

So What Else Is in the 2002 Farm Bill?

By Karen Krub

On May 13, 2002, President Bush signed into law H.R. 2646, the "Farm Security and Rural Investment Act of 2002." The text of the bill—now Public Law 107-171—can be found in the Congressional Record for May 1, 2002, or on the Internet at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:h2646enr.txt.pdf.

This law, referred to here as the 2002 Farm Bill, is more than 400 pages in length and sets out the general framework for national agricultural policy for the next several years. The commodity programs and conservation programs established by the 2002 Farm Bill are receiving much media attention and are the focus of discussion for many farm organizations. This special edition of *Farmers' Legal Action Report* discusses other provisions of the 2002 Farm Bill that will be important to many family farmers and ranchers but that are not receiving the same level of attention in the press and farm publications.

The 2002 Farm Bill provisions discussed here affect (1) agricultural credit, (2) equitable relief in certain USDA programs, (3) the 90-day finality rule, (4) Chapter 12 bankruptcy, (5) USDA's nondiscrimination policies, (6) crop insurance and disaster assistance, (7) contract production, (8) farm products financing statements, (9) organic production, (10) country-of-origin labeling requirements, and (11) agriculture-related reports and studies required of USDA. At the end of this report there is also a very brief discussion of a few of the notable items that were in either the House or Senate versions of the Farm Bill but were not included in the compromise bill.

I. Agricultural Credit

Title V of the 2002 Farm Bill makes several amendments to laws controlling the Farm Service Agency (FSA) direct and guaranteed farm loan programs. These changes are not as dramatic or far-reaching as the credit provisions of the 1996 Farm Bill, but they will have an impact on many individual

cases. It is impossible to predict when these changes will be implemented by FSA.

A. One Disaster-Related "Debt Forgiveness" Allowed for Operating Loans

The 2002 Farm Bill makes a limited change to the restrictions on FSA operating loan eligibility where the borrower has had debt forgiveness. The 1996 Farm Bill made any borrower who had received "debt forgiveness" (causing the Secretary of Agriculture a loss on a direct or guaranteed loan) ineligible for new FSA direct or guaranteed loans. The only exception to this restriction in the 1996 Farm Bill was that borrowers whose debt forgiveness came through administrative write-down could still receive loans for annual operating expenses.

A law enacted in 1998 loosened these debt forgiveness restrictions somewhat for guaranteed loans but still prohibited any debt forgiveness after April 4, 1996—the date the 1996 Farm Bill was enacted. The 1998 law also added a new exception for annual operating credit if the debt forgiveness was from a confirmed reorganization bankruptcy plan.

Section 5319 of the 2002 Farm Bill adds a third exception to the restriction on operating credit. It provides that a borrower may be eligible for a direct or guaranteed annual operating loan if the borrower received debt forgiveness that was "directly and primarily" the result of a disaster or emergency declared *on or after* April 4, 1996. This exception may only be used once.

It is not clear why Congress chose to limit the disaster exception to events occurring after April 3, 1996. The committee report accompanying the Farm Bill itself seems to assume that the exception is not date-restricted, but the statutory language is clear in establishing the cut-off date.

B. Direct FO Loans Now Available to Refinance Bridge Loans

Section 5002 of the 2002 Farm Bill adds a new eligible purpose for FSA direct Farm

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Ownership (FO) loans. The new statutory language allows a borrower to obtain a direct FO loan to refinance a bridge loan made by a commercial or cooperative lender for the purchase of land for a farm or ranch if FSA had approved a direct FO loan application for the land purchase but funds for direct FO loans were not available when the application was approved.

C. Eligibility for Direct FO Loans After Three Years of Participation in Operations

As part of the 1996 Farm Bill, Congress limited eligibility for FSA direct Farm Ownership loans to persons who have operated a farm or ranch for at least three years. Section 5001 of the 2002 Farm Bill changes this requirement, making direct FO loans available to persons who have "participated in the business operations" of a farm or ranch for at least three years. The committee report accompanying the Farm Bill indicates that the committee was concerned that the earlier requirement had limited beginning farmer and rancher eligibility. The committee directed USDA to "comprehensively" examine applicants' participation in farm and ranch business operations, whether or not an applicant was the primary or senior operator. The committee also directed USDA to place "considerable weight" on whether an applicant has completed or will complete the borrower training program.

D. Change to "Qualified Beginning Farmer or Rancher" Definition

Section 5310(a) of the 2002 Farm Bill changes the statutory definition of "qualified beginning farmer or rancher" by increasing the amount of land that a person may own and still qualify. Previously, an individual could own no more than 25 percent of the median acreage of farms or ranches in the county and be considered a qualified beginning farmer or rancher. Now an individual may own up to 30 percent of the median acreage of farms or ranches in the county and qualify. This statutory change to "qualified beginning farmers or ranchers" does not automatically change the regulatory definition of "beginning farmers or ranchers," but USDA is expected to follow suit and change the regulatory definition also. Whether the statutory or regulatory definition applies depends on the program or benefit that is sought.

