

cent shall be paid from such sources. Subject to the approval of the Secretary, such contributions for a project may be in the form of, but are not required to be limited to, private cash donations, and the contribution of materials, equipment, or services necessary for the project.

**(f) Eligibility of designated State agencies**

No designated State agency shall be eligible to receive matching funds from the Wildlife Conservation and Appreciation Fund if revenue derived from activities regulated by such an agency is diverted for any purpose other than the management and conservation of fish and wildlife. Such revenue shall include, but not be limited to, all income from the sale of hunting, fishing and trapping licenses; all income from nongame checkoff systems; all income from the sale of waterfowl, habitat conservation, and other stamps that are requisite for engaging in certain activities regulated by the designated State agency; all income from the sale of any commodities and products by the designated State agency from lands and waters administered by the State for fish and wildlife purposes; and all funds apportioned to the designated State agency under the Federal Aid in Wildlife and Sport Fish Restoration Programs.

**(g) Establishment of Fund**

(1) The Secretary shall establish the Fund, which shall consist of amounts deposited into the Fund by the Secretary under paragraph (2) of this subsection.

(2) The Secretary shall deposit into the Fund amounts appropriated to the Secretary for deposit to the Fund, of which not more than 4 percent shall be available to the Secretary to defray the costs of administering this chapter and evaluating wildlife conservation and appreciation projects.

**(h) Authorization of appropriations**

There are authorized to be appropriated to the Fund and to the Secretary for each of fiscal years 1992 through 1998 not to exceed \$6,250,000.

(Pub. L. 102-587, title VII, §7105, Nov. 4, 1992, 106 Stat. 5097; Pub. L. 103-375, §6(4)-(7), Oct. 19, 1994, 108 Stat. 3495, 3496.)

AMENDMENTS

1994—Subsec. (d)(5). Pub. L. 103-375, §6(4), struck out par. (5) which read as follows: “may not exceed the State share of the cost of implementing such a project.”

Subsec. (e). Pub. L. 103-375, §6(5), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “The share of the cost of carrying out eligible projects under this section shall be from a non-Federal source and shall not be in the form of an in-kind contribution.”

Subsec. (g)(2). Pub. L. 103-375, §6(6)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary shall deposit into the Fund—

“(A) amounts appropriated to the Secretary for deposit to the Fund, of which not more than 4 percent shall be available to the Secretary and the National Fish and Wildlife Foundation to defray the costs of administering this chapter and evaluating wildlife conservation and appreciation projects; and

“(B) amounts received as donations from the National Fish and Wildlife Foundation or other private entities or persons for deposit to the Fund.”

Subsec. (g)(3), (4). Pub. L. 103-375, §6(6)(B), struck out pars. (3) and (4) which read as follows:

“(3) The Secretary may accept and use donations from the National Fish and Wildlife Foundation and other private entities or persons for purposes of assisting States under this section.

“(4) Of the total amount provided from the Fund to assist a State in carrying out a wildlife conservation and appreciation project under subsection (a) of this section, at least 50 percent shall have been donated to the Fund by the National Fish and Wildlife Foundation.”

Subsec. (h). Pub. L. 103-375, §6(7), substituted “1998” for “1995” and struck out before period at end “to match the amount of contributions made to the Fund by the National Fish and Wildlife Foundation”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3743 of this title.

**CHAPTER 58—ERODIBLE LAND AND WETLAND CONSERVATION AND RESERVE PROGRAM**

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1308-3, 1308-4, 1463, 1985, 6932, 6962.

SUBCHAPTER I—DEFINITIONS

§ 3801. Definitions

(a) For purposes of subchapters I through V of this chapter:

(1) The term "agricultural commodity" means—

- (A) any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters; or
- (B) sugarcane planted and produced in a State.

(2) The term "conservation district" means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district", "soil conservation district", "soil and water conservation district", "resource conservation district", "natural resource district", "land conservation committee", or a similar name.

(3) The term "cost sharing payment" means a payment made by the Secretary to an owner or operator of a farm or ranch containing highly erodible cropland under the provisions of section 3834(b) of this title.

(4)(A) The term "converted wetland" means wetland that has been drained, dredged, filled,

leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible if—

- (i) such production would not have been possible but for such action; and
- (ii) before such action—
  - (I) such land was wetland; and
  - (II) such land was neither highly erodible land nor highly erodible cropland.

(B) Wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year—

- (i) is possible as a result of a natural condition, such as drought; and
- (ii) is not assisted by an action of the producer that destroys natural wetland characteristics.

(5) The term "field" means such term as is defined in section 718.2(b)(9) of title 7 of the Code of Federal Regulations (as of January 1, 1985), except that any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and that is not exempt under section 3812 of this title shall be considered as part of the field in which such land was included on December 23, 1985, unless the Secretary permits modification of the boundaries of the field to carry out subchapters I through V of this chapter.

(6) The term "highly erodible cropland" means highly erodible land that is in cropland use, as determined by the Secretary.

(7)(A) The term "highly erodible land" means land—

- (i) that is classified by the Soil Conservation Service as class IV, VI, VII, or VIII land under the land capability classification system in effect on December 23, 1985; or
- (ii) that has, or that if used to produce an agricultural commodity, would have an excessive average annual rate of erosion in relation to the soil loss tolerance level, as established by the Secretary, and as determined by the Secretary through application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope.

(B) For purposes of this paragraph, the land capability class or rate of erosion for a field shall be that determined by the Secretary to be the predominant class or rate of erosion under regulations issued by the Secretary.

(8) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(9) The term "hydrophytic vegetation" means a plant growing in—

- (A) water; or
- (B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(10) The term "in-kind commodities" means commodities that are normally produced on

land that is the subject of an agreement entered into under subchapter IV of this chapter.

(11) The term “rental payment” means a payment made by the Secretary to an owner or operator of a farm or ranch containing highly erodible cropland to compensate the owner or operator for retiring such land from crop production and placing such land in the conservation reserve in accordance with subchapter IV of this chapter.

(12) The term “Secretary” means the Secretary of Agriculture.

(13) The term “shelterbelt” means a vegetative barrier with a linear configuration composed of trees, shrubs, and other approved perennial vegetation.

(14) The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(15) The term “vegetative cover” means—

(A) perennial grasses, legumes, forbs, or shrubs with an expected life span of 5 or more years; or

(B) trees.

(16) The term “wetland”, except when such term is part of the term “converted wetland”, means land that—

(A) has a predominance of hydric soils;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of such vegetation.

For purposes of this Act, and any other Act, this term shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils.

