

# Understanding the Farm Bill's Conservation Program Contracts and Regulations



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For most, the Farm Bill is understood to provide a safety net for the nation's agricultural producers and a nutrition-assistance program for the nation's most vulnerable. This understanding is generally correct; the Farm Bill's Commodity Programs and especially its Nutrition Programs push out the most money and, therefore, garner the most attention.

But the Farm Bill's Conservation programs play a key role in the country's land use policy and provide a unique business tool for owners of working-lands, as well as active farmers and ranchers. According to 2023 statistics, owners and producers nationwide enrolled:

- 927,000 acres through the General Conservation Reserve Program (CRP) Sign-up
- 2.3 million acres through the Grassland CRP Sign-up
- 694,000 acres through the Continuous CRP Sign-up

The 2023 enrollments brought CRP's total enrollment to 24.8 million acres. The Farm Service Agency (FSA), in turn, issued more than \$1.77 billion in rental payments to more than 667,000 landowners and producers. Although CRP is the Farm Bill's largest conservation program, other programs see significant participation, including the Environmental Quality Incentives Program (EQIP), the Conservation Stewardship Program (CSP) and the Agricultural Conservation Easement Program (ACEP). All of these programs, and others, are likely to grow in the coming years.

As more environmentally sensitive (and, often, marginally productive) lands are enrolled in Department of Agriculture conservation programs, landowners and producers are well advised to understand the contractual requirements and implications of participation:

**Participants must execute a Conservation Program Contract with the applicable USDA agency, FSA or the Natural Resources Conservation Service (NRCS).** This Contract will incorporate a Conservation Plan or Schedule of Operations, with agreed-upon payments by the agency and practices by the participant. Some practices have a shorter lifespan, such as one year, and some have a longer lifespan, such as fifteen to twenty years. Failure to maintain these practices as agreed, for the time periods agreed, can result in agency proceedings for forfeiture of future payments and refund of past payments, together with administrative penalties and costs.

**Participants must control the enrolled acreage during the entire contract period.** Loss of control, such as by sale or transfer, can trigger non-compliance with the Contract and demands for reimbursement by the agency, so it is important to properly address the Contract and its required practices when selling or leasing lands that include covered acreage. Producer or tenant-participants should also exercise caution

with their leases and leasing decisions, since any non-renewal of a lease that includes covered acreage can again trigger agency proceedings for non-compliance.

**Conversion of enrolled acres into actual solar energy production is likely prohibited under many conservation program contracts, including acres in CRP or the Conservation Reserve Enhancement Program (CREP).** Likewise, acres dedicated to solar energy production are ineligible for participation in many conservation programs, including CRP and CREP. There is a push from some to revise the Farm Bill to make enrolled acres compatible with renewable energy objectives.

**Conversion of tillable or producing acres to a nonagricultural purpose like commercial or industrial development will certainly raise the same eligibility and compliance concerns for lands enrolled in long-term conservation programs.** Additionally, conversion of tillable acres to another non-producing purpose may impact the calculation of Base Acres and affect a desirable wetlands designation of Prior Converted Cropland.

Enrollment and participation in the Farm Bill's conservation programs is both a production decision and a land stewardship decision. It is also, oftentimes, a long-term business commitment. Understanding the applicable program contracts, regulations and related land use restrictions and responsibilities is vitally important for owners, operators and tenants.

*Attorneys Jack Talbot and Jordan Wimpy practice agriculture law and help producers and agribusinesses navigate the extensive challenges and regulatory issues presented in today's modern agriculture environment.*