E. Down Payment Loan Program Terms Expanded

Section 5005 of the 2002 Farm Bill changes some of the mandatory terms of loans made under the FSA down payment loan program, which provides funding for down payments on farm or ranch purchases made by beginning farmers and ranchers. First, the new law requires that the amount of a loan made under the down payment loan program be 40 percent of the purchase price or appraisal value of the operation to be acquired, up from 30 percent under prior law. (The borrower may request a lesser amount). Second, the new law extends the maximum repayment period for down payment loans from 10 years to 15 years.

F. Tightened Criteria for Waiver of Borrower Training

Section 5316 of the 2002 Farm Bill adds new language to the statutory provision allowing for waiver of the borrower training requirement for FSA direct loans in certain circumstances. This new language requires the Secretary to establish criteria for waivers that will be applied consistently nationwide. The committee report accompanying the Farm Bill expresses concern that waivers have not been consistently used and that waiver rates in some areas have been "exceptionally high." According to the report, "clear and transparent" waiver criteria must be issued as quickly as possible and the Secretary must emphasize the importance of borrower training to the success of borrowers and the effectiveness of the direct loan program.

G. Changes to Direct Operating Loan Term Limit

In the 1996 Farm Bill, Congress set limits on how many years a borrower could receive FSA direct operating loans. Under these limits, a borrower may receive direct operating loans in only seven different years before becoming ineligible for future loans. A later statute suspended the term limits until the end of 2002. The 2002 Farm Bill allows the term limit on direct operating loans to take effect but makes some important changes.

1. Term Limit Waiver Possibilities

Section 5101(2) of the 2002 Farm Bill provides for two types of waivers of the direct operating loan term limit. The first type of waiver is available for farmers and ranchers

whose land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe. For this waiver to be available, the Secretary of Agriculture must determine that commercial credit is not generally available for such operations.

The second type of waiver of the direct operating loan term limit is available on a case-by-case basis for farmers and ranchers who have viable operations, who have unsuccessfully applied for commercial credit, and who have completed or will complete FSA borrower training. A waiver received under this provision is effective for two years and is only available once for each borrower.

2. Beginning Farmers and Ranchers Effectively Given Ten-Year Term Limit

The 1996 Farm Bill exempted beginning farmers and ranchers from the direct operating loan term limit, but only so long as they had not operated a farm or ranch for more than five years. Because the five-year exception was shorter than the seven-year term limit, this exception had no practical effect and the term limit generally applied to all beginning farmers and ranchers.

Section 5101(1) of the 2002 Farm Bill removes the statutory language limiting the exception to beginning farmers and ranchers who have been in operation for no more than five years. The effect of this change appears to be that so long as a borrower qualifies as a beginning farmer or rancher, there is no limit on the number of years the borrower can receive a direct operating loan. Since one can operate a farm or ranch for up to ten years and still qualify as a beginning farmer or rancher, the new change should make the effective term limit on direct operating loan eligibility a maximum of ten years.

H. Continued Suspension of Guaranteed Operating Loan Term Limit

The 1996 Farm Bill also set limits on how many years a borrower could receive FSA guaranteed operating loans, making borrowers ineligible for further loans after they have received guaranteed operating loans for 15 years. A later statute suspended this eligibility requirement until the end of 2002. Section 5102 of the 2002 Farm Bill continues the suspension, making this eligibility requirement for guaranteed operating loans ineffective until the end of 2006.

I. New Pilot Program for Guaranteeing Private Party Contract Land Sales to Beginning Farmers and Ranchers

Section 5006 of the 2002 Farm Bill directs the Secretary of Agriculture to conduct a pilot program guaranteeing loans made by a private seller of a farm or ranch to a qualified beginning farmer or rancher on a contract land sale basis. By October 1, 2002, the Secretary must determine whether this type of guarantee presents risks that are comparable with the risk of guaranteeing loans made by commercial lenders. If the Secretary determines that the risks are comparable, the pilot program must be implemented in at least five states with guarantees of up to five private loans in each state each year from 2003 to 2007.

J. Guarantees on Loans Made Under State Beginning Farmer or Rancher Programs

Current FSA guaranteed loan regulations prohibit guarantees on loans made through any tax-exempt financing programs. This has made state beginning farmer and rancher loan programs funded through "Aggie Bonds" ineligible for guarantees by FSA. Section 5004 of the 2002 Farm Bill adds new statutory language explicitly authorizing guarantees on loans made under state beginning farmer or rancher programs, including state programs financed by certain tax-exempt agricultural bonds. Implementation of this provision may require a change in the tax law as well.

K. Simplified Guaranteed Application Process for Loans Up to \$125,000

Since 1993, the application process for an FSA guaranteed loan has been simplified for loans of \$50,000 or less. Section 5307 of the 2002 Farm Bill increases to \$125,000 the maximum principal amount of loans eligible for the simplified application process.