(b) The Secretary shall develop—

(1) criteria for the identification of hydric soils and hydrophytic vegetation; and

(2) lists of such soils and such vegetation.

(Pub. L. 99-198, title XII, §1201, Dec. 23, 1985, 99 Stat. 1504; Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 714; Pub. L. 101-624, title XIV, §1421(a), Nov. 28, 1990, 104 Stat. 3572.)

#### AMENDMENTS

1990—Subsec. (a)(16). Pub. L. 101-624 substituted introductory provisions and subpars. (A) to (C) for “The term ‘wetland’, except when such term is part of the term ‘converted wetland’, means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.”

1986—Subsec. (a)(16). Pub. L. 99-349 inserted provision that for purposes of this Act, and any other Act, the term “wetland” shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils.

#### SHORT TITLE OF 1990 AMENDMENT

Section 1401 of title XIV of Pub. L. 101-624 provided that: “This title [enacting sections 1003a, 1010, 3824,

3830, 3835a, 3837 to 3837f, 3838 to 3838f, 3839 to 3839d, 3846, 3847, 3861, and 3862 of this title and sections 136i-1, 2814, 3130, 5401 to 5403, 5501 to 5506 and 5822 of Title 7, Agriculture, amending this section, sections 590p, 1002, 1003, 3459, 3461, 3811, 3812, 3821 to 3823, 3831, 3832, 3834, 3835, 3836, 3843, and 3845 of this title, and sections 136a, 136a-1, 136d, 136w-3, 450i, and 4202 of Title 7, and enacting provisions set out as notes under this section and sections 2101 and 3831 of this title and sections 136a and 4201 of Title 7] may be cited as the ‘Conservation Program Improvements Act.’”

#### SHORT TITLE

Title XII of Pub. L. 99-198, which is classified principally to this chapter, is popularly known as the “Sodbuster Law”.

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 1985, 1997, 2006e; title 26 section 1257.

#### SUBCHAPTER II—HIGHLY ERODIBLE LAND CONSERVATION

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3842, 3843, 3844 of this title; title 12 section 2219d.

#### § 3811. Program ineligibility

Except as provided in section 3812 of this title, and notwithstanding any other provision of law, following December 23, 1985, any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominate, or designates land on which highly erodible land is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, as determined by the Secretary shall be ineligible for—

(1) as to any commodity produced during that crop year by such person—

(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), under section 132 of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), or under any similar provision enacted subsequent to August 14, 1989; or

(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land;

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation; or

(3) during such crop year—

(A) a payment made under section 590h, section 590i or section 590p(b) of this title;

(B) a payment made under section 2201 or section 2202 of this title;

(C) a payment under any contract entered into pursuant to section 3831 of this title;

(D) a payment under part II of subchapter IV of this chapter;

(E) a payment under part III of subchapter IV of this chapter; or

(F) a payment, loan or other assistance under section 1003 or section 1006a of this title.

(Pub. L. 99-198, title XII, §1211, Dec. 23, 1985, 99 Stat. 1506; Pub. L. 101-624, title XIV, §1411, Nov. 28, 1990, 104 Stat. 3569; Pub. L. 102-237, title II, §204(1), Dec. 13, 1991, 105 Stat. 1854.)

#### REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (1)(A), (D), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in par. (1)(A), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Federal Crop Insurance Act, referred to in par. (1)(C), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§1501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 132 of the Disaster Assistance Act of 1989, referred to in par. (1)(D), is section 132 of Pub. L. 101-82, which is set out in a note under section 1421 of Title 7.

The Consolidated Farm and Rural Development Act, referred to in par. (1)(E), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

#### AMENDMENTS

1991—Par. (1)(D). Pub. L. 102-237, §204(1)(A), substituted “(7 U.S.C. 1421 note)” for “(16 U.S.C. 1421 note)”.

Par. (3)(D), (E). Pub. L. 102-237, §204(1)(B), (C), made technical amendments to references to part II of subchapter IV of this chapter and part III of subchapter IV of this chapter, in subpars. (D) and (E), respectively, to clarify references in corresponding provisions of original Act.

1990—Pub. L. 101-624, §1411(1), inserted “, or designates land on which highly erodible land is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, as determined by the Secretary” after “is predominate” in first sentence.

Par. (1)(D). Pub. L. 101-624, §1411(2), inserted reference to section 132 of the Disaster Assistance Act of 1989 and similar provisions enacted after Aug. 14, 1989.

Par. (3). Pub. L. 101-624, §1411(3)-(5), added par. (3).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3812, 3836, 3843 of this title; title 7 section 1446e.

#### § 3812. Exemptions

**(a) Persons eligible for program benefits in connection with production or reduced production of crops on certain lands; eligibility based upon compliance with conservation plan by January 1, 1995; minimization of documentation**

(1) During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is 2 years after the date land on which a crop of an agricultural commodity is produced was mapped by the Soil Conservation Service for purposes of classifying such land under the land capability classification system in effect on December 23, 1985, except as provided in paragraph (2), no person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on any land that was—

(A) cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity; or

(B) set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) If, as of January 1, 1990, or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan that documents the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedule and that is based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 590h(b) of this title and the Secretary, or by the Secretary, such person shall have until January 1, 1995, to comply with the plan without being subject to program ineligibility. In carrying out this subsection, the Secretary, Soil Conservation Service, and local soil conservation districts shall minimize the quantity of documentation a person must submit to comply with this paragraph.

(3) Any person who owns or operates highly erodible land that was the subject of a contract entered into under subpart B of part I of subchapter IV of this chapter shall, if the conservation plan established under this subchapter for such land requires structures to be constructed, have until 2 years after the expiration of such contract to comply with the conservation plan, or a longer period of time if the Secretary determines compliance is otherwise technically or economically not feasible, or such longer period is otherwise appropriate, before such person will be subject to program ineligibility with respect to such land under section 3811 of this title.

(4) On the expiration of a contract entered into under subpart B of part I of subchapter IV of this chapter, the provisions of this subchapter

shall apply to the acreage that was the subject of such contract.

**(b) Persons eligible for program benefits in connection with production of certain planted crops or production of crops on highly erodible land**

No person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity—

- (1) planted before December 23, 1985; or
- (2) planted during any crop year beginning before December 23, 1985.

