis for use in calculating any PLC payment. Yields may be updated as 90% of average yield per planted acre

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
election was made. The election shall be made at a time and manner to be in effect beginning with the 2014 crop year as determined by the Secretary. The PLC payment yield update was equal to 90% of the average of the yield per planted acre for the covered commodity for the 2008-2012 crop years, excluding any crop year in which the acreage planted to the covered commodity was zero. **(7 U.S.C. §9013(d))**	for 2013-2017 crop years but subject to a commodity-specific adjustment factor (equal to the ratio of the 2008-2012 national average yield over the 2013-2017 national average yield) to account for national increase in trend yield. The yield update election must be made so as to be in effect beginning with the 2020 crop year. **(§1103(b))**
Yield plug. If the yield for any of the 2008-2012 crop years was less than 75% of the average county yield, a "plug" yield was used for that crop year equal to 75% of the county average for 2008-2012. (7 **U.S.C. §9013(d)(4))**	If the farm-level yield is less than 75% of the average county yield for a covered commodity for any of the years (excluding any year in which the yield was zero), then the Secretary shall assign 75% of the 2013-2017 average county yield for the covered commodity for that crop year. The election must be made so as to be in effect beginning with the 2020 crop year. **(§1103(b))**
Payment yield for seed cotton. The payment yield for seed cotton for a farm shall be equal to 2.4 times the payment yield for upland cotton for the farm established under the 2008 farm bill as in effect on September 30, 2013. At the sole discretion of the owner of a farm with an established yield for upland cotton, the owner shall have a one-time opportunity to update the payment yield for upland cotton, as provided in **7 U.S.C. §9013(d)**, for the purpose of calculating the payment yield for seed cotton. **(7 U.S.C. §9013(e))**	The average yield for seed cotton per planted acre equals 2.4 times the average yield for upland cotton per planted acre. **(§1103(b))**
Payment Acres	
Payment acres. With respect to PLC and county-level ARC payments, payment acres are 85% of the base acres of a covered commodity on a farm. For individual (farm-level) ARC, the payment acres equal 65% of the base acres for all of the covered commodities on the farm. Generic base is eligible for payments if a covered commodity is planted on the farm. Specifically, for each crop year, generic base acres are attributed (i.e., temporarily designated as) base acres to a particular covered commodity base in proportion to that crop's share of total plantings of all covered commodities in that year. The amount of generic base attributed for a particular year cannot exceed the acreage planted to covered commodities in that year. (Use of double-cropping for payment calculations is not allowed unless the practice is approved by the Secretary.) **(7 U.S.C. §9014)**	Continues prior law.
Exclusion from payment acres. Payment acres may not include any crop subsequently planted during the same crop year on the same land for which the first crop is eligible for PLC or ARC payments unless the crop was approved for double cropping as determined by the Secretary. **(7 U.S.C. §9014(c))**	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Minimal payment acres. A producer on a farm may not receive PLC payments or ARC payments if the sum of the base acres on the farm is 10 acres or less except for socially disadvantaged farmers/ranchers or limited resource farmers/ranchers. **(7 U.S.C. §9014(d))**	Continues prior law but with new exemptions. First, a farmer may combine base acres from all farms in which the farmer has an interest. If this aggregate total for base acres is greater than 10 acres, then these acres are exempted from the prohibition on ARC and PLC payments. Also, two additional producer groupings—beginning farmers or ranchers and veteran farmers or ranchers—are excluded from the minimal base acres payment prohibition. **(§1104(1))**
Effect of planting fruits and vegetables on payment acres. Any crop may be planted without effect on base acres. However, payment acres on a farm are reduced in any crop year in which fruits, vegetables (other than mung beans and pulse crops), or wild rice (FVWR) have been planted on base acres. The reduction to payment acres is one-for-one for each acre planted to these crops in excess of 15% of base acres for either the PLC or county coverage under the ARC program and in excess of 35% of base acres for ARC individual coverage. **(7 U.S.C. §9014(e)(1-3))** No reduction to payment acres shall be made under this subsection, as determined by the Secretary, if FVWR are grown solely for conservation purposes and not harvested for use or sale or if a region has a history of double-cropping covered commodities with FVWR and the FVWR were so double-cropped on the base acres. **(7 U.S.C. §9014(e)(4))**	For each crop year for which FVWR are planted to base acres on a farm for which a reduction in payment acres is made under this subsection, the Secretary shall consider such base acres to be planted, or prevented from being planted, to a covered commodity for purposes of any adjustment or reduction of base acres. **(§1104(2))**
Unassigned crop base. Requires the Secretary to maintain information on generic base acres on a farm allocated as unassigned crop base under the formulation for seed cotton base acres. **(7 U.S.C. §9014(b)(4)(B,D); 7 U.S.C. §9014(f))**	Continues prior law.
Producer Election	
Producer election. For the 2014-2018 crop years, all producers involved in a single farm operation had to unanimously make a one-time, irrevocable election to obtain either (1) PLC or county-level ARC on a covered-commodity-by-covered-commodity basis or (2) ARC individual coverage applicable to all of the covered commodities on the farm. **(7 U.S.C. §9015)** **Note:** In Section 60101(a) of the Bipartisan Budget Act of 2018 (P.L. 115-123), producers of seed cotton base were given a one-time election for their seed cotton base between PLC and county-level ARC in the 2018 crop year. **(7 U.S.C. §9015(g))**	For the 2019-2020 crop years, all producers on a farm must unanimously make a one-time, irrevocable election to obtain either PLC or county-level ARC on a covered-commodity-by-covered-commodity basis. **(§1105 (1)-(2))** **Option to change producer election.** Notwithstanding **7 U.S.C. §9015(a),** amends current law to allow participating producers a one-time choice in crop year 2021 and each crop year thereafter to change their election choice between ARC and PLC. The new election shall apply to the crop year for which it is made and each crop year thereafter until another election is made. **(§1105(5))**
Failure to make a choice. Failure to make a unanimous election for the 2014 crop year results in no program payments to the farm for the 2014 crop year, and the producers on the farm are deemed to have elected PLC for all covered commodities on the farm for the 2015-2018 crop years. If all the producers on a farm selected ARC county coverage for a covered commodity, the Secretary could not make PLC payments to the producers on the farm with respect to that covered commodity. If all the producers on a farm selected	Failure to make a unanimous election for the 2019 crop year results in no program payments to the farm for the 2019 crop year, and producers on the farm are deemed to have elected the same coverage for the 2020-2023 crop years as was applicable for the 2015-2018 crop years. **(§1105(3))**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
individual coverage, payment calculations included the producer's share of all farms in the same state in which the producer has an interest and for which individual coverage was selected. Producers on a farm cannot reconstitute the farm to void or change a program election. **(7 U.S.C. §9015(c))**	
Annual filing for ARC and PLC. In accordance with its authority to implement these programs **(7 U.S.C. §1601),** USDA is directed to issue regulations. Such regulations require that eligible producers of covered commodities with base acres must execute and submit an ARC or PLC program contract not later than June 1 of the applicable year for each of 2016 through 2018 fiscal year contracts. **(7 CFR §1412.41)**	**Options for electronic filing and multi-year contract for ARC and PLC.** Producers may remotely and electronically sign annual contracts for ARC and PLC, and producers have the option to sign a multi-year contract for the ARC and PLC programs. **(§1706(b))**
Price Loss Coverage (PLC) Program	
PLC program. Establishes the PLC program for crop years 2014-2018. PLC payments are made on a farm where the owners have unanimously elected to participate in PLC on a covered-commodity-by-covered-commodity basis if the effective price is less than the reference price. **(7 U.S.C. §9016(a))**	Requires the Secretary to make PLC payments on a covered-commodity-by-covered-commodity basis where all of the producers on a farm have elected PLC for crop years 2019-2023 when the effective price for a crop year is less than the effective reference price. **(§1106(1)(D))**
PLC effective price. The higher of (1) the "MYAP received by producers during the 12-month marketing year" for the covered commodity, as determined by the Secretary, or (2) the national average loan rate for a marketing assistance loan. **(7 U.S.C. 9016(b))**	Continues prior law.
PLC effective price for barley. The all-barley price. **(7 U.S.C. 9016(f))**	Continues prior law.
PLC effective price for seed cotton. The MYAP for seed cotton, calculated as the quotient obtained by dividing (A) the sum obtained by adding (i) the product of the upland cotton lint MYAP and total U.S. upland cotton lint production, measured in pounds, and (ii) the product of the cottonseed MYAP and total U.S. cottonseed production, measured in pounds, by (B) the sum of total U.S. upland cotton lint production and total U.S. cottonseed production, both measured in pounds. **(7 U.S.C. §9016(h))**	Continues prior law.
Reference price for temperate japonica rice. The Secretary shall provide a reference price with respect to temperate japonica rice in an amount equal to 115% of the amount established for long-grain and medium-grain rice in order to reflect price premiums. **(7 U.S.C. §9016(g))**	To reflect price premiums, the reference price for temperate japonica rice equals $14.00 per cwt., as adjusted by the formula for calculating the effective reference price multiplied by the ratio of the simple average of the MYAP of medium-grain rice from crop years 2012-2016 divided by the simple average of the MYAP of all rice from crop years 2012-2016. **(§1106(3))**
PLC payment rate. The difference between the reference price in statute and the MYAP or loan rate, if higher. (7 **U.S.C. §9016(c))**	Defines the PLC payment rate for each covered commodity, for the crop years 2019-2023, as the difference between the effective reference price and the effective price for a crop year when the effective price is lower. Not later than 30 days after the end of each applicable 12-month marketing year for each covered commodity, the Secretary shall publish the PLC payment rate. **(§1106(2)(B))**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
PLC payment amount. If PLC payments for a covered commodity are triggered for any of crop years 2014-2018, the payment amount equals the payment rate times payment acres times payment yield. **(7 U.S.C. §9016(d))**	Continues prior law.
Timing of PLC payment. Payments shall be made beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity. **(7 U.S.C. §9016(e))**	Not later than 30 days after the end of each applicable 12-month marketing year for each covered commodity, the Secretary shall publish the PLC payment rate. **(§1106(2)(B))** **Insufficient data.** In the case of a covered commodity for which the Secretary cannot determine the payment rate for the most recent 12-month marketing year by the date described above, due to insufficient reporting of timely pricing data by one or more nongovernmental entities, the Secretary shall publish the payment rate as soon as practicable after the marketing year data are made available. **(§1106(2)(D))**
Agricultural Risk Coverage (ARC) Program	
ARC program. Establishes the ARC program as either a county-level, commodity-specific ARC or an individual whole-farm ARC. Under the "producer election" **(7 U.S.C. §9015)**, producers may select county-level ARC or PLC on a commodity-by-commodity basis for each farm or select individual farm-level ARC for all covered commodities on the farm. ARC payments for a crop year are triggered if the actual crop revenue is less than its ARC guarantee. Both the actual crop revenue and ARC guarantee are calculated differently based on the producer's election choice: either county- or farm-level ARC. **(7 U.S.C. §9017(a))**	Extends both the county- and individual-level ARC programs through 2023. Requires that payments are to be based on the physical location of the farm. **(§1107)**
Actual crop revenue. The actual crop revenue varies with the choice of county-level or farm-level ARC. County coverage for a crop year of a covered commodity: actual crop revenue per acre equals the actual average county yield per planted acre for a covered commodity times the higher of the MYAP or the national average marketing assistance loan rate. **Individual (farm-level) coverage.** Actual crop revenue per acre is the producer's share of the aggregated revenue per acre for all covered commodities planted on all farms for which individual coverage has been selected. Actual crop revenue per acre equals the sum of covered commodity revenue (total production of each covered commodity on such farms times the higher of (i) the MYAP or (ii) the national average loan rate) divided by the total planted acres of all covered commodities on such farms. **(7 U.S.C. §9017(b))**	Continues prior law.
ARC revenue guarantee. ARC guarantee per acre equals 86% times the benchmark revenue. The benchmark revenue varies with the choice of county-level or individual (farm-level) ARC. For county ARC coverage for a covered commodity for a crop year, benchmark revenue per acre equals the recent five-year average county yield (excluding the years with the highest	Continues ARC program as in current law through 2023. **(§1107(1)(A)-(B))**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
and lowest yields, or "Olympic average") times the covered commodity's Olympic MYAP for the most recent five crop years. For individual ARC coverage for a crop year, benchmark revenue is based on the producer's share of all covered commodities planted on all farms for which individual coverage has been selected and in which the producer has an interest. Benchmark revenue is the summation of Olympic five-year average revenue for each covered commodity aggregated across all farms with individual coverage, adjusted to reflect current-year planted acreage shares by covered commodity. **(7 U.S.C. §9017(c))**	
No comparable provision.	**Trend-adjusted yields.** Includes a trend-adjustment for both the average historical county yield (i.e., the five-year Olympic MYAP) and the actual average county yield per planted acre for the county, crop, and year in question. The yield adjustment should not exceed the trend-adjusted yield factor used to increase yield history under the federal crop insurance endorsement for that crop and county. **(§1107(1)(C)-(E))**
Yield plugs in ARC actual revenue and revenue guarantee calculations. If, for the covered commodity for any of the five most recent crop years, the yield per planted acre or historical county yield per planted acre is less than 70% of the transitional yield, then 70% of the transitional yield shall be used for those years. **(7 U.S.C. §9017(c)(4))**	Effective for the 2019-2023 crop years, if, for the covered commodity for any of the five most recent crop years, the yield per planted acre or historical county yield per planted acre is less than 80% of the transitional yield, then 80% of the transitional yield shall be used for those years**. (§1107(2)(C))**
Reference price in ARC revenue guarantee. The reference price is used if the MYAP for any of the five most recent crop years is lower than the reference price. **(7 U.S.C. §9017(c)(5))**	**Effective reference price in lieu of low MYAP.** For crop years 2019-2023, if the national MYAP during the 12-month marketing year for any of the five most recent crop years is lower than the effective reference price (defined under **§1101(8)**) for the covered commodity, the Secretary shall use the effective reference price for those years in calculating the ARC revenue guarantee. **(§1107(2)(F))**
ARC payment rate. The payment rate for a covered commodity, in the case of either county coverage or individual coverage, is equal to the lesser of (1) the amount that the ARC guarantee exceeds the actual crop revenue for the crop year or (2) 10% of the benchmark revenue for the crop year. **(7 U.S.C. §9017(d))**	Continues prior law. **(§1107(3)(A)-(C))**
ARC payment amount. If ARC payments are required to be paid for any of the 2014-2018 crop years, then the payment amount equals the payment rate times the payment acres. **(7 U.S.C. §9017(e))**	Extends ARC payments through crop year 2023. **(§1107(4))**
Timing of ARC payments. Payments shall be made beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity. **(7 U.S.C. §9017(f))**	Not later than 30 days after the end of each applicable 12-month marketing year for each covered commodity, the Secretary shall publish the ARC payment rate. **(§1107(3)(D))**
Additional duties of the Secretary. In providing ARC, the Secretary shall, to the maximum extent practical, (1) use all available information and analysis, including data mining, to check for anomalies in the determination of ARC payments; (2) calculate a separate actual	Continues additional duties of the Secretary as in current law with an additional specification regarding county yield determinations as follows:

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
crop revenue and ARC guarantee for irrigated and non-irrigated covered commodities, (3) for individual coverage, if the Secretary determines that the farm has planted acreage in a quantity that is insufficient to calculate a representative average yield for the farm, assign an average yield for a farm on the basis of the yield history of representative farms in the state, region, or crop reporting district, as determined by the Secretary; and (4) for county coverage, if the Secretary cannot establish the actual or benchmark county yield for each planted acre for a crop year for a covered commodity in the county, or the yield is an unrepresentative average yield for the county, assign an actual or benchmark county yield for each planted acre for the crop year for the covered commodity on the basis of the yield history of representative farms in the state, region, or crop reporting district, as determined by the Secretary. **(7 U.S.C. §9017(g))**	**Separate yields for irrigated and nonirrigated land.** In providing ARC, the Secretary shall calculate a separate actual crop revenue and agriculture risk coverage guarantee for irrigated and nonirrigated covered commodities. **(§1107(5)(A))** **Prioritize RMA data.** Effective for the 2019-2023 crop years, in the case of county coverage the Secretary shall assign an actual or benchmark county yield for each planted acre for the crop year for the covered commodity: (A) where county data collected by the Risk Management Agency (RMA) are sufficient to offer a county-wide insurance product, using the actual average county yield determined by RMA (i.e., prioritize RMA data in the calculation of both the guarantee and actual yield in each county); or (B) for any other county using (i) other sources of yield information, as determined by USDA, or (ii) the yield history of representative farms in the state, region, or crop reporting district, as determined by USDA. **(§1107(5)(D))**
No comparable provision.	**Reporting requirements.** USDA shall publish, for each covered commodity in each county, the county risk coverage guarantee, average historical county yield, and national average market price for each covered commodity in each county, not later than 30 days after the end of each applicable 12-month marketing year. In the event of insufficient data for a covered commodity, USDA shall rely on data from nongovernmental sources and publish the ARC data components within 60 days of the end of the marketing year. Similarly, USDA shall publish actual average county yield estimates by covered commodity including sources of data and information on any USDA evaluations of that data. **(§1107(6))**
No comparable provision.	**Administrative units.** Amends current law to allow, under certain circumstances, for the division of up to 25 counties nationwide into two separate administrative units for determining ARC payments. To be eligible, a county must (1) be larger than 1,400 square miles and (2) contain more than 190,000 base acres. Prior to any ARC payments for the 2019 crop, the FSA state committee, in consultation with the FSA county committee, may make a one-time election to divide a county into two administrative units to better reflect differences in weather patterns, soil types, or other factors. The election is in effect for the 2019-2023 crop years. Preference is given to the division of counties with greater variation in climate, soils, and expected productivity between the proposed administrative units. **(§1107(6))**
Producer Agreement	
Producer agreements. The Secretary may require producers to comply with certain provisions in exchange for receiving payments, issue rules to ensure compliance, and modify compliance requirements. Eligibility for PLC and ARC payments and marketing loans	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
requires producers to comply with conservation and wetland protection, control noxious weeds, maintain sound agricultural practices, and use the farm's land attributable to base acres for agricultural or conserving use and not for nonagricultural commercial, industrial, or residential use as determined by the Secretary. **(7 U.S.C. §9018(a))**	
Termination of payments. A transfer of or change in the interest of the producers on a farm will result in the termination of payments unless the transferee or owner agrees to assume all compliance obligations. An exception to payment termination is made for producers who die or become incapacitated. **(7 U.S.C. §9018(b))**	Continues prior law.
Annual acreage reports. Eligibility for PLC and ARC payments and marketing loans requires producers to submit annual acreage reports. **(7 U.S.C. §9018(c))** Eligibility for ARC payments for individual (i.e., the whole-farm, farm-level) coverage (as opposed to the crop-specific, county-level ARC program) requires a producer to submit annual production reports for each covered commodity that is covered by the farm's ARC individual program—as produced on all farms in the same state. **(7 U.S.C. §9018(d))**	Continues prior law.
Effect of inaccurate reports. No penalties (with respect to benefits under PLC, ARC, or marketing loans) can be assessed against a producer for an inaccurate acreage or production report unless the Secretary determines that the producer knowingly and willfully falsified the report. **(7 U.S.C. §9018(e))**	Continues prior law.
Interests of tenants and sharecroppers. The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers and shall provide for the sharing of payments among producers on a farm. **(7 U.S.C. §9018(f-g))**	Continues prior law.
Repeal of Transition Assistance for Producers of Upland Cotton	
Cotton Transition Assistance Payments. Transition payments are made available for upland cotton for the 2014 crop year (and for 2015 if STAX is not yet available—see Title XI). Payment equals program yield (divided by the national yield of 597 pounds per acre) times transition assistance rate times payment acres. Transition rate is based on cotton price decline between June 2013 and December 2013. Payment acres in 2014 equal 60% of 2013 cotton base acres and 36.5% in 2015. **(7 U.S.C. §9019)**	Cotton Transition Assistance Payments are repealed. **(§1108a)**

Source: Compiled by CRS.

Table A-2. Subtitle B—Marketing Loans

<table>
<tr><th>Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended</th><th>Current Law: 2018 Farm Bill (P.L. 115-334)</th></tr>
<tr><td colspan="2">Nonrecourse Marketing Loans and Other Recourse Loans</td></tr>
<tr><td>Nonrecourse marketing loans are available for any amount of loan of a loan commodity (see list below) produced in crop years 2014-2018. To receive a marketing assistance loan, a producer must comply with applicable conservation and wetland protection requirements during the term of the loan. (7 U.S.C. §9031) Peanuts nonrecourse marketing loans are authorized separately and may be obtained through a marketing cooperative or association approved by USDA. Storage for peanuts under loan is to be provided on a nondiscriminatory basis and under any additional requirements. USDA shall pay storage, handling, and other associated costs incurred for peanuts placed under loan. Such costs must be repaid if the peanuts under loan are redeemed but not if forfeited. (7 U.S.C. §9031(e))</td><td>Extends nonrecourse marketing assistance loans for all loan commodities (including peanuts) through crop year 2023. (§1201)</td></tr>
<tr><td>Loan commodities and loan rates. For crop years 2014-2018, the loan rate for a nonrecourse marketing assistance loan for each loan commodity is as follows:
• Wheat, $2.94 per bu.
• Corn, $1.95 per bu.
• Grain sorghum, $1.95 per bu.
• Barley, $1.95 per bu.
• Oats, $1.39 per bu.
• ELS cotton, $0.7977 per lb.
• Long-grain rice, $6.50 per cwt.
• Medium-grain rice, $6.50 per cwt.
• Soybeans, $5.00 per bu.
• Other oilseeds, $10.09 per cwt. for sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or any other oilseeds designated by the Secretary.
• Dry peas, $5.40 per cwt.
• Lentils, $11.28 per cwt.
• Small chickpeas, $7.43 per cwt.
• Large chickpeas, $11.28 per cwt.
• Graded wool, $1.15 per lb.
• Nongraded wool, $0.40 per lb.
• Mohair, $4.20 per lb.
• Honey, $0.69 per lb.
• Peanuts, $355 per ton. (7 U.S.C. §9032)</td><td>Continues the nonrecourse marketing assistance loan program for commodities in current law for the 2019-2023 crop years, but with additional specification that the loan rate for each loan commodity is as follows:
• Wheat, $3.38 per bu.
• Corn, $2.20 per bu.
• Grain sorghum, $2.20 per bu.
• Barley, $2.50 per bu.
• Oats, $2.00 per bu.
• ELS cotton, $0.95 per lb.
• Long-grain rice, $7.00 per cwt.
• Medium-grain rice, $7.00 per cwt.
• Soybeans, $6.20 per bu.
• Other oilseeds, $10.09 per cwt. for sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or any other oilseeds designated by the Secretary.
• Dry peas, $6.15 per cwt.
• Lentils, $13.00 per cwt.
• Small chickpeas, $10.00 per cwt.
• Large chickpeas, $14.00 per cwt.
• Graded wool, $1.15 per lb.
• Nongraded wool, $0.40 per lb.
• Mohair, $4.20 per lb.
• Honey, $0.69 per lb.
• Peanuts, $355 per ton.
• Seed cotton, $0.25 per lb. (§1202)</td></tr>
</table>

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Upland cotton loan rate. The simple average of the adjusted prevailing world price for the two immediately preceding marketing years but in no case less than $0.45 per lb. or more than $0.52 per pound (announced October 1 preceding the next domestic plantings). **(7 U.S.C. §9032(a)(6))**	The simple average of the adjusted prevailing world price for the two immediately preceding marketing years but in no case more than $0.52 per pound nor less than $0.45 per pound or an amount equal to 98% of the loan rate for the preceding year (announced October 1 preceding the next domestic plantings). **(§1202)**
Single county loan rate for other oilseeds is established in each county for each other kind of oilseed. **(7 U.S.C. §9032(b))**	Continues prior law.
Seed cotton loan rate. Only for implementation of the PLC and ARC programs, the loan rate for seed cotton is deemed to be $0.25 per pound. This does not authorize a seed cotton nonrecourse marketing loan. **(7 U.S.C. §9032(c))**	Continues prior law.
Term of loans. Nine months after the day the loan is made. Extensions prohibited. Same term for peanuts. **(7 U.S.C. §9033)**	Continues prior law.
Repayment of loans. Loans may be repaid at the lesser of (1) the loan rate plus interest, (2) a rate based on average market prices during the preceding 30-day period, or (3) a rate determined by USDA that will minimize forfeitures, accumulation of stocks, storage costs, market impediments, and discrepancies in benefits across states and counties. Excludes upland cotton, rice, ELS cotton, confectionery, and each kind of sunflower seed (other than oil sunflower seed). **(7 U.S.C. §9034(a))**	Continues prior law.
Special repayment rates. For upland cotton, long-grain rice, and medium-grain rice, repayment may be at the lesser of the loan rate plus interest or the prevailing world price for the commodity adjusted to U.S. quality and location. **(7 U.S.C. §9034(b))** ELS cotton repayment rate is the loan rate plus interest. **(7 U.S.C. §9034(c))** For confectionery and each kind of sunflower seed (other than oil sunflower seed), loans must be repaid at the lesser of the loan rate plus interest or the repayment rate for oil sunflower seed. **(7 U.S.C. §9034(f))**	Continues prior law.
Prevailing world market price. The Secretary shall prescribe by regulation a formula to determine the prevailing world market price for each of upland cotton, long-grain rice, and medium-grain rice and a mechanism to announce periodically prevailing world market prices. **(7 U.S.C. §9034(d))** Provides explicit market conditions to USDA for adjustments to the prevailing world market price for quality and location (both rice and upland cotton) and additionally the potential for loan forfeitures (upland cotton). **(7 U.S.C. §9034(e))**	Continues prior law. The adjustments to the prevailing world market price for upland cotton as used to determine the repayment rate of marketing assistance loans are extended through July 31, 2024. **(§1201(b)(1))**
Payment of cotton storage costs. For each of crop years 2014-2018, the Secretary shall make cotton storage payments available in the same manner and at the same rates as the Secretary provided storage payments for the 2006 crop of cotton, except that the rates shall be reduced by 10%. **(7 U.S.C. §9034(g))**	Extends current law for crop years 2019-2023. **(§1201(b)(2))**

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Repayment rate for peanuts. Loans may be repaid at the lesser of (1) the loan rate plus interest or (2) a rate determined by USDA that will minimize forfeitures, accumulation of stocks, storage costs, market impediments, and discrepancies in benefits across states and counties. **(7 U.S.C. §9034(h)))**	Continues prior law.
Authority to temporarily adjust repayment rates. USDA may temporarily, and on a short-term basis only, adjust the repayment rates in the event of a severe disruption to marketing, transportation, or related infrastructure. **(7 U.S.C. §9034(i))**	Continues prior law.
Loan deficiency payments (LDPs). For the crop years 2014-2018, USDA makes available LDPs to producers who agree to forego marketing loans. An LDP is computed by multiplying the payment rate (the amount that the loan rate exceeds the rate at which a marketing loan may be repaid) for the commodity times the quantity of the commodity produced. LDPs are also available for unshorn pelts or hay and silage, even though they are not eligible for marketing loans. ELS cotton is not eligible. Payment rates determined using the rate in effect as of the date that producers request payment. (Producers do not need to lose beneficial interest.) **(7 U.S.C. §9035)**	Extends current law through crop year 2023. **(§1201(c)(1))**
Payments in lieu of LDPs are available for grazed acreage of wheat, barley, oats, or triticale if a producer forgoes harvesting any crop from that acreage. Crop production on the grazed acreage is not eligible for crop insurance or noninsured crop assistance. **(7 U.S.C. §9036)**	Extends current law through crop year 2023. **(§1201(c)(2))**
Special marketing loan provisions for upland cotton. Imposes a special import quota on upland cotton without an expiration date beginning on August 1, 2014, when price of U.S. cotton, delivered to a definable and significant international market, exceeds the prevailing world market price for four weeks. **(7 U.S.C. §9037(b))** Limited global import quota is imposed on upland cotton when U.S. prices average 130% of the previous three-year average of U.S. prices. **(7 U.S.C. §9037(b))**	Continues prior law.
Economic adjustment assistance to users of upland cotton provides assistance to domestic users of upland cotton for uses of all cotton regardless of origin to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery. Rate is $0.03 per pound effective beginning August 1, 2013. **(7 U.S.C. 9037(c))**	Extends current law (at current $0.03/pound rate) without an expiration date but changes the subsection heading of current law to "Economic Adjustment Assistance for Textile Mills." **(§1203(b))** Repeals a redundant authority in 7 U.S.C. §8737(c). **(§1203(a))**
Special competitive provisions for ELS cotton. Payments to domestic users and exporters are triggered whenever the world market price for the lowest priced ELS cotton is below the prevailing U.S. price for a competing growth of ELS cotton for a four-week period and the lowest priced competing growth of ELS cotton is less than 134% of the loan rate for ELS cotton. Effective through July 31, 2019. Payments equal the difference between	Continues the authorization through July 31, 2024, of the special competitive provisions for ELS cotton but adjusts the payment trigger to whenever the world market price for the lowest priced ELS cotton is below the prevailing U.S. price for a competing growth of ELS cotton for a four-week period and the lowest priced competing growth of ELS cotton is less

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
the trigger prices (above) times the amount purchased by domestic users or exported by exporters in the week following the four-week trigger period. **(7 U.S.C. §9038)**	than 113% of the loan rate for ELS cotton. This adjustment reflects the increase in the ELS cotton loan rate. **(§1204)**
Availability of recourse loan. For crop years 2014-2018, recourse loans for high-moisture feed grains and seed cotton are available for farms that normally harvest corn or sorghum in a high-moisture condition at rates set by the USDA. For recourse loans for seed cotton, repayment is at loan rate plus interest. **(7 U.S.C. §9039)**	Continues the authorization for recourse loans for certain crops for the 2019-2023 crop years in same manner as current law except for the addition of a provision providing for recourse loans for commodities that are contaminated but still merchantable. **(§1205)**
Adjustment of loans. Adjustments are authorized for any commodity (other than cotton) based on differences in grade, type, quality, location, and other factors. Allows county loan rates as low as 95% of the U.S. average if it does not increase outlays. Prohibits adjustments that would increase the national average loan rate. For cotton, loan rates may be adjusted for differences in quality factors (made after consultation with the U.S. cotton industry). For rice, loan rates may be adjusted for differences in grade and quality (including milling yields). **(7 U.S.C. §9040)**	Continues prior law.

Source: Compiled by CRS.

Table A-3. Subtitle E—Supplemental Agricultural Disaster Assistance

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Supplemental Agricultural Disaster Assistance	
Four disaster assistance programs (LIP, LFP, ELAP, and TAP as described below) are reauthorized permanently (retroactive to FY2012) with mandatory funding from the Commodity Credit Corporation. Producers are not required to purchase crop insurance or NAP coverage to participate. **(7 U.S.C. §9081)**	Continues prior law.
Definitions. Four terms are defined under the Supplemental Agricultural Disaster Assistance Program: *eligible producer on a farm*, *farm-raised fish*, *livestock*, and *Secretary*. *Eligible producer on a farm* is defined as an individual or entity that assumes the production and market risks associated with the agricultural production of crops or livestock. The phrase *individual or entity* specifically refers to (1) a U.S. citizen, (2) a resident alien, (3) a partnership of U.S. citizens, or (4) a corporation, limited liability corporation, or other farm organization structure organized under state law. *Farm-raised fish* means any aquatic species that is propagated and reared in a controlled environment. *Livestock* includes cattle (including dairy cattle), bison, poultry, sheep, swine, horses, and other livestock as determined by the Secretary. *Secretary* means the Secretary of Agriculture. **(7 U.S.C. §9081(a))**	Adds *Indian tribe or tribal organization*, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (15 U.S.C. §3504), to the list of *individual or entities* referenced in the definition of *eligible producer on a farm*. **(§1501(a))**
The **Livestock Indemnity Program (LIP)** compensates producers at a rate of 75% of market value for livestock mortality or livestock sold at a loss caused by adverse weather including hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold or by animals reintroduced into the wild by the federal government or protected by federal law, including wolves and avian predators. Ensures that LIP payments do not duplicate any federal compensation associated with federal quarantine and disposal. **(7 U.S.C. §9081(b))**	Expands payments to include losses from disease that is caused or transmitted by a vector and is not controlled by vaccination or other acceptable management practices. Specifies that USDA may disregard management practices, vaccination protocol, or lack of vaccination by the eligible producer when the loss from adverse weather was the death of unweaned livestock. **(§1501(b))**
The **Livestock Forage Disaster Program (LFP)** compensated eligible livestock producers for grazing losses due to either (a) qualifying drought conditions (using the drought monitor system for classifying drought) or (b) fire on public managed land. An eligible livestock producer is an owner, lessee, or contract grower that provides the pastureland or grazing land and meets other criteria. For drought, the monthly payment rate equals 60% of estimated feed costs; number of monthly payments: (a) one month for land located in a county with a D2 drought intensity for at least eight consecutive weeks, (b) three months for land in a county with at least a D3 rating at any time during the normal grazing period, (c) four months if the county has a D3 rating for at least four weeks, (d) four months if the county has a D4 rating at any time	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
during the normal grazing period, (e) five months of payments if the county has a D4 rating for at least four weeks. For fire on public land, the monthly payment rate equaled to 50% of estimated feed costs and covered the period the federal agency excludes the producer from using the managed rangeland for grazing. **(7 U.S.C. §9081(c))**	
Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP). Provides payments to producers of livestock, honey bees, and farm-raised fish as compensation for losses due to disease (including cattle tick fever), adverse weather, feed or water shortages, or other conditions (such as wildfires) that are not covered under LIP or LFP. **(7 U.S.C. §9081(d))**	Amends the program to add the cost of inspecting for cattle tick fever to the list of approved costs covered by the program. Effective date of amendment applies to inspections conducted on or after enactment. **(§1501(c))**
The **Tree Assistance Program (TAP)** provides payments to eligible orchardists and nursery growers to replant or rehabilitate trees, bushes, and vines damaged by natural disasters. Eligible losses must exceed 15%, after adjustment for normal mortality including natural disaster, including plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence. For damage or mortality in excess of 15%, payments cover 65% of the cost of replanting trees or nursery stock and 50% of the cost of rehabilitation (e.g., pruning and removal to salvage existing trees or prepare the land to replant trees). **TAP** has a separate limit of $125,000 per year, and TAP payment acreage may not exceed 1,000 acres. **(7 U.S.C. §9081(e))**	Adds a new, increased payment rate for beginning and veteran producers of 75% of the cost of replanting and rehabilitation. **(§1501(d))** **TAP** is no longer subject to a payment limit, but TAP payment acreage may not exceed 1,000 acres. **(§1501(f))**
Disaster program payment limit: Total combined payments received under **LFP** and **ELAP** are limited to $125,000 for any crop year. (7 **U.S.C. §9081(f))**	Excludes **ELAP** from the payment limit. **LFP** payments remain subject to a $125,000 per crop year payment limit. **(§1501(f))**

Source: Compiled by CRS.

Table A-4. Subtitle F—Noninsured Crop Assistance

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Noninsured Crop Disaster Assistance Program (NAP)	
Operation and administration. NAP provides a catastrophic-level of coverage to producers of crops that are not insurable under the federal crop insurance program. **(7 U.S.C. §7333(a)(1))**	Adds a data collection and coordination requirement. **(§1601(1)(A))**
Crops eligible for NAP are defined as commercial crops or commodities (except livestock) for which catastrophic risk protection and select policies (including buy-up coverage) under the federal crop insurance program is unavailable. **(7 U.S.C. §7333(a)(2))**	Amends the definition of *eligible crop* to include those crops that may be insurable under the crop insurance program but only for whole farm plans or policies that provide coverage for specific intervals based on weather indexes. **(§1601(1)(B))**
Native sod. Following enactment of the 2014 farm bill, native sod acreage that has been tilled to produce annual crops receive reduced benefits under NAP during the first four years of planting. Crops planted on native sod have higher fees and reduced yield guarantees. Benefit reductions are limited to native sod in Minnesota, Iowa, North Dakota, South Dakota, Montana, and Nebraska. **(7 U.S.C. §7333(a)(4))**	Amends benefit reductions on native sod to include all "eligible" crops rather than "annual" crops for not more than four years during the first 10 years after initial tillage. Adds an amendment to yield guarantee reduction from transition yields to county expected yields. **(§1601(1)(C))**
Applications. NAP applications are due 30 days prior to the coverage period. Producers must provide annual production records and acreage reports. **(7 U.S.C. §7333(b))**	Provides flexibility for NAP application deadlines and requires a streamlined process for submitting records and acreage reports for diverse production systems. **(§1601(2))**
Payments. Payments are made based on 50% of the established yield of the crop. **(7 U.S.C. §7333(d))**	Adjusts the payment formula to include the producer's share of the total number of acres devoted to the eligible crop and based on the approved yield rather than the established yield. **(§1601(3))**
Yield determinations are calculated based on actual production history or, if unavailable, 65% of the transitional yield.**(7 U.S.C. §7333(e)(1)-(e)(3))**	Amends yield determinations with no production history to use county expected yields rather than transitional yields. **(§1601(4))**
Payment limits. Total NAP payments are limited to $125,000 per crop year per individual or entity. **(7 U.S.C. §7333(i)(2))**	Separates the payment limit for catastrophic coverage ($125,000) and additional coverage ($300,000). **(§1601(5))**
Service fee. Producers pay a fee of $250 per crop per county or $750 per producer per county, not to exceed $1,875 per producer. **(7 U.S.C. §7333(k)(1))**	Increases service fees to $325 per crop per county or $825 per producer per county, not to exceed $1,950 per producer. **(§1601(6))**
Buy-up coverage. Additional, or buy-up, coverage may be purchased at 50%-65% (in 5% increments) of established yield and 100% of average market price. The farmer-paid fee for additional coverage is 5.25% times the product of the selected coverage level and value of production (acreage times yield times average market price). Buy-up coverage is available each of crop years 2015-2018. **(7 U.S.C. 7333(l))**	Deletes a 2012 fruit loss provision and buy-up coverage expiration date. Amends the premium for additional coverage to be proportional to a producer's share of the crop, adds the producer's share of the crop to the list of multipliers used to calculate the payment amount, and amends the average market price multiplier to include contract price or other premium price. **(§1601(7))**

Source: Compiled by CRS.