L. 95 Percent Guarantee on Operating Loans for Operations on Tribal Lands

Section 5003 of the 2002 Farm Bill adds a new category of loan that will receive a 95 percent guarantee under FSA's guaranteed loan program. The 95 percent guarantee is now available for operating loans made to a farmer or rancher whose land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security

Guaranteed Operating
Loan term limit sus-
pended through 2006.

Some servicing of SAA payment agreements authorized and USDA told to reassess appraisal appeal policies. Proposed SAA enforcement moratorium and recapture forgiveness provisions not adopted.

instruments that are subject to the jurisdiction of an Indian tribe.

M. Changes to Guaranteed Loan Interest Assistance

Section 5313 of the 2002 Farm Bill makes some small but important changes to FSA's Interest Assistance Program for guaranteed loans.

Most importantly, the program is now permanently authorized due to the removal of language that would have terminated the program at the end of September 2002.

The 2002 Farm Bill also increases the annual funding authorization for Interest Assistance from \$490 million to \$750 million and adds a new requirement that 15 percent of Interest Assistance funds are to be reserved for beginning farmers and ranchers until March 1 of each year.

N. New Interest Rate Option for Direct Loans in Servicing

When FSA direct loans are serviced through reamortization, rescheduling, deferral, or consolidation, the interest rate on the serviced loan has been the lower of the original interest rate or the interest rate at the time of servicing. Section 5305 of the 2002 Farm Bill adds a new option, so that the interest rate on the serviced loan now will be the lowest of the original interest rate, the interest rate at the time of servicing, or the interest rate at the time the borrower *applied* for servicing.

O. Some Servicing of Shared Appreciation Recapture Loans Now Available

Section 5314 of the 2002 Farm Bill adds a new statutory provision authorizing the Secretary to offer servicing of delinquent Shared Appreciation Agreement (SAA) recapture amortizations if the delinquency is due to circumstances beyond the borrower's control and the borrower acted in good faith in attempting to repay the recapture amount. This authorization is limited, however, in that an amortization may not be extended past 25 years and no reduction of principal or unpaid interest due is allowed. Servicing that could be available includes reamortization up to the 25-year maximum term, interest rate reduction, deferral, and set-aside.

Both the House and Senate versions of the Farm Bill contained specific provisions relating to SAAs that were deleted by the committee and replaced with this servicing provision in the final bill. The House had proposed a temporary moratorium on foreclosure on

SAA security and collection of SAA recapture debt through December 31, 2002. The Senate had proposed adding statutory language for forgiveness of a borrower's SAA recapture debt if the borrower granted USDA a 25-year agricultural use easement on the security property subject to the SAA.

P. Committee Directs USDA to Reconsider Approach in SAA Appraisal Appeals

In the report accompanying the 2002 Farm Bill, the committee stated that they "expect" the Secretary to review USDA appeal procedures regarding SAA appraisals and "establish policies that will result in the use of the most accurate appraisal of assets." The committee specifically mentions the possibility of using independent appraisals provided on appeal by a borrower, if the appraisal is consistent with federal standards. Although this report has no binding effect on USDA, the strong "expectation" language used by the committee indicates congressional disapproval with USDA's current policies and will hopefully motivate change to a more reasonable process.

Q. Maximizing Opportunities for Beginning Farmers and Ranchers to Acquire Inventory Property

The 2002 Farm Bill extends the time period for the Secretary to offer inventory property for purchase to qualified beginning farmers and ranchers. The Secretary had been required to offer inventory property for public sale no later than 75 days after acquiring the property if no acceptable offer was received from a qualified beginning farmer or rancher. Under Section 5308 of the 2002 Farm Bill, the Secretary now must wait 135 days after acquiring inventory property before offering the property for public sale in order to give beginning farmers and ranchers an opportunity to make an offer.

Section 5308 also includes new language requiring the Secretary to "maximize the opportunity" for beginning farmers and ranchers to purchase inventory property by combining or dividing parcels of property in inventory, as determined appropriate by the Secretary.

R. Credit Programs Funding Authorization

Section 5311 of the 2002 Farm Bill sets out the funding authorization for the FSA direct and guaranteed loan programs for 2003

through 2007. The funding limits are increased to approximately \$3.8 billion overall, up from \$3.4 billion for 2002. Just over \$200 million is authorized for direct Farm Ownership loans and \$565 million for direct operating loans, up from 2002 levels of \$85 million and \$500 million, respectively. Guaranteed Farm Ownership loans are authorized at \$1 billion, up from a 2002 level of \$750 million. Funding authorization for guaranteed operating loans decreased slightly from the 2002 level of \$2.1 billion to \$2.026 billion. These amounts are merely authorizations for future funding. Actual funding levels will be determined by the amount allocated in annual appropriations acts for USDA.

S. Changes to FSA County and Area Committee Role in Credit Programs

FSA county and area committees have had a decreasing role in FSA credit programs. Since 1999, committees have been removed from decision making on borrower eligibility, beginning farmer or rancher status, and borrower training. Committees are instead used as general advisors to FSA loan officials concerning such issues as typical production practices and lease terms in the area.