**(c) Ineligibility for loans and payments under section 3811**

No person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity or the designation of land to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity (hereafter in this subsection referred to as "set aside")—

- (1) on highly erodible land in an area—
  - (A) within a conservation district, under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for such district; or
  - (B) not within a conservation district, under a conservation system determined by the Secretary to be adequate for the protection of highly erodible land that has been set aside or for the production of such agricultural commodity on any highly erodible land subject to this chapter; or
- (2) on highly erodible land that is planted or set aside in reliance on a determination by the Soil Conservation Service that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted or set aside on any land after the Soil Conservation Service determines that such land is highly erodible land; or
- (3) on highly erodible land planted to alfalfa during each of the 1981 through 1985 crop years as part of a rotation practice approved by the Secretary, if the person has submitted a conservation plan based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 590h(b) of this title and the Secretary, such person shall have until June 1, 1988, to comply with the plan without being subject to program ineligibility under section 3811 of this title.

**(d) Program ineligibility inapplicable to pre-December 23, 1985, section 3811 loans**

Section 3811 of this title shall not apply to a loan described in section 3811 of this title made before December 23, 1985.

**(e) Limitations on ineligibility for tenants**

If a tenant is determined to be ineligible for payments and other benefits under section 3811

of this title, the Secretary may limit such ineligibility only to the farm which is the basis for such ineligibility determination if—

(1) the tenant has established to the satisfaction of the Secretary that—

(A) the tenant has made a good faith effort to meet the requirements of this section, including enlisting the assistance of the Secretary to obtain a reasonable conservation compliance plan for such farm; and

(B) the landlord on the farm refuses to comply with such plan on such farm; and

(2) the Secretary determines that such lack of compliance is not a part of a scheme or device to avoid such compliance.

The Secretary shall provide an annual report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the ineligibility determinations limited during the previous 12-month period under this subsection.

**(f) Graduated sanctions**

(1) Except to the extent provided in paragraph (2), no person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as a result of the failure of such person to actively apply a conservation plan that documents the decisions of such person with respect to location, land use, tillage systems, and conservation treatment measures and schedules prepared under subsection (a) of this section, if the Secretary determines that such person has—

(A) not violated the provisions of section 3811 of this title within the previous 5 years on a farm; and

(B) acted in good faith and without the intent to violate the provisions of this subchapter.

(2) If the Secretary determines that a person who has failed to comply with the provisions of section 3811 of this title meets the requirements of paragraph (1), the Secretary shall, in lieu of applying the ineligibility provisions in section 3811 of this title, reduce by not less than \$500 nor more than \$5,000, depending on the seriousness of the violation as determined by the Secretary, program benefits described in section 3811 of this title that such producer would otherwise be eligible to receive in a crop year.

(3) Any person whose benefits are reduced in any crop year under this subsection shall continue to be eligible for all of the benefits described in section 3811 of this title for any subsequent crop year if, prior to the beginning of such subsequent crop year, the Secretary determines that such person is actively applying a conservation plan prepared under subsection (a) of this section according to the schedule set forth in such plan.

(4) Notwithstanding any other provision of this subchapter, no person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as a result of the failure of such person to actively apply a conservation plan that documents the decisions of such person with respect to location, land use, tillage systems, and conservation treatment

measures and schedules prepared under subsection (a) of this section, if the Secretary—

(A) determines that such failure results in a violation of section 3811 of this title that is technical and minor in nature and that such violation has a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which such violation has occurred;

(B) determines that such failure is due to circumstances beyond the control of the person; or

(C) grants the person a temporary variance from the practices specified in the plan for the purpose of handling a specific problem.

A determination or the granting of a variance by the Secretary under this paragraph shall not be counted as a violation for the purposes of paragraph (1)(A).

**(g) Preparation or revision of conservation plan**

The Secretary, in providing assistance to an individual in the preparation or revision of a conservation plan under this section, shall provide such individual with information—

(1) concerning cost effective and applicable erosion control measures that may be available to such individual to meet the requirements of this section; and

(2) concerning crop flexibility, base adjustment, and conservation assistance options that may be available to such individual to meet the requirements of this section, including the provisions of titles X, XII, and XIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (or the amendments made by such titles).

**(h) Noncommercial production of agricultural commodities**

Section 3811 of this title shall not apply to the noncommercial production of agricultural commodities on a farm if such production is limited to two acres or less and if the Secretary determines that such production is not intended to circumvent the conservation requirements otherwise applicable to lands under this subchapter.

(Pub. L. 99-198, title XII, §1212, Dec. 23, 1985, 99 Stat. 1506; Pub. L. 100-28, §§2, 3, Apr. 24, 1987, 101 Stat. 291; Pub. L. 101-624, title XIV, §1412, Nov. 28, 1990, 104 Stat. 3569; Pub. L. 102-237, title II, §204(2), Dec. 13, 1991, 105 Stat. 1854.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1)(B), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (g)(2), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. Title X of the Act enacted section 1446h of Title 7 and amended section 1425a of Title 7. Title XII of the Act, known as the Forest Stewardship Act of 1990, is classified principally to amended chapter 41 (§2101 et seq.) of this title. Title XIII of the Act enacted sections 138 to 138i and 499b-1 of Title 7, amended sections 499c, 608c, and 608e-1 of Title 7, and enacted provisions set out as notes under sections 499a and 1622 of Title 7. For complete classi-

fication of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

AMENDMENTS

1991—Subsec. (f)(4)(A). Pub. L. 102-237, §204(2)(A), substituted “such violation” for “such violations” after “which”.

Subsec. (g)(2). Pub. L. 102-235, §204(2)(B), struck out comma after “XIII”.

1990—Subsec. (a)(3), (4). Pub. L. 101-624, §1412(a), added pars. (3) and (4).

Subsec. (b)(1), (2). Pub. L. 101-624, §1412(b)(1), (2), inserted “or” in par. (1) and substituted a period for a semicolon in par. (2).

Subsec. (b)(3) to (5). Pub. L. 101-624, §1412(b)(4), redesignated pars. (3) to (5) as pars. (1) to (3), respectively, of subsec. (c).

Subsec. (c). Pub. L. 101-624, §1412(b)(3), (4), added subsec. (c) introductory provisions, and redesignated former subsec. (c) as (d).

Subsec. (c)(1). Pub. L. 101-624, §1412(b)(4), (5), redesignated par. (3) of subsec. (b) as par. (1) of subsec. (c) and in subpar. (B) inserted “for the protection of highly erodible land that has been set aside or” after “adequate”.

Subsec. (c)(2). Pub. L. 101-624, §1412(b)(4), (6), redesignated par. (4) of subsec. (b) as par. (2) of subsec. (c) and inserted “or set aside” in two places.

Subsec. (c)(3). Pub. L. 101-624, §1412(b)(4), redesignated par. (5) of subsec. (b) as par. (3) of subsec. (c).