Table A-5. Subtitle G—Administration

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
Administrative Programs	
General administration. The Secretary may use the funds and facilities of the CCC to carry out this title **(7 U.S.C. §9091(a)).** Provides that a determination made by the Secretary under this title shall be final and conclusive **(7 U.S.C. §9091(b))**. Provides for an expedited implementation of this title: Not later than 90 days after February 7, 2014, USDA and the CCC shall promulgate such regulations as necessary **(7 U.S.C. §9091(c))**.	Amends current law for expedited rulemaking to extend the authority to include Title I of the 2018 farm bill and the amendments made by this title. **(§1701)**
Adjustment authority to comply with trade agreements. Provides the Secretary authority to adjust expenditures under this title to ensure that the United States remains in compliance with domestic support levels allowed under the World Trade Organization. **(7 U.S.C. §9091(d))**	Continues prior law.
Suspension of permanent price support authority. Suspends the permanent price support authority of the Agricultural Adjustment Act of 1938 and the Agricultural Adjustment Act of 1949 for the 2014-2018 crop years (covered commodities, cotton, and sugar) and for milk through December 31, 2018. **(7 U.S.C. §9092)**	Extends the suspension of permanent price authority in the Agriculture Marketing Adjustment Act of 1938 and the Agricultural Act of 1949 through December 31, 2023. **(§1702)**
Prevention of deceased individuals receiving payments under farm commodity programs. At least twice each year, the Secretary shall reconcile Social Security numbers of all individuals who receive payments under this chapter, whether directly or indirectly, with the commissioner of Social Security to determine if the individuals are alive. The Secretary shall preclude the issuance of payments to, and on behalf of, deceased individuals who were not eligible for payments. **(7 U.S.C. §9003)**	Continues prior law.
Assignment of payments. Provides the authority for a producer who receives a payment under this title to assign the payment to someone else after proper notice to the Secretary. **(7 U.S.C. §9003)**	Continues prior law.
Tracking of benefits. Authorizes the Secretary to track the benefits provided to individuals getting payments under Titles I and II programs. **(7 U.S.C. §9003)**	Continues prior law.
Signature authority. In carrying out a Title I or II program, if the Secretary approves a document, then the Secretary may not subsequently (or retroactively) determine that the document is inadequate or invalid due to the lack of authority of any person signing on behalf of another individual, entity, general partnership, or joint venture unless the person knowingly and willfully falsified the signature. **(7 U.S.C. §9003)**	Continues prior law.
Personal liability of producers for deficiencies. No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any nonrecourse loan unless	No comparable provision.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
the loan was obtained through a fraudulent representation by the producer. However, USDA may require a producer to assume liability for a deficiency in the grade, quality, or quantity of a commodity stored on a farm or delivered by the producer; failure to properly care for and preserve a commodity; or failure or refusal to deliver a commodity in accordance with a program. **(7 U.S.C. §7284)**	
Program Suspension	
Suspends the permanent price support authority of the Agricultural Adjustment Act of 1938 and the Agricultural Adjustment Act of 1949 for the 2014-2018 crop years (covered commodities, peanuts, and sugar) and for milk through December 31, 2018. **(7 U.S.C. §8782)**	Same as prior law, except applies to 2019-2023 crop years and through December 31, 2023 for milk. **(§1702)**
Payment Limitations	
Payment limitations. Establishes a per-year limit on cumulative commodity program payments for PLC payments, ARC payments, marketing loan gains (MLGs), and LDPs. —PLC, ARC, MLGs, and LDPs for the sum of all covered commodities except peanuts: $125,000. —PLC, ARC, MLGs and LDPs, for peanuts: $125,000. —cotton transition payments (2014 and 2015): $40,000. Any benefits arising from forfeiture of crops held under marketing assistance loans is not subject to a payment limit. **(7 U.S.C. §1308(a)-(d))**	Retains the payment limit of $125,000 per year for all covered commodities (with a separate limit for peanuts) to a person or legal entity but applies it only to the sum of PLC and ARC payments. Marketing assistance loan benefits (MLGs, LDPs, and forfeiture benefits) are excluded from payment limits. **(§1703(a)(2))** Amends the definition of *family member* (see below) **(§1703(a)(1)(B))** Amends current law to require the Secretary to apply reductions in PLC or ARC payments due to a sequester before applying payment limitations. **(§1603(a)(4))** All changes made to payment limits shall apply starting with the 2019 crop year. **(§1703(b))**
Payment attribution. Payments are attributed to a person by accounting for the direct and indirect ownership in any legal entity. Payments made directly to a person are combined with the person's pro-rata share of payments from a legal entity. Payments to a legal entity cannot exceed the limits above and are attributed to persons. Attribution of payments to legal entities is traced to four levels of ownership. If a payment has not been allocated to an individual after four levels of ownership, the payment to the first-level entity is reduced on a pro-rata basis. Payments made to a legal entity are reduced proportionately by the ownership share of any person or legal entity that has otherwise exceeded the applicable payment limitation. **(7 U.S.C. §1308 (e)-(h))**	Continues other payment limit provisions such as direct attribution. Addresses active personal management (see below).
Actively engaged in farming (AEF) requirement. To be eligible to receive an ARC or PLC payment or MAL benefit, a person or legal entity shall be AEF with respect to a farming operation according to the following criteria. A person (including a partner in a general partnership or joint venture, a grantor of a revocable trust, or a participant in a similar entity) shall be considered AEF if (1) the person makes a significant contribution of (A) capital, equipment, or land; and (B) personal labor or	Continues prior law.

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
active personal management; (2) the person's share of the profits or losses from the farming operation is commensurate with contributions to the farming operation; and (3) the person's contributions are at risk. A legal entity that is a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity shall be considered as AEF if (i) the legal entity separately makes a significant contribution of capital, equipment, or land; (ii) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation; and (iii) the standards (2) and (3) above for a person are met by the legal entity. **(7 U.S.C. §1308-1(b))** Instructs the Secretary of Agriculture to write new regulations that define *significant contribution of active personal management* (to more clearly and objectively implement **(7 U.S.C §1308-1(b)(2))**, recognizing past difficulties). Specifically allows for different limits for varying types of farming operations based on considerations of size, nature, and management requirements of different farming types, changes in the nature of active personal management due to advancements in farming practices, and the impact of this regulation on the long-term viability of farming operations. Regulations shall not apply to entities made solely of family members. Conferees intend for regional differences and a range of activities performed to be considered. Regulations are to be promulgated within six months of enactment and may apply beginning with the 2015 crop year. **(7 U.S.C. §1308-1note)**	
Family member. A person to whom a member in the farming operation is related as lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage. **(7 U.S.C. §1308(a)(2))**	Revises the definition of *family member* to include first cousins, nieces, and nephews. **(§1703(a)(1)(B))**
Treatment of joint ventures and partnerships. Payment limit for joint ventures and general partnerships equals the payment limit for a person or legal entity of $125,000 times the number of eligible persons or legal entities that comprise the business' ownership. **(7 U.S.C. §1308(e)(3)(B)(ii))**	Continues prior law.
Adjusted Gross Income (AGI) Limitation	
AGI limitation. Prohibits farm commodity program benefits (including benefits under PLC, ARC, MAL, agricultural disaster assistance, or conservation programs) to an individual or entity if AGI exceeds $900,000. The AGI limit is calculated as the average AGI or comparable measure of the person or legal entity over the three taxable years prior to the most immediately complete taxable year. **(7 U.S.C. §1308-3a)**	Continues current AGI limitation subject to the two amendments. Provides authority to Secretary to waive AGI limitation, on case-by-case basis, to protect environmentally sensitive land of special significance. **(§1704 (a)(2))** Applies the **Section 1704** changes starting with the 2018 crop, fiscal, or program year as appropriate. **(§1704(c))**
No comparable provision.	**Farm Service Agency (FSA) accountability.** (a) Not later than one year from enactment, USDA shall establish policies, procedures, and plans to improve accountability and

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
	integrity through targeted and coordinated activities, including data mining to identify and reduce errors, waste, fraud, and abuse in FSA programs. (b) Not later than three years after enactment, USDA shall submit a report to the House and Senate Agriculture Committees describing efforts to achieve the goals cited in (a). **(§1705(b))**
Implementation. Requires the Secretary to maintain base acres and payment yields for each covered commodity. **(7 U.S.C. §9097(a))** Requires the Secretary to continue to streamline administrative burdens and costs including through the Acreage Crop Reporting and Streamlining Initiative (ACRSI); improve coordination, information sharing, and administrative work within USDA; and use new technologies to enhance efficiency and effectiveness of program delivery. **(7 U.S.C. §9097(b))** The Secretary shall make $100 million available to implement this title. Additional funds are made available upon notification to House and Senate Agriculture Committees of significant progress by September 20, 2014 ($10 million) and full implementation by September 30, 2015 ($10 million). Also $3 million is available for state extension services to educate farmers and ranchers of their options under this title and $3 million to support qualified universities to develop and train producers on web-based decision aids. **(7 U.S.C. §9097(c))**. USDA shall use CCC funds to ensure that the MAL program and benefits are fully functional in any year that discretionary spending limits are enforced via sequestration or other means. **(7 U.S.C. §9097(d))**	Same as prior law for all provisions except: No agent, approved insurance provider (AIP), or employee or contractor of an agency or AIP bears responsibility or liability under ACRSI for the eligibility of a producer for programs administered by USDA that are not policies or plans of insurance offered under the Federal Crop Insurance Act (7 U.S.C. §1501 *et. seq.*) except in cases of fraud, misrepresentation, or scheme and device. Crop insurance agents and AIPs are allowed access to records held by FSA necessary for effective crop insurance program delivery. USDA shall continue to improve coordination and data sharing efforts with NRCS, FSA, and RMA. By September 30, 2020, RMA and FSA shall implement a consistent method for determining farm and crop acreage, yields, property descriptions, and other common informational requirements, including measures of common land units. Producers may remotely and electronically sign annual contracts for ARC and PLC, and producers have the option to sign multi-year contracts for the ARC and PLC programs. The Secretary is required to make $15.5 million in mandatory funding available for the FSA to implement this title. USDA shall use CCC funds to ensure that PLC and ARC payments are fully made prior to enforcing in any year where discretionary spending limits are enforced via sequestration or other budgetary means. Any USDA payment obligations that have not been disbursed or liquidated and remain outstanding five years after the date on which the payment was obligated or made available shall be de-obligated and revert to the Treasury. The Secretary may delay the date of de-obligation. Not later than January 1, 2020, and each January 1 thereafter through January 1, 2023, USDA shall submit a report on tilled native sod that was subject to benefit reductions under crop insurance or NAP. **(§1706)**
Exemption from certain reporting requirements for certain producers. Section 1244(m) of the Food Security Act of 1985, as amended by Section 766 of the Consolidated Appropriations Act of 2018 (P.L. 115-124), stipulates that select federal grant financial reporting requirements for producers (defined as producers and landowners eligible to	Expands the federal grant financial reporting requirement exemption for NRCS conservation programs to all commodity, indemnity, and conservation programs administered by FSA, the Animal and Plant Health Inspection Service (APHIS), and the NRCS. Further defines *exempted producer* as an eligible entity that participates in a farm bill conservation program, an

Prior Law: 2014 Farm Bill (P.L. 113-79), as Amended	Current Law: 2018 Farm Bill (P.L. 115-334)
participate in any USDA conservation program) should not apply to Natural Resources Conservation Service (NRCS) conservation programs. **(16 U.S.C. §3844(m))**	indemnity or disease control program, or a Title I commodity program (excluding cotton) administered by NRCS, APHIS, and FSA. **(§1707)**

Source: Compiled by CRS.

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Law & Lending in a Down Farm Economy: Recent Trends and Outlooks

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U.S. Farm Income Outlook for 2019

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U.S. Farm Income Outlook for 2019

SUMMARY

R45697

April 16, 2019

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This report uses the U.S. Department of Agriculture's (USDA) farm income projections (as of March 6, 2019) and agricultural trade outlook update (as of February 21, 2019) to describe the U.S. farm economic outlook. According to USDA's Economic Research Service (ERS), national net farm income—a key indicator of U.S. farm well-being—is forecast at $69.4 billion in 2019, up $6.3 billion (+10%) from last year. The forecast rise in 2019 net farm income is the result of an increase in gross returns (up $8.5 billion or +2%)—including continued payments under the trade aid package announced by USDA in July 2018—partially offset by slightly higher production expenses (up $2.2 billion or +0.6%). Net *farm* income is calculated on an accrual basis. Net *cash* income (calculated on a cash-flow basis) is also projected higher in 2019 (+4.7%) to $95.7 billion.

The 2019 net farm income forecast is substantially below (-18%) the 10-year average of $84.8 billion (in nominal dollars)—primarily the result of the outlook for continued weak prices for most major crops. Commodity prices are under pressure from a record soybean and near-record corn harvest in 2018, diminished export prospects due to an ongoing trade dispute with China, and burdensome stocks.

Government payments are projected down nearly 17% from 2018 at $11.5 billion—due largely to lower market facilitation payments by USDA. Market facilitation payments to qualifying agricultural producers—in response to the U.S.-China trade dispute—were an estimated $5.2 billion in 2018 and are projected at $3.5 billion in 2019. Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC) payments are also projected lower in 2019 ($1.7 billion) versus 2018 ($3.0 billion). Payments to dairy producers under the new Dairy Margin Coverage (DMC) program are projected up over 200% at $600 million, while payments under conservation and disaster assistance are projected up in 2019 at $4.3 billion (+8.6%) and $1.4 billion (+20%).

Since 2008, U.S. agricultural exports have accounted for a 20% share of U.S. farm and manufactured or processed agricultural sales. In 2018 total agricultural exports were estimated up 2% at $143.4 billion. However, abundant supplies in international markets, strong competition from major foreign competitors, and the ongoing U.S.-China trade dispute are expected to shift trade patterns and lower U.S. export prospects slightly (-1%) in 2019.

In addition to the outlook for slightly higher farm income, farm asset value is also projected up 1.5% from 2018 to $3.1 trillion. However, aggregate farm debt is projected record large at $426.7 billion—up 3.9% from 2018. Farm asset values reflect farm investors' and lenders' expectations about long-term profitability of farm sector investments. USDA farmland values are projected to rise 1.8% in 2019, similar to the increases of 1.9% in 2018 and 2.3% in 2017. Because they comprise such a significant portion of the U.S. farm sector's asset base (83%), change in farmland values is a critical barometer of the farm sector's financial performance. At the farm household level, average farm household incomes have been well above average U.S. household incomes since the late 1990s. However, that advantage has narrowed in recent years. In 2014, the average farm household income (including off-farm income sources) was about 77% higher than the average U.S. household income. In 2017 (the last year with comparable data), that advantage is expected to decline to 32%.

The outlook for below average net farm income and relatively weak prices for most major program crops signals the likelihood of continued relatively lean times ahead. The U.S. agricultural sector's well-being remains dependent on continued growth in domestic and foreign demand to sustain prices at current modest levels. In addition to commodity prices, the financial picture for the agricultural sector as a whole heading into 2019 will hinge on both domestic and international macroeconomic factors, including interest rates, economic growth, and consumer demand.

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Contacts

Introduction

The U.S. farm sector is vast and varied. It encompasses production activities related to traditional field crops (such as corn, soybeans, wheat, and cotton) and livestock and poultry products (including meat, dairy, and eggs), as well as fruits, tree nuts, and vegetables. In addition, U.S. agricultural output includes greenhouse and nursery products, forest products, custom work, machine hire, and other farm-related activities. The intensity and economic importance of each of these activities, as well as their underlying market structure and production processes, vary regionally based on the agro-climatic setting, market conditions, and other factors. As a result, farm income and rural economic conditions may vary substantially across the United States.

Annual U.S. net farm income is the single most watched indicator of farm sector well-being, as it captures and reflects the entirety of economic activity across the range of production processes, input expenses, and marketing conditions that have prevailed during a specific time period. When national net farm income is reported together with a measure of the national farm debt-to-asset ratio, the two summary statistics provide a quick and widely referenced indicator of the economic well-being of the national farm economy.

Measuring Farm Profitability

Two different indicators measure farm profitability: net cash income and net farm income.

Net cash income compares cash receipts to cash expenses. As such, it is a cash flow measure representing the funds that are available to farm operators to meet family living expenses and make debt payments. For example, crops that are produced and harvested but kept in on-farm storage are not counted in net cash income. Farm output must be sold before it is counted as part of the household's cash flow.

Net farm income is a more comprehensive measure of farm profitability. It measures value of production, indicating the farm operator's share of the net value added to the national economy within a calendar year independent of whether it is received in cash or noncash form. As a result, net farm income includes the value of home consumption, changes in inventories, capital replacement, and implicit rent and expenses related to the farm operator's dwelling that are not reflected in cash transactions. Thus, once a crop is grown and harvested, it is included in the farm's net income calculation, even if it remains in on-farm storage.

Key Concepts Behind Farm Income

- Net cash income is generally less variable than net farm income. Farmers can manage the timing of crop and livestock sales and purchase of inputs to stabilize the variability in their net cash income. For example, farmers can hold crops from large harvests in on-farm storage to sell in the forthcoming year, when output may be lower and prices higher.
- Off-farm income and crop insurance subsidies, both of which have increased in importance in recent years, are not included in the calculation of aggregate farm income. Crop insurance indemnity payments are included.
- Off-farm income is included in the discussion of farm income at the household level at the end of this report.

National vs. State-Level Farm Household Data

This report focuses singularly on aggregate national net farm income projections for calendar year 2019 as reported by the U.S. Department of Agriculture's (USDA) Economic Research Service (ERS).[1] Aggregate data often obscure or understate the tremendous diversity and regional variation that occurs across America's agricultural landscape. For insights into the differences in American agriculture, visit the ERS websites on "Farm Structure and Organization" and "Farm Household Well-being."[2]

[1] For both national and state-level farm income, see ERS, "U.S. and State Farm Income and Wealth Statistics," http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx.

[2] ERS, "Farm Structure and Organization," http://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization.aspx; and "Farm Household Well-Being," http://www.ers.usda.gov/topics/farm-economy/farm-household-well-being.aspx.

USDA's 2019 Farm Income Forecast

In the first of three official U.S. farm income outlook releases scheduled for 2019, ERS projects that U.S. net farm income will rise slightly in 2019 to $69.4 billion, up $6.3 billion (+10%) from last year.[3] Net cash income (calculated on a cash-flow basis) is also projected higher in 2019 (+4.7%) to $95.7 billion. However, the initial 2019 net farm income forecast is below (-18%) the 10-year average of $84.8 billion and represents continued agriculture-sector economic weakness since 2013's record high of $123.8 billion.

Substantial Uncertainties Underpin the Outlook

Abundant domestic and international supplies of grains and oilseeds suggest a fourth straight year of relatively weak commodity prices in 2018 (**Figure A-1** through **Figure A-4**, and **Table A-4**). However, considerable uncertainty remains concerning whether the United States will achieve a resolution to its trade dispute with China and other major trading partners, what crops U.S. producers will decide to plant across the major growing regions of the United States (**Figure 3**), whether farmers and ranchers will continue to expand livestock production (**Figure 8**), what weather and growing conditions will prevail during the principal plant-growth season, and how domestic and international demand will evolve during the year.

Selected Highlights

- Since the record highs of 2012 and 2013, net cash income and net farm income have fallen by 29% and 44%, respectively (**Figure 1**), thus continuing a general downward trend in farm income since 2013—primarily the result of a significant decline in most farm commodity prices since 2013-2014.
- Cash receipts for most major field crops (feed grains, hay, and wheat), oilseeds (**Figure 12**), and animal products (beef, pork, broilers, eggs, and milk—**Figure 14**), are projected at $381.5 billion in 2019 (+2.3%) but have declined since their highs in 2012 and 2014 as U.S. and global grain and oilseed stocks and animal herds have rebuilt.
- Government payments in 2019 are projected down (-17%) from 2018 at $11.5 billion—due largely to lower payments under both the Market Facilitation Program (MFP)[4] and revenue-support programs (**Figure 16**).
- Total production expenses for 2019 (**Figure 18**), at $372 billion, are projected up slightly from 2018 (+0.6%), driven largely by feed, labor, and interest costs.
- Global demand for U.S. agricultural exports (**Figure 22**) is projected at $141.5 billion in 2019, down 1% from 2018, due largely to a decline in sales to China.[5]
- Farm asset values and debt levels are projected to reach record levels in 2019—asset values at $3.1 trillion (+1.5%) and farm debt at $427 billion (+3.9%)—pushing the projected debt-to-asset ratio up to 13.9%, the highest level since 2002 (**Figure 28**).

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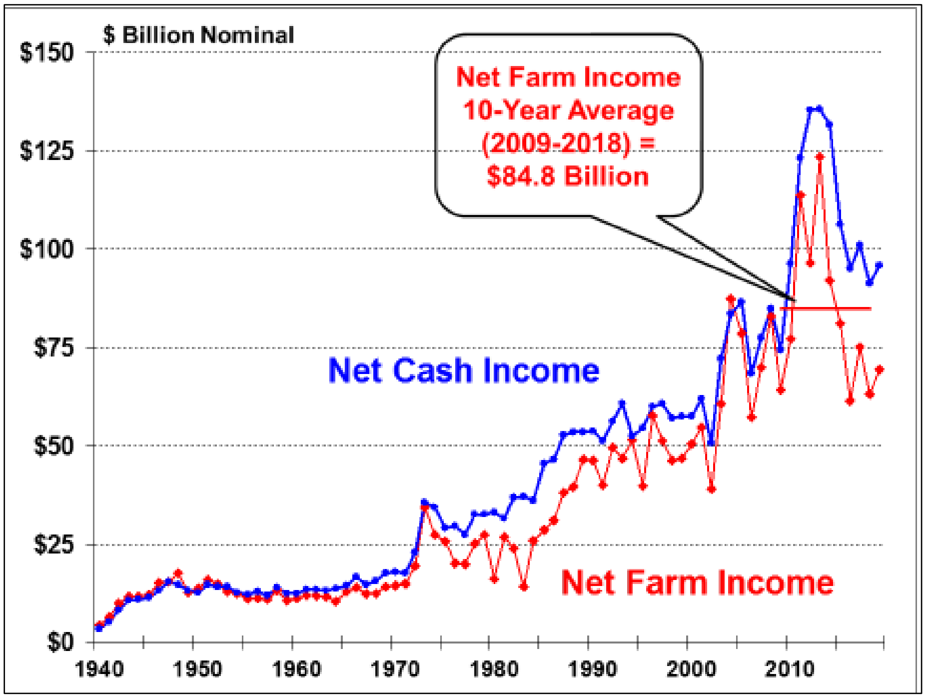
[3] ERS's first farm income forecast was released on March 6, 2019. ERS is to update its farm income outlook in August (mid-year outlook) and again in November. ERS's 2019 Farm Sector Income Forecasts are available at https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast/.

[4] See CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

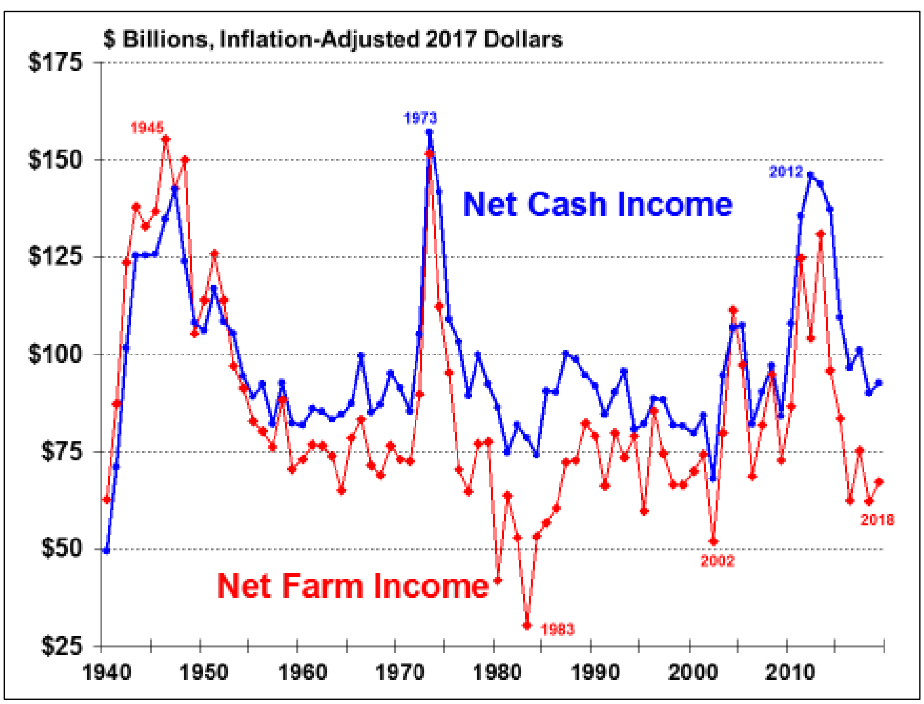
[5] ERS, *Outlook for U.S. Agricultural Trade,* AES-106, November 29, 2018.

Figure 1. Annual U.S. Farm Sector Nominal Income, 1940-2019



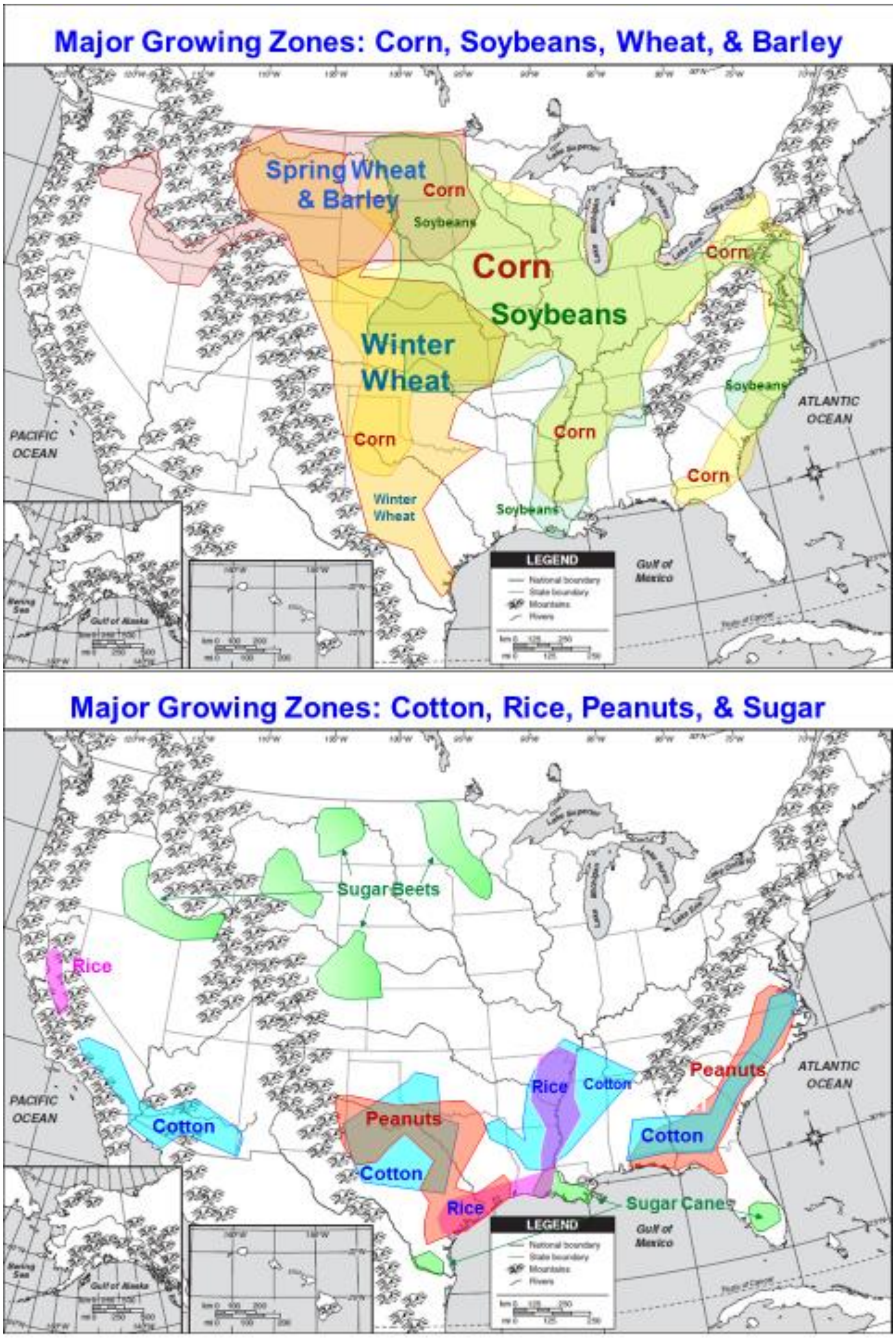
Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Figure 2. Annual U.S. Farm Sector Inflation-Adjusted Income, 1940-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are adjusted for inflation using the chain-type gross domestic product deflator, where 2017 = 100. Office of Management and Budget, Historical Tables, Table 10.1, https://www.whitehouse.gov/omb/budget/Historicals; 2019 is forecast.

Figure 3. Principal Growing Zones for Major Program Crops



Source: Compiled by CRS based on USDA, Office of the Chief Economist, "Major World Crop Areas: North America," https://www.usda.gov/oce/weather/pubs/Other/MWCACP/namerica.htm.

Note: In the upper figure, corn zones are yellow, soybeans are green, winter wheat is brown, and spring wheat and barley are pink. In the lower figure, cotton zones are blue, rice is pink, peanuts are brown, and sugar crops are green. Additional minor production activity occurs outside of the indicated zones. See source for mappings of minor production activity.

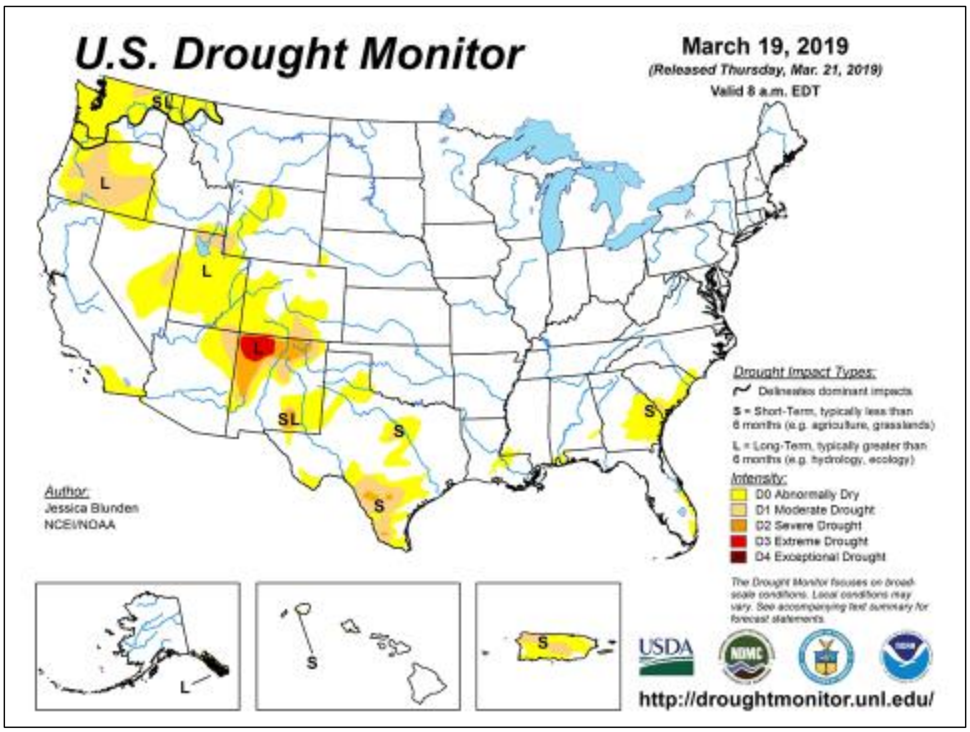
U.S. Agriculture Outlook: 2019 Overview

Farm production choices in 2019 will largely be determined by producers' expectations for relative net returns from both the market and government programs across the various crops and livestock activities. Growing-season weather, yields, and harvest-time market prices are unknown early in the year when producers must lock in their production decisions for the year.

Heading into 2019, most of the major growing zones (**Figure 3**) across the Corn Belt, Plain States, Delta, and Southeast are largely free of drought (**Figure 4**). Some dryness persists primarily in the mountain states, the Pacific Northwest, and southern Texas.

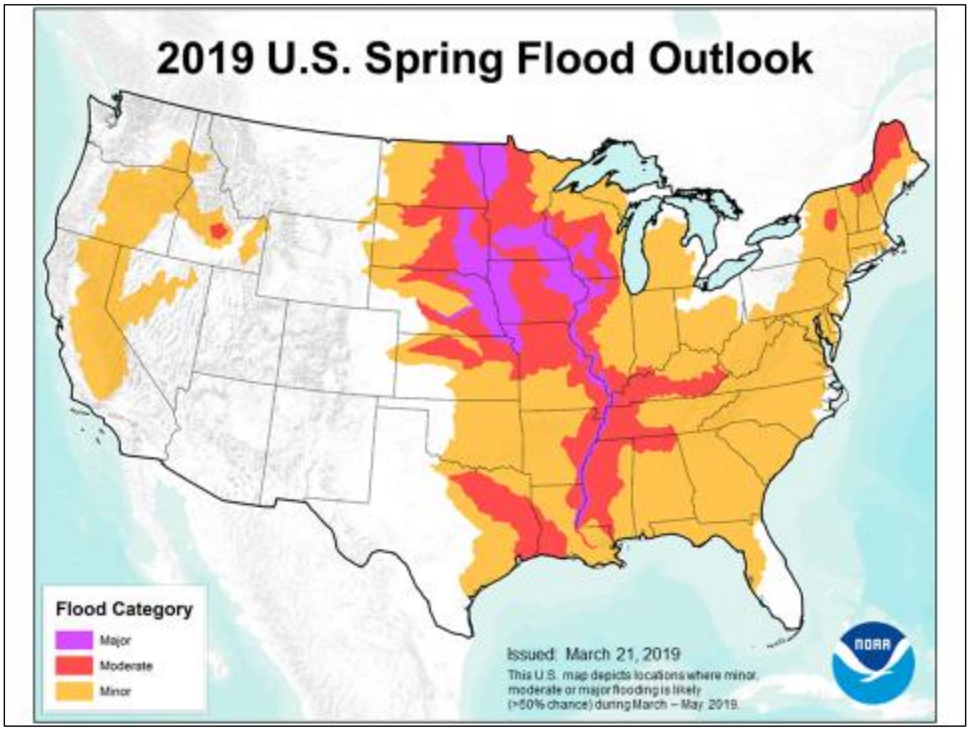
Instead of dryness, excessive precipitation and early spring flooding present potential hindrances to the normal crop-choice and planting routines for 2019, particularly in the western Corn Belt (**Figure 5**).

Figure 4. Favorable Conditions Across Most Growing Zones Heading into 2019



Source: USDA, Office of the Chief Economist, Current U.S. Drought Monitor, March 5, 2019, http://droughtmonitor.unl.edu/data/jpg/current/current_usdm.jpg.

Figure 5. U.S. Spring Flood Outlook for 2019



Source: National Oceanic and Atmospheric Administration, March 21, 2019.