The 2002 Farm Bill includes a number of provisions addressing the role of FSA committees in loan programs. Several provisions continue or acknowledge the reduced role of FSA county and area committees in credit programs, while others suggest an increased role.

1. Removal of Some Committee Duties

Section 5303 of the 2002 Farm Bill changes the statutory language governing the Secretary's debt settlement authority to provide that the Secretary should consult with the FSA county or area committee before entering a debt settlement agreement with a borrower but that the Secretary is not limited by settlement terms recommended by the committee.

Section 5306 of the 2002 Farm Bill eliminates statutory language requiring that the county or area committee certify that an annual review of each borrower's continuing eligibility, credit history, and business operation has been conducted. The changed language still requires that the annual reviews be done but removes the committee involvement.

Section 5316 of the 2002 Farm Bill changes the statutory language allowing for waiver of the borrower training requirement for FSA

direct loans. The change removes reference to determinations by county committees and provides that the determination of whether a waiver is justified shall be made by the Secretary.

The statutory section setting out USDA's obligations to determine loan feasibility previously included language stating that the feasibility determination would come after the borrower is found to be eligible for a loan by the county committee. Section 5317 of the 2002 Farm Bill removes the language referring to eligibility determinations by county committees from this statutory section.

2. Possible Expanded Use of Committees in Loan Making and Servicing

Section 5320 of the 2002 Farm Bill creates a new statutory section directing the Secretary of Agriculture to use state, county, and area committee personnel in FSA loan making and servicing functions "to the extent the personnel have been trained to do so." It is not exactly clear what is intended by this language given the reduced role of committees in loan eligibility determinations, but it could be an effort to reduce loan processing times by making use of committee personnel.

The committee report accompanying the Farm Bill says that committee personnel serving these functions should be adequately trained in a comparable manner to FSA employees with the same responsibilities and that credit decisions by committee personnel should be subject to the same loan review process as decisions by FSA employees. The report states that the review process should include disciplinary action (as needed) to protect against misuse of government funds, but it does not suggest how committee personnel might be disciplined by FSA.

3. Committee Employees Eligible for FSA Loans and Loan Guarantees

Section 5321 of the 2002 Farm Bill creates a new statutory section making employees of FSA state, county, or area committees and USDA employees eligible to receive FSA direct and guaranteed loans. Loan applications by these individuals must be reviewed and approved by the next higher approval authority.

Some areas may see FSA committee personnel taking on loan making and servicing tasks.

Significant changes made to USDA equitable relief authority.

T. Miscellaneous Credit Changes

Section 5302 of the 2002 Farm Bill adds language to the statutes governing FSA loan eligibility to make it clear that limited liability companies and trusts are also eligible for FSA Farm Ownership, Operating, and Emergency loans. At least with regard to limited liability companies, this change should be only a formality, since FSA had already been treating limited liability companies as an eligible type of “joint operation.”

Section 5304 of the 2002 Farm Bill repeals statutory authority for USDA to contract with private collection agencies to collect FSA credit program debts. The section also repeals authority for USDA to conduct a pilot project using private financial institutions to service FSA loans. USDA will continue to use internal collection tools to collect FSA credit program debts.

Section 5312 of the 2002 Farm Bill continues through 2007 the requirement that USDA reserve 35 percent of direct operating loan funds for beginning farmers and ranchers.

Section 5315 of the 2002 Farm Bill changes statutory language to require that loan funds reserved and allocated for use in a particular state by socially disadvantaged farmers and ranchers that are not used shall be available to satisfy pending applications from socially disadvantaged farmers and ranchers in other states before being reallocated for general use within the state.

Section 5317 of the 2002 Farm Bill changes USDA’s loan assessment duties by requiring that direct loans be reviewed every year to assess the borrower’s progress in meeting the goals of the operation. Such assessments had previously been required biannually.

II. Equitable Relief in Certain USDA Programs

Sometimes farmers who attempt to meet the requirements of a USDA program fail to do so because they are given wrong information by a USDA employee. Congress has authorized the Secretary of Agriculture to grant farmers “equitable relief” in such cases if it seems appropriate, taking into account whether the farmer relied on the wrong information in good faith.

Section 1613 of the 2002 Farm Bill repeals two existing statutory provisions that gave the Secretary equitable relief authority and creates a new section providing more

comprehensive direction to the Secretary about when equitable relief may be offered. The new section both expands and limits the circumstances when equitable relief may now be available.

The new equitable relief section lists possible forms of relief available, including retaining benefits received and continuing to be eligible for program benefits. Farmers who receive equitable relief may be required to take action necessary to comply with program requirements.

FSA State Directors and NRCS (Natural Resources Conservation Service) State Conservationists are given authority under the new section to grant equitable relief for small benefit levels under certain programs.