Subsec. (d). Pub. L. 101-624, §1412(b)(3), redesignated subsec. (c) as (d).

Subsecs. (e) to (h). Pub. L. 101-624, §1412(c)-(f), added subsecs. (e) to (h).

1987—Subsec. (a)(2). Pub. L. 100-28, §3, inserted “that documents the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedule and that is” after “conservation plan”, and inserted at end “In carrying out this subsection, the Secretary, Soil Conservation Service, and local soil conservation districts shall minimize the quantity of documentation a person must submit to comply with this paragraph.”

Subsec. (b)(5). Pub. L. 100-28, §2(b), added par. (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3801, 3811, 3831, 3838b, 3838d, 3843 of this title; title 7 section 1924.

**§ 3813. Soil surveys**

The Secretary shall, as soon as is practicable after December 23, 1985, complete soil surveys on those private lands that do not have a soil survey suitable for use in determining the land capability class for purposes of this subchapter. In carrying out this section, the Secretary shall, insofar as possible, concentrate on those localities where significant amounts of highly erodible land are being converted to the production of agricultural commodities.

(Pub. L. 99-198, title XII, §1213, Dec. 23, 1985, 99 Stat. 1507.)

SUBCHAPTER III—WETLAND  
CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3842, 3843, 3844 of this title; title 12 section 2219d.

**§ 3821. Program ineligibility**

(a) Except as provided in section 3822 of this title and notwithstanding any other provision of law, following December 23, 1985, any person who

in any crop year produces an agricultural commodity on converted wetland shall be ineligible for—

(1) as to any commodity produced during that crop year by such person—

(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), under section 132 of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), or under any similar provision enacted subsequent to August 14, 1989; or

(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to conversion of wetlands (other than as provided in this subchapter) to produce an agricultural commodity;

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation; or

(3) during such crop year—

(A) a payment made under section 590h, section 590l or section 590p(b) of this title;

(B) a payment made under section 2201 or section 2202 of this title;

(C) a payment under any contract entered into pursuant to section 3831 of this title;

(D) a payment under part II of subchapter IV of this chapter;

(E) a payment under part III of subchapter IV of this chapter; or

(F) a payment, loan or other assistance under section 1003 or section 1006a of this title.

(b) Except as provided in section 3822 of this title and notwithstanding any other provision of law, any person who in any crop year subsequent to November 28, 1990, converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland shall be ineligible for those payments, loans, or programs specified in subsections (a)(1) through (3) of this section for that crop year and all subsequent crop years.

(Pub. L. 99-198, title XII, §1221, Dec. 23, 1985, 99 Stat. 1507; Pub. L. 101-624, title XIV, §1421(b), Nov. 28, 1990, 104 Stat. 3572; Pub. L. 102-237, title II, §204(3), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 102-552, title III, §308(a), Oct. 28, 1992, 106 Stat. 4116.)

#### REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in subsec. (a)(1)(A), (D), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in subsec. (a)(1)(A), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (a)(1)(C), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§1501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 132 of the Disaster Assistance Act of 1989, referred to in subsec. (a)(1)(D), is section 132 of Pub. L. 101-82, which is set out in a note under section 1421 of Title 7.

The Consolidated Farm and Rural Development Act, referred to in subsec. (a)(1)(E), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

Parts II and III of subchapter IV of this chapter, referred to in subsec. (a)(3)(D), (E), were in the original references to chapters 2 and 3, respectively, and were translated as references to chapters 2 and 3 of subtitle D meaning chapters 2 and 3 of subtitle D of title XII of Pub. L. 99-198, to reflect the probable intent of Congress.

#### AMENDMENTS

1992—Subsec. (a)(1)(D). Pub. L. 102-552 made technical correction to directory language of Pub. L. 102-237. See 1991 Amendment note below.

1991—Subsec. (a)(1)(D). Pub. L. 102-237, as amended by Pub. L. 102-552, substituted “(7 U.S.C. 1421 note)” for “(16 U.S.C. 1421 note)”.

1990—Subsec. (a). Pub. L. 101-624, §1421(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(1)(D). Pub. L. 101-624, §1421(b)(2), inserted reference to section 132 of the Disaster Assistance Act of 1989 and similar provisions enacted after Aug. 14, 1989.

Subsec. (a)(3). Pub. L. 101-624, §1421(b)(3)-(5), added par. (3).

Subsec. (b). Pub. L. 101-624, §1421(b)(6), added subsec. (b).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3822, 3836 of this title; title 7 section 1446e.

### § 3822. Delineation of wetlands; exemptions

#### (a) Delineation of wetlands

##### (1) Wetland delineation maps

The Secretary shall delineate wetlands on wetland delineation maps. The Secretary shall make a reasonable effort to make an on-site wetland determination whenever requested by an owner or operator, prior to such delineation.

##### (2) Certification

Upon providing notice to affected owners or operators, the Secretary shall certify each such map as sufficient for the purpose of making determinations of ineligibility for program

benefits under section 3821 of this title and shall, in accordance with section 3843 of this title, provide an opportunity to appeal such delineations to the Secretary prior to making such certification final. In the case of an appeal, the Secretary shall review and certify the accuracy of the mapping of all lands subject to the appeal mapped prior to November 28, 1990, for the purpose of wetland delineations to ensure that wetland on such lands has been accurately delineated. Prior to rendering a decision on any such appeal, the Secretary shall conduct an on-site inspection of the subject land. The Secretary shall not be required to provide an opportunity for an appeal of delineations completed prior to November 28, 1990, that are not changed, and for which an appeal had already occurred and, in connection with such previous appeal, an on-site determination had been conducted.

**(3) Public list**

The Secretary shall maintain a public listing of all such certifications that have been completed.

**(4) Periodic review and update**

The Secretary shall provide by regulation a process for the periodic review and update of such wetland delineations as the Secretary deems appropriate. No person shall be adversely affected because of having taken an action based on a previous determination by the Secretary.

**(b) Exemptions**

No person shall become ineligible under section 3821 of this title for program loans, payments, and benefits—

(1) as the result of the production of an agricultural commodity on—

(A) converted wetland if the conversion of such wetland was commenced before December 23, 1985;

(B) an artificial lake, pond, or wetland created by excavating or diking nonwetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control;

(C) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(D) wetland on which the owner or operator of a farm or ranch uses normal cropping or ranching practices to produce an agricultural commodity in a manner that is consistent for the area where such production is possible as a result of a natural condition, such as drought, and is without action by the producer that destroys a natural wetland characteristic; or

(2) for the conversion of—

(A) an artificial lake, pond, or wetland created by excavating or diking nonwetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; or

(B) a wet area created by a water delivery system, irrigation, irrigation system, or the application of water for irrigation.