Large Corn and Soybean Crops Continue to Dominate Commodity Markets

Corn and soybeans are the two largest U.S. commercial crops in terms of both value and acreage. For the past several years, U.S. corn and soybean crops have experienced strong growth in both productivity and output, thus helping to build stockpiles at the end of the marketing year. This has been particularly true for soybeans, which have seen rapid growth in yield, acres planted, and stocks. This pattern reached a historic point in 2018 when, for the first time in history, U.S. soybean plantings (at 89.196 million acres) narrowly exceeded corn plantings (89.120 million acres). The record soybean plantings, coupled with the second-highest yields on record (51.6 bushels/acres), produced a record U.S. soybean harvest of 4.5 billion bushels and record ending stocks (900 million bushels) in 2018.[6] The record harvest and abundant supply, coupled with the sudden loss of China as the principal buyer of U.S. soybeans in 2018, have pressured soybean farm prices lower (-8%) to a projected $8.60/bushel for the 2018/2019 marketing year—the lowest farm price since 2006 (**Figure 6**).[7]

Like soybeans, USDA estimated the second-highest corn yields on record in 2018 at 176.4 bushels/acre (just behind the previous year's record yield of 176.6 bushels/acre). As a result, the United States produced the third-largest corn harvest on record at 14.4 billion bushels. Despite the near-record production, USDA predicts that record large domestic usage (including for livestock feed, ethanol production, other industrial processing, and seed) plus large exports will result in a

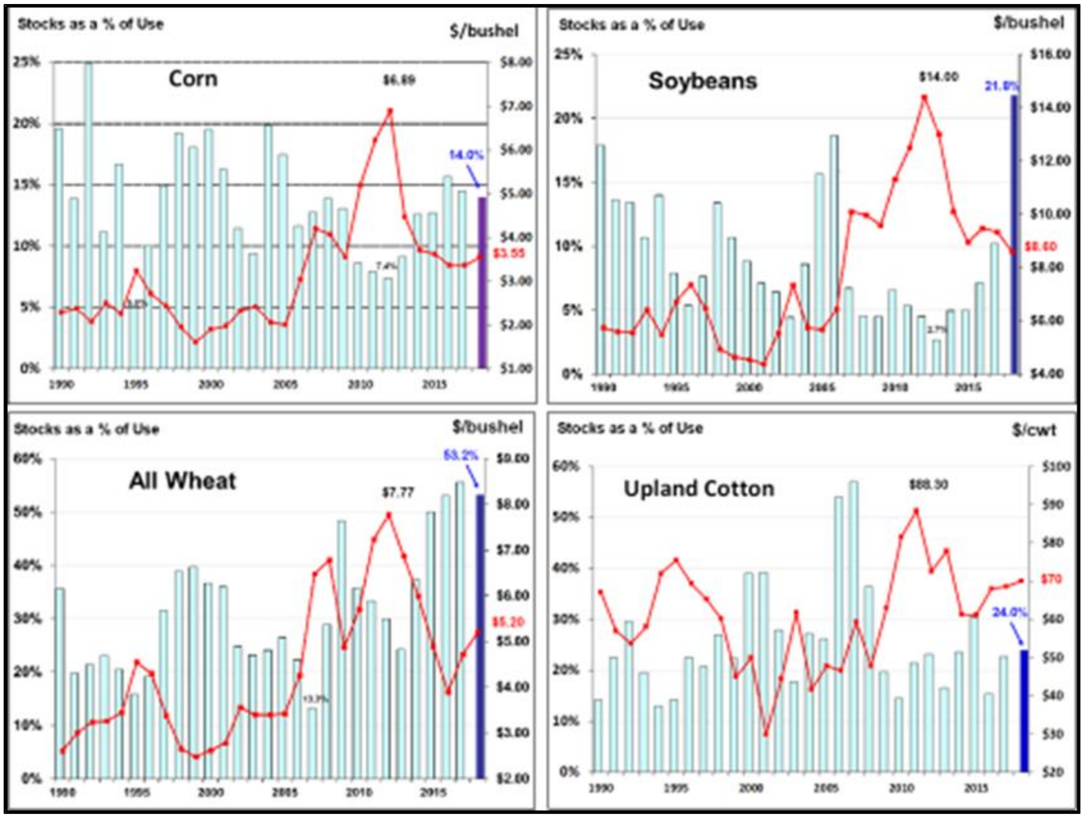
[6] USDA, World Agricultural Outlook Board (WAOB), *World Agricultural Supply and Demand Estimates (WASDE)*, March 8, 2019.

[7] The marketing year varies slightly with each agricultural commodity, but it tends to begin at harvest and end before the next year's harvest. For example, the marketing year for corn planted and harvested in 2018 begins September 1, 2018, and ends August 31, 2019.

small reduction in corn ending stocks, a decline in the ending stocks-to-use ratio to 14.0% (down from 14.5%) and a slightly higher season average farm price of $3.55/bushel.

Both wheat and upland cotton farm prices are projected up slightly from 2017 despite relatively abundant stocks-to-use ratios, largely on the strength of international demand.

Figure 6. Stocks-to-Use Ratios and Farm Prices: Corn, Soybeans, Wheat, and Cotton



Source: USDA, World Agricultural Outlook Board, *World Agricultural Supply and Demand Estimates*, April 9, 2019. All values are nominal. Values for 2019 are forecasts and are shown in dark blue.

Notes: Stocks-to-use equals the ratio of season-ending stocks relative to the season's total usage.

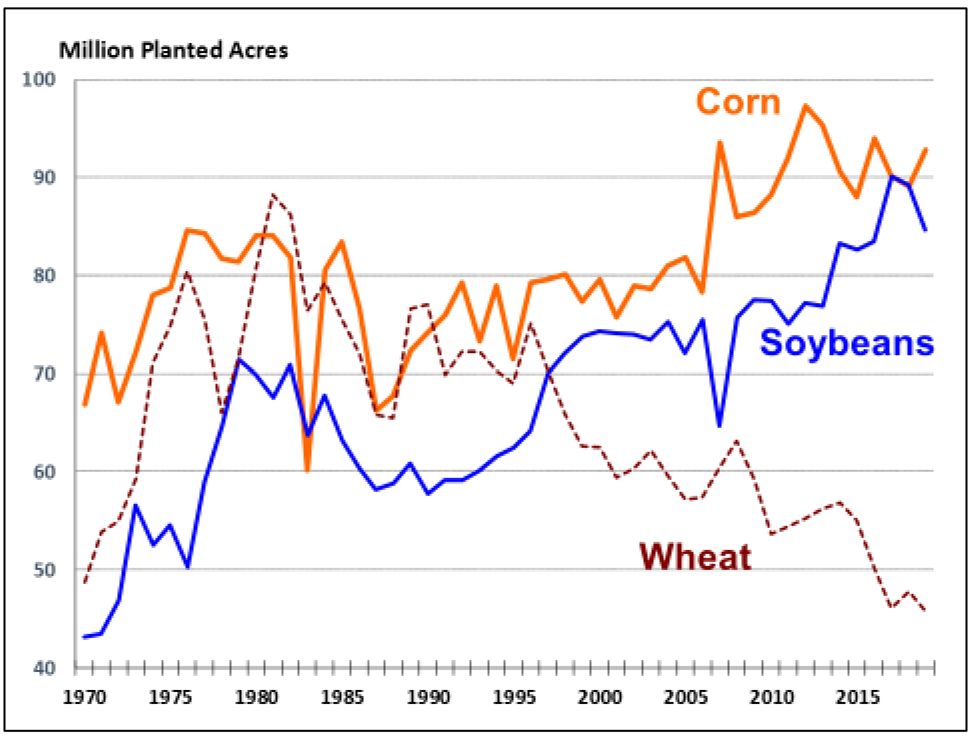
The corn and soybean crops provide important inputs for the domestic livestock, poultry, and biofuels sectors. In addition, the United States is traditionally one of the world's leading exporters of corn, soybeans, and soybean products—vegetable oil and meal. During the recent five-year period from 2013/2014 to 2017/2018, the United States exported 49% of its soybean production and 15% of its corn crop. As a result, the export outlook for these two crops is critical to both farm sector profitability and regional economic activity across large swaths of the United States as well as in international markets. However, a tariff-related trade dispute between the United States and several major trading partners (in particular, China) has cast uncertainty over the corn and soybean markets.[8]

[8] See CRS Insight IN10943, *Escalating Tariffs: Timeline*; and CRS Insight IN10880, *China's Retaliatory Tariffs on Selected U.S. Agricultural Products*.

The trade dispute has resulted in lower purchases of U.S. agricultural products by China in 2018,[9] with continued diminished prospects for 2019. China was the top export market for U.S. agricultural products in 2017 with $25.9 billion in purchases. With the realization of diminished Chinese purchases, USDA has revised downward its expected export value to China for 2018 to $20.5 billion and for 2019 to $13.6 billion.[10] Similarly, USDA has lowered its U.S. soybean export forecast from its initial estimate of 2.3 billion bushels in May 2018 to 1.875 billion bushels in its March 8, 2019, World Agricultural Supply and Demand Estimates report. The marketing year for corn and soybeans extends through August 2019. Thus, these forecasts depend on whether the trade dispute continues unabated or how the terms of any resolution (if one were to occur) would impact trade in the remaining months of the marketing year in 2019.

The rapid expansion of U.S. soybean production has come largely at the expense of the wheat sector, which has been steadily losing acreage over the past several decades (**Figure 7**). In 2017 U.S. wheat-planted acres were the lowest in over 100 years. Poor planting conditions in the fall of 2018 (for the 2019 winter wheat crop) across several states have resulted in the lowest estimated plantings outlook for winter wheat since 1909. The contraction in area is expected to support wheat prices and possibly lead to expanded spring wheat plantings in the Northern Plains in 2019.[11]

Figure 7. Planted Acres Since 1970: Corn, Soybeans, and Wheat



Source: USDA, National Agricultural Statistics Service (NASS).

[9] See CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

[10] ERS, *Outlook for U.S. Agricultural Trade*, AES-107, February 21, 2019.

[11] Rob Johansson, "The Outlook for U.S. Agriculture—2019," USDA, February 21, 2019.

Livestock Outlook for 2019

USDA's February 2019 *Cattle* report reported that U.S. cattle herd expansion, which has been growing since 2015, has slowed markedly but is still projected to grow through 2019.[12] Similarly, U.S. hog and poultry flocks have been growing and are expected to continue to expand in 2019.[13] A key uncertainty for the meat-producing sector is whether demand will expand rapidly enough to absorb the continued growth in output or whether surplus production will begin to pressure prices lower. For 2019, expected production of beef (+1.6%), pork (+4.2%), broilers (+1.2%), and eggs (+2.3%) are projected to expand relatively robustly. This growth in protein production was preceded by strong growth rates in 2018: beef (+2.6%), pork (+2.9%), broilers (+2.2%), and eggs (+2.1%). USDA projects that combined domestic and export demand will continue to grow for red meat (+1.7%) and poultry (+0.9%) but at slower rates than projected meat production, thus contributing to the outlook for lower prices and profit margins for livestock in 2019.

Feed Margins Signal Profit Outlook

The changing conditions for the U.S. livestock sector may be tracked by the evolution of the ratios of livestock output prices to feed costs (**Figure 10**). A higher ratio suggests greater profitability for producers.[14] The cattle-, hog-, and broiler-to-feed margins all moved upward in during 2014 but have exhibited volatility during the 2015-2018 period.[15] The hog, cattle, and broiler sectors remain profitable. However, continued production growth of between 2% and 4% for red meat and poultry suggests that prices are vulnerable to weakness in demand. Both the milk- and hog-to-feed ratios fell during 2018, suggesting eroding profitability. While this result varies widely across the United States, many small or marginally profitable hog and milk producers face continued financial difficulties. In addition, both U.S. and global milk production are projected to continue growing in 2019. As a result, milk prices could come under further pressure in 2019, although USDA is currently projecting milk prices up slightly in 2019.[16]

Background on the U.S. Cattle-Beef Sector

Record profitability among cow-calf producers in 2014, coupled with then-improved forage conditions, helped to trigger the beef cow herd expansion (**Figure 9**).[17] The continued cattle expansion through 2019—despite weakening profitability—is primarily the result of a lag in the biological response to the strong market price signals of late 2014. During the 2007-2014 period, high feed and forage prices plus widespread drought in the Southern Plains—the largest U.S. cattle production region—had resulted in an 8% contraction of the U.S. cattle inventory (**Figure 9**). Reduced beef supplies led to higher producer and consumer prices, which in turn triggered the slow rebuilding phase in the cattle cycle that started in 2014 (see the price-to-feed ratio for steers and heifers, **Figure 10**). The resulting continued expansion of beef supplies pressured market prices lower in 2016. The lower price outlook is expected to persist through 2019 despite strong domestic and international demand across all meat categories—beef, pork, and poultry (**Table A-4**).

[12] USDA, National Agricultural Statistics Service, *Cattle*, February 22, 2019.

[13] WAOB, *WASDE*, Table—U.S. Quarterly Animal Product Production, March 8, 2019, p. 31.

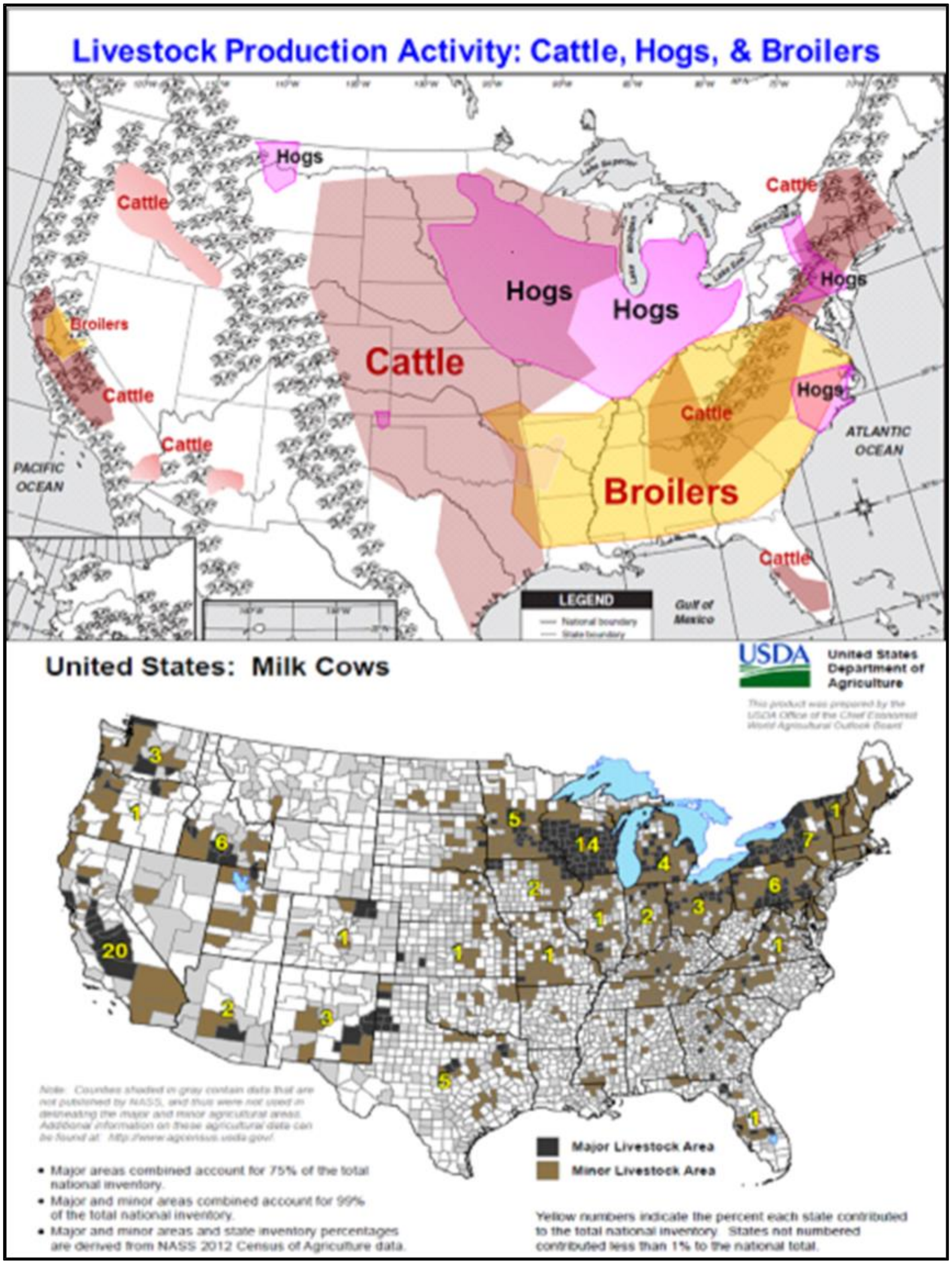
[14] Feed costs—at 30% to 80% of variable costs—are generally the largest cost component in livestock operations.

[15] Broilers are chickens raised for meat. Layers are chickens retained for egg production.

[16] WAOB, *WASDE*, Table—U.S. Quarterly Prices for Animal Products, November 8, 2018, p. 31.

[17] J. Mintert, "Cattle Inventory Growth Slowing Down, but Beef Production Still Increasing," *farmdoc daily*, vol. 8, no. 18 (February 5, 2018).

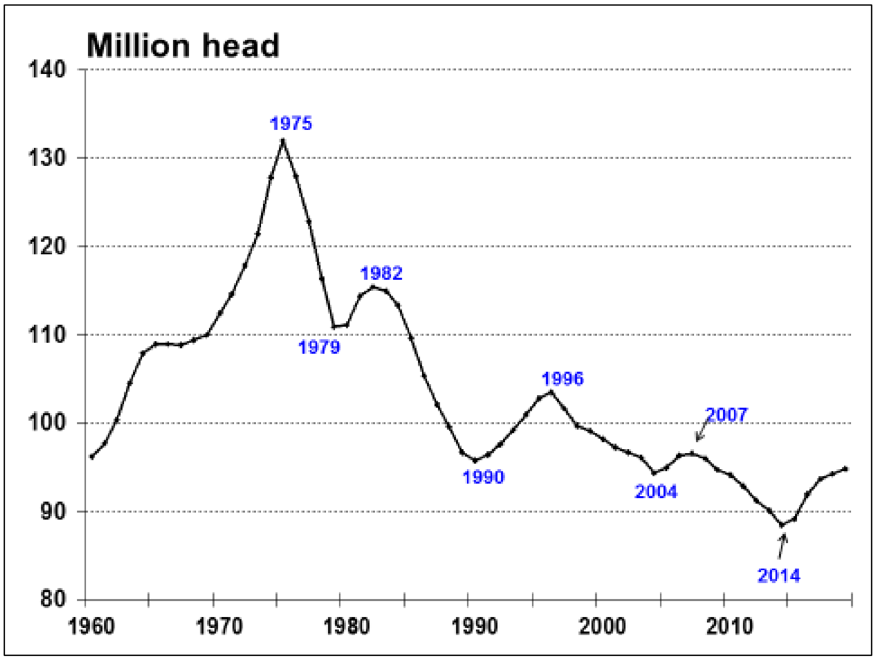
Figure 8. Principal Livestock Activity by Production Zones



Source: Compiled by CRS based on USDA, Office of the Chief Economist, "Major World Crop Areas: North America," https://www.usda.gov/oce/weather/pubs/Other/MWCACP/namerica.htm.

Notes: In the upper figure, cattle zones are purple, hogs are pink, and broilers are orange. In the lower figure, dairy zones are marked by light and dark shades of brown. Additional minor production activity occurs outside of the indicated zones. See source for mappings of minor production activity.

Figure 9. The U.S. Beef Cattle Inventory (Including Calves) Since 1960

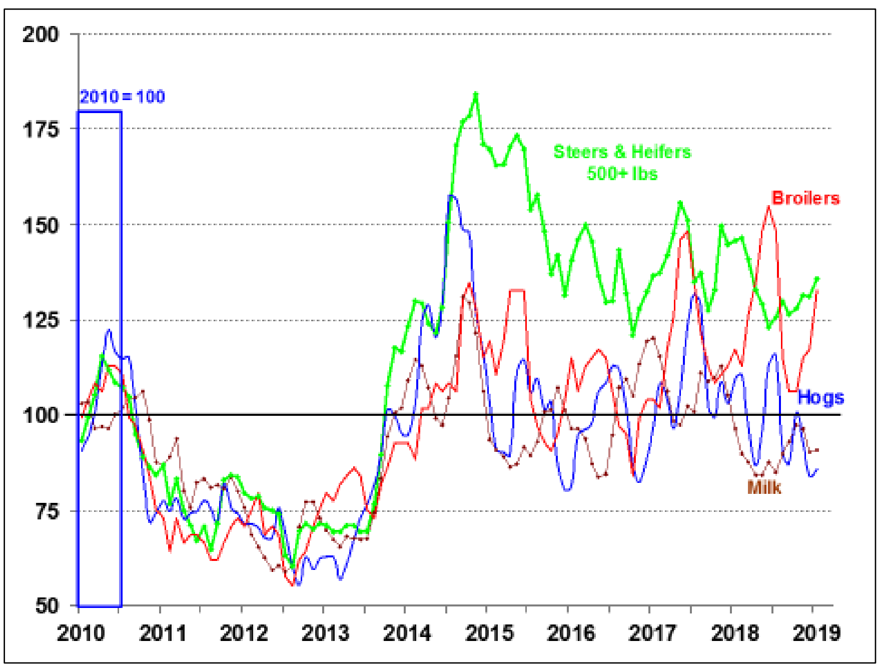


Source: NASS, *Cattle*, February 28, 2019.

Notes: Inventory data are for January 1 of each year.

Figure 10. Indexed Farm-Price-to-Feed Ratios for Cattle, Broilers, Milk, and Hogs

(Ratio of national average farm price per 100 lbs. of meat to per-unit feed cost. Indexed, 2010 = 100.)



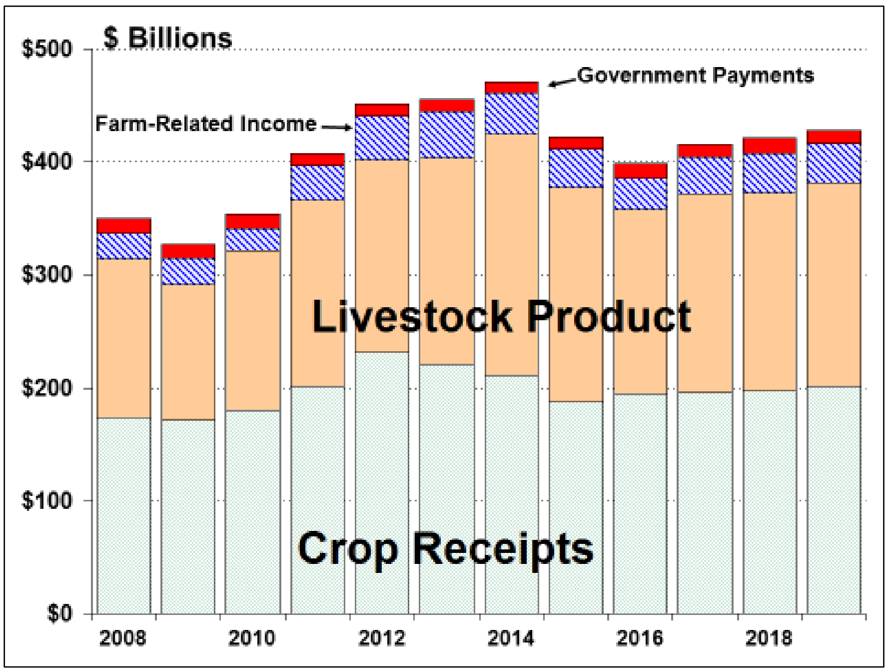
Source: NASS, *Agricultural Prices*, February 28, 2019.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2010 = 100. Cattle and hog feed cost is 100% corn. Broilers feed cost is 58% corn and 42% soybeans. Dairy feed cost is a mix of corn, soybean meal, and alfalfa hay.

Gross Cash Income Highlights

Projected farm-sector revenue sources in 2019 include crop revenues (47% of sector revenues), livestock receipts (42%), government payments (3%), and other farm-related income (8%), including crop insurance indemnities, machine hire, and custom work. Total farm sector gross cash income for 2019 is projected to be up (+1.4%) to $427.5 billion, driven by increases in both crop (+2%) and livestock (+2.6%) receipts (**Figure 11**). Cash receipts from direct government payments (-17%) and other farm-related income (-1.2) are down slightly from 2018.

Figure 11. Farm Cash Receipts by Source, 2008-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Notes: Farm-related income includes income from custom work, machine hire, agro-tourism, forest product sales, crop insurance indemnities, and cooperative patronage dividend fees.

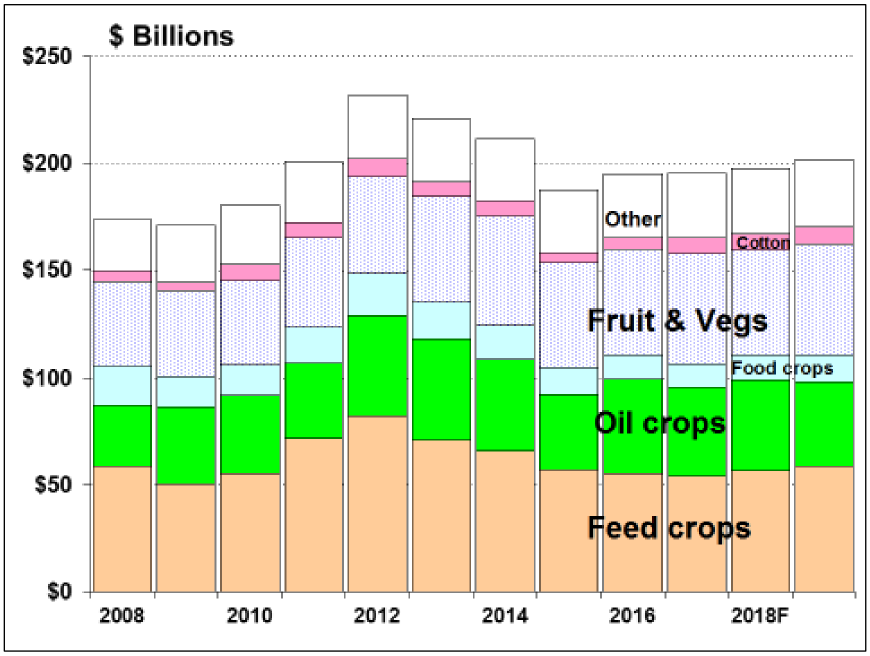
Crop Receipts

Total crop sales peaked in 2012 at $231.6 billion when a nationwide drought pushed commodity prices to record or near-record levels. In 2019, crop sales are projected at $201.7 billion, up slightly from 2018 (**Figure 12**). Projections for 2019 and percentage changes from 2018 include:

- Feed crops—corn, barley, oats, sorghum, and hay: $58.8 billion (+4.0%);
- Oil crops—soybeans, peanuts, and other oilseeds: $39.5 billion (-6.6%);
- Fruits and nuts: $32.9 billion (+8.2%);
- Vegetables and melons: $18.6 billion (+0.9%);
- Food grains—wheat and rice: $12.4 billion (+6.2%);

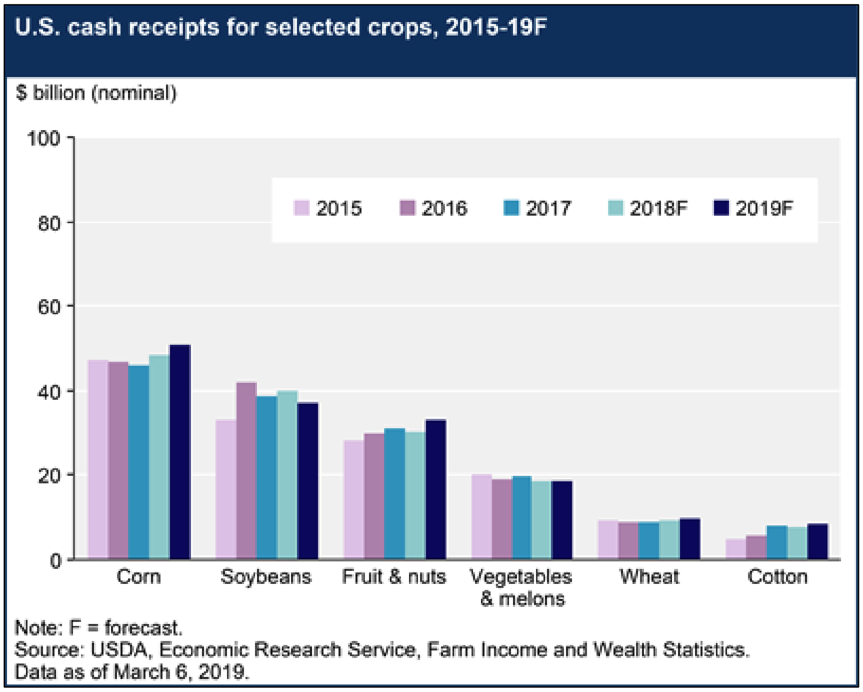
- Cotton: $8.3 billion (+6.5%); and
- Other crops including tobacco, sugar, greenhouse, and nursery: $29.8 billion (+2%).

Figure 12. Crop Cash Receipts by Source, 2008-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Figure 13. Cash Receipts for Selected Crops, 2015-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

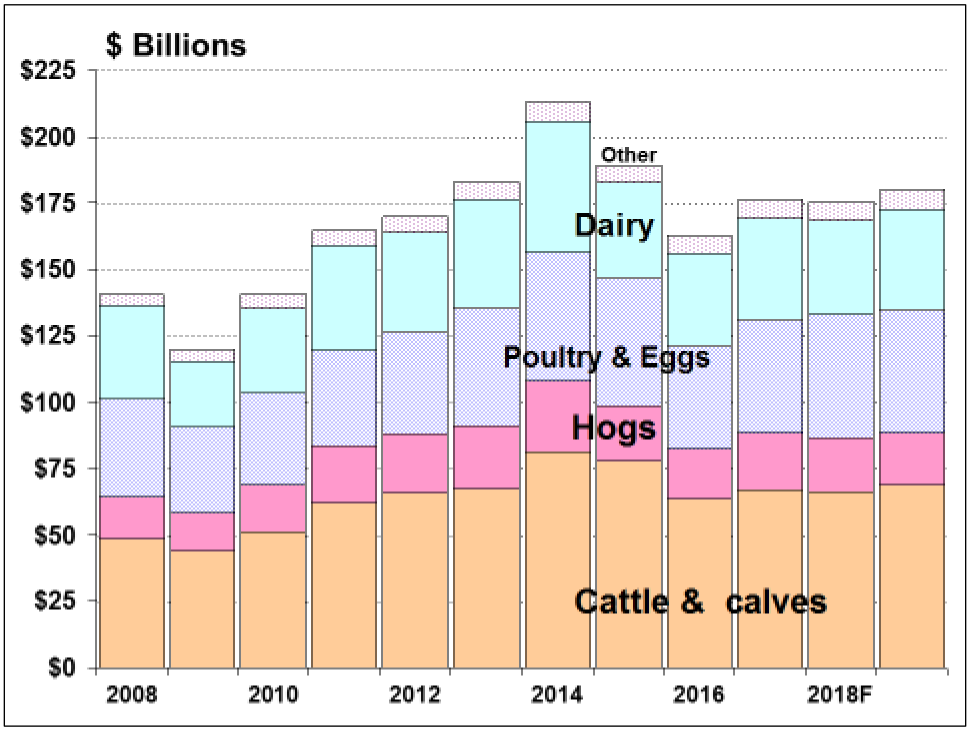
Livestock Receipts

The livestock sector includes cattle, hogs, sheep, poultry and eggs, dairy, and other minor activities. Cash receipts for the livestock sector grew steadily from 2009 to 2014, when it peaked at a record $212.8 billion. However, the sector turned downward in 2015 (-11.0%) and again in 2016 (-14.1%), driven largely by projected year-over-year price declines across major livestock categories (**Table A-4** and **Figure 14**). In 2017, livestock sector cash receipts recovered with year-to-year growth of 8.1% to $176.0 billion. In 2018, cash receipts were nearly unchanged. In 2019, cash receipts are projected up 2.6% for the sector at $179.9 billion as cattle and dairy sales partially offset declines in hog and poultry. Projections for 2019 (and percentage changes from 2018) include:

- Cattle and calf sales: $69.2 billion (+4.0%);
- Poultry and egg sales: $46.0 billion (-0.7%);
- Dairy sales, valued at $37.8 billion (+7.8%);
- Hog sales: $19.5 billion (-3.2%); and
- Miscellaneous livestock,[18] valued at $7.4 billion (+2.7%).

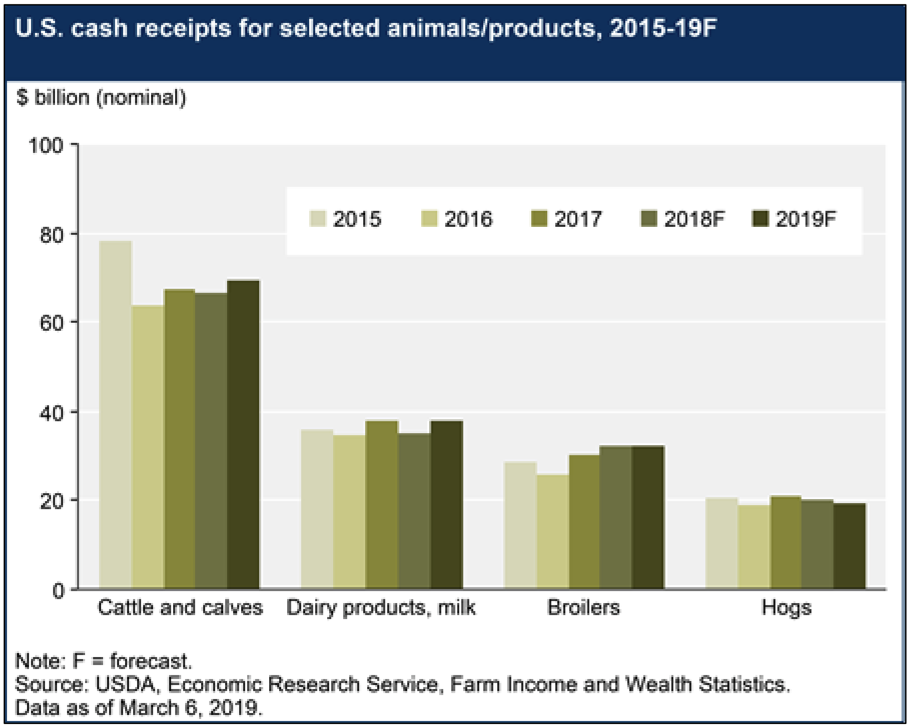
[18] Miscellaneous livestock includes aquaculture, sheep and lambs, honey, mohair, wool, pelts, and other animal products.

Figure 14. U.S. Livestock Product Cash Receipts by Source, 2008-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Figure 15. Cash Receipts for Selected Animal Products, 2015-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Government Payments

Government payments include direct payments (decoupled payments based on historical planted acres), price-contingent payments (program outlays linked to market conditions), conservation payments (including the Conservation Reserve Program and other environmental-based outlays), ad hoc and emergency disaster assistance payments (including emergency supplemental crop and livestock disaster payments and market loss assistance payments for relief of low commodity prices), and other miscellaneous outlays (including market facilitation payments, cotton ginning cost-share, biomass crop assistance program, peanut quota buyout, milk income loss, tobacco transition, and other miscellaneous payments).

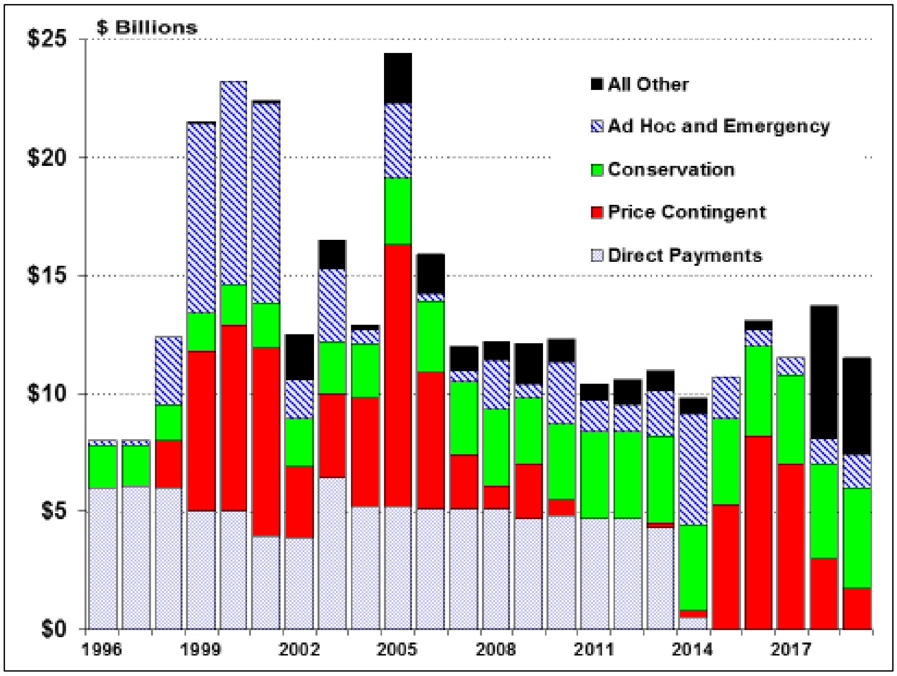
Total government payments of $11.5 billion still represent a relatively small share (3%) of projected gross cash income of $427.5 billion in 2019. In contrast, government payments are expected to represent 16% of the projected net farm income of $69.4 billion. However, the importance of government payments as a percentage of net farm income varies nationally by crop and livestock sector and by region.