A. Credit and Crop Insurance Programs Excluded From Equitable Relief Provision

The new equitable relief section specifically excludes agricultural credit and crop insurance programs from the equitable relief authority. In the past, there had been some question whether the broad language in one of the statutory equitable relief provisions covered all USDA programs for farmers. The new language provides for equitable relief for farmers and ranchers only under the commodity payment, disaster relief, and conservation programs administered by USDA. This language was added in the committee compromise; it had not been part of the Farm Bill proposals from either the House of Representatives or the Senate. The committee report gives no explanation for denying equitable relief to farmers who are given wrong information about USDA credit or crop insurance programs.

B. Good Faith Reliance on Bad Information or Good Faith Effort to Comply

For those programs where equitable relief is available, the new section expands the circumstances when it may be offered. The two repealed equitable relief provisions were based on the farmer’s “good faith reliance” on information or action by a USDA employee. The new section continues this basis for granting equitable relief (expanding it to cover any authorized USDA representative), and adds a new basis: the farmer’s good faith effort to comply with the program requirements. This opens up the possibility for equitable relief and continued program

eligibility when a farmer attempted to satisfy program requirements but did not fully comply—perhaps because the farmer misunderstood what was required—without requiring that a USDA employee have given the farmer wrong information.

C. Equitable Relief Decisions Not Subject to Review by Courts

The new section adds language making an equitable relief decision by the Secretary or a State Director or State Conservationist non-reviewable by federal courts. Such decisions still appear to be appealable to USDA's National Appeals Division.

III. Changes to 90-Day Finality Rule

As part of the 1990 Farm Bill, Congress enacted language providing that unless there was fraud or other misconduct, decisions of FSA state, county, and area committees would become final after 90 days, and USDA could not later attempt to recover overpayments that were made based on those decisions. This has been known as the "Finality Rule" or "90-Day Rule."

Section 1613(i) of the 2002 Farm Bill makes two notable changes to the 90-day finality rule. First, it excludes certain types of FSA committee decisions from the rule. Now, decisions made by FSA state, county, or area committees related to loan making or loan servicing and committee decisions under a conservation program administered by NRCS are not covered by the 90-day finality rule.

Second, the 2002 Farm Bill significantly limits the timing for applying exceptions to the rule. Under the statute, the 90-day finality rule does not apply if the committee's decision is appealed or is modified by the FSA Administrator. Some farmers who have attempted to enforce the 90-day finality rule have had particular trouble with the modification exception, finding that the agency believed there to be no time limit on when the Administrator could modify a committee decision. Congress apparently heard these farmers' complaints, because as part of the 2002 Farm Bill it included language requiring that the exceptions to the 90-day finality rule would only apply if they occurred within the 90-day period. That means that an FSA committee decision will be final after 90 days, and the FSA Administrator's power to modify the decision must now be exercised within those 90 days.

IV. Chapter 12 Bankruptcy Extension Through 2002

Chapter 12 of the Bankruptcy Code, which allows for bankruptcy reorganization of family farms, was enacted in 1986 as a temporary law that was allowed to expire or "sunset" on October 1, 2001. A temporary extension enacted on May 7, 2002, revived Chapter 12 authorization through May 31, 2002. Section 10814 of the 2002 Farm Bill reauthorizes Chapter 12 bankruptcies from June 1, 2002, through December 31, 2002. Farmers are again allowed to file Chapter 12 bankruptcy petitions during this period. Any cases that are filed before the end of 2002 will be able to proceed under the existing Chapter 12 provisions even if the statutory authority is allowed to expire once again.

Permanent authorization of Chapter 12 bankruptcies remains a part of larger bankruptcy reform legislation pending in Congress.

V. USDA Nondiscrimination Policies

The 2002 Farm Bill contains a number of provisions related to enforcement of nondiscrimination policies within USDA.

A. Write-Down Resulting From Resolution of Discrimination Complaint Not Considered "Debt Forgiveness"

The 2002 Farm Bill creates an exception to the general ban on FSA loan eligibility for borrowers who have received "debt forgiveness" in the past on an FSA loan. Debt forgiveness generally includes all forms of reducing or terminating a loan that cause a loss to USDA. Section 5310(b) provides that debt forgiveness specifically does not include any write-down of FSA debt received as part of the resolution of a discrimination complaint against the Secretary of Agriculture. This statutory change is in addition to the debt relief provisions of the consent decree in *Pigford v. Veneman*.

B. Assistant Secretary for Civil Rights Position Established

Section 10704 of the 2002 Farm Bill creates a new position in the Department of Agriculture called the Assistant Secretary for Civil Rights. This person will generally be responsible for ensuring compliance with all civil rights laws by all agencies and under all programs of USDA and coordinating

Ninety-day finality rule strengthened—FSA Administrator cannot modify committee decision after 90 days.

Authority for Chapter 12 bankruptcy filings revived through December 31, 2002.

FSA committee elections subject to greater public disclosure and reporting requirements. Participation by socially disadvantaged groups to be tracked.

administration of civil rights laws for USDA employees and program participants. The committee report accompanying the Farm Bill elaborates on the new Assistant Secretary's duties, stating that this individual is responsible for, among other things, "ensuring that USDA has measurable goals for fair and non-discriminatory treatment," "holding USDA agency heads and senior executives accountable for civil rights compliance and assessing their performance," and "ensuring that there is a sufficient level of participation" by socially disadvantaged farmers and ranchers in FSA county and area committees.