**(c) On-site inspection requirement**

No program loans, payments, or benefits shall be withheld from a person under this subchapter unless the Secretary has conducted an on-site visit of the subject land.

**(d) Prior loans**

Section 3821 of this title shall not apply to a loan described in section 3821 of this title made before December 23, 1985.

**(e) Nonwetlands**

The Secretary shall exempt from the ineligibility provisions of section 3821 of this title any action by a person upon lands in any case in which the Secretary determines that any one of the following does not apply with respect to such lands:

(1) Such lands have a predominance of hydric soils.

(2) Such lands are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(3) Such lands, under normal circumstances, support a prevalence of such vegetation.

**(f) Minimal effect; mitigation**

The Secretary shall exempt a person from the ineligibility provisions of section 3821 of this title for any action associated with the production of an agricultural commodity on a converted wetland, or the conversion of a wetland, if, as determined by the Secretary—

(1) such action, individually and in connection with all other similar actions authorized by the Secretary in the area, will have a minimal effect on the functional hydrological and biological value of the wetland, including the value to waterfowl and wildlife;

(2) such wetland has been frequently cropped prior to the date of such action and the wetland values, acreage, and functions are mitigated by the producer through the restoration of a converted wetland, the conversion of which occurred or was commenced prior to December 23, 1985, where such restoration is—

(A) in accordance with a restoration plan;

(B) in advance of, or concurrent with, such action;

(C) not at the expense of the Federal Government;

(D) on not greater than a one-for-one acreage basis unless more acreage is needed to provide equivalent functions and values that will be lost as a result of such wetland conversion to be mitigated;

(E) on lands in the same general area of the local watershed as the converted wetland; and

(F) with respect to such restored wetland, made subject to an easement to be recorded on public land records, and which shall remain in force for as long as the converted wetland for which the restoration is to mitigate remains in agricultural use or is not returned to its original wetland classification

with equivalent functions and values, and which easement prohibits making alterations to such restored wetland that lower the restored wetland's functions and values; or

(3) such wetland was converted subsequent to December 23, 1985, but prior to November 28, 1990, and the wetland values, acreage, and functions are mitigated by the producer through the restoration of a converted wetland, the conversion of which occurred or was commenced prior to December 23, 1985, if such restoration meets the requirements of subparagraphs (A), (B), (C), (D), (E), and (F) of paragraph (2).

**(g) Mitigation appeals**

A producer shall be afforded the right to appeal, under section 3843 of this title, the imposition of a mitigation agreement requiring greater than one-to-one acreage mitigation to which the producer is subject.

**(h) Good faith exemption; graduated sanctions**

**(1) Good faith exemption**

A person's ineligibility under section 3821 of this title for program loans, payments, and benefits as the result of the conversion of a wetland subsequent to November 28, 1990, or the production of an agricultural commodity on a converted wetland subsequent to December 23, 1985, may be reduced under paragraph (2) if—

(A) such person is actively restoring the wetland under an agreement entered into with the Secretary to fully restore the characteristics of the converted wetland to its prior wetland state, or such person has previously restored the characteristics of the converted wetland to its prior wetland state as determined by the Secretary; and

(B) the Secretary determines that—

(i) the person has not otherwise violated the provisions of section 3821 of this title in the previous 10-year period on a farm; and

(ii) such person converted a wetland, or produced an agricultural commodity on a converted wetland, in good faith and without the intent to violate the provisions of section 3821 of this title.

**(2) Graduated sanctions**

If the Secretary determines that a person who has violated the provisions of section 3821 of this title meets the requirements of paragraph (1), the Secretary shall, in lieu of applying the ineligibility provisions in section 3821 of this title, reduce by not less than \$750 nor more than \$10,000, depending on the seriousness of the violation, program benefits described in section 3821 of this title that such person would otherwise be eligible to receive in a crop year.

**(3) Relief**

The relief allowed by this subsection shall include the restoration of benefits withheld for violations that occurred prior to November 28, 1990.

**(i) Restoration**

Any person who is determined to be ineligible for program benefits under section 3821 of this

title for any crop year shall not be ineligible for such program benefits under such section for any subsequent crop year if, prior to the beginning of such subsequent crop year, the person has fully restored the characteristics of the converted wetland to its prior wetland state.

**(j) Determinations; restoration and mitigation plans; reporting; monitoring activities**

**(1) Determinations; plans**

Technical determinations and the development of restoration and mitigation plans under this section shall be made through the agreement of the local representative of the Soil Conservation Service and a representative of the Fish and Wildlife Service. If agreement cannot be reached at the local level under the preceding sentence, such determinations shall be referred to the State Conservationist, who in making a determination under this paragraph, shall consult with the Fish and Wildlife Service.

**(2) Report of determinations**

The State Conservationist and a representative of the Fish and Wildlife Service shall report to their respective national offices concerning all determinations made under paragraph (1) at the State level as a result of an agreement not being reached at the local level.

**(3) Monitoring activities**

The Secretary shall conduct such monitoring activities as are necessary to ensure the success and effectiveness of the wetland restorations undertaken pursuant to this section.

(Pub. L. 99-198, title XII, §1222, Dec. 23, 1985, 99 Stat. 1508; Pub. L. 101-624, title XIV, §1422, Nov. 28, 1990, 104 Stat. 3573.)

REFERENCES IN TEXT

November 28, 1990, referred to in subsec. (a)(2) before "that are not changed", was in the original "the enactment of this subsection", and was translated as meaning the date of enactment of Pub. L. 101-624, which generally amended this section, to reflect the probable intent of Congress.

November 28, 1990, referred to in subsecs. (f)(3) and (h)(3), was in the original "the date of enactment of this section", and was translated as meaning the date of enactment of Pub. L. 101-624, which generally amended this section, to reflect the probable intent of Congress.

AMENDMENTS

1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions relating to eligibility for program benefits in connection with production of crops on certain wetlands, making program ineligibility inapplicable to pre-Dec. 23, 1985, section 3821 loans, and providing for personal exemptions from program ineligibility for actions associated with production of commodities having minimal wetland effect.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3821, 3823 of this title.

**§ 3823. Consultation with Secretary of the Interior**

The Secretary shall consult with the Secretary of the Interior on such determinations

and actions as are necessary to carry out this subchapter, including—

- (1) the identification of wetland;
- (2) the determination of exemptions under section 3822 of this title;
- (3) the issuance of regulations under section 3844 of this title to carry out this subchapter;
- (4) mitigation; and
- (5) the restoration of wetland values and functions on converted wetland as required under this subchapter.