Government payments in 2019 are projected down 16.8% from 2018 at $11.5 billion (**Figure 16** and **Table A-4**). Government payments in 2018 were inflated by unexpected payments of approximately $5.2 billion under the MFP initiated by USDA in response to the U.S.-China trade dispute.[19] MFP payments to qualifying agricultural producers were estimated at $5.7 billion in

[19] In July 2018, USDA announced a trade aid package including up to $12 billion in financial support designed to partially offset the negative price and income effects of lost commodity sales to major markets. The trade aid package included direct payments of up to an estimated $9.7 billion to qualifying producers of soybeans, corn, cotton, sorghum,

2018 and are projected at $3.5 billion in 2019, thus accounting for a year-to-year difference of -$2.2 billion. USDA ad hoc disaster assistance,[20] at $1.4 billion, is projected up (+20.4%). MFP and ad hoc disaster assistance payments are expected to add $6.8 billion, or about 12%, to net farm income in 2018 and $4.9 billion, or about 8%, to net farm income in 2019.

Figure 16. U.S. Government Farm Support, Direct Outlays, 1996-2019F



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

Notes: Data are on a calendar year basis and reflect the timing of the actual payment. "Direct Payments" include production flexibility contract payments enacted under the 1996 farm bill and fixed direct payments of the 2002 and 2008 farm bills. "Price-Contingent" outlays include loan deficiency payments, marketing loan gains, counter-cyclical payments, Average Crop Revenue Election, Price Loss Coverage, and Agricultural Risk Coverage payments. "Conservation" outlays include Conservation Reserve Program payments along with other conservation program outlays. "Ad Hoc and Emergency" includes emergency supplemental crop and livestock disaster payments and market loss assistance payments for relief of low commodity prices. "All Other" outlays include market facilitation payments, cotton ginning cost-share, biomass crop assistance program, peanut quota buyout, milk income loss, tobacco transition, and other miscellaneous payments.

Payments under the Agricultural Risk Coverage and Price Loss Coverage programs are projected lower in 2019 at $1.7 billion compared with an estimated $3.0 billion in 2018 (see "Price Contingent" in **Figure 16**).[21] No payments are forecast under the marketing loan program in 2019, the same as in 2018, as program crop prices are expected to remain above most farm-bill loan rates through 2019. The new Dairy Margin Coverage program is expected to make $600

wheat, hogs, dairy, fresh sweet cherries, and shelled almonds. The trade aid package also included $1.2 billion in government purchases of excess food supplies and $200 million in trade promotion. See CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*.

[20] Fiscal year payments generally involve outlay commitments incurred during the previous crop year. For example, FY2019 disaster assistance payments are primarily related to disasters for crops that were grown and harvested in 2018. See CRS Report RS21212, *Agricultural Disaster Assistance*, for information on available farm disaster programs.

[21] For details see CRS Report R43448, *Farm Commodity Provisions in the 2014 Farm Bill (P.L. 113-79)*.

million in payments in 2019, up from $188 million under the previous milk Margin Protection Program (MPP) in 2018 (see next section for details).

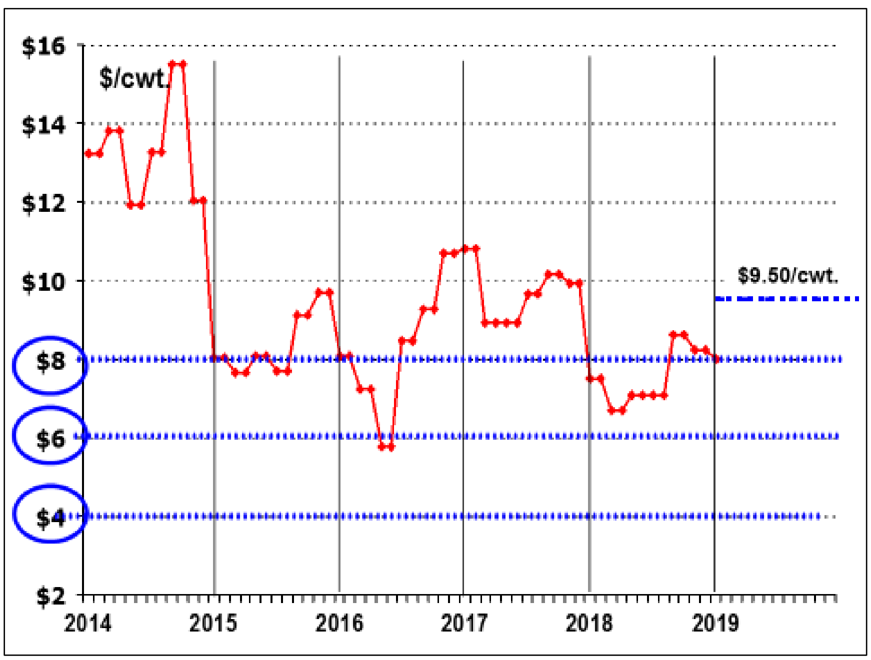
Conservation programs include all conservation programs operated by USDA's Farm Service Agency and the Natural Resources Conservation Service that provide direct payments to producers. Estimated conservation payments of $4.3 billion are forecast for 2019, up slightly from $4.0 billion in 2018.

Dairy Margin Coverage Program Outlook

The 2018 farm bill (Agricultural Improvement Act of 2018, P.L. 115-334) made several changes to the previous MPP program, including a new name—the Dairy Margin Coverage (DMC) program—and expanded margin coverage choices from the original range of $4.00-$8.00 per hundredweight (cwt.).[22] Under the 2018 farm bill, milk producers have the option of covering the milk-to-feed margin at a $9.50/cwt. threshold on the first 5 million pounds of milk coverage under the program.

Figure 17. The Dairy Output-to-Input Margin Has Fallen Below $8/cwt. in Early 2018

(The dairy margin equals the national average farm price of milk less average feed costs per 100 lbs.)



Source: NASS, *Agricultural Prices*, February 28, 2019; calculations by CRS. All values are nominal.

Note: The margin equals the All Milk price minus a composite feed price based on the formula used by the DMC of the 2018 farm bill starting January 2019 and, for all prior months, the MPP of the 2014 farm bill (P.L. 113-79). See CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

The DMC margin differs from the USDA-reported milk-to-feed ratio shown in **Figure 10** but reflects the same market forces. As of January 2019, the formula-based milk-to-feed margin used

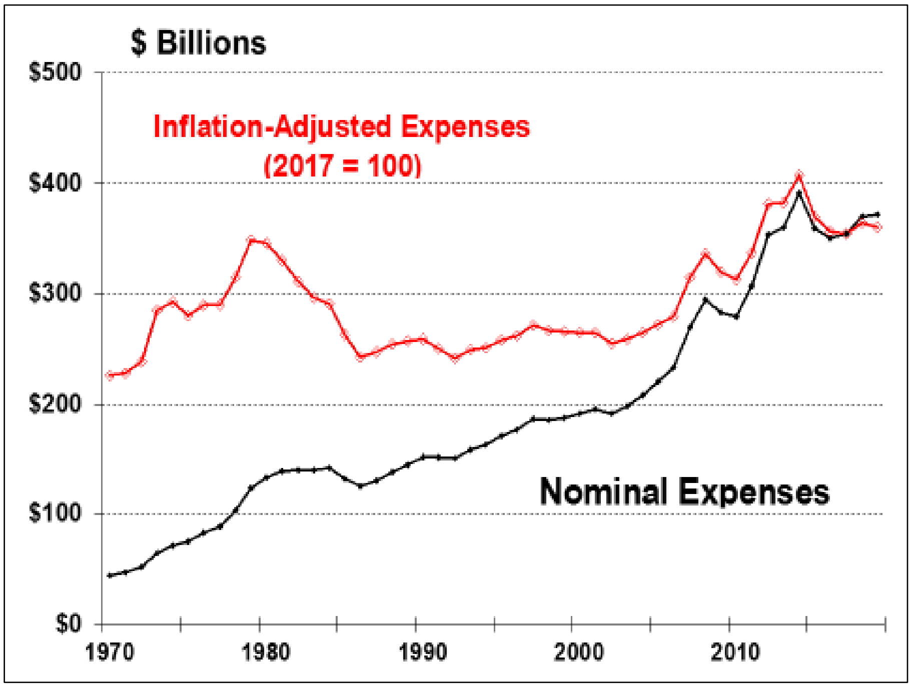
[22] The margin equals the All Milk price minus a composite feed price based on the formula used by the DMC of the 2018 farm bill starting January 2019 and, for all prior months, the MPP of the 2014 farm bill (P.L. 113-79). See CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, and CRS In Focus IF10195, *U.S. Dairy Programs After the 2014 Farm Bill (P.L. 113-79).*

to determine government payments was below the newly instituted $9.50/cwt. threshold (**Figure 17**), thus increasing the likelihood of DMC payments in 2019.

Production Expenses

Total production expenses for 2019 for the U.S. agricultural sector are projected to be up slightly (+0.6%) from 2018 in nominal dollars at $372.0 billion (**Figure 18**). Production expenses peaked in both nominal and inflation-adjusted dollars in 2014, then declined for two years before resuming their upward trend in nominal dollars in 2017.

Figure 18. Total Annual Farm Production Expenses, 1970-2019

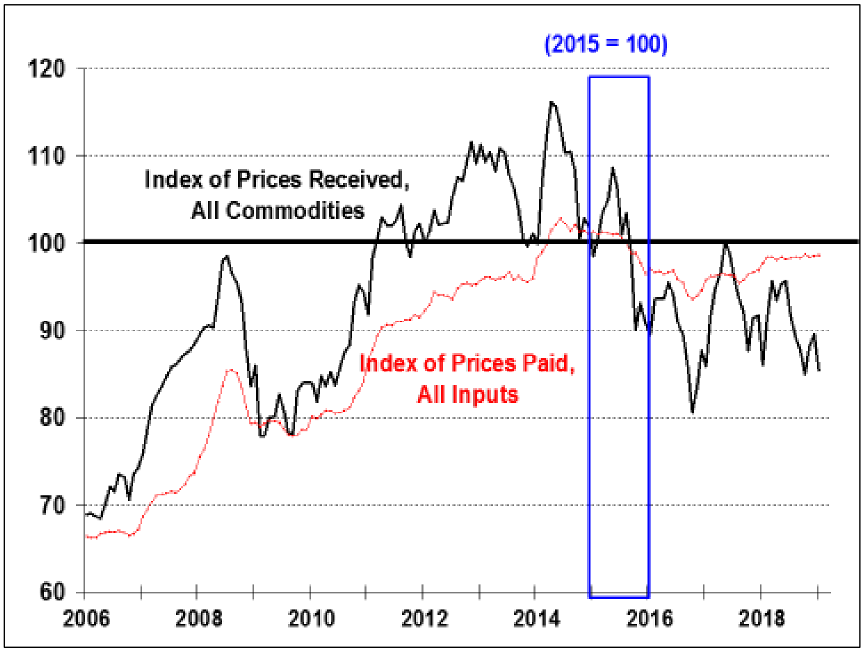


Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Inflation-adjusted expenses are calculated using the chain-type GDP deflator. OMB, Historical Tables, Table 10.1. Amounts for 2019 are forecasts.

But how have production expenses moved relative to revenues? A comparison of the indexes of prices paid (an indicator of expenses) versus prices received (an indicator of revenues) reveals that the prices received index generally declined from 2014 through 2016, rebounded in 2017, then declined again in 2018 (**Figure 19**). Farm input prices (as reflected by the prices paid index) showed a similar pattern but with a much smaller decline from their 2014 peak, thus suggesting that farm sector profit margins have been squeezed since 2014.

Production expenses will affect crop and livestock farms differently. The principal expenses for livestock farms are feed costs, purchases of feeder animals and poultry, and hired labor. Feed costs, labor expenses, interest costs, and property taxes are all projected up in 2019 (**Figure 20**). In contrast, fuel, land rent, and fertilizer costs are projected lower.

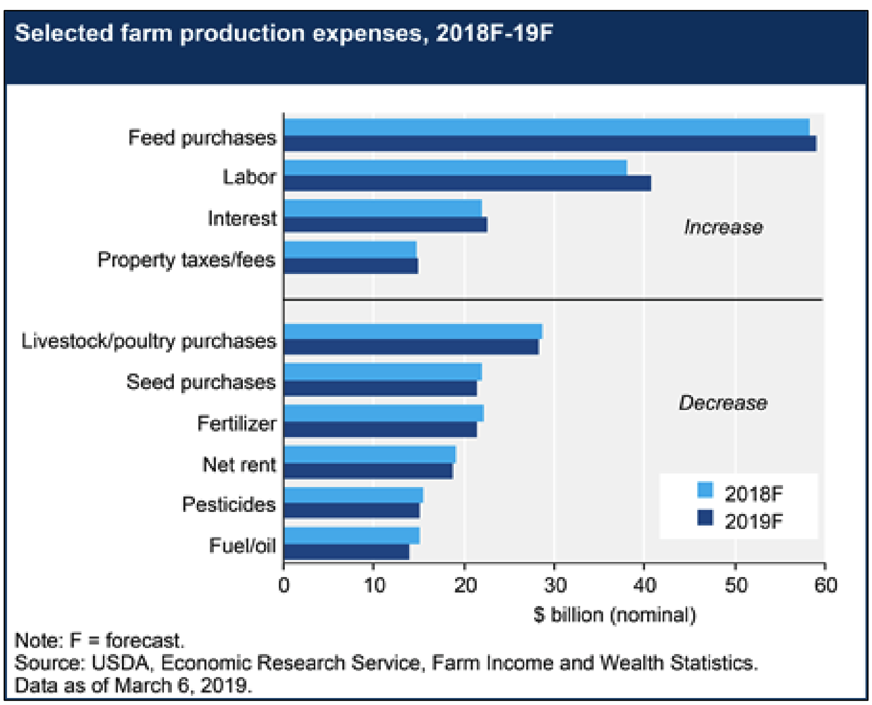
Figure 19. Index of Monthly Prices Received vs. Prices Paid, 2006-2019



Source: NASS, *Agricultural Prices*, February 28, 2019.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2015 = 100. Prices are indexed to 2015 = 100 to permit relative comparisons. Calculations by CRS.

Figure 20. Farm Production Expenses for Selected Items, 2018 and 2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are nominal—that is, not adjusted for inflation. Values for 2019 are forecasts.

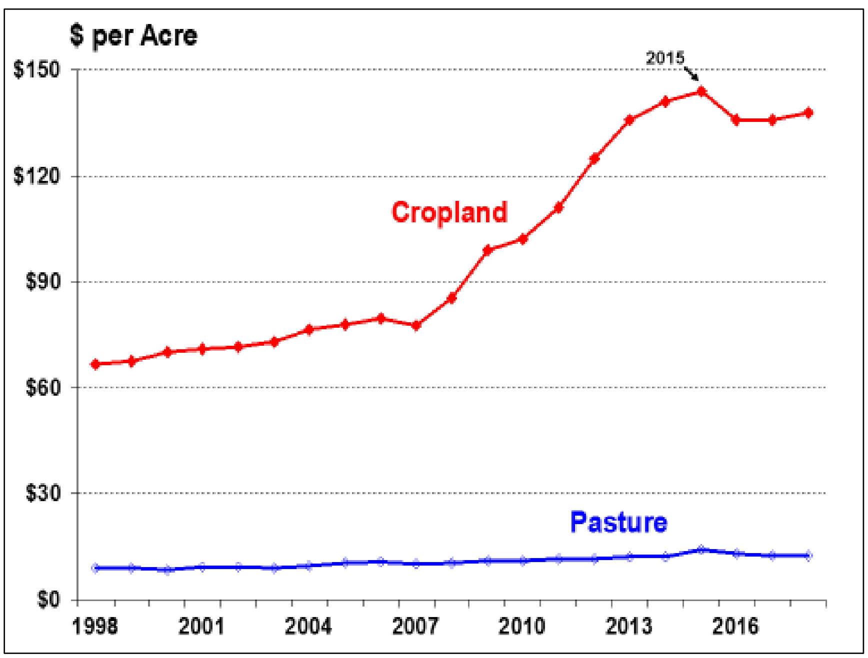
Cash Rental Rates

Renting or leasing land is a way for young or beginning farmers to enter agriculture without incurring debt associated with land purchases. It is also a means for existing farm operations to adjust production more quickly in response to changing market and production conditions while avoiding risks associated with land ownership. The share of rented farmland varies widely by region and production activity. However, for some farms it constitutes an important component of farm operating expenses. Since 2002, about 38% of agricultural land used in U.S. farming operations has been rented.[23]

The majority of rented land in farms is rented from nonoperating landlords. Nationally in 2012, 30% of all land in farms was rented from someone other than a farm operator. Some farmland is rented from other farm operations—nationally about 8% of all land in farms in 2012 (the most recent year for which data are available)—and thus constitutes a source of income for some operator landlords. Total net rent to nonoperator landlords is projected to be down (-2.1%) at $14.3 billion in 2019.

Cash rental rates for 2019 are not yet available. Average cash rental rates for 2018 were up year-over-year ($138 per acre versus $136 in 2017). Although rental rates—which for 2019 were set the preceding fall of 2018 or in early spring of 2019—dipped in 2016, they still reflect the high crop prices and large net returns of the preceding several years, especially the 2011-2014 period (**Figure 21**). The national rental rate for cropland peaked at $144 per acre in 2015.[24]

Figure 21. U.S. Average Farmland Cash Rental Rates Since 1998



Source: NASS, *Agricultural Land Values*, August 2, 2018. All values are nominal.

[23] ERS, "Land Use, Land Values and Tenure: Farmland Ownership and Tenure," https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-ownership-and-tenure/.

[24] Local and regional land rental rates may vary substantially from the national average.

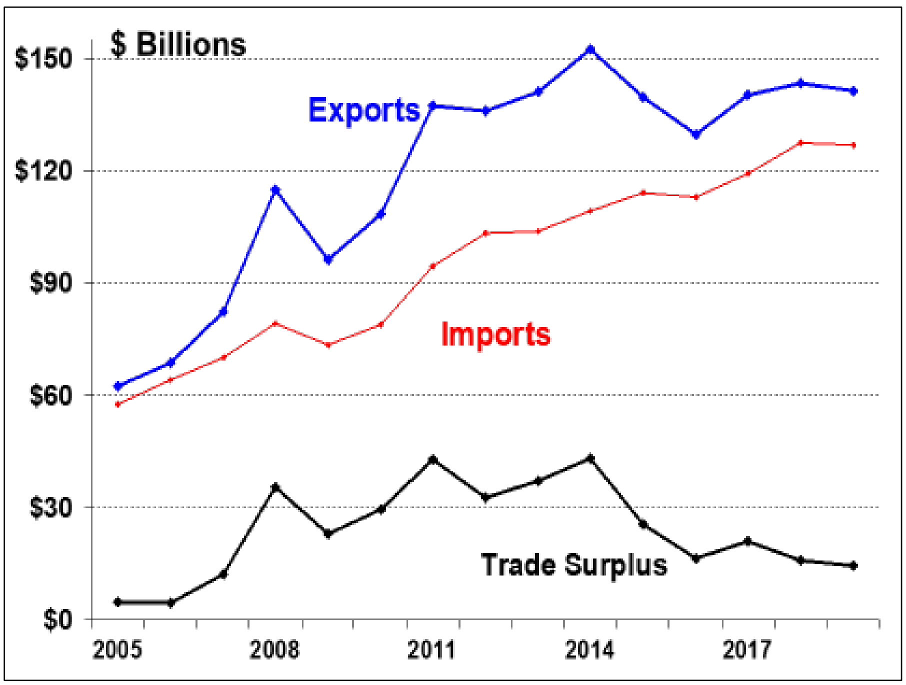
Agricultural Trade Outlook

U.S. agricultural exports have been a major contributor to farm income, especially since 2005. As a result, the downturn in those exports that started in 2015 (**Figure 22**) deepened the downturn in farm income that had started in 2013 (**Figure 1**).

Key U.S. Agricultural Trade Highlights

- USDA projects U.S. agricultural exports at $141.5 billion in FY2019, down slightly (-1%) from $143.4 billion in FY2018. Export data include processed and unprocessed agricultural products. This downturn masks larger country-level changes that have occurred as a result of ongoing trade disputes (as discussed below).
- In FY2019, U.S. agricultural imports are projected nearly unchanged at $127.0 billion, but the resultant agricultural trade surplus of $14.5 billion would be the lowest since 2007.

Figure 22. U.S. Agricultural Trade Since 2005, Nominal Values



Source: ERS, *Outlook for U.S. Agricultural Trade*, AES-107, February 21, 2019. Amounts for 2018 and 2019 are projected.

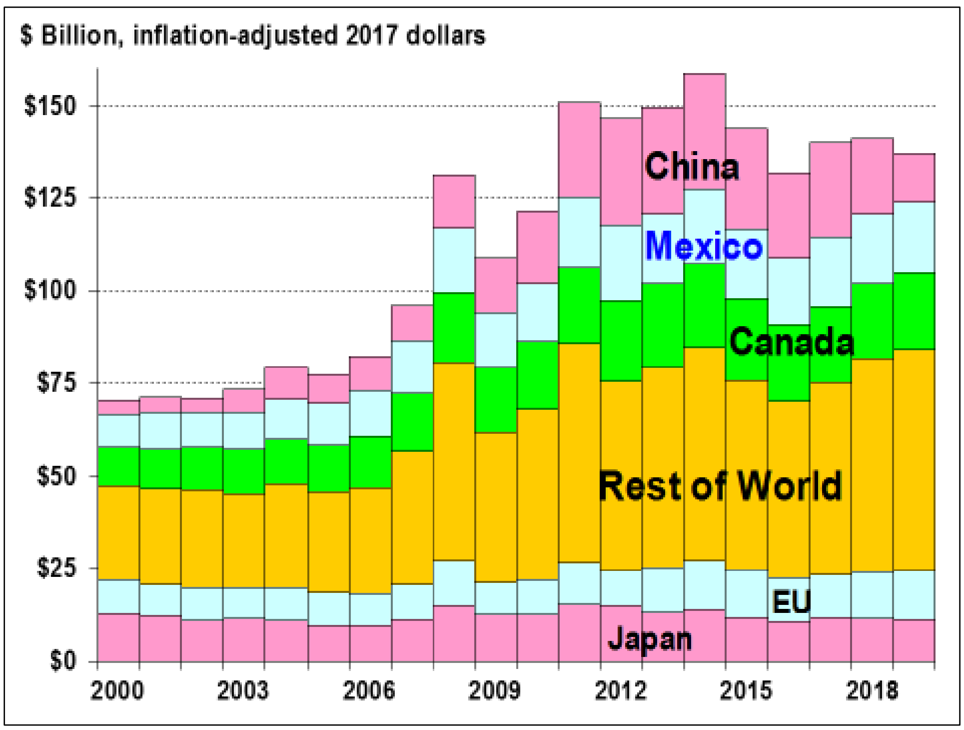
- A substantial portion of the surge in U.S. agricultural exports that occurred between 2010 and 2014 was due to higher-priced grain and feed shipments, including record oilseed exports to China and growing animal product exports to East Asia. As commodity prices have leveled off, so too have export values (see the commodity price indexes in **Figure A-1** and **Figure A-2**).
- In FY2017, the top three markets for U.S. agricultural exports were China, Canada, and Mexico, in that order. Together, these three countries accounted for

46% of total U.S. agricultural exports during the five-year period FY2014-FY2018 (**Figure 23**).

- However, in FY2019 the combined share of U.S. exports taken by China, Canada, and Mexico is projected down to 42% largely due to sharply lower exports to China. The ordering of the top three markets is reordered to Canada, Mexico, and China, as China is projected to barely stay ahead of the European Union and Japan as a destination for U.S. agricultural exports.
- From FY2014 through FY2017, China imported an average of $26.2 billion of U.S. agricultural products. However, USDA forecasts China's imports of U.S. agricultural products to decline to $20.5 billion in FY2018 and to $13.6 billion in FY2019 as a result of the U.S.-China trade dispute.
- The fourth- and fifth-largest U.S. export markets are the European Union and Japan, which have accounted for a combined 17% of U.S. agricultural exports during the FY2014-FY2018 period. This same share is projected to continue in FY2019 (**Figure 23**). These two markets have shown relatively limited growth in recent years when compared with the rest of the world.

Figure 23. U.S. Agricultural Exports Have Leveled Off Since FY2011

(Inflation adjusted using the implicit chain GDP deflator, 2017 = 100)



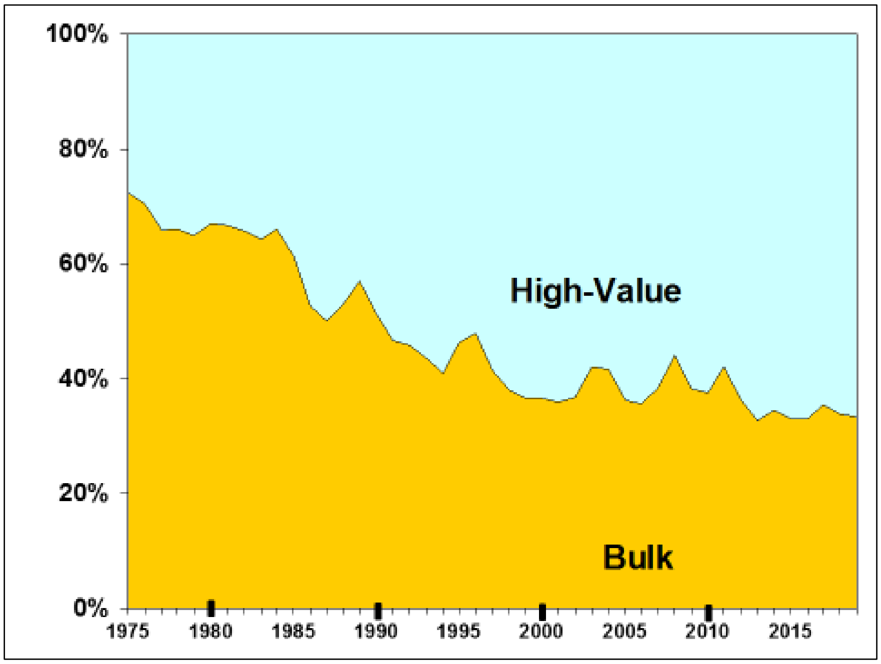
Source: ERS, *Outlook for U.S. Agricultural Trade*, AES-107, February 21, 2019. Amounts for 2018 and 2019 are projected. All values are adjusted for inflation by CRS using the chain-type gross domestic product deflator, where 2017 = 100. OMB, Historical Tables, Table 10.1, https://www.whitehouse.gov/omb/budget/Historicals.

Note: Data are for fiscal years (October to September).

- The "Rest of World" (ROW) component of U.S. agricultural trade—South and Central America, the Middle East, Africa, and Southeast Asia—has shown strong import growth in recent years. ROW is expected to account for 41% of U.S. agricultural exports in FY2019. ROW import growth is being driven in part by both population and GDP growth but also from shifting trade patterns as some products previously targeting China have been diverted to new markets.

- Over the past four decades, U.S. agricultural exports have experienced fairly steady growth in shipments of high-value products—including horticultural products, livestock, poultry, and dairy. High-valued exports are forecast at $94.3 billion for a 66.6% share of U.S. agricultural exports in FY2019 (**Figure 24**).
- In contrast, bulk commodity shipments (primarily wheat, rice, feed grains, soybeans, cotton, and unmanufactured tobacco) are forecast at a 33.4% share of total U.S. agricultural exports in FY2019 at $47.2 billion. This compares with an average share of over 60% during the 1970s and into the 1980s. As grain and oilseed prices decline, so will the bulk value share of U.S. exports.

Figure 24. U.S. Agricultural Trade: Bulk vs. High-Value Shares



Source: ERS, *Outlook for U.S. Agricultural Trade*, AES-107, February 21, 2019. Amounts for 2018 and 2019 are projected.

U.S. Farm and Manufactured Agricultural Product Export Shares

The share of agricultural production (based on value) sold outside the country indicates the level of U.S. agriculture's dependence on foreign markets, as well as the overall market for U.S. agricultural products.

The U.S. Export Share Measurement for Agriculture

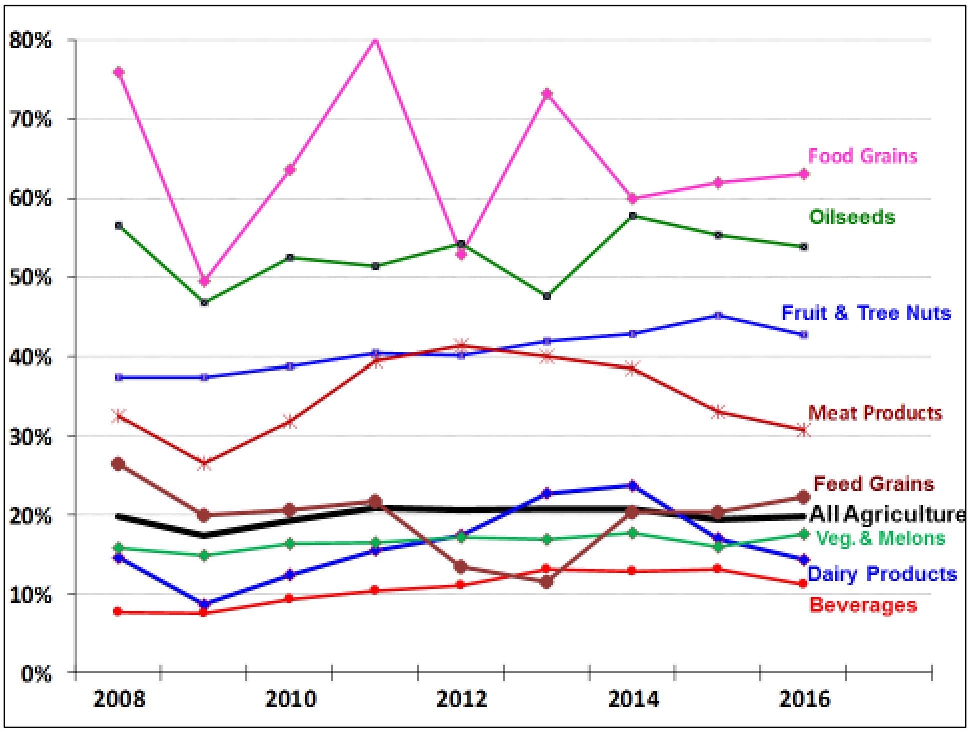
Because agricultural and food exports consist of farm commodities and their manufactured products, a substantial component of export value represents value-added from marketing and processing. This value-added must be accounted for in measuring the U.S. export share. With this in mind, ERS calculates the export value share for agriculture as follows:[25] The numerator includes aggregated export values for all agricultural products—including

[25] The methodology is described at ERS, "U.S. Export Share of Production," https://www.ers.usda.gov/topics/international-markets-us-trade/us-agricultural-trade/.

bulk commodities and manufactured products. The denominator includes the total value of U.S. farm and manufactured agricultural production—estimated as farm cash receipts for crop and livestock production plus the value added by agricultural manufacturers. The value-added amount for agricultural processing is from the U.S. Census Bureau's Annual Survey of Manufacturers.

As a share of total farm and manufactured agricultural production, U.S. exports were estimated to account for 19.8% of the overall market for agricultural products from 2008 through 2016—the most recent data year for this calculation (**Figure 25**). The export share of agricultural production varies by product category.

Figure 25. U.S. Export Share of Farm and Manufactured Agricultural Production



Source: ERS, "U.S. Export Share of Production," as of February 9, 2018.

Note: The export value share includes aggregated export values for all agricultural products—including bulk commodities and manufactured products—in the numerator and the total value of U.S. farm and manufactured agricultural production—estimated as farm cash receipts for crop and livestock production plus the value added by agricultural manufacturers—in the denominator.

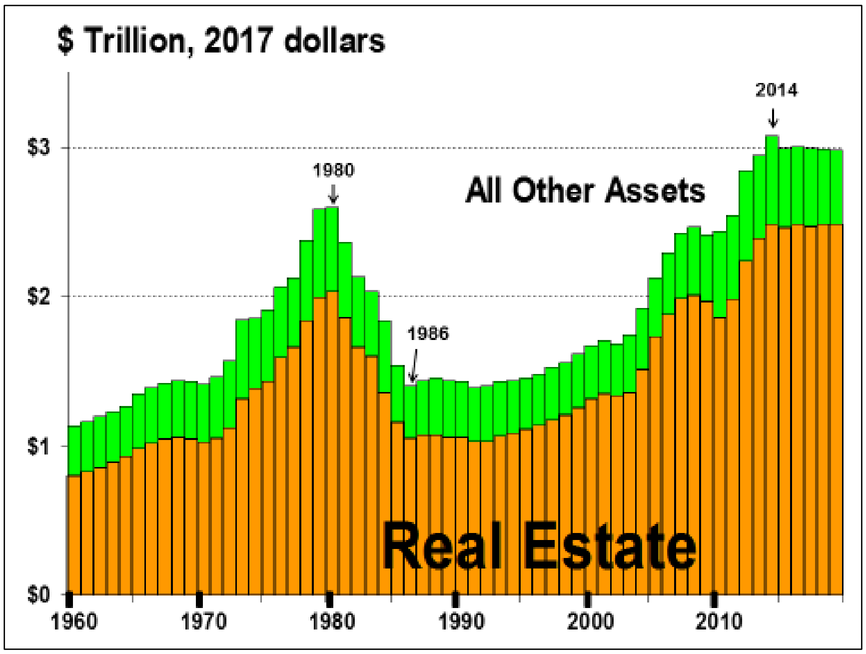
- At the upper end of the range for export shares, the bulk food grain export share has varied between 50% and 80% since 2008, while the oilseed export share has ranged between 47% and 58%.
- The mid-spectrum range of export shares includes the export share for fruit and tree nuts, which has ranged from 37% to 45%, while meat products have ranged from 27% to 41%.
- At the low end of the spectrum, the export share of vegetable and melon sales has ranged from 15% to 18%, the dairy products export share from 9% to 24%, and the agricultural-based beverage export share between 7% and 13%.

Farm Asset Values and Debt

The U.S. farm income and asset-value situation and outlook suggest a relatively stable financial position heading into 2019 for the agriculture sector as a whole—but with considerable uncertainty regarding the downward outlook for prices and market conditions for the sector and an increasing dependency on international markets to absorb domestic surpluses

- Farm asset values—which reflect farm investors' and lenders' expectations about long-term profitability of farm sector investments—are projected to be up 1.5% in 2019 to a nominal $3.1 trillion (**Table A-3**). In inflation-adjusted terms (using 2017 dollars), farm asset values peaked in 2014 (**Figure 26**).

Figure 26. Real Estate Assets Comprise 83% of Total Farm Sector Assets in 2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are adjusted for inflation using the chain-type GDP deflator such that 2017 = 100. OMB, Historical Tables, Table 10.1; 2018 and 2019 are forecasts.

Note: Nonreal estate assets include financial assets, inventories of agricultural products, and the value of machinery and motor vehicles.

- Nominally higher farm asset values are expected in 2019 due to higher real estate values (+1.8%), which offset a slight decrease in nonreal estate values (-0.1%). Real estate is projected to account for 83% of total farm sector asset value.
- Crop land values are closely linked to commodity prices. The leveling off of crop land values since 2015 reflects mixed forecasts for commodity prices (corn, soybeans, and cotton lower; wheat, rice, and livestock products higher) and the uncertainty associated with international commodity markets (**Figure 27**).
- Total farm debt is forecast to rise to a record $426.7 billion in 2019 (+3.9%) (**Table A-3**). Farm equity—or net worth, defined as asset value minus debt—is projected to be up slightly (+1.1%) at $2.7 trillion in 2019 (**Table A-3**).
- The farm debt-to-asset ratio is forecast up in 2019 at 13.9%, the highest level since 2002 but still relatively low by historical standards (**Figure 28**).