C. Collection and Reporting of Participation Data

Section 10708(a) of the 2002 Farm Bill creates a new statutory provision aimed at "hold[ing] the Department of Agriculture accountable for the nondiscriminatory participation of socially disadvantaged farmers and ranchers in programs of the Department." The new provision requires the Secretary to annually determine participation rates of socially disadvantaged farmers and ranchers in each USDA program and to report those rates by race, ethnicity, and gender. This information must be maintained and readily available to the public.

D. Public Disclosure of Committee Elections and Possible Rule-Making on Election Guidelines

Section 10708(b) of the 2002 Farm Bill changes the statute governing FSA county and area committee elections to require that (1) every solicitation of nominations for committees must include the USDA nondiscrimination statement; (2) any person may observe the opening and counting of committee election ballots, and the date and time of the opening must be announced at least 10 days in advance; (3) within 20 days after every election, committees must file formal election reports setting out specified information, including the number and percent of disqualified ballots; and (4) the Secretary must compile a national report that consolidates all committee election report information.

Based upon this national report, the Secretary must determine whether it is necessary to issue formal regulations establishing uniform guidelines for conducting committee elections. If regulatory guidelines are to be issued, they must ensure fair representation of

socially disadvantaged groups in cases where these groups are underrepresented on the committee in a given area. The new statutory language authorizes the Secretary to ensure participation of socially disadvantaged farmers and ranchers by allowing for appointment of one additional voting member to a committee. Other methods are also possible.

After every Census of Agriculture, the Secretary must report to Congress on the rate of loss or gain since the last Census in participation by each socially disadvantaged group by race, ethnicity, and gender.

VI. Crop Insurance and Disaster Assistance

The 2002 Farm Bill makes several isolated changes to crop insurance and disaster programs.

A. Renewed Authority to Make Payments Under Past Programs

Some farmers and ranchers have been denied the benefit of past assistance programs that they qualified for because their eligibility was not determined until after the funding authorization for the program expired. One common example of this is when a farmer is initially denied eligibility and successfully appeals the denial, but the appeal decision is not issued until after the end of the fiscal year.

In an apparent effort to address these situations, section 1617 of the 2002 Farm Bill provides that USDA can provide benefits under certain specified programs to persons who were eligible to receive assistance under the programs but did not receive the assistance before October 1, 2001. The programs covered by this provision include various disaster and market loss assistance programs from 1998 to 2001.

B. Emergency Loans Available for Losses Due to Federal Quarantine

Section 5201 of the 2002 Farm Bill makes losses due to plant or animal quarantines imposed by the Secretary of Agriculture eligible for FSA Emergency loan assistance. The House Farm Bill had proposed also making FSA Emergency loans available for producers affected by a specified level of increase in energy costs, but this language was not adopted in the final Farm Bill.

C. Crop Insurance Changes

Section 10001 of the 2002 Farm Bill amends the statute governing the federal crop insurance program to allow coverage under sweet potato insurance policies to extend beyond the time of harvest.

Section 10003 of the 2002 Farm Bill adds new language related to quality losses under the federal crop insurance program, providing that USDA will accept “evidence of the quality of agricultural commodities delivered to warehouse operators.” According to the committee report accompanying the Farm Bill, this new language is intended to require USDA to allow certain classifications of commodity warehouse operators to make quality adjustments for federal crop insurance quality loss purposes.

Section 10004 of the 2002 Farm Bill directs the Secretary to continue the Adjusted Gross Revenue insurance pilot program through at least 2004 and to include at least eight counties in California and eight counties in Pennsylvania in the pilot program for 2003.

Section 10005 of the 2002 Farm Bill expresses the sense of Congress that federal crop insurance coverage and pilot programs should be expanded to address producers’ needs, specifically including crop revenue coverage for pecan producers in Georgia and insurance coverage for producers of continuous crops of wheat in Kansas.

D. Authorization of Livestock Assistance Programs

Section 10104 authorizes livestock and dairy assistance programs including indemnity programs for mortality losses, assistance to producers affected by feed shortages, compensation for sudden increases in production costs, and assistance for other economic losses as the Secretary considers appropriate. The programs are to be funded by future appropriations, and Commodity Credit Corporation funds may not be used for these purposes.

Section 1503(b) of the 2002 Farm Bill reauthorizes the Dairy Indemnity Program through September 30, 2007. This program provides payments to dairy farmers who, through no fault of their own, are unable to market their milk because the milk contains residues of harmful chemicals or is contaminated by nuclear radiation.

E. Market Loss Assistance for Apple Producers and Onion Producers

Section 10105 of the 2002 Farm Bill appropriates \$94 million for payments to apple producers for the loss of markets during the 2002 marketing year. Payments are to be based on the quantity of the 2000 crop produced, up to five million pounds per farm, with no payment limitation.