(Pub. L. 99-198, title XII, §1223, Dec. 23, 1985, 99 Stat. 1508; Pub. L. 101-624, title XIV, §1423, Nov. 28, 1990, 104 Stat. 3576; Pub. L. 102-237, title II, §204(4), Dec. 13, 1991, 105 Stat. 1855.)

#### AMENDMENTS

1991—Par. (3). Pub. L. 102-237 struck out “and” at end.  
1990—Pars. (4), (5). Pub. L. 101-624 added pars. (4) and (5).

### § 3824. Fairness of compliance

If the actions of an unrelated person or public entity, outside the control of, and without the prior approval of, the landowner or tenant result in a change in the characteristics of cropland that would cause the land to be determined to be a wetland, the affected land shall not be considered to be wetland for purposes of this subchapter.

(Pub. L. 99-198, title XII, §1224, as added Pub. L. 101-624, title XIV, §1424, Nov. 28, 1990, 104 Stat. 3576.)

#### SUBCHAPTER IV—AGRICULTURAL RESOURCES CONSERVATION PROGRAM

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3801, 3841, 3842, 3843, 3845, 3847 of this title; title 7 sections 1308, 1308-3, 1441-2, 1444-2, 1444f, 1445b-3a.

#### PART I—ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3843, 3845 of this title.

##### SUBPART A—GENERAL PROVISIONS

### § 3830. Environmental Conservation Acreage Reserve Program

#### (a) Establishment

During the 1991 through 1995 calendar years, the Secretary shall, in accordance with this part, establish an Environmental Conservation Acreage Reserve Program and implement such program through contracts and the acquisition of easements to assist owners and operators of highly erodible lands, other fragile lands (including land with associated ground or surface water that may be vulnerable to contamination), and wetlands in conserving and improving the soil and water resources of the farms or ranches of such owners and operators.

#### (b) Number of acres

In carrying out the Environmental Conservation Acreage Reserve Program, the Secretary shall enter into contracts with owners and oper-

ators and acquire interests in lands through easements from owners as provided for in subparts B and C.

#### (c) Implementation

The Secretary shall carry out the Environmental Conservation Acreage Reserve Program established under subsection (a) of this section through the conservation reserve program and the wetland reserve program established in subparts B and C, respectively. Acreage enrolled into the conservation reserve under subpart B prior to November 28, 1990, shall be considered to be land placed in the Environmental Conservation Acreage Reserve Program for the purposes of this part.

(Pub. L. 99-198, title XII, §1230, as added Pub. L. 101-624, title XIV, §1431(2), Nov. 28, 1990, 104 Stat. 3576; amended Pub. L. 103-66, title I, §1402(a), Aug. 10, 1993, 107 Stat. 332.)

#### AMENDMENTS

1993—Subsec. (b). Pub. L. 103-66 struck out before period at end “to place in the Environmental Conservation Acreage Reserve Program during the 1986 through 1995 calendar years a total of not less than 40,000,000 nor more than 45,000,000 acres”.

#### SUBPART B—CONSERVATION RESERVE

##### SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3812, 3830, 3837 of this title; title 7 sections 6932, 6962.

### § 3831. Conservation reserve

#### (a) In general

Through the 1995 calendar year, the Secretary shall formulate and carry out the enrollment of lands in a conservation reserve program through the use of contracts to assist owners and operators of lands specified in subsection (b) of this section to conserve and improve the soil and water resources of such lands.

#### (b) Eligible lands

The Secretary may include in the program established under this subpart—

- (1) highly erodible croplands that—

(A) if permitted to remain untreated could substantially reduce the production capability for future generations; or

(B) can not be farmed in accordance with a plan under section 3812 of this title;

(2) marginal pasture lands converted to wetland or established as wildlife habitat prior to November 28, 1990;

(3) marginal pasture lands to be devoted to trees in or near riparian areas or for similar water quality purposes, not to exceed 10 percent of the number of acres of land that is placed in the conservation reserve under this subpart in each of the 1991 through 1995 calendar years;

(4) croplands that are otherwise not eligible—

(A) if the Secretary determines that (i) such lands contribute to the degradation of water quality or would pose an on-site or off-site environmental threat to water quality if permitted to remain in agricultural production, and (ii) water quality objectives with

respect to such land cannot be achieved under the water quality incentives program established under part II of this subchapter;

(B) if such croplands are newly-created, permanent grass sod waterways, or are contour grass sod strips established and maintained as part of an approved conservation plan;

(C) that will be devoted to newly established living snow fences, permanent wildlife habitat, windbreaks, shelterbelts, or filterstrips devoted to trees or shrubs; or

(D) if the Secretary determines that such lands pose an off-farm environmental threat, or pose a threat of continued degradation of productivity due to soil salinity, if permitted to remain in production.

**(c) Certain land affected by secretarial action**

For purposes of determining the eligibility of land to be placed in the conservation reserve established under this subpart, land shall be considered planted to an agricultural commodity during a crop year if an action of the Secretary prevented land from being planted to the commodity during the crop year.

**(d) Maximum enrollment**

The Secretary shall enter into contracts under this section to place in the conservation reserve a total of 38,000,000 acres during the 1986 through 1995 calendar years. In enrolling such acres, the Secretary shall reserve 1 million acres for enrollment under this section in the 1995 calendar year.

**(e) Duration of contract**

**(1) In general**

For the purpose of carrying out this subpart, the Secretary shall enter into contracts of not less than 10, nor more than 15, years.

**(2) Certain lands**

In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under a contract entered into under this subpart after October 1, 1990, and land devoted to such uses under contracts modified under section 3835A of this title, the owner or operator of such land may, within the limitations prescribed under this section, specify the duration of the contract. The Secretary may, in the case of land that is devoted to hardwood trees under a contract entered into under this subpart prior to October 1, 1990, extend such contract for not to exceed 5 years, as agreed to by the owner or operator of such land and the Secretary.

**(f) Conservation priority areas**

**(1) Designation**

Upon application by the appropriate State agency, the Secretary shall designate watershed areas of the Chesapeake Bay Region (Pennsylvania, Maryland, and Virginia), the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity as conservation priority areas.

**(2) Eligible watersheds**

Watersheds eligible for designation under this subsection shall include areas with actual

and significant adverse water quality or habitat impacts related to agricultural production activities.