Measuring Farm Wealth: The Debt-to-Asset Ratio

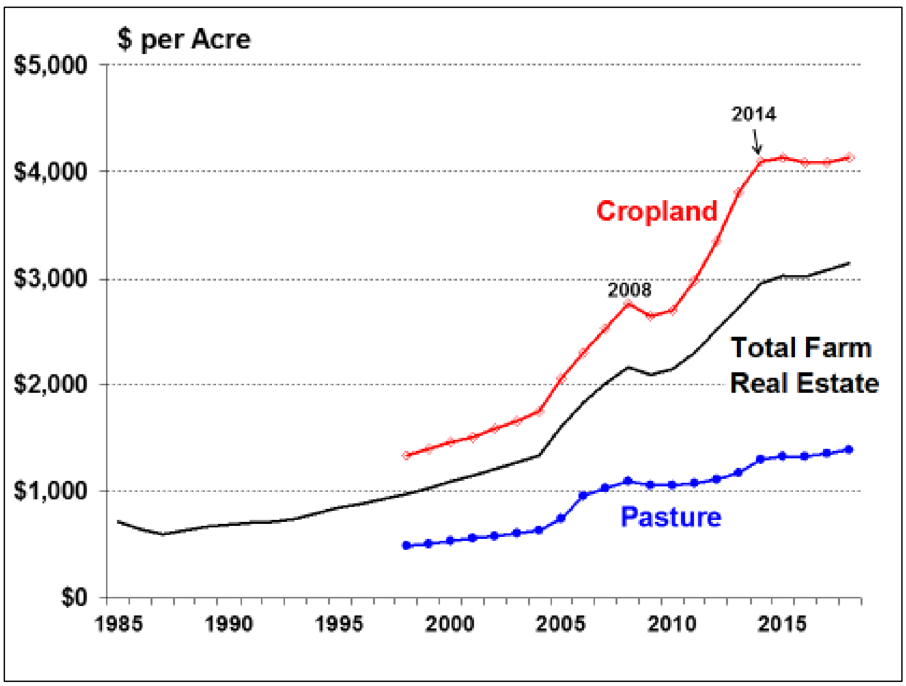
A useful measure of the farm sector's financial well-being is net worth as measured by farm assets minus farm debt. A summary statistic that captures this relationship is the debt-to-asset ratio.

Farm assets include both physical and financial farm assets. **Physical assets** include land, buildings, farm equipment, on-farm inventories of crops and livestock, and other miscellaneous farm assets. **Financial assets** include cash, bank accounts, and investments such as stocks and bonds.

Farm debt includes both business and consumer debt linked to real estate and nonreal-estate assets (e.g., financial assets, inventories of agricultural products, and the value of machinery and motor vehicles) of the farm sector.

The **debt-to-asset ratio** compares the farm sector's outstanding debt related to farm operations relative to the value of the sector's aggregate assets. Change in the debt-to-asset ratio is a critical barometer of the farm sector's financial performance, with lower ratios indicating greater financial resiliency. A lower debt-to-asset ratio suggests that the sector is better able to withstand short-term increases in debt related to interest rate fluctuations or changes in the revenue stream related to lower output prices, higher input prices, or production shortfalls. The largest single component in a typical farmer's investment portfolio is farmland. As a result, real estate values affect the financial well-being of agricultural producers and serve as the principal source of collateral for farm loans.

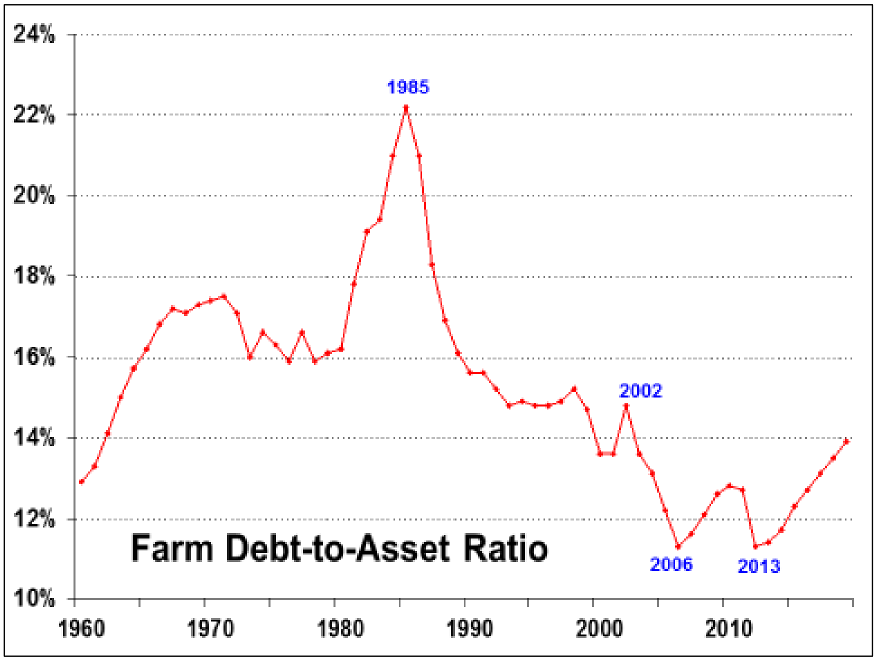
Figure 27. U.S. Average Farm Land Values, 1985-2018



Source: NASS, *Land Values 2018 Summary*, August 2018.

Notes: Farm real estate value measures the value of all land and buildings on farms. Separate cropland and pasture values are available only since 1998. All values are nominal.

Figure 28. U.S. Farm Debt-to-Asset Ratio, 1960-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. Values for 2019 are forecasts.

Average Farm Household Income

A farm can have both an on-farm and an off-farm component to its income statement and balance sheet of assets and debt.[26] Thus, the well-being of farm operator households is not equivalent to the financial performance of the farm sector or of farm businesses because of the inclusion of nonfarm investments, jobs, and other links to the nonfarm economy.

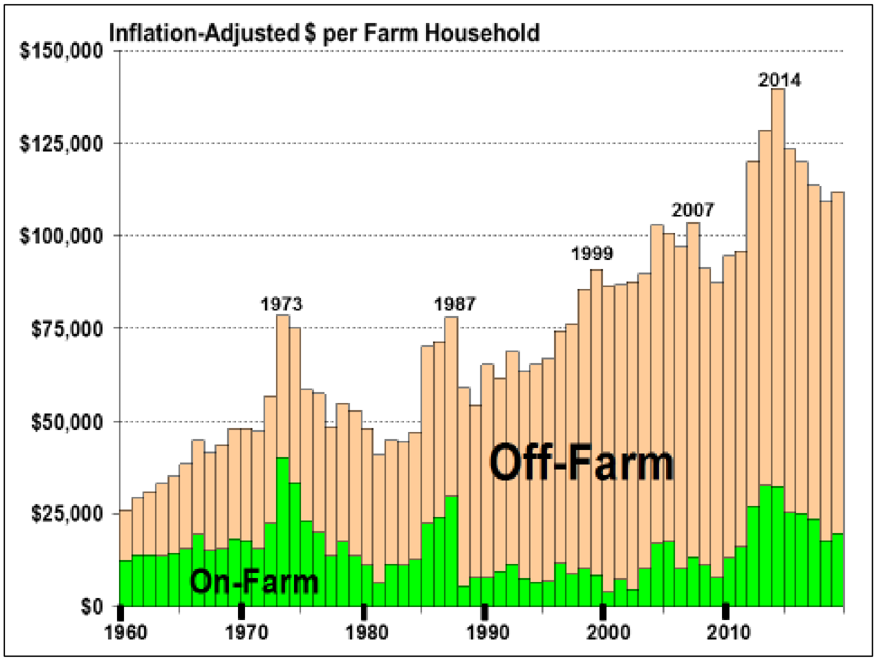
- Average farm household income (sum of on- and off-farm income) is projected at $115,588 in 2019 (**Table A-2**), up 4.3% from 2018 and below the record of $134,164 in 2014.
- About 18% ($20,365) of total farm household income is from farm production activities, and the remaining 82% ($95,223) is earned off the farm (including financial investments).
- The share of farm income derived from off-farm sources had increased steadily for decades but peaked at about 95% in 2000 (**Figure 29**).

Total vs. Farm Household Average Income

- Since the late 1990s, farm household incomes have surged ahead of average U.S. household incomes (**Figure 30**).
- In 2017 (the last year for which comparable data were available), the average farm household income of $113,495 was about 32% higher than the average U.S. household income of $86,220 (**Table A-2**).

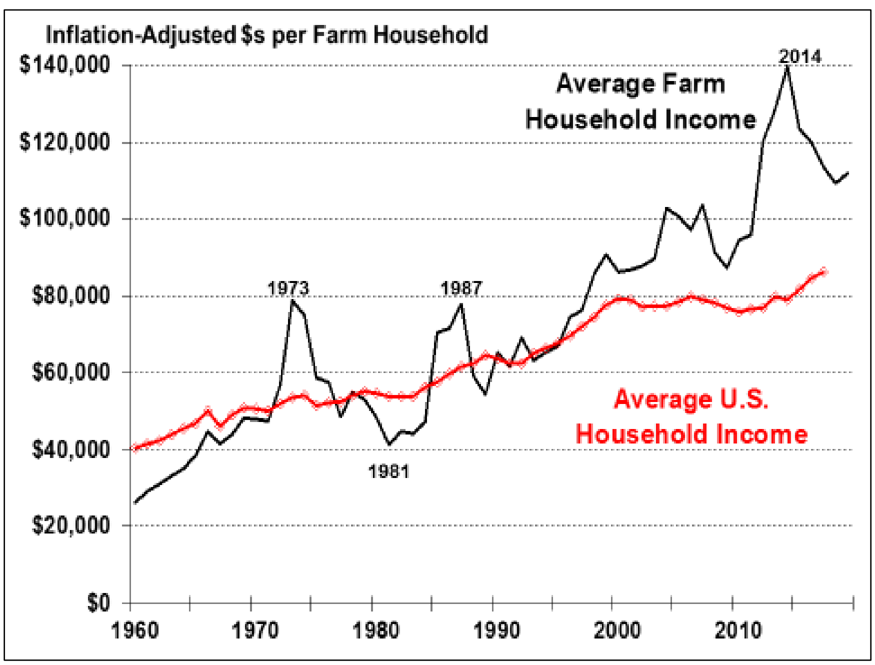
[26] ERS, "Farm Household Well-Being," http://www.ers.usda.gov/topics/farm-economy/farm-household-well-being.aspx.

Figure 29. U.S. Average Farm Household Income, by Source, 1960-2019



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are adjusted for inflation using the chain-type GDP deflator, 2017 = 100. OMB, Historical Tables, Table 10.1. Values for 2019 are forecasts.

Figure 30. Farm Household Income Has Been Above U.S. Average Since1996



Source: ERS, "2019 Farm Income Forecast," March 6, 2019. All values are adjusted for inflation using the chain-type GDP deflator, 2017 = 100. OMB, Historical Tables, Table 10.1. Values for 2019 are forecasts.

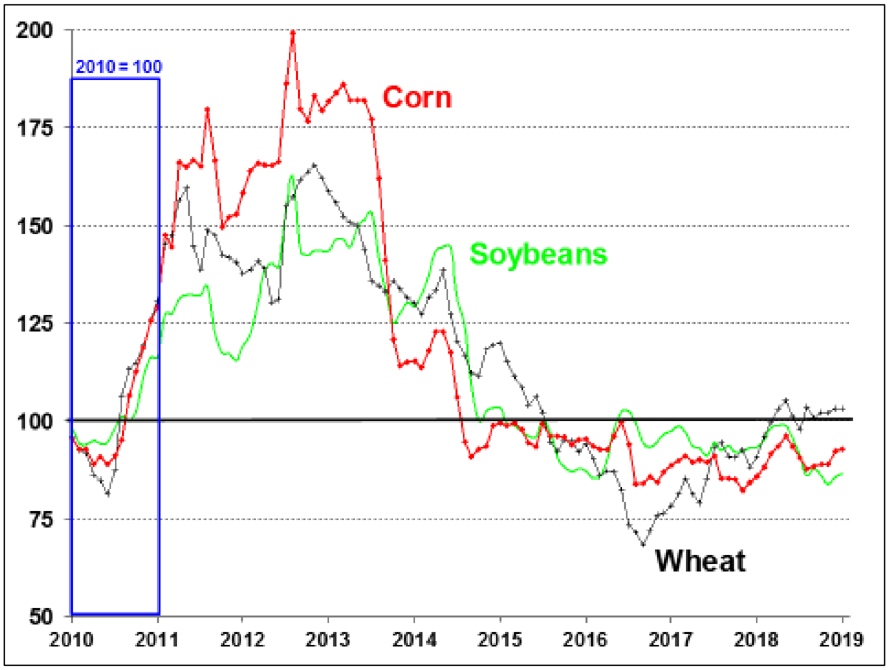
Appendix. Supporting Charts and Tables

Figure A-1 to **Figure A-4** present USDA data on monthly farm prices received for several major farm commodities—corn, soybeans, wheat, upland cotton, rice, milk, cattle, hogs, and chickens. The data are presented in an indexed format where monthly price data for year 2010 = 100 to facilitate comparisons.

USDA Farm Income Data Tables

Table A-1 to **Table A-3** present aggregate farm income variables that summarize the financial situation of U.S. agriculture. In addition, **Table A-4** presents the annual average farm price received for several major commodities, including the USDA forecast for the 2018-2019 marketing year.

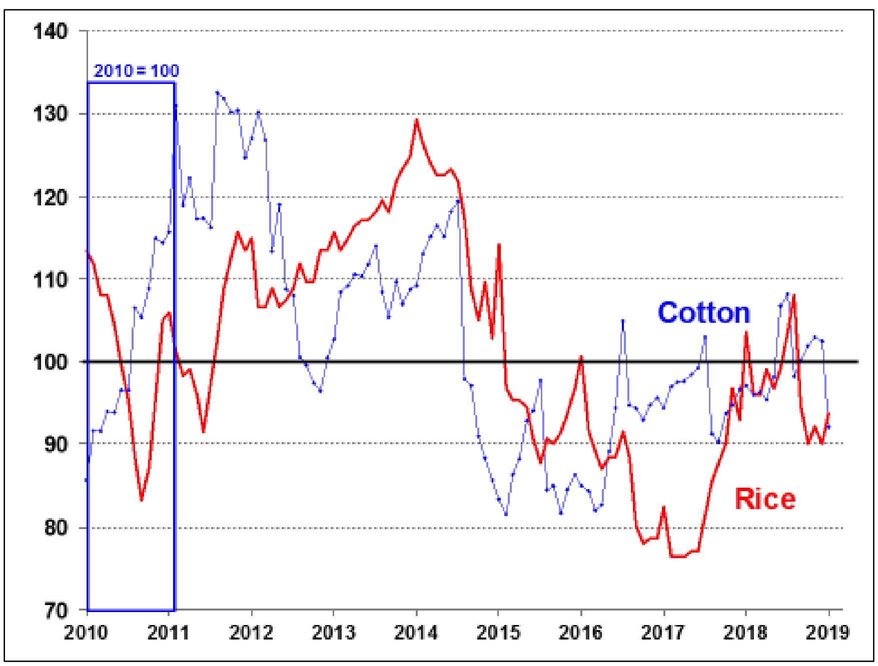
Figure A-1. Monthly Farm Prices for Corn, Soybeans, and Wheat, Indexed Dollars



Source: NASS, *Agricultural Prices*, February 28, 2019. Calculations by CRS.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2010 = 100. Such price indexing facilitates relative comparisons.

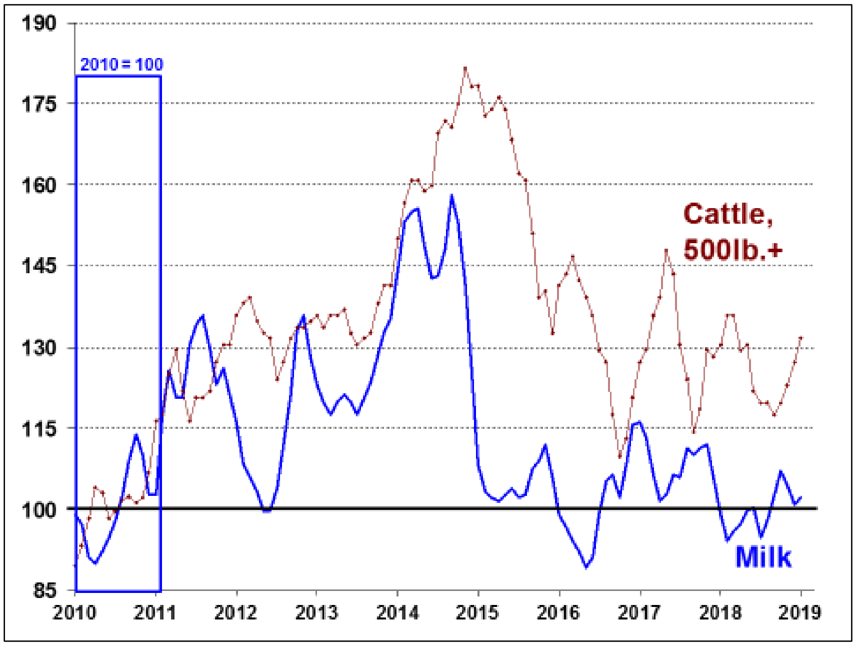
Figure A-2. Monthly Farm Prices for Cotton and Rice, Indexed Dollars



Source: NASS, *Agricultural Prices*, February 28, 2019. Calculations by CRS.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2010 = 100. Such price indexing facilitates relative comparisons.

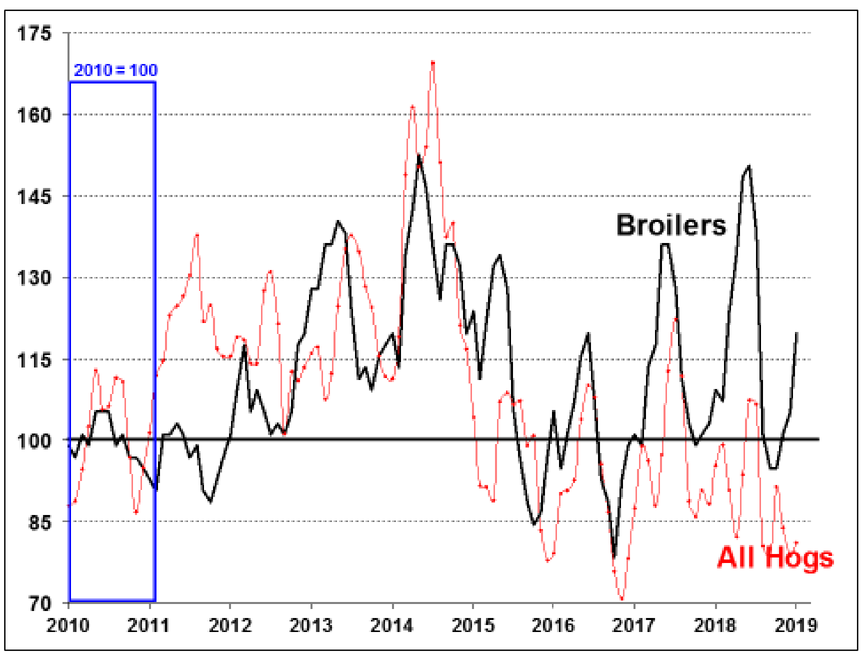
Figure A-3. Monthly Farm Prices for All-Milk and Cattle (500+ lbs.), Indexed Dollars



Source: NASS, *Agricultural Prices* February 28, 2019. Calculations by CRS.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2010 = 100. Such price indexing facilitates relative comparisons.

Figure A-4. Monthly Farm Prices for All Hogs and Broilers, Indexed Dollars



Source: NASS, *Agricultural Prices*, February 28, 2019. Calculations by CRS.

Notes: Monthly farm prices for the 2010-2019 period have been divided by the annual average price for 2010 and multiplied by 100 such that 2010 = 100. Such price indexing facilitates relative comparisons.

Table A-1. Annual U.S. Farm Income Since 2012

($ billions)

Item	2012	2013	2014	2015	2016	2017	2018	2019[a]	Change (%)[a]
1. Cash receipts	**401.4**	**403.6**	**424.2**	**377.1**	**357.8**	**371.4**	**372.9**	**381.5**	**2.3%**
Crops[b]	231.6	220.8	211.4	187.6	195.0	195.4	197.6	201.7	2.0%
Livestock	169.8	182.7	212.8	189.5	162.8	176.0	175.3	179.9	2.6%
2. Government payments[c]	**10.6**	**11.0**	**9.8**	**10.8**	**13.0**	**11.5**	**13.8**	**11.5**	**-16.8%**
Fixed direct payments[d]	4.7	4.3	0.5	0.0	0.0	0.0	0.0	0.0	NA
CCP-PLC-ARC[e]	0.0	0.0	0.0	5.3	8.2	7.0	3.0	1.7	-45.7%
Marketing loan benefits[f]	0.0	0.0	0.1	0.2	0.2	0.0	0.0	0.0	NA
Conservation	3.7	3.7	3.6	3.6	3.8	3.8	4.0	4.3	8.6%
Ad hoc and emergency[g]	1.1	2.1	5.0	1.8	0.7	0.7	1.1	1.4	20.4%
All other[h]	1.1	0.9	0.7	0.0	0.4	0.0	5.6	4.1	-26.6%
3. Farm-related income[i]	**39.2**	**41.0**	**36.6**	**34.4**	**27.9**	**32.9**	**35.0**	**34.5**	**-1.2%**
4. Gross cash income (1+2+3)	451.3	455.5	470.6	422.3	398.7	415.8	421.6	427.5	1.4%
5. Cash expenses[j]	316.1	320.0	339.0	315.9	303.8	314.8	330.3	331.9	0.5%
6. NET CASH INCOME	**135.3**	**135.6**	**131.6**	**106.3**	**94.9**	**101.0**	**91.4**	**95.7**	**4.7%**
7. Total gross revenues[k]	449.8	483.8	483.1	440.5	411.8	429.5	433.0	441.5	2.0%
8. Total production expenses[l]	353.4	360.4	391.1	359.4	350.2	354.3	369.8	372.0	4.2%
9. NET FARM INCOME	**96.4**	**123.4**	**92.0**	**81.1**	**61.5**	**75.2**	**63.1**	**69.4**	**10.0%**

Source: ERS, *Farm Income and Wealth Statistics*; U.S. and State Farm Income and Wealth Statistics, updated as of March 6, 2019. NA = not applicable.

a. Data for 2019 are USDA forecasts. Change represents year-to-year projected change between 2018 and 2019.
b. Includes Commodity Credit Corporation loans under the farm commodity support program.
c. Government payments reflect payments made directly to all recipients in the farm sector, including landlords. The nonoperator landlords' share is offset by its inclusion in rental expenses paid to these landlords and thus is not reflected in net farm income or net cash income.
d. Direct payments include production flexibility payments of the 1996 Farm Act through 2001 and fixed direct payments under the 2002 Farm Act since 2002.
e. CCP = counter-cyclical payments. PLC = Price Loss Coverage. ARC = Agricultural Risk Coverage.
f. Includes loan deficiency payments, marketing loan gains, and commodity certificate exchange gains.
g. Includes payments made under the Average Crop Revenue Election program, which was eliminated by the 2014 farm bill (P.L. 113-79).
h. Market facilitation payments, cotton ginning cost-share, biomass crop assistance program, milk income loss, tobacco transition, and other miscellaneous payments.
i. Income from custom work, machine hire, agri-tourism, forest product sales, and other farm sources.
j. Excludes depreciation and perquisites to hired labor.
k. Gross cash income plus inventory adjustments, the value of home consumption, and the imputed rental value of operator dwellings.
l. Cash expense plus depreciation and perquisites to hired labor.

Table A-2. Average Annual Income per U.S. Household, Farm Versus All, 2012-2019

($ per household)

	2012	2013	2014	2015	2016	2017	2018	2019
Average U.S. farm income by source								
On-farm income	$25,038	$30,639	$31,025	$24,740	$24,731	$23,678	$18,228	$20,365
Off-farm income	$86,486	$90,481	$103,140	$95,140	$93,187	$89,817	$92,644	$95,223
Total farm income	$111,524	$121,120	$134,165	$119,880	$117,918	$113,495	$110,872	$115,588
Average U.S. household income	$71,274	$75,195	$75,738	$79,263	$83,143	$86,220	NA	NA
Farm household income as share of U.S. avg. household income (%)	**156%**	**161%**	**177%**	**151%**	**142%**	**132%**	**NA**	**NA**

Source: ERS, *Farm Household Income and Characteristics*, principal farm operator household finances, data set updated as of March 6, 2019, http://www.ers.usda.gov/data-products/farm-household-income-and-characteristics.aspx.

Note: NA = not available. Data for 2018 and 2019 are USDA forecasts.

Table A-3. Average Annual Farm Sector Debt-to-Asset Ratio, 2012-2019

($ billions)

	2012	2013	2014	2015	2016	2017	2018	2019
Farm assets	2,638.2	2,776.1	2,949.2	2,909.7	2,956.5	2,993.1	3,032.8	3,077.4
Farm debt	297.5	315.3	345.2	356.7	374.2	393.0	410.8	426.7
Farm equity	2,340.7	2,460.8	2,604.0	2,552.9	2,582.3	2,600.0	2,621.9	2,650.7
Debt-to-asset ratio (%)	**11.3%**	**11.4%**	**11.7%**	**12.3%**	**12.7%**	**13.1%**	**13.5%**	**13.9%**

Source: ERS, *Farm Income and Wealth Statistics*; U.S. and State Farm Income and Wealth Statistics, updated as of March 6, 2019, http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx.

Note: Data for 2018 and 2019 are USDA forecasts.

Table A-4. U.S. Farm Prices and Support Rates for Selected Commodities Since 2013-2014 Marketing Year

Commodity[a]	Unit	Year	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019[b]	% Chg[c] 2017/18 to 2018/19	2019-2020[b]	% Chg[d] 2018/19 to 2019/20	Loan Rate[e]	Reference Price
Wheat	$/bu	Jun-May	6.87	5.99	4.89	3.89	4.72	5.15-5.25	10.2%	—	—	3.38	5.50
Corn	$/bu	Sep-Aug	4.46	3.70	3.61	3.36	3.36	3.40-3.70	5.7%	—	—	2.20	3.70
Sorghum	$/bu	Sep-Aug	4.28	4.03	3.31	2.79	3.22	3.05-3.35	-0.6%	—	—	2.20	3.95
Barley	$/bu	Jun-May	6.06	5.30	5.52	4.96	4.47	4.40-4.80	2.9%	—	—	2.50	4.95
Oats	$/bu	Jun-May	3.75	3.21	2.12	2.06	2.59	2.60-2.70	2.3%	—	—	2.00	2.40
Rice	$/cwt	Aug-Jul	16.30	13.40	12.10	10.40	12.90	11.80-12.40	-6.2%	—	—	7.00	14.00
Soybeans	$/bu	Sep-Aug	13.00	10.10	8.95	9.47	9.33	8.35-8.85	-7.8%	—	—	6.20	8.40
Soybean Oil	¢/lb	Oct-Sep	38.23	31.60	29.86	32.48	30.0	28.00-30.00	-3.5%	—	—	—	—
Soybean Meal	$/st	Oct-Sep	489.94	368.49	324.6	316.9	345.0	305-325	-8.7%	—	—	—	—
Cotton, Upland	¢/lb	Aug-Jul	77.9	61.3	61.2	68.0	68.6	69-71	2.0%	—	—	45-52	none
Choice Steers	$/cwt	Jan-Dec	125.89	154.56	148.12	120.86	121.52	117.12	-3.6%	117-122	2.0%	—	—
Barrows/Gilts	$/cwt	Jan-Dec	64.05	76.03	50.23	46.16	50.48	45.93	-9.0%	45-47	0.2%	—	—
Broilers	¢/lb	Jan-Dec	99.7	104.90	90.5	84.3	93.5	97.8	4.6%	94-98	-1.8%	—	—
Eggs	¢/doz	Jan-Dec	124.7	142.3	181.8	85.7	100.9	137.6	36.4%	103-108	-23.3%	—	—
Milk	$/cwt	Jan-Dec	20.05	23.97	17.12	16.30	17.65	16.18	-8.3%	17.25-17.75	8.2%	—	—

Source: Various USDA agency sources as described in the notes below.

Notes: bu = bushels, cwt = 100 pounds, lb = pound, st = short ton (2,000 pounds), doz = dozen.

a. Price for grains and oilseeds are from USDA, *World Agricultural Supply and Demand Estimates (WASDE)*, April 8, 2019. Calendar year data are for the first year. For example, 2018-2019 = 2018. "—" = no value, and USDA's out-year 2019-2020 crop price forecasts will first appear in the May 2019 *WASDE*. Soybean and livestock product prices are from USDA, Agricultural Marketing Service: soybean oil—Decatur, IL, cash price, simple average crude; soybean meal—Decatur, IL, cash price, simple average 48% protein; choice steers—Nebraska, direct 1,100-1,300 lbs.; barrows/gilts—national base, live equivalent 51%-52% lean; broilers—wholesale, 12-city average; eggs—Grade A, New York, volume buyers; and milk—simple average of prices received by farmers for all milk.

b. Data for 2018-2019 are USDA forecasts. Data for 2019-2020 are USDA projections.

c. Percentage change for 2017/18 to 2018/19, calculated using difference from the midpoint of the range for 2018-2019 with estimate for 2017-2018.

d. Percentage change for 2018/19 to 2019/20, calculated using difference from the midpoint of the range for 2019-2020 with midpoint of the range for 2018-2019.

e. Loan rate and reference prices are for the 2019-2020 market year as defined under the 2018 farm bill (P.L. 115-334). The loan rate for upland cotton equals the average market-year-average price for the two preceding crop years but within the range of 45 cents/lb. and 52 cents/lb. See CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*.

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NAVIGATING ENVIRONMENTAL LAW ISSUES FOR ATTORNEYS, LENDERS, AND LANDOWNERS: WHAT YOU NEED TO KNOW

Mid-South Agricultural and Environmental Law Conference
Memphis, Tennessee – June 7, 2019

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I. Introduction

"Navigating." It's a great verb for describing how one needs to approach environmental law and regulation in agriculture. A successful navigator needs to know where he or she is, where he or she is going, and what obstacles and dangers will be encountered en route. I'll add that he or she also needs to be aware of what weather or conditions are forecasted or developing along the journey.

Those same needs are present for anyone who sets sail upon the sea of environmental law and regulation. What laws and regulations currently control what you are doing? What laws and regulations will affect and limit (or support) what you want to be doing? What legal or regulatory obstacles will you encounter on the way? And what legal or regulatory storms are brewing on the horizon?

In sharing such observations, I don't think I am telling anyone in the field of agriculture anything that they probably don't already know. After all, history tells us that some of our earliest known laws spoke to agriculture. Consider, for example, that Hammurabi's Code, which dates back to 1750 BC in ancient Babylon, set forth these laws for your Mesopotamian predecessors:

- If anyone open his ditches to water his crop, but is careless, and the water floods the field of his neighbor, then he shall pay his neighbor corn for his loss.

- If a shepherd, without the permission of the owner of the field, and without the knowledge of the owner of the sheep, lets the sheep into a field to graze, then the owner of the field shall harvest his crop, and the shepherd, who had pastured his flock there without permission of the owner of the field, shall pay to the owner . . . corn [to compensate for the loss].

- If any man, without the knowledge of the owner of a garden, fells a tree in the garden he shall pay [compensation for the tree].

But, nevertheless, the subtitle of this presentation is "what you need to know," and what you need to know in 2019 is not Hammurabi's Code, and so let me work from that navigator's metaphor in our title to give you something useful to take home with you.

II. Where You Are – Environmental Laws and Regulations Today

At my previous firm, the lawyers in the environmental section tended to divide themselves into categories as "dirt lawyers," or "air lawyers," or "water lawyers." Sometimes we'd argue as to whether endangered species or historical resources fell within the realm of a dirt lawyer or a water lawyer, but, all in all, those categories seemed to cover everything we faced. But farmers don't have the luxury of such subdivisions. Air, water, and dirt, and the creatures in it, are exactly what any farmer is about, right? The point of this observation is simple: for better or for worse, practically every environmental law can touch upon and impact agriculture. From the federal perspective alone, consider the following:

- The Clean Air Act
- The Federal Water Pollution Control Act (aka the Clean Water Act)
- The Solid Waste Disposal Act
- The Resource Conservation and Recovery Act
- The Comprehensive Environmental Response, Compensation, and Liability Act
- The Endangered Species Act
- The Migratory Bird Treaty Act
- The Federal Insecticide, Fungicide, and Rodenticide Act
- The Toxic Substances Control Act
- The National Environmental Policy Act
- The National Historic Preservation Act

The foregoing are simply the federal statutes; the individual states can, and usually do, enact and implement their own environmental statutes (as long as they are at least as strict as their federal counterparts). Furthermore, the foregoing are statutes – i.e., legislatively-enacted laws. Each statute is implemented by volumes of regulations, implemented by various federal agencies such as the U.S. Environmental Protection Agency or the U.S. Fish & Wildlife Service.

As you can imagine, this paper and this presentation present neither the time nor the place to explain these statutes in detail. Therefore, I am going to have to rely that, building upon my theme of "navigation," you know where you are. All I can add in that regard is twofold.

First, if any of the laws recited above were previously unknown to you, I encourage you to avail yourselves of such resources as the following:

- The National Agricultural Law Center, at www.nationalaglawcenter.org.
- The Environmental Protection Agency, at www.epa.gov.
- The U.S. Fish & Wildlife Service, at www.fws.gov.
- Alabama Department of Environmental Management, at www.adem.state.al.us.
- Arkansas Department of Environmental Quality, at www.adeq.state.ar.us.
- Louisiana Department of Environmental Quality, at www.deq.louisiana.gov.
- Mississippi Department of Environmental Quality, at www.mdeq.ms.gov.
- Tennessee Department of Environmental and Conservation, at www.tn.gov/environment.html.

Second, again, if any of the laws recited above were previously unknown to you, then keep reading anyway. As this paper proceeds to discuss potential obstacles and provides forecasts, you'll develop a better sense of what those laws involve.

III. Where You are Going – Compliance with Today's Environmental Laws and Regulations

Most modern federal statutes date to the late 1960s and early 1970s, which means that today's farmer faces environmental regulation unknown to his or her grandparents or even parents. Compliance with such regulation can come with significant cost (and even frustration), whether in terms of operations, equipment, land use, and/or professional expenses. But consider the alternatives, as illustrated by just some of the proposed settlements currently out on public notice by the U.S. Department of Justice's Environment and Natural Resources Division:

- In a lawsuit brought pursuant to **CERCLA**, a company in California (the corporate successor to an early 20th century Florida landowner) agreed to pay the U.S. Air Force **$725,000** to reimburse the Air Force for costs incurred when the Air Force had to remediate arsenic and DDT contamination at old cattle vats on one of its bases in central Florida.

- In a lawsuit brought pursuant to the **CWA**, a lumber mill in Washington agreed to pay a **$320,000** civil penalty, undertake a **$435,000** Supplemental Environmental Project, and undertake other compliance actions due to unpermitted stormwater discharges from its facility and related violations.

- In a lawsuit brought pursuant to the **CAA**, a meat-packing plant in Massachusetts agreed to pay a **$138,000** civil penalty due to its inadequate risk management plan (a plan intended to address the risk of a release of anhydrous ammonia from the facility).

See generally https://www.justice.gov/enrd/consent-decrees (accessed May 23, 2019).

In light of the foregoing, the logical conclusion becomes self-evident. If ethical or environmental imperatives do not drive compliance, then the expenses associated with non-compliance certainly should.

Consider one final thought – and an important one. As discussed above, one can (and should) identify what compliance is required and then meet that requirement. At the same time, however, I think it is a wise approach for the regulated community to take steps to try to ensure that the laws and, in particular, their relevant regulations are indeed capable of being complied with. How does one do that? In part, by tracking, considering, and commenting upon regulations as they are developed and promulgated. As a matter of administrative law, each new state and federal environmental regulation is submitted to the public for a period of public comment and review. In the case of proposed federal regulations (and not just those of an environmental nature), they can be tracked at www.federalregister.gov.

IV. Shoals, Storms, and Changing Currents – Sailing the Environmental Seas

The following are, to the agricultural community, just a few of the more potentially relevant pending or recent developments and actions in environmental law.

A. Endangered and Threatened Species

Today, there are approximately 1,623 species of plants and animals listed as endangered or threatened pursuant to the Endangered Species Act – and, as you might imagine, the sheer volume of such protected species warrants awareness and consideration of any associated developments by the agricultural community. Consider the following:

- At the present time, the U.S. Fish & Wildlife Service is proposing downlisting the **American burying beetle** from endangered to threatened; it is also considering implementation of a 4(d) rule associated with the same. FWS is also considering removing the **gray wolf** from protected status.

- Currently, the public comment period is open on FWS's 5-year status review for the threatened **gray bat** (found in Alabama, Arkansas, Florida, Georgia, Missouri) and Tennessee, among other states) and the **Ozark hellbender** (found in Arkansas and Missouri). The public comment period closes on June 24, 2019. This is in addition to a separate 5-year status review for 36 other species found in the Southeastern United States; that comment period closes on June 10, 2019.

- Today, there are 14 species or distinct population segments of species in the United States which the FWS has **proposed for listing** as threatened or endangered. These include Alabama's slenderclaw crayfish, Missouri's eastern hellbender, and Tennessee's Barrens topminnow. Another 22 species or distinct population segments of species are **candidates for listing**. Several hundred species, on the other hand, are the **subject of petitions for listing**, filed by such organizations as Center for Biological Diversity and Defenders of Wildlife.