Section 10106 of the 2002 Farm Bill appropriates \$10 million for a grant to the state of New York to support onion producers who suffered crop losses between 1996 and 2000.

F. Tree Assistance Program

Title X, Subtitle C, of the 2002 Farm Bill establishes a new statutory Tree Assistance Program to provide assistance to commercial orchardists who suffer greater than 15 percent tree mortality due to natural disaster. Eligible orchardists will receive reimbursement of 75 percent of the cost of replanting trees exceeding the 15 percent threshold, up to a maximum of \$75,000.

VII. Contract Production

A. Swine Contract Production Arrangements Brought Under the Packers and Stockyards Act

Section 10502 of the 2002 Farm Bill makes changes to the federal Packers and Stockyards Act to bring swine contract production arrangements under the jurisdiction of that Act. Swine production contracts are defined as any arrangement under which a swine production contract grower raises and cares for swine in accordance with another person’s instructions.

B. Producer Right to Discuss Contract Terms With Certain Parties

Section 10503 of the 2002 Farm Bill establishes a new statutory right of producers engaged in raising and caring for livestock and poultry for slaughter to discuss the terms or details of a production contract with certain categories of people. This right exists regardless of any provision in a contract or marketing agreement making the terms secret, but it only applies to contracts entered into, changed, renewed, or extended after May 13, 2002.

Persons that producers have the right to discuss contracts with include: federal or state agency employees, legal advisers, lenders, accountants, landlords, immediate

Contract producers of livestock and poultry given statutory right to discuss contract terms.

Producers of 100 percent organic products exempted from general commodity checkoff assessments.

family members, and, if the producer is a business entity, a manager or executive of the entity.

VIII. Farm Products Financing Statements

Section 10604 of the 2002 Farm Bill makes changes to the statute governing the federal Effective Financing Statement for farm products. The changes parallel changes made to most states' commercial codes governing security agreements. One change removes the requirement that the financing statement include a description of the land on which the farm products are located. Another change, apparently aimed at facilitating electronic filings, adds language that allows an unsigned financing statement to be valid if it is otherwise authorized by the debtor. Note that the federal Effective Financing Statement requirements are separate from financing statement requirements under individual state laws.

IX. Organic Production

A number of provisions in the 2002 Farm Bill specifically address issues related to organic production. Two of those provisions are discussed here.

A. Organic Certification Cost-Share Program

Section 10606 of the 2002 Farm Bill establishes a national organic certification cost-share program to help both producers and handlers obtain certification under the National Organic Program. Individuals may receive federal assistance under this program for up to 75 percent of their certification costs, with a maximum payment of \$500 per person.

B. Organic Products Exempt From General Checkoff Programs

Section 10607 of the 2002 Farm Bill provides that any person who produces and markets only 100 percent organic products is exempt from paying mandatory assessments under commodity checkoff programs. The exemption applies to any commodity produced by that person on a certified organic farm.

X. Country-of-Origin Labeling for Retail Sales of Unprocessed Food

Section 10816 of the 2002 Farm Bill establishes a new statutory subtitle setting out requirements for country-of-origin labeling in certain commodity sales. The new requirements

provide that when covered commodities are sold to consumers, the seller must inform the consumer where the commodity originated. This may be done through labeling, stamps, or any clear and visible sign on the packaging or holding unit at the final point of sale to consumers. Restaurants and other food service businesses are not covered by the country-of-origin requirement. The country-of-origin requirement also does not apply to commodities that are ingredients in a processed food item.

Commodities covered by the requirements include beef, lamb, and pork (muscle cuts and ground), farm-raised and wild fish (in any cut), peanuts, and fresh and frozen vegetables. To be able to designate the United States as country of origin, meat animals and fish must have been born, raised, and slaughtered in the U.S., and fruit and vegetables must have been exclusively produced in the U.S.

By September 30, 2002, USDA is required to set out guidelines for voluntary labeling under these provisions. Mandatory country-of-origin labeling requirements will take effect September 30, 2004.

XI. Studies Required

The 2002 Farm Bill directs the Secretary of Agriculture to conduct several studies. The topics of these studies indicate issues that members of Congress are concerned about and may suggest areas of future change in federal agricultural policy.

A. Dairy Policy

Section 1507 of the 2002 Farm Bill directs the Secretary of Agriculture to conduct a "comprehensive economic evaluation" of national dairy policy, including its effect on farm price stability, farm profitability and viability, and local rural economies. Aspects of dairy policy to be considered include federal milk marketing orders, interstate dairy compacts, over-order premiums and state pricing programs, the federal milk price support program, and export programs.

Section 1508 of the 2002 Farm Bill directs the Secretary of Agriculture to conduct two studies related to national dairy policy. One study is to determine the effects of terminating all federal programs related to dairy price and supply management and authorizing interstate compacts to manage milk prices and supply. The second study is to

determine the effect of requiring a minimum protein content in the standard of identity for fluid milk.