**(3) Expiration**

Conservation priority area designation under this subsection shall expire after 5 years, subject to redesignation, except that the Secretary may withdraw a watershed's designation—

(A) upon application by the appropriate State agency; or

(B) in the case of areas specified in this subsection, if the Secretary finds that such areas no longer contain actual and significant adverse water quality or habitat impacts related to agricultural production activities.

**(4) Duty of Secretary**

In utilizing the authority granted under this subsection, the Secretary shall attempt to maximize water quality and habitat benefits in such watersheds by promoting a significant level of enrollment of lands within such watersheds in the program under this subpart by whatever means the Secretary determines appropriate and consistent with the purposes of this subpart.

**(g) Multi-year grasses and legumes**

For purposes of this subpart, alfalfa and other multi-year grasses and legumes in a rotation practice, approved by the Secretary, shall be considered agricultural commodities.

(Pub. L. 99-198, title XII, §1231, Dec. 23, 1985, 99 Stat. 1509; Pub. L. 99-500, §101(a) [title VI, §643], Oct. 18, 1986, 100 Stat. 1783, 1783-36, and Pub. L. 99-591, §101(a) [title VI, §643], Oct. 30, 1986, 100 Stat. 3341, 3341-36; Pub. L. 99-641, title II, §205, Nov. 10, 1986, 100 Stat. 3563; Pub. L. 101-624, title XIV, §§1432(2), 1447(a), Nov. 28, 1990, 104 Stat. 3577, 3605; Pub. L. 102-324, §1(a), July 22, 1992, 106 Stat. 447; Pub. L. 103-66, title I, §1402(b), Aug. 10, 1993, 107 Stat. 332.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1993—Subsec. (d). Pub. L. 103-66 in first sentence substituted “shall” for “may” after “The Secretary” and “a total of 38,000,000 acres during the 1986 through 1995 calendar years” for “the amount of acres specified in section 3830(b) of this title” and in second sentence substituted “the 1995 calendar year” for “each of calendar years 1994 and 1995”.

1992—Subsec. (b)(4)(C). Pub. L. 102-324 struck out “, and made subject to an easement for the useful life of,” after “will be devoted to”.

1990—Pub. L. 101-624, §1432(2), amended section generally, adding subsecs. (b), (c), (d), (e)(2), and (f), amending subsec. (a) by extending applicability of provisions from 1990 through 1995 and substituting reference to lands specified in subsec. (b) for reference to highly erodible cropland, redesignating subsec. (e) as subsec. (e)(1), and redesignating subsec. (f) as (g).

Pub. L. 101-624, §1447(a), substituted “this subpart” for “this subchapter” wherever appearing in this section as it existed prior to enactment of Pub. L. 101-624.

1986—Subsec. (f). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-641 made substantially identical amendments adding subsec. (f).

STUDY OF LAND USE FOR EXPIRING CONTRACTS AND EXTENSION OF AUTHORITY

Section 1437 of Pub. L. 101-624 provided that:

“(a) IN GENERAL.—The Secretary of Agriculture shall conduct a study of cropland subject to expiring conservation reserve contracts entered into prior to the date of enactment of this Act [Nov. 28, 1990] under subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.). Such study shall include the consideration of—

“(1) the environmental benefits of such lands that remain out of crop production as compared to the economic benefits that would result from returning such lands to production under adequate stewardship and management;

“(2) the renewal of the contracts in a manner that allows for certain sustainable economic uses of cropland in return for lower rental payments;

“(3) the purchase of permanent easements permitting specified economic uses of cropland subject to the contracts;

“(4) the purchase of the cropland subject to the contracts;

“(5) the preservation of crop acreage bases associated with cropland subject to the contracts if the owner or operator continues to devote the cropland to conserving uses;

“(6) the purchase of crop acreage bases associated with cropland subject to the contracts; and

“(7) the expiration of the contracts.

“(b) REPORT.—Not later than December 31, 1993, the Secretary of Agriculture shall prepare and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report concerning the results of the study conducted under subsection (a) and recommendations concerning the treatment of lands subject to expiring contracts under subtitle D of title XII of the Food Security Act of 1985 [16 U.S.C. 3831 et seq.], proposed legislation addressing the treatment of such lands, and the projected cost of such treatment.

“(c) EXTENSIONS.—During the 1996 through 2000 calendar years, the Secretary of Agriculture may—

“(1) extend up to 10 years contracts entered into under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831) [16 U.S.C. 3831 et seq.] prior to the date of enactment of this Act [Nov. 28, 1990]; or

“(2) purchase long-term or permanent easements as provided for in chapter 3 [16 U.S.C. 3839 et seq.]; at the option of the owner or operator on land that the Secretary has determined under the study conducted under subsection (a) should remain in conserving uses.”

#### EXISTING CONSERVATION PROGRAMS

Pub. L. 99-263, Mar. 24, 1986, 100 Stat. 59, provided: “That the conservation reserve program shall not replace or reduce any existing conservation program.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3811, 3821, 3837, 3839 of this title.

### § 3832. Duties of owners and operators

#### (a) Terms of contract

Under the terms of a contract entered into under this subpart, during the term of such contract, an owner or operator of a farm or ranch must agree—

(1) to implement a plan approved by the local conservation district (or in an area not located within a conservation district, a plan approved by the Secretary) for converting eligible lands normally devoted to the production of an agricultural commodity on the farm or ranch to a less intensive use (as defined by the Secretary), such as pasture, permanent grass, legumes, forbs, shrubs, or trees, substantially in accordance with a schedule outlined in the plan;

(2) to place highly erodible cropland subject to the contract in the conservation reserve established under this subpart;

(3) not to use such land for agricultural purposes, except as permitted by the Secretary;

(4) to establish approved vegetative cover, or water cover for the enhancement of wildlife, on such land, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes;

(5) in addition to the remedies provided under section 3836(d) of this title, on the violation of a term or condition of the contract at any time the owner or operator has control of such land—

(A) to forfeit all rights to receive rental payments and cost sharing payments under the contract and to refund to the Secretary any rental payments and cost sharing payments received by the owner or operator under the contract, together with interest thereon as determined by the Secretary, if the Secretary, after considering the recommendations of the soil conservation district and the Soil Conservation Service, determines that such violation is of such nature as to warrant termination of the contract; or

(B) to refund to the Secretary, or accept adjustments to, the rental payments and cost sharing payments provided to the owner or operator, as the Secretary considers appropriate, if the Secretary determines that such violation does not warrant termination of the contract;

(6) on the transfer of the right and interest of the owner or operator in land subject to the contract—

(A) to forfeit all rights to rental payments and cost sharing payments under the contract; and