- On May 23, 2019, the Center for Biological Diversity and the San Francisco Baykeeper filed a **lawsuit** against the U.S. Department of the Interior and FWS in the U.S. District Court for the Northern District of California, alleging that FWS had violated the ESA by failing to timely list eight species of plant and animal as threatened or endangered. The subject list included the eastern population of gopher tortoise, found in Alabama, Georgia, and Florida, and the Berry Cave salamander, found in Tennessee.

- Approximately eight months ago, the public comment period closed on FWS's proposed changes to certain ESA regulations. Several proposed changes relate to section 4 of the ESA, which deals with procedures for listing species, recovery, and designating critical habitat. Insofar as the ESA defines a threatened species as one that is likely to become in danger of extinction within the "foreseeable future," the proposed regulations offered an interpretation of "foreseeable future" intended to make it clear that it extends only as far as they can reasonably determine that both the future threats and the species' responses to those threats are probable. At the present time, no further action has been taken on this proposed change.

B. Evaluation of Pesticides' Impacts on Threatened and Endangered Species

The Endangered Species Act ("ESA"), codified at 16 U.S.C. §§ 1531 *et seq.,* requires, among other things, federal agencies, such as the U.S. Environmental Protection Agency

("EPA"), to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The registration of a pesticide (which includes herbicides, fungicides, and rodenticides) under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), codified at 7 U.S.C. §§ 136 *et seq.,* constitutes an EPA "action" under the ESA. If EPA determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively, the "services"), as appropriate. EPA initiates formal consultation with the Services through the conduct and transmittal of a biological evaluation ("BE") with its findings. The result of such consultation can impact what use restrictions are imposed on a particular pesticide.

On January 18, 2017, in the final 48 hours of President Obama's administration, EPA released its first nationwide BEs for pesticides conducted using a pilot interagency method developed by EPA and the services, with collaboration from the U.S. Department of Agriculture. The pilot method was developed following the recommendations of the April 2013 National Academy of Sciences' ("NAS") report, *Assessing Risks to Endangered and Threatened Species from Pesticides*. When developing the pilot process, EPA and the services intended to revisit and refine the method to address limitations identified through evaluation of the pilot chemicals (i.e., chlorpyrifos, diazinon, and malathion).

Upon further reflection of the utilization of the pilot method, EPA now believes that the pilot method had the following major limitations: (1) the method did not meaningfully distinguish species that are likely to be exposed to and affected by the assessed pesticides from those that are not likely; (2) the level of effort was too high for EPA to sustain for all pesticides; and (3) the amount of documentation produced was too great for the public to review and comment upon in a reasonable timeframe.

Consistent with the pilot process, EPA has now developed and is proposing a revised method for the nationwide evaluation of pesticide risks to listed species that is based on the experience gained through the pilot BEs and on information received in public comments on the draft pilot BEs and through several stakeholder meetings. The following is a summary of the major aspects for which the EPA is seeking comment on the draft revised method for assessing risk to listed species.

First, to more accurately represent where and to what extent a pesticide is likely to be applied, EPA is proposing an approach for incorporating pesticide-specific usage data into the listed species consultation process. The pilot BEs relied on use assumptions from pesticide product labels to represent where the pilot chemicals were likely to be applied (e.g., applied to all labelled crops at maximum application rates simultaneously). The revised method proposes to incorporate usage data (e.g., survey data, including actual application rates) in the determination of where a pesticide is likely to be applied.

Second, based on the accuracy of the spatial data utilized and the conservative assumptions related to the action area and potential drift, EPA is interpreting a <1% overlap of listed species' ranges with potential use sites as unreliable and not representative of real exposure potential.

Third, EPA's revised method proposes the use of probabilistic methods to determine the likelihood of a species to be adversely affected by a pesticide. The goal of the probabilistic analysis is to more fully capture and characterize the variability in the range of potential exposures and toxicological effects to listed species and to better inform the biological opinion.

Finally, EPA proposes to apply a weight-of-evidence framework to distinguish those listed species that are likely to be adversely affected from those that are not likely to be adversely affected, based on criteria (e.g., dietary preferences, migration patterns, and extent of range potentially exposed) associated with the likelihood that an individual will be exposed and affected.

A copy of the EPA Draft Revised Method for National Level Endangered Species Risk Assessment Process for Biological Evaluations of Pesticides, identified by docket ID number EPA-HQ-OPP-2019-0185, is available at http://www.regulations.gov.

C. District Decisions, National Impacts

As can be discerned from the foregoing, one of the more challenging aspects of federal environmental law is the fact that a single federal district court, sitting in a state far afield from where a farmer or industry may be located, can render a decision that, in the end, has national impact on the way that a regulatory agency (i.e., the U.S. Environmental Protection Agency or the U.S. Fish & Wildlife Service) conducts business – and thus impact a regulated farmer or industry. In many cases, that farmer or industry might not have even been aware that such litigation was pending.

In order to partially address such concerns, the Trump administration reportedly intends to challenge the legality of nationwide injunctions before the U.S. Supreme Court in the near future. And, in the more immediate term, on May 21, 2019, the U.S. Environmental Protection Agency launched a new internet-based system "to enhance transparency of the agency's defensive litigation activities." The system, part of an EPA initiative intended, in part, to address concerns that the agency had, in the past, participated in "sue and settle" arrangements with environmental groups to the detriment of the regulated community without necessarily enabling the input or participation of such stakeholders. The new system is intended to provide information to the public about new litigation and promoting transparency and public participation in settlement of those lawsuits.

Members of the public who sign up using the new system will be able to select categories of litigation notices to receive, manage their personal preferences, and unsubscribe at any time. The system can be accessed at https://www.epa.gov/ogc/email-subscriptions-new-litigation-notifications.

D. Definition of "Waters of the United States"

The CWA and its implementing regulations restrict and regulate discharges to so-called "Waters of the United States" ("WOTUS") and the question of just what is, or is not, WOTUS has bedeviled regulators, land owners, industries, farmers, and environmental groups ever since the last major rulemaking on the topic in the 1980s – particularly since the term is not defined by the CWA itself! Although EPA and the U.S. Army Corps of Engineers have worked to provide more clarity to the question, the practical result has only been more litigation. The U.S. Supreme Court last considered the issue in the case *Rapanos v. United States*, 547 U.S. 715 (2008), in an endeavor that only managed to generate a 5-4 plurality decision which hinged upon a concurrence by Justice Anthony Kennedy.

In truth, the *Rapanos* decision did little to provide clarity to those in the field (indeed, Chief Justice John Roberts warned that "[i]t is unfortunate that no opinion commands a majority of the Court on precisely how to read Congress' limits on the reach of the Clean Water Act"), and so, during the Obama Administration in 2015, EPA and the U.S. Army Corps of Engineers promulgated a new regulatory definition of WOTUS intended to offer a workable definition of the term in congruence with the *Rapanos* decision. The result, however, was even more litigation focused on the rulemaking itself, followed by further rulemakings following President Trump's inauguration that, in turn, sparked more litigation in various jurisdictions (that have, for their part, generated contradictory rulings).

Accordingly, at the present time, certain jurisdictions (to include Tennessee) define WOTUS as per the 2015 rule, whereas the rest of the nation relies upon the pre-rule definition. Furthermore, on February 14, 2019, EPA and the Corps promulgated a revised definition of WOTUS that, on April 15, 2019, completed its public notice period – and which, when finalized, will face its own challenges in court. See "Revised Definition of 'Waters of the United States'; Proposed Rule," 84 Fed. Reg. 4154 (Feb. 14, 2019).

Suffice it to say, therefore, that the situation surrounding the definition of WOTUS remains . . . dare I say. . . fluid. The best advice to be offered at the present time is for care to be taken and consultation to be sought before any activities (to include the placement of fill) in WOTUS are undertaken.

E. Clean Water Act's Jurisdiction Over Groundwater

Pursuant to the CWA's National Pollutant Discharge Elimination System ("NPDES"), one must obtain appropriate permits from federal or state officials before one can lawfully discharge pollutants into surface waters. On February 19, 2019, the U.S. Supreme Court agreed to resolve a split between the U.S. Courts of Appeal for the Fourth, Sixth, and Ninth Circuits as to how the CWA applies to groundwater and, in particular, whether that same requirement applies to pollution released into groundwater that migrates underground to nearby surface waters. *Cty. of Maui, Hawaii v. Hawaii Wildlife Fund*, 139 S. Ct. 1164 (2019); Petition for Writ of Certiorari, *Cty. of Maui v. Hawaii Wildlife Fund*, 2018 WL 4205010 (Aug. 27, 2018) (No. 18-260).

At issue are a recent series of contradictory circuit court rulings. In February 2018, the Ninth Circuit upheld a Hawaii federal district court's ruling that Maui County violated the CWA by allowing pollutants from four sewage wastewater injection wells to seep into the Pacific Ocean. *Hawaii Wildlife Fund v. Cty. of Maui*, 886 F.3d 737, 752 (9th Cir. 2018). The court held that the releases constituted "point source" discharges subject to NPDES permitting requirements, even though there was no direct discharge of pollutants into the ocean. *Id*. at 749. Shortly thereafter, the Fourth Circuit also held that indirect discharges to navigable waters via groundwater can also violate the CWA. *Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637, 651 (4th Cir. 2018). That fall, however, the Sixth Circuit ruled otherwise, holding that environmental groups could not pursue their CWA claims that pollutants from coal ash ponds in Kentucky had traveled through groundwater and harmed navigable waters. *Kentucky Waterways Alliance v. Kentucky Utils. Co.*, 905 F.3d 925, 932-33 (6th Cir. 2018).

As the U.S. Solicitor General has noted, the question of whether discharges to groundwater are regulated by the CWA is not a merely an academic matter; rather, the issue has "significant" implications for industry given the potential for civil penalties and even criminal punishment. *See* Brief for the United States as Amicus Curiae, *Cty. of Maui v. Hawaii Wildlife Fund* and *Kinder Morgan Energy Partners, L.P. v. Upstate Forever*, 2019 WL 102492 (Jan. 3. 2019) (Nos. 18-260, 18-268).

V. Conclusion

As with so many aspects of a modern economy, the modern regulatory regime brings its own peculiar challenges. Today's farmer or fellow participant in America's agricultural economy, therefore, has little choice but to educate himself or herself accordingly, take the steps necessary to ensure compliance, and, if possible, look for opportunities to participate in the regulatory and rulemaking process with the hope of ensuring that the burden of future regulations can be borne fairly and, for that matter, achieve the goals intended.

Succession Planning for Lawyers:
The Ten Commandments

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6th Annual Mid-South Ag & Environmental Law Conference
University of Memphis - Humphrey's School of Law
Memphis, Tennessee
May 24th, 2018

Chapter 9

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<u>Author's Vita</u>

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Professor Ferrell has been a practicing attorney for 16 years and focuses on agricultural law with a particular emphasis on energy, environmental, and estate planning issues. Since joining Oklahoma State University, he has provided over 450 seminars and workshops to a cumulative audience of over 27,000 while receiving the Distinguished Teaching and Distinguished Extension Awards from the Agricultural and Applied Economics Association and the Western Agricultural Economics Association, and the Excellence in Agricultural Law award from the American Agricultural Law Association. Professor Ferrell has authored a number of publications in the area of farm transition planning, including serving as lead author of the Farm Transition Workbook. He is also a member of the FamilyBusiness.ag peer group for farm business management and succession planning.

I. INTRODUCTION

A. Abstract

Attorneys are frequently among the loudest voices calling for farmers and ranchers to establish a clear plan for how their business and its asset base will be transferred to the next generation, as well as for them to have contingencies in place for the sudden loss of a principal due to death, disability, incapacity, or other cause. However, attorneys often fail to heed their own advice, and thus expose their clients, employees, and families to a number of potentially dire consequences. To avoid this, attorneys would be well-advised to consider how their practices and firms could be affected by their death or incapacity, review the relevant ethical rules, and craft a plan for how their client matters and practices should be managed in such an event. Perhaps even more importantly, though, attorneys should consider how they can create a true successor to their practice so they can realize the maximum value of their practice, both from a pecuniary and emotional perspective.

B. Preface

In the fourth chapter of Luke, Jesus returns to his hometown of Nazareth and goes to his synagogue to worship on the Sabbath. In verses 23 and 24 of the chapter, as the crowd wonders why He speaks as one with the authority of God, Jesus says to them "No doubt you will quote this proverb to Me, 'Physician, heal yourself! Whatever we heard was done at Capernaum, do here in your hometown as well.' And He said, 'Truly I say to you, no prophet is welcome in his hometown.'"

Many attorneys make a good portion of their living selling services centered on the creation of wills, trusts, and perhaps even more advanced tools designed to help their farm and ranch clients transfer their assets to the next generation. In a few cases, they may even succeed in getting those clients to craft a true business succession plan that allows for the smooth and gradual transition of business management and ownership over time. And yet, how many attorneys heed their own advice? How many among our profession have a clear plan in place for our own estate, much less a clear plan for what would happen to all of our clients' matters if we were to die unexpectedly (and as discussed in the next subsection, we should all expect to die – the timing of the matter is the only remaining "unexpected" element), or if we were to be incapacitated for an extended period of time? Would we welcome the advice of our colleagues as they tried to get us to heed our own advice? Or would we shun them as the prophet returning to their hometown? This article explores the rationale for a thorough succession plan for all attorneys, reviews some of the relevant ethical rules involved, and then walks through the steps of formulating and implementing a succession plan.

Before beginning that discussion, though, it is important to note that attorneys are not the only ones thinking about attorney succession. Noting the fact 16 percent of partners will retire in the next five years and 38 percent will retire in the next decade (Debra Cassens Weiss, "As Baby Boomer Partners Retire, Law Firms Face Increasing Costs and Client Issues, ABA Journal Online, August 30, 2016, http://www.abajournal.com/news/article/as_wave_of_baby_boomer_partners_retire_law_firms_face_increasing_costs_and/), an increasing number of states have implemented some form of "mandatory" attorney succession planning with at least a basic requirement of nominating a successor attorney to handle the attorney's matters in the event of his or her death or incapacity. (American Bar Association Mandatory Succession Rule Table, *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mandatory_successor_rule_chart.authcheckdam.pdf, updated June, 2015).

As a note to preface the article's discussion, numerous references will be made to the death or incapacity of the attorney. While the meaning of "death" is fairly self-evident, "incapacity" within the discussion is meant to refer to any physical, mental, or emotional condition, whether temporary or permanent, that renders the attorney either unable or unwilling to fulfill their obligations in representing a client.

II. THE TEN COMMANDMENTS OF LAWYER SUCCESSION

Since the succession plan of an attorney can be triggered by contingencies of literally life and death importance, perhaps it is fitting to pose the fundamental issues of succession planning for lawyers in terms of almost Biblical importance. Thus, this article presents the Ten Commandments of Lawyer Succession.

A. Recognize that thy mortal days are numbered and fleeting, and that much in this world depends upon thee.

Statistically speaking, 100% of people that have ever been born have died. Attorneys are frequently surprised they must expend so much effort convincing their estate planning clients of this fundamental truth. They constantly struggle to get their clients to confront the fact that they must view estate planning as a "when," and not an "if" matter. But they also struggle to convince their clients of the numerous other contingencies potentially threatening their family's well-being and economic security. What would happen if they were physically or mentally incapacitated for an extended period of time? What would happen to their family, particularly if they were the sole wage-earner or if a significant proportion of the family's income depended on them? Who would handle all the tasks around the house or farm that they usually managed?

Lawyers, by the very nature of their profession, are frequently looked to by those in the direst of straits; those faced by the sudden death or incapacity of someone central to their lives. As a result, lawyers – perhaps only besides doctors – have the most cautionary tales of how fleeting life and health can be. And yet, how often are lawyers guilty of exactly the kind of inaction of which they are constantly accusing their clients?

From an ethical standpoint, the failure of the attorney to have a plan in place for managing their clients' matters should they die or become incapacitated poses grave concerns for the rights of those clients. Those matters are discussed in the immediately succeeding subsection and throughout the article.

Beyond the legal ethics rules, though, attorneys would do well to consider the implications on the people who *aren't* their clients as well. First and foremost, the attorney's families may depend in part or in full on the income of the attorney for their support. A sound succession plan can preserve as much monetary value from the attorney's practice as possible, but a failure to plan can deplete the practice's resources and potentially even reach into the pockets of the family itself.

The family may not be the only people economically dependent on the attorney, though. The administrative assistant, paralegal, runner, and early-career associate may also depend partially or entirely upon the attorney for their livelihood as well, and the death or incapacity of the attorney can mean a significant disruption to their professional lives and their ability to provide for their families as well.

At the risk of [perhaps further] inflating the egos of attorneys, it is entirely possible – and indeed, probable – that many people depend on the success of their practice and the ability of that practice to survive a significant disruption. For numerous ethical and even moral reasons, it is vital the responsible attorney create and implement a succession plan for their practice.

B. Thou shalt bind the Model Rules of Professional Conduct and Model Rules for Lawyer Disciplinary Enforcement continually upon thy heart and tie them around your neck.

Any time a lawyer becomes unable (for any reason) to manage the matters entrusted to them by their clients, and any time a matter is transferred from one attorney to another, a number of ethical rules may be triggered. While these rules will be discussed throughout this article, they are gathered together in this section to bring them top-of-mind as the remainder of the article discusses the succession planning process.

1. <u>MRPC 1.1: Competence and MRPC 1.3: Diligence</u>

A tenet of farm succession planning is "*rigor mortis* makes for inflexible farm mangers." By the same token, a dead or incapacitated attorney faces a significant probability that they will "neglect a legal matter entrusted to the lawyer" or "frequently fail to carry out completely the obligations that the lawyer owes to a client." Having a succession plan for one's practice is not simply a matter of prudence; it is a matter of ethics. In case it they are not already committed to the reader's memory, Model Rule of Professional Conduct 1.1 requires a lawyer to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Model Rule of Professional Conduct 1.3 states "A lawyer shall act with reasonable diligence and promptness in representing a client."

To state the obvious, it is quite difficult to fulfill the obligations of MRPC 1.1 and 1.3 when one is disabled or deceased. As discussed above, the actuarial inevitability of one if not both of these conditions demands lawyers consider how to fulfill their ethical obligations if (or rather when) one of these conditions occur. Thus, MRPC 1.3, comment 5 directly addresses the issue of an attorney's death or disability:

> To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

To avoid a violation of MRPC 1.3, one must then consider how to proactively manage the handoff of matters in the event of an attorney's death or disability.

As mentioned in the preface, a number of states have enacted mandatory succession planning for attorneys. This movement has come, at least in part, through recognition of the dramatic aging of the legal profession and the fact that clients' interests can be severely prejudiced by the incapacity or death of the attorney.

Whether designating an attorney to serve as a successor the purpose of winding down matters or transitioning them to another attorney or finding a successor to carry on the practice in full, one should consider whether the designated successor will have the skills to fulfill the obligations of competence in MRPC 1.1. This can be a difficult assessment for the "receiving" attorney unless they have a clear picture of the matter, which invokes the need for comprehensive records that can enable that attorney to get up to speed quickly (as discussed later in this article), but also invokes concerns of confidentiality under MRPC 1.6, discussed below.

2. Model Rule for Lawyer Disciplinary Enforcement 27(a)

Model Rule for Lawyer Disciplinary Enforcement 27(a) requires an attorney who has been rendered "inactive" (either by disciplinary action or by disability) to provide notice to:

(1) all clients being represented in pending matters;
(2) any co-counsel in pending matters; and
(3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order. The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

Note that these requirements may impose an unexpected burden upon the attorney's staff or even family members if the attorney did not have a well-organized, up-to-date, and readily accessible client and matter record-keeping system. Further, how many attorneys have taken the time to inform their staff or family this duty could be triggered by their death or incapacity? Thus, all attorneys have an obligation to consider a contingency plan for death or incapacity, including the notification requirements under MRLDE 27. A better path than this notice requirement is discussed later in this article when succession planning is examined.

3. Model Rule for Lawyer Disciplinary Enforcement 28

The alternative to a failure to have a notification plan and succession strategy in place is for a client (or the disciplinary counsel in the jurisdiction) to petition the district court for an assumption of jurisdiction over the attorney's practice pursuant to Model Rule for Lawyer Disciplinary Enforcement 28, which states:

> If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

Essentially, this process leads to the appointment of a custodian who is charged with gaining access to the client files of the deceased or incapacitated attorney and winding those matters down.

This rule is designed as a stop-gap measure to make sure at least some mechanism is available to give another attorney the ability to avoid the prejudice of clients' rights, but it does not necessarily provide assurance of a smooth transition of the clients' matters to another attorney. As discussed later in this article, the ability of a successor attorney or a custodial attorney to handle the clients' matters depends largely on whether the deceased or incapacitated attorney left an orderly system in place that could easily be accessed by another, or if they created a nightmare of a scavenger hunt for whoever would bear the burden of coming after them.

4. Model Rule of Professional Conduct 1.2: Scope of Representation

Whether an attorney has designated a successor attorney as part of a plan before the need, or if a successor attorney has been appointed because of the original attorney's death or disability, the fact of the matter is a new attorney is representing the client. That new attorney has a different set of skills and competencies that may affect their ability to represent the client. A successor attorney designated simply to wind down or transition a matter to another attorney may seek to have minimal impact on the scope or objectives of the representation. However, in a scenario where the attorney is not merely transitioning matters but is rather undertaking representation in an on-going matter the attorney receiving matters may have to evaluate their approach to the matters and whether the scope or objectives must change. Model Rule of Professional Conduct 1.2 allows a lawyer to "limit the representation of the client if the limitation is reasonable under the circumstances and the client gives informed consent."

Connecting the considerations of MRPC 1.2 back to those referenced in the discussion of MRPC 1.1 and 1.3, an attorney should consider the skills, practice emphasis, and workload of a potential successor attorney; these factors are discussed in greater detail below.

5. Model Rule of Professional Conduct 1.4: Communication

Some attorneys may be reluctant to even bring up the possibility of some future event triggering a need for another attorney to handle a client's matter, but prudence dictates such matters should be addressed in the client's engagement letter. Doing so within that letter already sets the stage and makes things far easier for the successor attorney (who, in the absence of such language in the engagement letter, would have to go back to each client to secure permission to handle each matter). The possibility of implementing a succession plan, or even sale of the practice also requires communication from the attorney to apprise the client of their rights pursuant to Model Rule of Professional Conduct 1.4. A scenario in which a successor attorney would trigger almost every subsection of MRPC 1.4. Thus, an attorney should attempt to proactively address many of the communications issues in the initial engagement letter or agreement. Such language should address the following:

- The possibility of a circumstance triggering the activation of a successor attorney or the transfer of a portion or all of the attorneys practice by a sale or other transition of the practice.
- The client's right to retain other counsel or take possession of their file.
- The identity of the successor or acquiring practice and their contact information.
- The location of the client's file and when it will be available for retrieval, that a written receipt will be required, and that in the case of the sale or transfer of a practice, the fact that the selling lawyer is entitled to make and retain copies of the file at the selling lawyer's expense.
- The intent of the transferring lawyer to handle funds on deposit in his or her IOLTA or other client trust account and any other client property by transferring them either to the successor lawyer, who will be responsible for such funds and property, or to the client, if the acquiring lawyer's representation is not accepted by the client.
- The fact that the successor lawyer may represent the client on the same basis as that between the transferring lawyer and the client or that the successor attorney may desire to alter the terms of the engagement in the future (see discussion of TDRPC 1.02 above).
- The right of the client to decline representation by a designated successor and choose their own lawyer; alternatively, the transferring lawyer's and acquiring lawyer's intent to presume the client's consent to the transfer of the client's file if the client does not take any action or does not otherwise object within a specified period of time upon receipt of the notice.

State Bar of Texas, "Best Practices When Selling a Practice" http://texaslawpracticemanagement.com/best-practices-selling-practice/

6. Model Rule of Professional Conduct 1.5: Fees

In a minimal succession attorney role (simply transferring matters or winding them down), there may not be any reason to modify a fee agreement with the client. If there will be any change in fees, Model Rule of Professional Conduct 1.5 requires such changes should be communicated immediately to the client to give the client all needed information in deciding whether to take their matter to another attorney or to allow the successor to continue in the handling of the matter.

If the attorney is considering the sale of the practice as a succession plan, care must be taken to avoid violations of MRPC 1.5's prohibition against referral fees. Some state bar associations have found "[t]he sale price for an individual client matter is effectively a referral fee earned for simply turning the matter over to another lawyer while retaining no responsibility for the matter." State Bar of Texas, "Best Practices When Selling a Practice," http://texaslawpracticemanagement.com/best-practices-selling-practice/. That said, division of a fee for the work performed by the attorneys before and after a transfer is perfectly acceptable so long as the client agrees to the division of work in writing. *See* MRPC 1.5, comment 7. In the event of a sale of the practice as a succession plan, refer to the discussion of MRPC 1.17 below.

7. Model Rule of Professional Conduct 1.6: Confidentiality of Information

Model Rule of Professional Conduct 1.5 requires prudence on both the part of the attorney transferring a matter and the attorney receiving it. To properly prepare any form of successor, an attorney must give the receiving attorney sufficient information about the case to allow both of them to gauge the receiving attorney's ability to competently and diligently handle the matter. However, providing any confidential information about the matter requires the consent of the client. As discussed above, this is ideally handled through consent language included in the client's engagement letter.

By the same token, a successor attorney or custodian must walk a fine line between effectively handling the matters charged to them and respecting the confidentiality of those matters. MRPC 1.6 requires a successor or custodian to only reveal that information that is necessary to aid the client of the deceased or incapacitated attorney in either winding down the matter, closing the file, or securing another attorney.

8. Model Rules of Professional Conduct 1.7 through 1.10

Even though an attorney may designate a successor to handle matters in the event of their death of disability, the Model Rules applicable to conflicts of interest still apply. Indeed, multiple successors might be needed if there are one or more matters from which the primary successor is prohibited to handle as a result of conflicts of interest, whether those conflicts arise under Model Rule of Professional Conduct 1.7 (general rule), Model Rule of Professional Conduct 1.8(a) (acquisition of interest adverse to the client), Model Rule of Professional Conduct 1.9 (former clients), and Model Rule of Professional Conduct 1.10 (imputation of conflicts).

While these rules do not require the attorney receiving a matter have *no* conflicts with the deceased or incapacitated attorney, an important piece of the succession plan is to provide a means of aiding the receiving attorney in determining if any conflicts exist without disclosing any confidential information. This harkens back to the considerations invoked by MRPC 1.6 above.

9. Model Rule of Professional Conduct 1.15: Safekeeping of Property

Model Rule of Professional Conduct 1.15 functionally requires an attorney considering any form of successor to review the property kept on behalf of clients, and the ability of a successor to receive and safely keep that property. Are the proper accounts and facilities available to the receiving attorney? If the receiving attorney will be using the accounts and facilities of the transferring attorney, how will access be transferred, keeping in mind the transferring attorney may be unable to accomplish that transfer themselves?

As an additional consideration, if a court or bar association has appointed a successor attorney due to the death or incapacity of the original attorney, Model Rule of Lawyer Disciplinary Enforcement 27(D) may come into play:

> The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

10. Model Rule of Professional Conduct 1.16: Declining or Terminating Representation

Arguably, this entire article represents a discussion about compliance with Model Rule of Professional Conduct 1.16, specifically subsection (a)(2): "A lawyer shall not represent a client, or, where representation has commenced, shall withdraw… if the lawyer's physical, mental, or psychological condition materially impairs the lawyer's ability to represent the client."

Beyond this over-arching consideration, though, there are a number of reasons why the attorney receiving a matter from another attorney may choose to (or be required to) decline accepting a matter from the transferring attorney. If such a determination is made before accepting the matter, the transferring attorney should seek another attorney to receive the matter. However, if the determination is made after the receiving attorney has begun representation, TDRPC 1.16(d) is triggered, requiring the attorney terminating the representation "take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned."

11. Model Rule of Professional Conduct 1.17: Sale of Law Practice

One of the more proactive ways to handle the succession of a legal practice is the sale of the practice to an attorney whose skills and interests are a match for the practice. The sale of a practice is permitted under the model rules, but many restrictions must be observed, as set forth in Model Rule of Professional Conduct 1.17. Since MRPC 1.17 and its comments provide an extensive list of considerations in the sale of a practice, the rule and its comments are provide in their entirety in Exhibit 1 to this article.

12. Model Rule of Professional Conduct 5.6: Restrictions on Right to Practice

Though likely inapplicable to a successor attorney simply seeking to wind down matters or transfer them to another attorney, Model Rule of Professional Conduct 5.6 does potentially impact a successor arrangement involving the transfer of an attorney's practice in its entirety. In some practice sales, for example, a "non-compete" provision may be made part of the terms, but such terms should be crafted with utmost care to avoid violation of MRPC which restricts lawyers from making agreements "that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement."

As discussed below, a true succession arrangement may obviate the need for any non-compete clause or other arrangement potentially violating MRPC 5.6 as the transferring lawyer remains affiliated in some regard with the receiving attorney in an of-counsel or advisory role. If, however, the attorney chooses to completely step away from the practice of law, extreme care is required such an arrangement is a requirement of the transfer of the practice.

13. Model Rule of Professional Conduct 7.3 and Civil Barratry Rules

Model Rule of Professional Conduct 7.3 states "A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain."

This rule, coupled with some state statutory rules (*See, e.g.* Texas Government Code §82.0651, providing that a client may bring an action to void a contract for legal services if those services were produced through a violation of TDRPC 7.03 [equivalent to MRPC 7.3] or other acts of barratry) requires extreme caution on the part of the successor attorney or custodian who seeks to engage the clients of the deceased or incapacitated attorney as their own clients. It also underscores the importance of attorneys securing consent from their clients to have their matters handled by a successor.

C. Thou shalt survey all that is around thee.

Succession planning for attorneys involves a significant amount of "physician, heal thyself," "take your own medicine," and "eat your own cooking" all within the unique context of the legal profession. Thus, much can be learned from the succession planning techniques espoused by lawyers to their farm and ranch clients.

What is the first thing an attorney would require while they were on-boarding a new succession planning client? They would likely tell them to conduct an exhaustive, 360-degree review of their operation: its resources, business plans, human resources, and stakeholders. Thus, the attorney tackling the task of succession planning would do well to follow the same path.

The first task for the lawyer trying to establish a succession plan is to examine the status quo of their practice. While more detail will be provided later with respect to records of past and current matters, it shall suffice for now to say that a first step within this first step is to compile a complete and detailed listing of the attorney's matters.

Beyond this and other record-keeping matters, though, an attorney would also do well to update the inventory of human resources: who is in your employ, what are their skill sets and areas of deepest knowledge, and how could they help a successor in the continued operation of the practice? Additionally, who are the stakeholders in the business – those who may have an economic interest in the business. Are there subsidiary or affiliated businesses potentially impacted by a disruption to the primary practice?

Farm and ranch clients coming to an attorney for succession planning advice likely would hear they need a comprehensive update of their core financial statements, including updated statements of cash flows, income statements, and balance sheets with both market value and tax basis values. The attorney would also be well-advised to update these important economic indicators of firm financial health. It is a best practice of the attorney to know the financial condition of the operation in any case, but it is particularly important in the context of succession planning. If the firm's revenues are cyclical for any reason, the succession plan should address how to handle periods of constrained cash flows or how to manage periods of increased revenues for when the lean times come. Further, if a particular matter has already depleted cash reserves, sources of additional liquidity should be identified to help make ends meet if necessary. Remember, whenever a succession plan is triggered, it will be anything other than business as usual for your firm, so be sure to provide means of handling that economic disruption.

Does the firm have a statement of core values, a mission statement, a vision statement, and a strategic plan? While at first blush, these may not appear to be core elements in establishing a succession plan, they are. As discussed later, finding the right successor can make all the difference in the success of succession. Finding the right successor means finding someone who has compatible core values and who can buy in to the mission and vision of the firm while contributing valuable skills that advance the firm's strategic plan. If you or your firm don't have these elements, take the time to build them. Not only will they bolster the strength of your succession plan; they will also help focus you and make you think about why you do what you do – for reasons other than "I've just always done it."

D. Be thou diligent to know the state of thy dockets, and look well to thy files.

Malpractice insurance providers may require attorneys to have a redundant docketing system and some form of file organization, but there is the possibility – however infinitesimal – that some attorneys only manage these systems to the absolute minimum specifications required for coverage. So in the interests of aiding clients and those who depend on the successful, smooth operation of legal practices, let the discerning and diligent attorney consider their docketing and file-management systems this way: if a random, but reasonably intelligent person were plucked off the street and plopped down in his or her law office, would that person be able to figure out the relevant deadlines and find the relevant files? Further, let us add the caveat that this person should not have to engage in superhuman feats of deductive reasoning and forensic filing to do so, but rather could find things quickly and easily.

While setting up such a docketing and filing system may sound like a lot of non-billable time, it can pay multiple dividends in improved productivity for you and your staff. If you don't already have such a system in place, be sure to involve other members of your staff as you develop it and place all of your existing matters into it. This will enable you to both tap into their insights about each matter and to train them in the system so they can aid your successor should the successor need to take over the practice at any point. Further, this process adds the benefit of supplementing your comprehensive review of the practice, mentioned in the immediately-previous subsection.

A number of state bar associations have created guidelines to develop procedures that can not only help the efficiency of your current operations, but can also make for a smooth handoff of operations to a successor attorney:

- Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.
- Keep a list of contact information for all past and current client matters.
- Create a list of passwords for computer and network login, email accounts, bank accounts, credit cards and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping (this will be discussed in more detail in the immediately succeeding subsection).
- Maintain written fee agreements for each client matter.
- Maintain a separate file for each client matter.
- Maintain a separate trust account and dedicated ledger for each client whose funds you hold.
- Keep your time and billing up-to-date.
- Keep a calendaring system with applicable deadlines.
- When you have a closed client matter, send a termination letter and include any original documents.

See State Bar of Texas, "How to Protect Your Clients and Firm in the Event of Death, Disability, Impairment, or Incapacity," https://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides1/ClosingaLawPractice/ProtectYourClients.htm .

E. Store up keys, passwords, account numbers and other access tools, not where rust and data degradation doth corrupt and hackers may break through and steal, but where successors may reach them readily.

When a farmer works on a succession plan for his or her operation, it has to include telling the successor where the keys to the feed truck can be found. With succession planning for attorneys, the equivalent starts with who has the keys to the front door of the office but goes well beyond that. Literally, who has those keys, the keys to the file cabinet, the key to the safe deposit box at the local bank, the combination to the firm safe… the list goes on and on.

Just as the docket and file system should enable the successor to quickly find each file and determine its status and relevant deadlines, we should also consider how the successor will gain access to any physical and digital resources he or she may need to manage matters.

An important first step in determining what access might be needed is to simply keep a list of all of the physical keys, combinations, account names, and passwords you use, day by day, for a week or two. The physical keys and combinations may well be easy, but the digital access may prove problematic. For example, you may have set a number of frequently-used websites such as Lexis or Westlaw to automatically log in with your ID and password pre-entered. Thus, in your journal, be sure to record any websites you frequently use, and find (or reset, if needed) your login credentials for recording in your list.

Financial accounts and the institutions where they reside are another important piece of the access puzzle. Wherever possible, be sure to tie those accounts to the docket and file system so funds, accounts, and their balances can be readily tied to the relevant matters. If you have already identified a successor, take them with you to the financial institutions keeping your accounts and take whatever measures are necessary to give them access to the appropriate accounts and deposit boxes. It may be necessary to only give them access to those items contingent upon your death or incapacity, and if that is the case, discuss with the institution what documentation the successor will have to provide in order to gain access.

Increasingly, we use applications such as Dashlane, Sticky Password, RoboForm, and others to record our passwords and in some cases, automatically enter them. These applications can be excellent tools, but you should also be sure to back them up and give a trusted party access to those backups. At the same time, we use apps to manage our passwords, we also use biometrics like fingerprint scans or phone passwords to protect them. Without access to a duplicate of the password application's data, the data is inaccessible if it only exists on a smartphone that cannot be opened.

The challenges of accessing password records underscores a fundamental principle of access, whether physical or digital: you must ensure a successor will be able to gain access to the keys, passwords, and accounts through some means that is not dependent on you being there, whether that access is through a third party or some mutually-accessible means. Access, access, access is the key, as well as access to the keys…

F. Gather thee consent from thy clients for a successor attorney.

While much has been made in the discussion to this point about the ethical implications of having a robust succession plan, we would be remiss if we did not discuss the ethical implications of actually having a succession plan. First and perhaps foremost, you will need to secure the consent of your clients to transfer their files to a successor should such a measure become necessary. Since doing so will necessarily involve the disclosure of confidential information, such a disclosure would be a violation of MRPC 1.6 without the consent of the client.

Perhaps the easiest way to secure this consent before it is needed (and remember, if and when it is needed, you will be unable to secure it yourself) is to include a provision in your retainer and fee agreements securing the client's permission to transfer their files, associated accounts, and funds to a successor attorney in the event of your death or incapacity. You may also want to define "incapacity" to include situations in which you are unable to effectively represent them, even if such situations do not involve a legal or medical determination of incapacity.