B. Commission on Payment Limitations

Section 1605 of the 2002 Farm Bill establishes a “Commission on the Application of Payment Limitations for Agriculture” to conduct a study of the impacts of further payment limitations for USDA commodity programs. The Commission is to determine the effect of such limitations on farm income, land values, rural communities, agribusiness infrastructure, planting decisions by affected producers, and supply and prices of agricultural commodities.

C. Limits on Moving Tobacco Quota

Section 1611(b) of the 2002 Farm Bill directs the Secretary of Agriculture to conduct a study of the effects of limiting producers’ ability to move tobacco quota to a farm that was not the farm the quota was initially assigned to.

D. Annual Reports on Requests for Equitable Relief

Section 1613(g) of the 2002 Farm Bill requires the Secretary of Agriculture to make annual reports to Congress setting out the number of requests by farmers for equitable relief. The reports must cover both equitable relief requests made directly to the agencies and requests made within the National Appeals Division process and must indicate how the requests were resolved.

E. Impact of Commodity Programs

Section 10904 of the 2002 Farm Bill requires the Secretary of Agriculture to review the effects of commodity programs under the 1996 and 2002 Farm Bills on the economic viability of producers and the farming infrastructure, particularly where the climate, soil types, and other conditions severely limit the eligible commodities that producers can choose to successfully and profitably produce. The section requires a specific case study of the effects of the payment programs on the rice industry in Texas and recommendations for reducing the adverse effects of payment programs on tenants and agricultural economies of farming areas, both generally and specifically.

F. Evaluation of Direct and Guaranteed Lending Programs

Section 5301 of the 2002 Farm Bill directs the Secretary of Agriculture to conduct two studies of FSA’s direct and guaranteed lending programs. One study must cover the one-year period following enactment of the 2002 Farm Bill. The second study must cover a one-year period beginning May 13, 2005. Both studies must address the number, average principal amount, and delinquency and default rates of loans under the two programs and must include an analysis of how effectively the programs meet the credit needs of farmers and ranchers “in an efficient and fiscally responsible manner.”

G. Specialty Crop Insurance

Section 10006 of the 2002 Farm Bill directs the Secretary of Agriculture to submit to Congress a report describing (1) the Federal Crop Insurance Corporation’s progress in developing risk management products that include the cost of production and provide coverage for numerous specified specialty crops, and (2) the Corporation’s progress in increasing the use of risk management products by producers of specialty crops, by small- and moderate-sized farms, and by producers in underserved areas.

H. Feasibility of Payment for Government-Caused Disaster Losses

Section 10108 of the 2002 Farm Bill directs the Secretary of Agriculture to study the feasibility of expanding crop insurance and NAP eligibility to include producers experiencing disaster conditions caused primarily by federal agency action restricting access to irrigation water.

I. Geographically Disadvantaged Farmers and Ranchers

Section 10906 of the 2002 Farm Bill requires the Secretary of Agriculture to report to Congress on the barriers to efficient and competitive transportation of inputs and products by farmers and ranchers in remote areas, including Alaska and Hawaii, and to propose means of encouraging and assisting these farmers and ranchers to own and operate farms and ranches and participate in the full range of USDA agricultural programs.

USDA to study effectiveness and efficiency of FSA direct and guaranteed loan programs in meeting credit needs of farmers and ranchers.

XII. Selected Provisions Proposed but Deleted in the Final Bill

The House Farm Bill had proposed a change to the FSA guaranteed loan program allowing Certified and Preferred lenders to receive guarantees even where the borrower could not show adequate income as required by current law. The guarantee under this proposal would have been less than 80 percent. This change was not adopted in the final Farm Bill.

The House Farm Bill proposed to change the debt forgiveness restriction on FSA direct loan eligibility by allowing borrowers to have received debt forgiveness on two occasions before losing eligibility for new direct loans. The proposed change would also have allowed borrowers with no more than three instances of debt forgiveness to retain guaranteed loan

eligibility, without regard to when the debt forgiveness occurred. This language was deleted in the final Farm Bill.

The House Farm Bill proposed to change the statute governing USDA National Appeals Division (NAD) appeals to provide that if the farmer or rancher was successful in a NAD appeal at the hearing officer level, the agency could not seek review of the hearing officer's decision by the NAD Director. This language was not adopted in the final Farm Bill.

The Senate Farm Bill included language banning ownership or control of livestock by a packer more than 14 days before slaughter. The House Farm Bill proposed to establish an Interagency Task Force on Agricultural Competition to conduct hearings on competition issues and proposed to increase Grain Inspection Packers

and Stockyards Administration (GIPSA) staffing to "monitor, investigate, and pursue the competitive implications of structural changes in the meat packing industry." The final Farm Bill deleted all of these provisions with a note in the committee report that that committee "recognizes the importance" of congressional hearings on consolidation and marketing issues affecting livestock producers.

The Senate Farm Bill proposed to add a new section to the federal Packers and Stockyards Act stating that any person seeking to resolve a contract dispute could pursue any means of resolution, including mediation and civil action in court, regardless of a contractual provision requiring arbitration of disputes. This provision was deleted by the committee in the final Farm Bill.

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