G. At a minimum, thou shalt have a successor attorney.

At this point you may be thinking to yourself "I've read all this discussion of 'successor attorneys' but they've never told us what the heck that is." Thus, let us turn to the concept of the successor attorney.

First, it is worth noting that just as an administrator is chosen as the personal representative for an intestate estate, so to a successor attorney – or more appropriately, a "custodian" – can be selected to administer the matters of a deceased or incapacitated attorney.

Model Rule of Lawyer Disciplinary Enforcement 23 is meant to provide a safeguard against the languishing of client's interests caused by a death or incapacity of an attorney that is not communicated to clients, the courts, or other parties. MRLDE 23 allows for an attorney to be moved to disability inactive status if the attorney is "judicially declared incompetent or is involuntarily committed on the grounds of incompetence or disability." Model Rule of Lawyer Disciplinary Enforcement 27 requires notice of such action be given to "all clients being represented in pending matters," and Model Rule of Lawyer Disciplinary Enforcement 28 states

> If a respondent [the deceased or disabled attorney] has been transferred to disability inactive status, or has disappeared or died… and there is evidence that he or she has not complied with Rule 27 and no partner, executor, or other responsible party capable of condudcting the respondent's affairs is known to exist, the presiding judge in the judicial district in in which the respondent maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

These procedures should be regarded as a backup, though, and should not be the primary line of defense for one's clients. Rather, attorneys should take a proactive approach in crafting a succession plan and a successor attorney. The immediately following subsection discusses the difference between a successor attorney and a "true successor" to the practice, but for now, let the discussion turn to the minimum requirements for a successor whose sole job is to manage the transfer of matters and wind down a practice.

Just as intestate succession procedures will pick "someone" to handle the administration of the estate, the MRLDE procedures will pick "some attorney" to handle your client's matters. By proactively choosing an attorney yourself, you can select someone who has a skill set better suited to your practice and client base.

If you practice as part of a firm, you have an unfair advantage when it comes to selecting a successor attorney, since you may very well be surrounded by people who could take on the duties of a successor attorney with significantly greater ease than anyone else.

If you practice as part of a firm, your partners can serve as the first line of defense should you become unable to practice, as they are [or should be] familiar with your firm's resources and procedures, and should have ready access to your files.

However, even with all these advantages, a partner may still struggle to keep both their and your plates spinning in the air if they are unfamiliar with your cases. One practice to address this is to conduct regular firm meetings (on a weekly basis) where attorneys update each other on their matters. Not only does this help with firm management and getting different perspectives on cases; it also helps partners assume each other's duties should the need arise.

More is required than just regular meetings, though. If talking about one's farm was all that was needed for one farmer to take the reins of another's operation, anyone at the coffee shop would be able to jump in. A successor farmer needs to know what the farm's resources are, where they are, and how to access them – where are the keys to the feed truck, anyway? By the same token, good office procedures and record-keeping practices can help anyone who needs to handle your matters.

If you do not practice as part of a firm, you will likely face a bit more work in your search for a successor. Visit with a number of attorneys in your area to gauge their willingness to serve as your successor and to gauge how their skills could apply to your practice. By the way, "in the area" means geographically as well as from a subject matter perspective. Since handling your matters while you are incapacitated or winding down the practice if you should pass away will involve a significant time commitment, someone in the nearby area may face fewer inconveniences than someone more removed. Although a great deal of practice management can be handled remotely via electronic means, there are a number of tasks that will have to be handled in person.

Besides geographic proximity and skills, another thing to consider is the age and health of your successor. From an actuarial standpoint, an experienced but slightly younger and healthy attorney represents the lowest probability that *they* will be incapacitated when you need them because *you* are incapacitated.

Once you have identified a potential successor, you will need to do the lawyerly thing and draft a succession agreement. First, the agreement should spell out the scope of the successor's responsibility. As stated in the State Bar of Texas guide:

> The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

See State Bar of Texas, "How to Protect Your Clients and Firm in the Event of Death, Disability, Impairment, or Incapacity," https://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides1/ClosingaLawPractice/ProtectYourClients.htm .

Another important piece of the succession agreement is what triggers the event and how long the agreement should remain in effect after the trigger. In this article, the term "incapacity" has been used, but who determines if that state exists? Is it to be determined only by a medical diagnosis? Can it be designated to exist by your spouse or adult children? At the far end of the spectrum, could the successor attorney declare it to exist on the occurrence of certain events (notification by a client, observed absence from work for an extended period of time, failure to reply to communication, etc.)? With respect to the duration of the agreement, it may be preferable to define the term by milestone event (for example, when all matters have been concluded or transferred to another attorney) rather than by a defined period, since the wind-down process may take longer than expected.

The successor attorney agreement should also include a clear listing of the duties the successor is to perform. This can include the following:

- Reviewing files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

State Bar of Texas, *id.*

As mentioned in subsection II.E., carrying out these tasks may require access to your financial accounts. Some banks may require a power of attorney be executed giving the successor attorney the legal power to handle your accounts. If so, you will likely want to make such a power a springing one, and again care must be taken to define the triggering event for both the successor attorney agreement and the springing of the power of attorney. The successor, a close family member, or your personal representative should also be granted access to your trust account so client funds may be dispersed.

As we discuss triggering events, it is also important for you to give clear instructions to an employee, spouse, or other party that they should provide notice to the successor when a triggering event has occurred. Be sure to provide the contact information for the successor attorney to that party. Additionally, make sure a member of your office staff has instructions to send notice to your clients that the successor attorney will be handling their matters.

H. And yet shew I unto you a still more excellent way: have a true successor.

The MRLDE procedure is a stop-gap. A successor attorney is a chosen lifeguard for your clients. But ideally, would it not be preferable to find a true successor to the practice, not just a selected custodian? What if someone could be found not only to continue your practice, but to provide you and your family the maximum value for the practice and give you the opportunity to pass on your experience? That is what your agricultural clients so often seek; is it something you want to seek for yourself?

One perhaps obvious yet often-overlooked consideration in succession planning for attorneys is the fact that one can stop practicing before one dies or is incapacitated. An attorney can step away from his or her practice to enjoy other pursuits entirely, or can scale back to an of-counsel role to reduce workload or pursue only matters they enjoy most. While care should be taken in simply immediately and completely "shutting down" (see the following section), there are many options along the continuum of successors and the speed at which matters are turned over to them.

Again, if you practice as part of a firm, a lot of the succession work may have been done for you in the form of the partnership agreement. That agreement coupled with firm procedures might provide for a number of scenarios including how your clients' matters will be handled in the event of your death or incapacity. In the event of your death, it may provide for how your estate will be compensated for the value of your partnership interest. That said, though, do not assume these matters are covered – review the relevant agreements and procedures to make sure they are. If they are not, it is time to visit with your partners to see that they are.

While the firm model can facilitate succession, the firm may not have depth in your particular area of expertise. If part of the reason you joined a firm or others joined you was to "horizontally integrate" and broaden the services provided rather than provide additional depth in one subject area, there may not be a clear successor to your practice. If that is the case, it may be time to identify an associate at your firm or find a new hire to take over your practice – whether that is as a result of your death or incapacity, or as a result of your planned retirement. Starting the process early gives you time to show your associate the ropes and to develop the relationship between him or her and your clients so those clients can develop rapport with them and ensure the continuity of those critical business relationships.

If one chooses to step back or completely away from the practice in a timeframe that is not conducive to the development of an associate, law firm consultant David French presents a number of other partnership and merger options that can fulfill the needs of succession planning in his article "Succession Planning: Preparing Your Law Firm's Future:" (Arizona Attorney, October, 2016, available at http://www.azattorneymag-digital.com/azattorneymag/201610/?pg=1#pg1).

- Bring on a new experienced partner. Select someone whom you feel you could immediately entrust your practice to, which will allow you to slow down. This lets you maintain some control while helping your clients adapt to this new partner.
- Merge with another similarly sized firm. With two strong balance sheets, you will be in a better position to begin a transition, whether now or in the future. This should be discussed from the outset, even if the plan is not to be implemented for a number of years.
- Join a larger firm. If slowing down is your desire and bringing in an associate or partner sounds like a lot of work, sometimes identifying a seasoned group to take care of your clients is your best option.
- Consider selling your practice. It should be noted that valuations of law firms rely heavily on the personal goodwill the selling attorney has maintained with clients. It is important to note that an outright sale in which the selling attorney simply walks away from the practice and clients will not usually work. Also, traditional financing is hard to come by in a law firm sale, so while our company has identified a few sources that will look to provide capital in these transactions, an earn-out of some sort will normally be the best approach.

Having a true successor rather than someone who will simply serve as a "custodian" to your matters provides the best potential for your clients to receive continuous, high-quality legal services and to preserve the value of your practice. However, selecting a succession arrangement is a very involved process that will take some time – perhaps years – to implement.

I. Thou shalt preserve a meaningful role for thyself.

Bill was the senior operator of a large and successful farming operation and recognized the need for a succession plan. He did everything a good succession planning attorney would advise: did a 360 degree review of his operation, discussed options with all of the farm's stakeholders, engaged a team of attorneys and tax professionals to help with the development of the transition tools, and implemented the plan wherein he turned the management of the operation over to his children. All Bill had to do was sit back on the porch, drink lemonade, and watch the farm prosper.

In the first year following the implementation of his plan, Bill wore out three transmissions in his John Deere Gator. Why? He was a farmer, and farmers farm. But there was no farming left for him to do – he had delegated all of his tasks to his children. Not knowing what else to do, he simply drove the fencerows of the farm spraying weeds from his Gator. After that, the family figured out that Bill needed a more meaningful role on the operation, and re-engaged him to handle some of the production operations, as well as making him "chairman of the board" to help with strategic decision-making and to provide his experience as they weighed management choices.

The moral of Bill's story is that being a farmer is very much at the core of most farmer's identities. There is at most a blurry line between the land and themselves, if there is a line at all. Many attorneys are the same way. Lawyer jokes notwithstanding, the practice of law and the pursuit of justice is a noble profession, and many of us tie our very identity very closely to that profession. If we were not lawyers, and did not spend our days lawyering, we wouldn't know what to do with ourselves, and perhaps more worryingly, wouldn't know who we are.

As attorneys, it is important for us to recognize the importance of what we do, but it is also important for us to recognize that we have an identity separate from our profession. We can make vital contributions to our families and our communities regardless of whether "attorney at law" appears on our business card. Further, if we have any degree of excellence in our profession, we also owe it to the generations that follow us to impart what we know on the lawyers that will follow us. At some time, it may be important for us to take a step back from the profession (we dare not say "retire") to create room for those new professionals to step forward.

Having said this, however, it would be foolish to assume "step back" means to completely "step away." To do so, especially abruptly, can have devastating consequences on the emotional health of an attorney (to say nothing of the sanity of their families who are then suddenly burdened with an aimless attorney around the house).

Let us learn from the story of Bill and the Gator and recognize that even if the attorney does recognize a need to step back from the practice of law, perhaps a number of small steps are best. Moving to an of-counsel or advisory role still gives the attorney the opportunity to "keep the sword sharp" and impart their experience to other practitioners. Pursing more pro bono work or using one's legal and business experience to help in charitable and community groups can also help give attorneys meaningful work while still giving them flexibility and time with their families that might not have been possible in full-time practice. The primary consideration is to make sure that the attorney does not swing completely from one end of the spectrum ("you can have this practice when you pry it from my cold, dead fingers") completely to the other without finding meaningful ways to channel their personal and professional energies.

J. Where there is no counsel, the people fall; but in the multitude of counselors, there is safety.
Corollary: Thou shalt have trusted advisors who shall speak unto thee the truth, and shall not speak unto thee the leavings of the bull.

Lawyers need friends; not just friends to provide emotional support, but friends we trust enough to be honest with us and hold us accountable. As Proverbs 27:6 reminds us, "Wounds from a friend can be trusted, but an enemy multiplies kisses." We need friends who will remind us that we have an obligation to take care of ourselves. While we may never capture the mythical unicorn of "work-life balance," we need friends to remind us that life might not be best measured in billable hours, that we need to sleep, that we need to exercise, that we need to eat well, and that we need to spend time with both the people who give us a reason to go to work as well as the people with whom we work. The friends who remind us of these things must also be empowered to remind us that we swore an oath before God to discharge our duties to our clients to the best of our abilities, and that oath also requires us to take measures to protect our clients in the event we *can't* discharge those duties. They must remind us that we owe a duty not only to our clients, but to our employees and to our families to take care of them, even if we cannot take care of ourselves. Thus, reader, find a friend who will speak these things to you in both truth and grace and who will hold you accountable to develop and implement a true succession plan.

As you go about crafting and implementing your succession plan, also remember the adage "he who represents himself has a fool for a client." Obviously, your professional experience and skills position you well to do much of the work of succession planning yourself, but don't rely solely upon yourself. As attorneys, much of the value in our problem-solving skills comes from the fact we are not directly involved in the problem, but can examine all its facets from an objective point of view. When you are involved in your own succession planning process, you are looking at the problem from the inside-out. Engage trusted friends and colleagues with relevant experience to examine the problem with you and to offer their perspectives.

Any good succession team should include:

- An attorney (and in this case, that means an attorney in addition to you) to craft the transactional tools and other documentation needed to accomplish both the gradual transition of your practice and the contingency plans if sudden illness or death occur.
- An accountant / tax professional to guide you through the potential economic and tax implications of your succession strategies.

- An investment advisor to help you plan for your income needs if you choose to scale back your practice and to examine tools to provide income to your family when you die or become incapacitated.
- A human resources advisor to help you determine the skills needed in the transition of your practice.

III. CONCLUSION

At the end of the day, selecting a true successor is a function of a number of interests, and reflects the same questions we would ask our clients to confront as we are advising them in their succession planning. How does one balance the desire to pass along a valuable asset to someone else while also harvesting some of the value created for oneself? How do we ensure that our successor has the same values I do and carries them out in the operation of the business? If part of my livelihood depends on the continued success of the business, how can I give my successor the experience they need when no one knows my business like me (and no one could *possibly* run it *better* than I could)? How do I know when it is time to take a step back and let someone else have the reins? At least one of the reasons our clients are not falling over themselves to engage in succession planning is because it involves confronting these difficult questions, and that takes courage. We must have the same courage for the sake of our own legacy.

Epilogue: Helping someone with the Loss of a Loved One

In the agricultural practice of a small town, our clients and colleagues are frequently more than just that - they are our friends, fellow members of our church, parents of our children's schoolmates, members of the same local cooperative, and so on. When one of those clients or colleagues is lost, what helps?

In many small towns, the good intentions of many caring neighbors sometimes turns the home of the bereaved into something of a bed and breakfast. Guests at mealtimes must be fed (and try to time your visit to avoid mealtimes), and out-of-town family members need a place to stay. Consider providing food (that is not a casserole – the author assures you that within hours there will be more casseroles at the home than can possibly be consumed within a human lifetime) that is easily frozen or refrigerated and conveniently reheated. Sandwich ingredients and other convenience foods may also be appreciated. Since refrigerated storage may be used up quickly, providing ice and the loan of an ice chest or portable refrigerator may be valuable. Disposable plates, cups, utensils, and napkins ease the burden of dishes for the family. Gift cards for local restaurants, particularly those that deliver, can be a good idea, as the family may simply want to get out of the house for a while. Don't be afraid to offer some comfort foods and indulgent snacks. The family may choose to eat a few feelings in the form of potato chips or share a fond memory over some ice cream; they can walk off the calories at a later date.

If you are close to the family, offering a guest room for overnight visitors can help ease the crowding, burden, and expense of such visitors.

Your skills and connections as an attorney can help you move quickly to establish means of raising support for a family that may need help with the expenses attendant to a funeral and/or final medical expenses. Most local banks will work to set up temporary funds that can be used as holding accounts for donations until the appropriate arrangements can be made to transfer the funds to the family – and your legal skills can help in those arrangements.

With support coming in, a multitude of thank you notes are needed. Gifts of thank you notes and postage can help with this.

Visitation can be welcomed, but timing can be crucial. If the client is a close personal friend, do not hesitate to offer your support. Do not mention any of the legal mechanics unless there are items that simply must be attended to immediately; simply let the bereaved know that you are ready to assist them when they are ready. Keep your visit brief to express your support; longer visits may be more appropriate a scheduled viewing or visitation at the funeral home or church; of course, if the family requests you stay longer, don't feel like you must cut the visit short.

The family may have a number of visitors prior to the funeral, but unsurprisingly there may be few after the funeral. The funeral marks the beginning of the long and potentially very lonely "long haul" of dealing with grief, and a visit a few days *after* the funeral can do a great deal to help the family remember there are those that are there for that long haul. If the only relationship with the family is that of client alone, simply let the family know of your support and that you are available whenever they feel ready.

Human empathy compels many of us to form some sort of connection with the bereaved, and sometimes the words "I know how you feel" slip out. In the early days following a loss, no one wants to hear that. Whether true or not, their loss feels very uniquely and intimately theirs. If indeed you have experienced a similar loss, the time to access that shared experience is later, and with the introduction "I know I can't know exactly how you felt, but when something similar happened to me, I felt…" Well-meaning assurances that "he's in a better place" or "this will work out for the good" can trivialize the loss; consider instead simply saying "our hearts are heavy for you" to express your compassion and offer your thoughts and prayers.

EXHIBIT 1: MODEL RULE OF PROFESSIONAL CONDUCT 1.17 WITH COMMENTS

Source: American Bar Association, Center for Professional Responsibility
Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_17_sale_of_law_practice/

Client-Lawyer Relationship

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

COMMENTS

Client-Lawyer Relationship

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to

another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(7). Providing the purchaser access to detailed information relating to the representation, such as the client’s file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist).

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the

definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

EXHIBIT 2: HOW TO PROTECT YOUR CLIENTS AND FIRM IN THE EVENT OF DEATH, DISABILITY, IMPAIRMENT, OR INCAPACITY

Souce: State Bar of Texas, https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886

This information is designed to help you protect your clients' interests in the event you are suddenly rendered unable to practice law. With some advanced planning, you can ensure a smoother transition for your clients and allay potential ethical pitfalls.

SUCCESSOR ATTORNEY

If you suddenly become unable to practice law, someone will need to review your case files to ascertain if there are pending or upcoming filing dates, contact clients to return or transfer files, handle the firm's financial affairs, and deal with other issues that may need immediate attention. Due to the content contained in the files, and the need to be able to spot legal issues, the best person to do this is presumably an attorney, or "successor attorney."

By determining in advance who will serve as your successor attorney, you offer better protection for your clients and a faster transition out of law practice. Once you have found a suitable attorney who agrees to wind down your practice, it is important to discuss what duties the successor attorney will need to perform, the scope of their responsibility, what event will trigger the successor attorney's service, and the systems you employ in your firm to make the job easier to accomplish. Be sure to reduce your agreement to writing so the successor attorney will have the legal authority to perform the duties you have both discussed.

1. Scope of Responsibility

The need to establish the scope of the successor attorney's duties and obligation to you and/or your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he or she may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

2. Duration and Triggering Event

You will also want to establish what event will trigger the successor attorney to enter your practice and start winding down your business and who will determine that this event has occurred. Will it be a doctor, your spouse, the good faith belief of the successor attorney? How long will the task of wrapping up the practice take?

3. Duties to Be Performed

Include in your written agreement a signed consent authorizing the successor attorney to perform certain tasks, for example:

- Review your files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

4. Power of Attorney

If you want the successor attorney to handle your firm's financial affairs, access to your bank accounts will be required. While a written agreement may be sufficient, some banks require that the successor attorney have a Power of Attorney. Check with your bank to see what documents they will require in order to honor your wishes with respect to the closure of your firm. Again, you'll need to think through what sort of Power of Attorney you want to grant the successor attorney and how and when the Power of Attorney will be triggered. Will the successor attorney's Power of Attorney be triggered by a specific event, who will determine that the triggering event has occurred, what specific powers will be granted, and what will determine the duration?

5. Notifying Your Client

You will need to notify your clients that you have arranged for a successor attorney to wind down your practice. Since the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. The easiest way to notify your clients and obtain their consent is to put a provision in your retainer and fee agreements.

6. Ethical Issues

- **Confidentiality:** The client must give consent to have his confidential information shared with successor attorney.
- **Conflicts:** The successor attorney will need to conduct a conflict check if the review of client confidential information is being conducted in order to return or transfer the file.
- **Barratry:** If the successor attorney is contacting your clients or wishes to represent your clients, he or she should be aware of potential restrictions in the Disciplinary Rules with respect to barratry or solicitation:
- Notification of Attorney's Cessation of Practice. See Texas Disciplinary Rule 13.01

AUTHORIZED SIGNER ON THE TRUST ACCOUNT

In order to return funds to clients and remit payment for work performed, someone will need to have access to your trust account. If you do not make arrangements, your clients may not receive their funds until a court orders access to the trust account. You may grant this authority to your successor attorney, a close family member, or your personal representative.

OFFICE PROCEDURES

Maintaining good office procedures will aid your successor attorney and provide increased protection for your clients.

1. Contact List

Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.

2. Passwords and Account Numbers

Create a list of passwords for computer and network login, email accounts, bank accounts, credit cards and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping.

3. Fee Agreements

Maintain written fee agreements for each client matter.

4. Separate Files

Maintain a separate file for each client matter.

5. Trust Account

Maintain a separate trust account and dedicated ledger for each client whose funds you hold.

6. Keep Time and Billing Up-to-date

7. Docket Control

Keep a calendaring system with applicable deadlines.

8. Termination Letter

When you have closed a client matter, send a termination letter and include any original documents.

Exhibit 3: Assumption of Practice: A Custodian's Guide

Source: State Bar of Texas
https://www.texasbar.com/AM/Template.cfm?Section=Closing_a_Law_Practice&Template=/CM/HTMLDisplay.cfm&ContentID=31886

INTRODUCTION

There are a variety of reasons why an assumption of a lawyer's practice may be necessary. In an ideal world, every attorney would take appropriate steps to plan for the eventual closure of his or her practice. However, often times the assumption of a lawyer's practice is required because the lawyer has been suspended or disbarred, is suffering from a disability, has passed away, or has simply abandoned the practice. In these situations, the State Bar relies on attorneys from around the state to volunteer to serve as "custodian" of these practices for the purpose of examining client matters, notifying clients, contacting courts, and returning client papers and files. This handbook is a tool for those volunteers. It offers insight and guidance regarding the process of assuming an attorney's practice, forms that may be useful in facilitating the process, and contact information of those who can provide assistance.

INITIATING THE PROCESS

A client, the Office of the Chief Disciplinary Counsel of the State Bar of Texas, or any other interested person may file a petition initiating custodianship proceedings ("assumption of jurisdiction") designating the volunteer as custodian. The current possessor of the attorney files will be ordered to show cause as to why the Court should not assume jurisdiction of the attorney's practice, which he or she may waive. The custodian will receive a copy of the assumption order and may proceed with custodial duties detailed below. The custodian will then prepare a report for the Court describing services rendered and the status of all client files, and seek an orderdissolving the custodianship.

GUIDELINES TO MANAGING CUSTODIAL DUTIES

This is intended as guidance only. Each situation will be unique, and the action required will vary accordingly.
The cessation of a law practice is governed by Texas Rules of Disciplinary Procedure Section 13 (also available here), which sets forth the requirements applicable to assuming jurisdiction of a lawyer's a practice. This handbook aims to provide guidance supplemental to those requirements. Please note that these guidelines are not comprehensive and are intended only to provide a general roadmap for navigating the assumption of a practice. Every case will be different and the action required to successfully assume a practice will vary accordingly.
Successor Attorney? Determine if attorney had an arrangement with another attorney (sometimes called a successor or assuming attorney) who previously agreed to assume practice of deceased or disabled attorney. Check with staff, close friends, and relatives.
Ask local bar association(s) to send e-mail alerts to members and place a public notice in bar publications announcing death or disability of attorney. The notices should ask for information as to any successor attorney(s) with client matters with the deceased or disabled attorney.

Getting in. Obtain a set of keys, access codes, and/or passwords to the premises and to interior locked file cabinets, safes, and offices. Ask staff and the landlord for help. Change locks, codes, and passwords to protect the office files and assets.

Utilize attorney's staff. To the extent possible, utilize attorney's staff to assist in the closure of the practice. Inquire as to client and contact lists, office procedure manual, locating files, accessing information (e.g., keys, passwords), calendars, and other matters pertaining to the practice.

Track and document all action taken. From the moment you begin sorting through the attorney's files, prepare and maintain an inventory of client files, the status of those files, and actions you have taken and that need to be taken on each file. This information will be included into the Custodian's report to the Court.

Deadlines and other urgent matters. First, determine which files are active and identify any deadlines or other urgent matters that require immediate attention, such as cases with a statute of limitations running, scheduled court appearances, or cases with discovery or filing deadlines. Check with staff. Review all office calendars, both physical and electronic. Ask the local court administrator to run a search to determine if the lawyer is attorney of record on any open matters.

Contact the client regarding urgent matters and ask for permission to reset. Encourage the clients to hire new counsel as soon as possible. Confirm extensions and resets in writing. Ensure these scheduling arrangements do not pose a conflict of interest for you or your clients. If a conflict exists, contact another attorney about handling these matters.

Notify courts agencies, opposing counsel, and other appropriate entities of the assumption and, with client consent, seek extensions of time or continuances, and/or reset scheduled settings. File notices, motions, and pleadings on behalf of clients who cannot be contacted prior to immediately required action.

Contact clients. Notify clients of attorney's death, disability, incapacity, or other inability to act. When possible, client communications should be in writing. If you are unable to reach a client, consider publishing notice of the assumption in a local publication.

Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney. Send clients who have closed files a letter informing them of the assumption and giving them the opportunity to collect their file or authorize destruction of their file.

If the client wants to pick up his or her file, obtain a written request and make appropriate arrangements. It is advisable to designate a single pick-up location for all client files. The file must be returned even if client has an outstanding balance. The file can be returned by certified mail with written consent from the client. Be sure to get proof of delivery.

If the client wishes for the file to be sent to new counsel, have the client sign transfer authorization for the original file to be released to the new attorney. If the case is pending in court, ensure that a Substitution of Attorney is filed.

If the client prefers that the file be destroyed, obtain written authorization.
Ensure that a phone number is available for the clients to either speak with someone about their file or so that the client can leave a message.

Client files. Consider the following guidelines in organizing and disposing of all client files in the attorney's possession:

- **Locate and inventory all files**, including all physical and electronic materials corresponding to each. Note that closed files may be kept in more than one location. Physical files may be stores in places such as public warehouses, the attorney's home, or even with a client. Electronic files may be stored on servers, hard drives, laptops, home computers, and/or removable media such as thumb drives or disks. Be sure to add copies of all digital files to the physical files. Ask staff, relatives, and close friends about off-site locations, passwords, and keys.
- **Update all files** with any new mail, stray documents, or any action pertaining to urgent matters.
- **Return files to clients** promptly upon client request. Coordinate a time and location in which client may pick up his or her file. Ask for identification. Absent written consent, file materials should not be released to anyone but client. Have client sign an acknowledgement of receipt. Again, if the client has provided written authorization of certified mail delivery, be sure to get proof of delivery.
- **Transfer files to third party** promptly upon client request. Ensure you have obtained a transfer authorization signed by the client. Obtain an acknowledgment of receipt from third-party recipient.
- **Destroy client files** only if authorized. Authorization may be obtained through written client authorization, court order obtained through a motionfor authorization to destroy files, or as authorized under a file-retention provision in the fee agreement. The file should then be completely destroyed. The safest way to destroy closed files is to shred them or have them shredded by a company that provides professional shredding services. A list of client files destroyed with dates of destruction will be included in the Custodian's report submitted at the conclusion of the proceeding.
- **Properly store closed files** of clients who cannot be reached and that may not be destroyed. Texas Disciplinary Rule of Professional Conduct 1.14(a) (available here) provides, in part, that "Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Make information available regarding where these files will be stored and whom clients should contact in order to retrieve a closed file. Notify the Bar of where closed files will be stored and the name, address, and phone number of the contact person for retrieving the files.
- **Original documents** that a client might need to establish substantial personal or property rights—such as wills, signed contracts, stock certificates, promissory notes, property deeds, trust instruments—or other original documents like birth and marriage certificates and passports, must be returned to the client, safeguarded by the lawyer, or disposed of by court order.

  Special attention should be paid to closed files that contain documents pertaining to a minor (such as custody and support judgments and adoption records), corporate books or records, intellectual property files, or any other file in which it appears the client's or attorney's interest may be ongoing.

Financial affairs. Identify and contact a family member, business associate, or close friend of the attorney to encourage them to initiate a probate proceeding or obtain a guardianship to handle the attorney's financial affairs.

Office matters.

- **Review all unopened mail**, especially certified mail, and place in corresponding client files. Look for information on pending client matters, bills that have to be paid, tax returns that have to be filed, income that may come in, etc.
- **Contact the landlord** or other leasing entity and, if necessary, arrange for the assignment of the lease to the custodian, the termination of the lease, or the subletting of the lease to another party.
- **Notify post office** of assumption, as well as building management and some nearby offices. Post office forwarding will prevent mail from being delivered and left at an empty office. Request building management and nearby office to collect mail, express deliveries and anything else that might be important.
- **Tend to voicemail and email.** If you can obtain passwords, clear all voicemails that may contain client or other important communications. If passwords are not available, disconnect all voicemails and consider using a simple answering machine instead. Arrange for automatic forwarding of all emails to a mailbox of the responsible person. It is also possible to reject or answer all emails with a notice instructing the sender whom to contact.

Track hours and expenses. Keep a record of all time spent in the performance of custodial duties and associated expenses, including receipts. This will be useful in preparing your Court report and may be applied toward pro bono credit.

Report to the Court. Prepare and submit a report to the Court describing all custodial services rendered in the assumption of the practice and requesting dissolution of the custodianship. Consider including exhibits that detail disposition of client files and expenses incurred in the course of performing all custodial duties. Submit a proposed order dissolving the custodianship.

OTHER CUSTODIANSHIP ISSUES

Representation. The custodian does ***not*** assume representation of the client upon appointment as custodian. The custodian must inform the client accordingly and advise the client to retain new counsel. The custodian may not transfer the file without written consent. If the attorney was a partner at a law firm, another lawyer(s) within the firm does not automatically assume the attorney's practice. The client must be informed of the closure and retained independently. The custodian may represent the client, but representation must be established by a new, separate agreement between the custodian and the client. Check your client list for possible client conflicts before undergoing representation or reviewing confidential information of the client.

Confidentiality. The custodian is bound by Texas Disciplinary Rules of Professional Conduct 1.05 (also available here) in performing all duties pertaining to the assumption of practice. The custodian must maintain the confidences and secrets of a client and protect the attorney-client privilege as if the custodian represented the clients of the attorney.

Liability. The custodian will not be liable to attorney or attorney's estate for any act or failure to act in the performance of his/her duties as custodian, except for intentional misconduct or gross negligence. The custodian will not process, pay, or in any other way be responsible for payment of attorney's personal bills.
Questions? For questions or information pertaining to custodial proceedings or duties, please contact **James Ehler** at (210) 208-6600, or **Timothy Baldwin** at (713) 758-8200.

Exhibit 4: Transition Planning Inventory

Adapted from
"Items to Consider for a Will or Trust" by Bruce Moates
"The Family Love Letter" by AXA Equitable Financial Advisors
"Estate Planning Inventory" by Mike Hardin

My Family Members

For each person, include the contact information for the person, any special needs the person may have, if you are a guardian for the person, and whether they are the beneficiary of any trusts or other instruments.

- ☐ Spouse
- ☐ Child (children) (include spouses)
- ☐ Grandchildren (include spouses)
- ☐ Parent
- ☐ Pets

My Emergency Contacts

For each person you would want contacted, include name, mobile phone number, home phone number, address, and relationship. Also consider entering each person in your mobile phone with a listing of ICE ("In Case of Emergency) 1, ICE 2, ICE 3, etc.

My Important Numbers

Include numbers for yourself and your spouse

- ☐ Social Security number
- ☐ Drivers license number
- ☐ Passport number
- ☐ Medicare number
- ☐ Employer identification numbers (EINs) for any business entities owned
- ☐ Any other identifying numbers

My goals and objectives

- ☐ What standard of living do I want to provide for my surviving spouse?
- ☐ What type of gifts do I want to make to my family members?
- ☐ What type of gift do I want to make to charities, churches, and other community organizations?
- ☐ Is it important that my farming operation stay in one piece?
- ☐ Is it important that the farming operation be continued by a family member?
- ☐ What are my goals for the future of the farm operation?
- ☐ If some of my goals come into conflict, what values should guide the decision as to how to proceed?

My financial status

- ☐ Current balance sheet
- ☐ Current income statement
- ☐ Current cash flow statement
- ☐ Whole farm plan
- ☐ Operating budget for farm
- ☐ Personal monthly budget

My advisors

Include contact information for each

- ☐ Financial planner / investment advisor
- ☐ Stock broker
- ☐ Retirement plan administrator
- ☐ IRA administrator
- ☐ Estate planning attorney
- ☐ Business attorney
- ☐ CPA / accountant
- ☐ Former employers
- ☐ Mortgage holder
- ☐ Lenders
- ☐ Banker
- ☐ Primary care physician
- ☐ Specialist physician
- ☐ Farm consultants
- ☐ Others

My Assets

- Real property
  - ☐ Surface and mineral deeds for all real property
  - ☐ Abstracts for any property interests
  - ☐ Surface and mineral leases for all real property
  - ☐ Any additional agreements for land use
    - Wind energy leases/easements
    - Mineral leases
    - Hunting leases
    - Easements/right of way agreements
  - ☐ Property that is leased by you
    - Copy of lease agreement
    - Contact information for lessor
- Financial assets

  Include account number, contact information for holding institution, beneficiary designations (such as payable on death provisions), whether account is jointly held (and if so, with whom) and amounts
  - ☐ Savings accounts
  - ☐ Checking accounts
  - ☐ Money market accounts
  - ☐ Certificates of deposit
  - ☐ Custodial accounts
  - ☐ Savings bonds
  - ☐ Social Security updated statement (call 800-722-1213)
  - ☐ IRA documentation:
    - Traditional IRAs
    - Rollover IRAs
    - Spousal IRAs
    - Roth IRAs
    - SEP IRAs
    - SIMPLE IRAs
    - Beneficiary IRAs
  - ☐ Qualified retirement plans
    - 401(K) or 403(B) plans
    - Profit sharing plans
    - ESOP plans
    - Pension plans
    - Other qualified plans
  - ☐ Section 529 Education Plans

[Financial assets, continued]

- ☐ Stock options / stock purchase plans
- ☐ Mutual funds
- ☐ Annuities
- ☐ Brokerage accounts
- ☐ Individual stocks
- ☐ Bonds
- ☐ Deferred compensation from employer
- ☐ Military retirement benefits
- ☐ Military survivor benefits
- ☐ Installment sale contracts owed to me
- ☐ Debts owed to me
- ☐ Legal judgments / settlements owed to me
- ☐ Other items
  - Frequent flyer miles
  - Retailer reward accounts

- Business interests
  - ☐ Partnership agreement / by laws / operating agreement for entity
  - ☐ Stock or ownership certificates
  - ☐ Copy of any buy/sell or ownership agreements for interest
- Personal property and non-financial assets
  - ☐ Automobiles (along with copy of title)
  - ☐ Farm equipment (serial numbers and other descriptive information)
  - ☐ Farm inventories

    Include descriptions, values, and location where kept
    - Livestock
    - Crops
    - Supply inventories (feed, seed, chemicals, other inputs)
    - Pre-purchased inputs, if not yet delivered (include vendor conact)
  - ☐ Recreational vehicles (titles or serial numbers and descriptive information
    - Boats
    - Motorcycles
    - ATVs
    - Utility vehicles
  - ☐ Aircraft (along with copy of title)
  - ☐ Household goods
    - Jewelry
    - China / silverware
    - Picture albums
    - Antiques
    - Collections (coins, stamps, other items)
    - Books
    - Art
    - Electronics
    - Furnishings
    - Kitchen goods
    - Firearms
    - Sporting / hobby equipment
    - Clothing / furs

My Liabilities

- Debts
  For each debt, list amount owed, contact information for creditor, any insurance tied to the debt, copy of the loan agreement, and any other information or documentation available.
  - ☐ Mortgage
  - ☐ Automobile
  - ☐ Equipment
  - ☐ Revolving credit for business (i.e. operating line of credit)
  - ☐ Mortgage-backed line of credit (i.e. home equity loan)
  - ☐ Credit card
  - ☐ Store credit
  - ☐ Personal guaranties for loans
  - ☐ Co-signed loans
- Recurring payments
  Include contact information for service providers
  - ☐ Vehicle / equipment leases
    - Include copy of lease agreement
  - ☐ Utilities
    - Electric
    - Gas
    - Water
    - Garbage/recycling
    - Telephone (landline and mobile)
    - Television (satellite / cable)
    - Internet
  - ☐ Subscription services (magazines, news & information services)

My Insurance Policies

For each insurance type, include a copy of the policy, the policy number, contact information for the carrier, the owner and beneficiary of the policy, the face value of the policy, any cash value, any loans against the policy, and the premium schedule for the policy.

- ☐ Life insurance
- ☐ Disability insurance
- ☐ Long term care insurance
- ☐ Health insurance
- ☐ Specific ailment insurance (such as cancer policies)
- ☐ Vision care plans
- ☐ Dental care plans
- ☐ Medicare insurance
- ☐ Prescription drug plans
- ☐ Medigap insurance
- ☐ Other insurance policies

My Important Documents

For each, include information about where the original document is located, and the date the document was executed. You may also want to indicate if such a document has *not* been executed.

- ☐ Will
- ☐ Living trust
- ☐ Advance directive for healthcare
- ☐ Living will (may be part of advance directive for healthcare)
- ☐ Organ donation documents (may be part of advance directive for healthcare)
- ☐ Medical power of attorney (may be part of advance directive for healthcare)
- ☐ General power of attorney
- ☐ Limited power of attorney
- ☐ Life insurance trust
- ☐ Charitable trust
- ☐ Minor trust
- ☐ Section 529 education plan
- ☐ Custodial account
- ☐ Guardianship papers
- ☐ Family partnership documents
- ☐ Partnership, corporation, or LLC documents
- ☐ Real property deeds
- ☐ Marriage license
- ☐ Domestic partner agreement
- ☐ Cohabitation agreement
- ☐ Pre-nuptial agreement
- ☐ Post-nuptial agreement
- ☐ Divorce or separation agreement
- ☐ Child support agreement
- ☐ Birth certificates
- ☐ Adoption papers
- ☐ Automobile title
- ☐ Boat/airplane title
- ☐ Citizenship papers
- ☐ Burial or pre-need agreement
- ☐ Life insurance beneficiary form
- ☐ Military discharge papers
- ☐ Employment or contractor contract

My Digital Estate

For each item, include the applicable user ID, password, and any other information needed for access

- ☐ Email accounts
- ☐ Facebook
- ☐ Twitter
- ☐ YouTube
- ☐ Instagram
- ☐ Other social media site or service
- ☐ Financial software or service (Quickbooks, Rocket Matter, Mint, etc.)
- ☐ Cloud storage (Evernote, Dropbox, iCloud, etc.)

My funeral arrangements

- ☐ Desired speakers
- ☐ Desired officiant
- ☐ Desired program / order of worship
- ☐ Specific people to be notified of your death and/or funeral
- ☐ Specific people you wish not to attend your service
- ☐ Particular songs, readings, or other elements of your service
- ☐ Specifications for burial or cremation
- ☐ Location of burial plot
- ☐ Who is to receive possession of cremated remains
- ☐ Desired wording of obituary

Implementing My Plans

In the event of my death or disability…

- ☐ Do I have financial resources available for my spouse and children so they can meet their living expenses while the estate is being settled?
- ☐ Does my operation have the financial strength (both in terms of solvency and liquidity) to meet my objectives?
- ☐ Have I trained two or more people to manage the day-to-day operations of my farm, if they needed to do so *today*?
  - Have I walked them through the day-to-day operations?
  - Do the people who will be handling my affairs have access to the suppliers, vendors, and professionals they will need to keep the operation going for as long as needed?
  - Do they know where the land, livestock, supplies, equipment are located?
  - Have I spelled out what actions can be taken without any permissions? What actions require consulting with a professional (such as an attorney or accountant)? What actions require approval of the court?
  - Do they understand not only *how* the operation runs, but *why* certain decisions are made?

Top 10 Things You Need to Know About Ag Bankruptcy

Stephen L. Gershner, Davidson Law Firm

Top 10 Things You Need to Know About Ag Bankruptcy

By: Stephen L. Gershner

1. Types of relief available

Chapter 7 — Straight bankruptcy. Individuals and entities are eligible to be debtors. Debtor files a petition, listing assets and debts. Upon filing the petition, an estate is created. A Trustee is appointed as representative of the estate. The Trustee is charged with liquidating non-exempt assets and distributing proceeds to creditors. Discharge of indebtedness is granted to individuals on most debts unless an objection to discharge or dischargeability is sustained. Corporations do not get Chapter 7 discharge.

Chapter 11 — Reorganization. Originally designed for entitles, however, individuals are also eligible for Chapter 11 relief. As with Chapter 7, an estate is created upon filing a petition. Upon filing a Chapter 11 petition, the debtor becomes the debtor-in-possession and exercises most of the rights and duties as a Trustee. The debtor-in-possession operates the debtor's business and files a plan of reorganization and disclosure statement, which is voted on by creditors. Individuals get discharged upon confirmation of the plan. Confirmation of the plan creates a new contract between debtor and creditor.

Chapter 12 — Reorganization for family farmers (and fishermen). Chapter 12 was created by Congress in 1985. Individuals and entities are eligible. Family farmers must have no more than $4,153,150 in total indebtedness, at least 50 percent of debt must be derived from farming and 50 percent of gross income must be derived from farming. Partnerships and corporations are eligible to be debtors if a single farmer owns more than half of the equity in the entity. A Chapter

12 Trustee is appointed upon filing and is a party in interest. The debtor operates the business and proposes a plan for payment of creditors.

Chapter 13 – Reorganization for individuals with regular sources of income. Chapter 13 is not designed for farmers, but its provisions have similarities. Chapter 13 relief is only available for debtors having non-contingent liquidated unsecured debts of less than $384,725 and non-contingent, liquidated secured debt of less than $1,184,200. The regular income requirements and debt limitations of Chapter 13 are not generally suited for Ag reorganizations.

2. Ag reorganization can be expensive and difficult.

Commodity prices, fuel, weather, disease, and input costs can vary significantly from year to year. Distressed farmers may have difficulty obtaining production loans and those that do often encounter significantly higher borrowing costs. Row crop operations frequently operate through multiple entities, which complicates and adds to the expense of reorganization attempts.

Chapter 12 was implemented by congress as a reorganization proceeding for family farmers and fisherman but is seldom used. Family farmers often have multiple entitles with cross collateralization and cross default provisions. These types of operations may require multiple filings to protect assets necessary for an effective reorganization. To qualify for Chapter 12, the debtor must be a family farmer. A family farmer is defined as having aggregate debt that does not exceed $4,153,150. This debt limitation eliminates many distressed farming operations from Chapter 12 relief.

Chapter 11 was intended for reorganization of business entities, but individuals are eligible to be debtors in Chapter 11 cases. The 1984 Amendments to the bankruptcy code added §707(b), which authorized the court to dismiss cases filed by individuals under Chapter 7 or convert the case to Chapter 13, if the debts were primarily consumer debts and if the debtor had disposable income. In 2005, the bankruptcy code was amended to address concerns of the consumer credit lobby. The 2005 amendments contain provisions which make confirmation of Chapter 11 plans of individual debtors very difficult. Individuals as principals or guarantors are debtors in the great majority of farming operations.

3. Chapter 12 Overview.

Very few Chapter 12 cases have been filed. In large part, this is due to the debt limitations. Debt limitations affect eligibility and indirectly affect feasibility. In many instances, distressed farming operations of that size will have debt in excess of the maximum permitted for a Chapter 12 debtor. Attached is a Farm Bureau article reporting a small number of Chapter 12 filings per state and nationwide since 2009.

a. <u>Eligibility</u>

11 USC 109(f) Must be family farmer or fisherman.

11 USC 101(18) (A) "family farmer"

The individual or husband and wife must be engaged in a farming operation whose aggregate must not exceed $4,153,150.

Senate Bill S.897, introduced March 27, 2019 and referred to the Judiciary Committee, seeks to amend §101(18) to increase the debt limitation on Chapter 12 eligibility to $10,000,000.

At least 50%, of the aggregate non-contingent liquidated debts (exclusive of debt for the debtor's principal residence) must be related to the farming operation owned by the individual and spouse on the date of filing.

More than 50% of the gross income of the individual and spouse for the preceding tax year or, for family farmers only, for each of the 2nd and 3rd prior tax years must have come from the farming operation, or

11 USC 101(18) (B)

A corporation or partnership in which more than 50% of the outstanding stock or equity in the corporation or partnership must be owned by one family or by one family and its relatives. The family or the family and its relatives must conduct the farming operation.

More than 80% of the value of the corporate or partnership assets must be related to the farming or fishing operation.

The total indebtedness of the corporation or partnership must not exceed $4,153,150 and not less than 50% for a farming operation of the corporation's or partnership's total debts, which are fixed in amount (exclusive of debt for one home occupied by a shareholder or partner as principal residence), must be related to the farming operation.

If the corporation issues stock, the stock cannot be publicly traded.

11 USC 109 (f) Only a family farmer with a regular annual income may be a debtor under Chapter 12.

11 USC 101(19) a family farmer with regular annual income means a family farmer whose income is sufficiently stable and regular to enable the family farmer to make payment under a Chapter 12 plan.

11 USC 1203 gives the debtor-in-possession all the rights of a Trustee except for right of compensation and requires that the debtor-in-possession perform all duties of a Chapter 11 Trustee except for duty to investigate the debtor and report on the investigation.

The primary power of the Chapter 12 debtor-in-possession is operating the debtor's business.

b. Sec. 1222 – Plan Requirements

(a) The plan shall:

(1) provide for submission of all of such portion of future earnings or income of debtor the supervision or control of the Trustee.

(2) provide for full payment of sec. 507 priority claims, unless holder agrees otherwise.

(3) if plan classifies claims or interests treat each holder of claims within a class the same way.

(4) may pay sec. 507(a)(1)(B) priority (domestic) claims less than in full only if all disposable income for 5 years will be applied to make plan payments

(5) treat tax claims arising from pre or post-petition disposition of assets used in farming as unsecured claims.

(6) may not provide for payments over more than three years unless the court approves up to five (maximum).

(b) Subject to subsections (a) and (c) of this section, the plan may –

(1) designate a class or classes of unsecured claims, of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(7) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

(9) provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c) ;

(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a) , except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and,

(12) include any other appropriate provision not inconsistent with this title.

(c) Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than three years unless the court for cause approves a longer period, but the court may not approve a period that is longer than five years.

(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

c. <u>Sec. 1225 - Confirmation of plan.</u>

(a) Except as provided in subsection (b), the court shall confirm a plan if-

1. the plan complies with Ch. 12 and other applicable title 11 provisions;

2. all required fees have been paid;

3. the plan is filed in good faith and not by means forbidden by law;

4. the value of property distributed to unsecured creditors is not less the amount would be paid if debtor were liquidated under chapter 7;

5. With respect to each allowed secured claim provided for by the plan.

   A. the holder has accepted the plan;

   B. The holder of such claim retains its lien and is paid the value of the allowed secured claim; or

   C. the debtor may surrender the property.

6. the debtor will be able to make app plan payments and comply with the plan;

7. the debtor has paid all domestic support obligations that became due after the petition was filed.

(b)

(1) If the Trustee or an unsecured creditor objects to confirmation, the court may not approve the plan unless, as of the effective unless;

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

(B) Maintenance and support of the debtor or a dependent of the debtor and domestic support obligations. Continuation, preservation and operation of the debtor's business.

The bankruptcy estate of individuals in Chapter 12 is not a separate taxable entity. In 2017, section 1232 was enacted and states:

> In Chapter 12, unsecured claim of governmental unit against the debtor or the estate that arises before or after the filing of bankruptcy petition but before the debtor's discharge under section 1228, as a result of the sale, transfer, exchange or other disposition of any property used in the debtor's farming operation –
>
> (1) Shall be treated as an unsecured claim arising before the date on which the petition is filed.
>
> (2) Shall not be entitled to priority under section 507;
>
> (3) Shall be provided for under a plan; and
>
> (4) Shall be discharged in accordance with Section 1228.

4. Chapter 11 issues.

Chapter 11 is a reorganization proceeding designed for businesses. However, individuals are eligible to be debtors in Chapter 11 cases. Chapter 11 has provisions similar to those of Chapter 12, but the requirements to confirm a Chapter 11 plan are much more difficult. In a Chapter 11 plan, claims are classified and there is a hierarchy of creditor rights. Secured creditors are at the top of the hierarchy, followed by priority claim holders, then unsecured creditors. Equity holders or individual debtors are referred to as the class of interest and are at the bottom of the hierarchy.

To confirm a Chapter 11 plan, creditors vote by class. A class accepts the plan if more than two-thirds in amount and more than 50% in number of claims that vote accept the plan. See Sec. 1126(c).

A class of interests accepts a plan upon the vote of at least two-thirds of allowed amount of interest accepting the plan. See Sec. 1126(d).

To confirm a plan under Sec. 1129(a), all classes which vote must either accept the plan or the plan must provide that the rejecting class receive as much as it would receive if paid in a case under Chapter 7.

In Chapter 11, secured creditors are entitled to the value of their collateral. Remaining property of the bankruptcy estate is paid first to expense of administration and thereafter to unsecured creditors. Section 507 establishes priorities for various types of unsecured claims. The debtor in individual cases or equity holder in corporate cases are lower in priority than all classes of claims.

A concept known as the absolute priority rule arose from case law in the early 1900's. The absolute priory rule was codified in the 1978 code with section 1129(b) which allows the bankruptcy court to confirm a plan over a rejecting class if the plan is fair and equitable with respect to each class which has not accepted the plan. The absolute priority rule requires that for a plan to be fair and equitable a class that is junior to a rejecting class receive nothing under the plan if a senior rejecting class is not paid in full.

Section 541(a)(6) excludes from property of the estate, earnings from services performed by an individual after commencement of the case. Section 1306 of the bankruptcy code includes a debtor's post-petition earnings as property of the bankruptcy estate in Chapter 13 cases. However, the debt limitation for eligibility to be a Chapter 13 debtor is \$394,725 in unsecured and \$1,184,200 in secured debt. Section 707(b) of the bankruptcy code provides for dismissal of Chapter 7 cases of debtors hold primarily consumer debt the debtor converts to Chapter 11 or 13. Prior to the 2005 amendments a debtor with consumer debts in exceeding Chapter 13 eligibility could liquidate in a Chapter 11 case and their post-petition earnings would not be property of the estate or subject to creditor claims. The 2005 amendments added section 1115, which makes an individual debtor's post-petition earnings property of the Chapter 11 estate to make individual Chapter 11 cases more like Chapter 13. However, while Chapter 13 does not have an absolute priority rule the 2005 amendments did not address the absolute priority rule in Chapter 11 cases.

One of the means of overcoming the absolute priority rule in Chapter 11 has been the *new value* exception, in which the debtor made a substantial contribution to the reorganized debtor to retain ownership of the debtor to retain his equity or ownership interest, The 2005 amendments making an individual Chapter 11 debtor's post-petition earnings property of the estate, makes it extremely difficult for a debtor to contribute new value in exchange to retain his interest in the reorganized debtor.

Following the 2005 amendments there was a great deal of writing about whether the absolute priority rule still applied in individual Chapter 11 cases. All of the circuit courts which have addressed the issue hold that the absolute priority rule continues to apply in individual Chapter 11 cases. See *Maharaj v. Stubbs & Purdue,* 681 F. 2d 588 (4th Cir. 2012); *In re Lively,* 717 F, 3d 406 (5th Cir. 2013); *Ice House America LLC. v. Cardin* 751 F.3d 734 (6th Cir. 2014); *Zachary v. California Bank & Trust,* 811 F,3d 1191(9th Cir. 2016); *Dill Oil Co. LLC v. Stephens (In re Stephens)* 704 F. 3d 1279 (10th Cir. 2013).

In the 8th Circuit, there is no binding precedent on the status of the absolute priority rule in individual Chapter 11 cases. *In re Tegeder,* 390 B.R. 477 (Bankr. D. Neb. 2007) and *In re O'Neal* 490 B.R. 276 (Bankr. W.D. Ark. 2013) hold that the absolute priority rule no longer applies in individual Chapter 11 cases. But, *In re Woodward*, 537 B.R. 894 (B.A.P. 8th Cir. 2015) holds that the absolute priority rule still applies.

The absolute priority rule makes Chapter 11 is much less attractive as a vehicle for farm reorganization.

The bankruptcy estate in a Chapter 11 case is a separate taxable entity.

5. Multiple Entities.

Section 327 of the bankruptcy code authorized employment of attorneys and other professionals who do not hold an interest adverse to the debtor or the estate.

Farming operations frequently are conducted through multiple affiliated entities which may bring about a need for multiple filings. The existence of multiple entitles may result in a need for multiple bankruptcy filings, which could result in the need for separate counsel.

Bankruptcy Rule 1015 authorizes joint administration of multiple cases by or against (1) spouses, (2) a partnership and one or more of its general partners or (3) a debtor and an affiliate.

Joint administration is procedural only, each debtor has its own property and creditors.

Substantive consolidation may be appropriation upon consideration of (1) the necessity of consolidation due to the interrelation of the debtors, (2) the benefits of consolidation outweigh the harm to creditors; and (3) the prejudice that may result from not consolidating the debtors. *In re Giller,* 962, F.2d 796 (8th Cir, 1992).

Substantive consolidation is rooted in case law and the court's equitable powers under Section 105 of the Bankruptcy Code. *In re Reider*, 31 F.3d 1102, 1105 (11th Cir. 1994).

Joint administration generally occurs in larger corporate cases and substantive consolidation is rare.

6. Debtor's Conduct

Prepetition conduct and transactions of the debtor can seriously affect the ability of the debtor to reorganize or get a discharge.

Prepetition transfers may be voidable as preferences pursuant to section 547 or fraudulent transfers pursuant to section 548.

Section 727 allows prepetition transfers within one year of filing bankruptcy petition with intent to hinder, delay or defraud a creditor to result in discharge being denied.

Section 1104 applies in Chapter 11 cases and states cause for appointment of a trustee includes fraud, dishonesty, incompetence, and gross mismanagement the affairs of the debtor by current management.

Section 1204 provides for removal of the debtor as debtor-in-possession for cause including fraud, dishonesty, incompetence, and gross mismanagement the affairs of the debtor by current management.

7. Financing Chapter 11 and Chapter 12 Cases.

Operating a farm requires a great deal of cash. Even more is required to operate in a Chapter 11 or Chapter 12 case. Substantial fees are likely to be incurred with attorneys, accounts, appraiser, realtors etc. Attorneys and accounts generally require a substantial retainer.

Funding farming operations normally accomplished through a combination of existing financing on land and equipment and annual operating loans. A non-liquidating Chapter 11 or Chapter 12 case is unlikely to go very far without an operating lender. Operating loans are generally going to require some equity in real or personal property.

Common sources of financing are:

Banks

Farm lenders such as FSA 90/10 guaranty

Purchases on account from suppliers

Use of cash collateral

8. The Automatic Stay

The automatic stay of section 362 arising upon the filing of a bankruptcy petition. The automatic stay is very broad and generally stays the commencement and continuation of actions against the debtor or its property.

Co-debtor stay only applies to co-debtors on consumer debts in Chapter 12 and 13. See 11 USC 1201(a) and 1301(a).

Relief from co-debtor stay will be granted to creditor to the extent the non-debtor received the consideration for the creditor's claim; the debtors plan proposes not to pay the claim, or the creditor will be irreparably harmed if the stay is not lifted. 11 U.S.C. 1201(c), 1301(c).

Farming enterprises frequently involve multiple entities. Individuals, general partnership, limited liability company or corporation.

Non-debtors generally not protected by the automatic stay:

To extend the stay to non-debtor must show harm to debtor. Affecting value or debtor's property is not sufficient to extend the stay to a non-debtor. *National Bank of Arkansas v. Panther Mountain Land Development,* 686 F 3d 916 (8th Cir. 2012).

In rare circumstances, the stay may be extended to protect non-debtors through use of courts equitable powers under section 105 of the bankruptcy code. Use of equitable powers to extend the stay to protect non-debtor requires adversary proceeding and is analogous to seeking injunctive relief. *Id.*

However, a possessory interest in real property is protected by the automatic stay. See *In re 48th Street Steakhouse, Inc.* 835 F.2d 427, 430 (2d Cir. 1987). Restaurant leased to tenant who subleased property. Tenant/sublessor defaults. Subtenant filed Chapter 11. Sub-lease property of estate. Automatic stay barred termination of defaulted lease.

9. Adequate protection.

The bankruptcy code authorizes adequate protection for interests of entities in property in certain circumstances. Adequate protection in cases other than Chapter 12 is pursuant to section 361. Adequate protection in chapter 12 is pursuant to section 1205.

Adequate protection is designed to protect the interest of secured creditor or co-owner from loss. *U.S. v. Whiting Pools, Inc.* 462 U.S. 198, (1983); *U.S. Savings Association v. Timbers of Inwood Forest Assoc. Ltd.* 484 U.S. 65 (1988).

a. §361 Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by —

> (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
>
> (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
>
> (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

Adequate protection in Chapter 12 cases is through Section 1205.

Section 1205 contains all of the provisions of section 361 but also states that adequate protection can be provided by "paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property."

Lack of adequate protection is grounds for relief from the automatic stay of section 362.

The sale, use or lease of property of the estate pursuant to section 363 will be denied if a objecting secured party or co-owner lacks adequate protection.

A section 364(d) post-petition loan secured by a senior lien on encumbered property may be approved if the primed lien holder is granted adequate protection.

Adequate protection is most commonly granted for protection from loss arising from interest accruals, depreciation, depletion, and market forces. Common means of providing adequate protection include, equity cushion (amount varies depending on facts but generally expect 20% or greater). periodic payments, replacement lien on other property of estate, lien on property not belonging to estate, non-debtor guaranty.

10. Executory Contracts and Leases

Executory contracts and leases governed by section 365 of the bankruptcy code. Land and equipment leases are common in farm operations. A trustee in a Chapter 7 case and a debtor-in-possession in a Chapter 11 and Chapter 12 may accept or reject an executory contract or lease.

To accept an executory contract or lease, the trustee or debtor-in-possession must provide adequate assurance that defaults will be promptly cured and adequate assurance of future performance. Sec. 365(b)(2).

Cure of default does not include defaults relating to the debtor financial condition, bankruptcy filing, appointment of a trustee or receiver or penalties arising from the default.

A Chapter 7 trustee must assume or reject within 60 days has unless the bankruptcy court extends the time to assume or reject for an additional 60 days. Sec. 365 (d)(2).

In Chapter 11 and 12, the executory contract or lease can be assumed or rejected at any time before confirmation of a plan. Sec. 365 (d)(2).

Until the executory contract or lease is assumed or rejected, the trustee or debtor in possession must perform all of the debtor's obligations other than those is section 365(b)(2).

If an executory contract or lease is rejected the non- debtor lessor or lessee has an unsecured claim for damages arising from the rejection. Section 365(g)

A trustee or debtor in possession may assign an executory contract or lease after assumption, if the assignee provides adequate assurance of future performance, notwithstanding provisions of the executory contract or lease which restrict or prohibit assignment. Provisions which modify or terminate a lease as a result of an assignment under section 365 are not enforceable. Section 365(f).

Section 365(h) deals with real estate leases in which the debtor is a lessor. A debtor's rejection of a lease of real property does not deprive the lessee of possession, it merely relieves the debtor of the lessor's obligations and grants the lessee rights of set off against amounts due to the lessor.

Section 365(i) has similar provisions for real estate installment contracts in which the debtor is the seller and the a non-debtor lessee is in possession.

What is Chapter 12 Family Farmer Bankruptcy?

Market Intel / April 11, 2019

In recent months much attention has been given to the rise in Chapter 12 family farmer bankruptcies in portions of the U.S., e.g., Farm Bankruptcies in 2018 – The Truth is Out There. On the legislative front, the Family Farmer Relief Act of 2019 was introduced to help more family farmers reorganize and restructure their debt following several years of low commodity prices and poor economic conditions in agriculture.

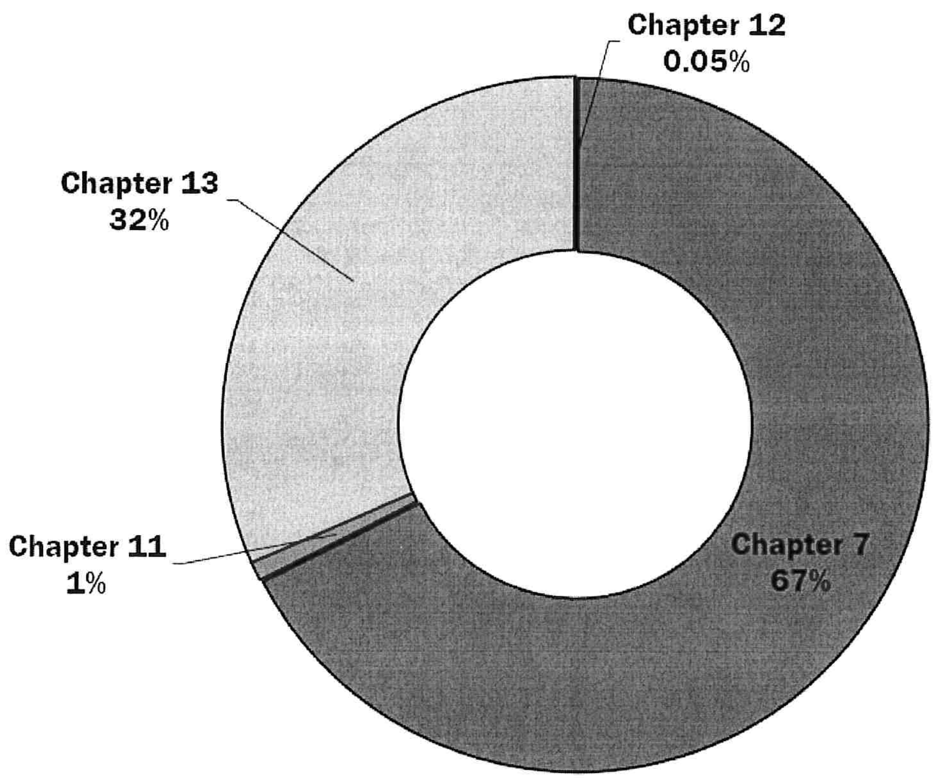
Today's article provides a high-level overview of the Chapter 12 family farmer bankruptcy provisions. Farmers seriously considering Chapter 12 bankruptcy should work with their creditors and an attorney to establish and confirm a Chapter 12 plan.

What is Chapter 12 Bankruptcy?

Chapter 12 bankruptcy was created in 1986 in response to the poor economic conditions that plagued agriculture, including low commodity prices, low farm income, record farm debt and tight agricultural credit markets. Modeled after Chapter 13 bankruptcy, Chapter 12 provides reorganizational advantages and financial relief specifically for family farmers in debt. Those advantages include a seasonal repayment schedule over a three- to five-year period and lower costs relative to other chapters. Filing under Chapter 12 provides a quick and predictable process for farmers to reorganize debt to avoid asset liquidation or foreclosure.

In 2018 there were 498 Chapter 12 bankruptcy filings, compared to nearly 766,000 Chapter 13 and Chapter 7 filings -- which are predominately consumer in nature. Over the last decade there have been more than 10 million total filings in Chapter 7 and Chapter 13, compared to 5,039 Chapter 12 filings. During this time, Chapter 12 bankruptcy filings have represented less than five-hundredths of a percent of total consumer and business bankruptcy filings, Figure 1.

Figure 1. Share of Bankruptcy Filings by Chapter 2009 to 2018



FARM BUREAU®

Source: US Courts, Farm Bureau Calculations

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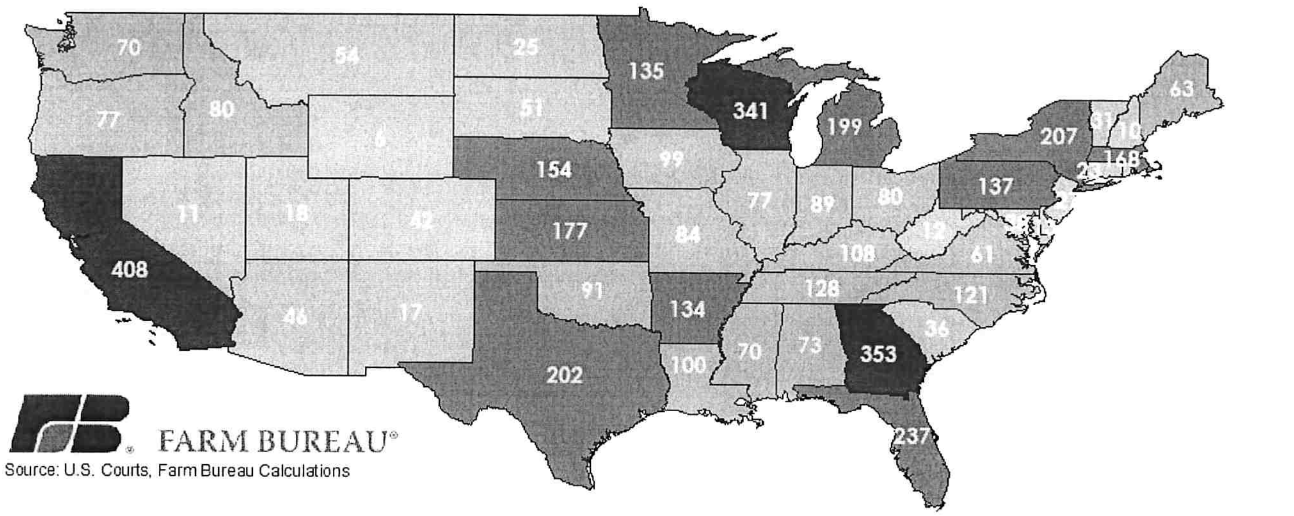
At 408, California has had the highest number of Chapter 12 filings over the last decade. Following California was Georgia at 353 filings and Wisconsin at 341 filings. Overall, Chapter 12 bankruptcies were the highest in the Midwest at 1,511 filings, followed by the Southeast at 1,484 filings. Figure 2 highlights Chapter 12 bankruptcy filings over the last decade.

Figure 2. Number of Chapter 12 Bankruptcy Filings in Last Decade 2009 to 2018



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Benefits of Chapter 12

There are several benefits associated with Chapter 12 bankruptcy filings.

First, debtors can cramdown debt on almost all secured debt (this is the only chapter that allows for cramdowns). A cramdown is when the debtor pays the present market value of a property rather than the whole debt during the bankruptcy filing process. For example, if a debtor owes $20,000 on a loan after the accumulation of missed payments and interest and the underlying asset for the loan is worth $15,000, the debtor can reduce - or cramdown - that debt to the base value of $15,000.

Second, the farmer can propose a repayment plan to make installments to creditors over three to five years if the plan meets the requirements set forth in chapter 12. The creditor does not need to approve the plan, nor do they have the opportunity to vote against it. Additionally, there is no requirement for equal monthly payments, allowing for seasonal or balloon payments that align with the harvesting and marketing of agricultural commodities produced on the farm.

Third, the debtor may use, sell or lease property of the estate in the normal course of business without court approval. Additionally, if a farmer sells farm assets, the tax claims from those sales can be treated as unsecured claims and they may not have to be paid in full or at all.

Finally, if the farmer is unable to complete the repayment plan due to medical illness or natural disasters, he may be eligible for a hardship discharge - effectively freeing him of remaining obligations.

Effectively, Chapter 12 provides farmers with more repayment flexibility than would be the case under Chapter 7 or Chapter 11 bankruptcy. The ability to make seasonal payments accommodates the reality of a farmer's fluctuating income and is not offered under any other chapter of bankruptcy. In addition, the fact that farmers can sell farmland and farm equipment free and clear of liens gives them more options to pay down their debts.

Eligibility for Chapter 12

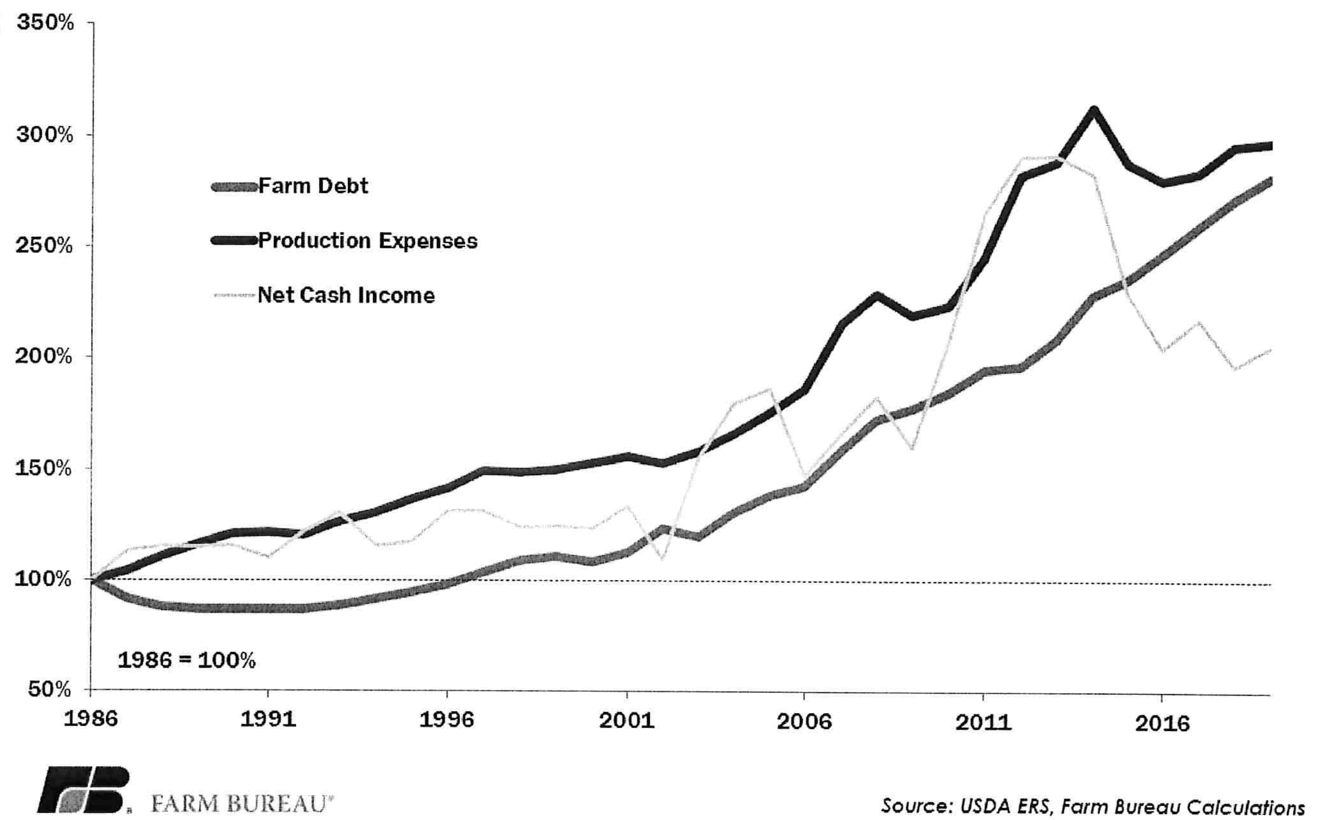
In discussions with farm lenders, Chapter 12 bankruptcy is generally considered the last resort for farmer debtors. First, lenders may seek to work with their farmer customers to find cost efficiencies, improve marketing and enhance the use of risk management tools. If Chapter 12 is used, farmers must meet the following criteria:

- The individual(s) must be engaged in a farming operation or commercial fishing operation.
- More than 50 percent of the gross income, i.e., income before taxes and other deductions, of the individual(s) for the preceding tax year must have come from the farming or commercial fishing operation. For family farmers, additional gross income criteria on prior tax years may also be evaluated relative to the gross income from farming.
- Total debts of the farm operation must not exceed $4,153,150 for a farming operation.
- For family fisherman, the total debt must not exceed $1,924,550 in inflation-adjusted dollars.
- At least 50 percent of the total debts that are fixed in amount, exclusive of debt for the debtor's home, must be related to the farming operation. For a commercial fishing operation, it's 80 percent.

Is More Help on The Way?

Prior to 2005, the Chapter 12 liability cap was $1.5 million, it was raised to $3.2 million in 2005, and after adjusting for inflation now stands at $4.2 million. Meanwhile, relative to 1986, and in nominal dollars, production expenses in agriculture have increased by 198 percent and farm debt has increased by 182 percent, while net cash income has experienced only half of that growth, Figure 3. As a result, the liability cap under Chapter 12 does not align with the modern credit and risk environment associated with family farming.

Figure 3. Index of Farm Production Expenses, Total Farm Debt and Net Cash Income from Farming, 1986 to 2019



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To more properly align Chapter 12 laws with the modern credit needs of agriculture, the liability cap should be lifted. The Family Farmer Relief Act of 2019 will do just that by raising it to $10 million in pre-inflation dollars. Recognizing that agriculture today is much different than in 1986 when Chapter 12 provisions were first introduced, the American Farm Bureau Federation supports lifting the liability cap.

Take action here! Ask Congress to support changes to Chapter 12 Bankruptcy.

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