(B) to refund to the United States all rental payments and cost sharing payments received by the owner or operator, or accept such payment adjustments or make such refunds as the Secretary considers appropriate and consistent with the objectives of this subpart;

unless the transferee of such land agrees with the Secretary to assume all obligations of the contract, or the transferee and the Secretary agree to modifications to such contract, where such modifications are consistent with the objectives of the program as determined by the Secretary; *Provided however*, no refund of rental payments and cost sharing payments shall be required when the land is purchased by or for the United States Fish and Wildlife Service;

(7) not to conduct any harvesting or grazing, nor otherwise make commercial use of the forage, on land that is subject to the contract, nor adopt any similar practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract, except that the Secretary may permit harvesting or grazing or other commercial use of the forage on land that is subject to the contract in response to a drought or other

similar emergency, and the Secretary may permit limited grazing on such land where such grazing is incidental to the gleaning of crop residues on the fields in which such land is located and occurs during the 7-month period in which grazing of conserving use acreage is allowed in a State under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) or after the producer harvests the grain crop of the surrounding field for a reduction in rental payment commensurate with the limited economic value of such incidental grazing;

(8) not to conduct any planting of trees on land that is subject to the contract unless the contract specifies that the harvesting and commercial sale of trees such as Christmas trees are prohibited, nor otherwise make commercial use of trees on land that is subject to the contract unless it is expressly permitted in the contract, nor adopt any similar practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract, except that no contract shall prohibit activities consistent with customary forestry practice, such as pruning, thinning, or stand improvement of trees, on lands converted to forestry use;

(9) not to adopt any practice specified by the Secretary in the contract as a practice that would tend to defeat the purposes of this subpart; and

(10) to comply with such additional provisions as the Secretary determines are desirable and are included in the contract to carry out this subpart or to facilitate the practical administration thereof; and

(11) with respect to any contract entered into after November 28, 1990, concerning highly erodible land in a county that has not reached the limitation established by section 3843(f) of this title—

(A) not to produce an agricultural commodity for the duration of the contract on any other highly erodible land that such owner or operator has purchased after November 28, 1990, and that does not have a history of being used to produce an agricultural commodity other than forage crops; and

(B) on the violation of a contract described in subparagraph (A), to be subject to the sanctions described in paragraph (5).

#### (b) Conversion plan provisions

The plan referred to in subsection (a)(1) of this section—

(1) shall set forth—

(A) the conservation measures and practices to be carried out by the owner or operator during the term of the contract; and

(B) the commercial use, if any, to be permitted on the land during such term; and

(2) may provide for the permanent retirement of any existing cropland base and allotment history for the land.

#### (c) Environmental use

To the extent practicable, not less than one-eighth of land that is placed in the conservation reserve under this subpart during the 1991 through 1995 calendar years shall be devoted to trees, or devoted to shrubs or other noncrop

vegetation or water that may provide a permanent habitat for wildlife including migratory waterfowl.

#### (d) Alley cropping

(1) The Secretary may permit alley cropping of agricultural commodities on land that is subject to contracts entered into under this subpart, if—

(A) such land is planted to hardwood trees;

(B) such agricultural commodities will be produced in conjunction with, and in close proximity to, such hardwood trees; and

(C) the owner or operator of such land agrees to implement appropriate conservation practices concerning such land.

(2) The Secretary shall develop a bid system by which owners and operators may offer to reduce their annual rental payments in exchange for permission to produce agricultural commodities on such land in accordance with this subsection. The Secretary shall not accept offers under this paragraph that provide for less than a 50 percent reduction in such annual payments.

(3) The Secretary shall ensure that the total annual rental payments over the term of any contract modified under this subsection are not in excess of that specified in the original contract.

(4) For the purposes of this subsection, the term “alley cropping” means the practice of planting rows of trees bordered on each side by a narrow strip of groundcover, alternated with wider strips of row crops or grain.

#### (e) Foreclosure

Notwithstanding any other provision of law, an owner or operator who is a party to a contract entered into under this subpart may not be required to make repayments to the Secretary of amounts received under such contract if the land that is subject to such contract has been foreclosed upon and the Secretary determines that forgiving such repayments is appropriate in order to provide fair and equitable treatment. This subsection shall not void the responsibilities of such an owner or operator under the contract if such owner or operator resumes control over the property that is subject to the contract within the period specified in the contract. Upon the resumption of such control over the property by the owner or operator, the provisions of the contract in effect on the date of the foreclosure shall apply.

(Pub. L. 99-198, title XII, §1232, Dec. 23, 1985, 99 Stat. 1509; Pub. L. 101-512, title I, Nov. 5, 1990, 104 Stat. 1919; Pub. L. 101-624, title XIV, §§1433, 1447(a), Nov. 28, 1990, 104 Stat. 3579, 3605; Pub. L. 102-237, title II, §204(5), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 102-552, title V, §516(a), Oct. 28, 1992, 106 Stat. 4136.)

#### REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in subsec. (a)(7), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

#### CODIFICATION

Pub. L. 101-512 and Pub. L. 101-624 were approved by the President after Congress adjourned and in reverse

order of passage by Congress. Accordingly, the amendments made by Pub. L. 101-624 were executed to text prior to the amendment made by Pub. L. 101-512 to reflect the probable intent of Congress.

#### AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102-552 made technical correction to directory language of Pub. L. 101-512. See 1991 Amendment note below.

1991—Subsec. (a)(6). Pub. L. 102-237, §204(5)(A), struck out extra semicolon after “determined by the Secretary;”.

Subsec. (a)(7). Pub. L. 102-237, §204(5)(B), struck out “fall and winter” after “Secretary may permit limited” and substituted “and occurs during the 7-month period in which grazing of conserving use acreage is allowed in a State under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) or after the producer harvests the grain crop of the surrounding field for a reduction in rental payment commensurate with the limited economic value of such incidental grazing” for “for an applicable reduction in rental payment”.

1990—Subsec. (a). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter wherever appearing.

Subsec. (a)(1). Pub. L. 101-624, §1433(a)(1), substituted “eligible lands” for “highly erodible cropland”.

Subsec. (a)(4). Pub. L. 101-624, §1433(a)(2), inserted “, or water cover for the enhancement of wildlife,” after “cover” and “, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes” after “land”.

Subsec. (a)(5). Pub. L. 101-624, §1433(a)(3), inserted reference to remedies under section 3836(d) of this title.

Subsec. (a)(6). Pub. L. 101-624, §1433(a)(4), inserted before semicolon at end “, or the transferee and the Secretary agree to modifications to such contract, where such modifications are consistent with the objectives of the program as determined by the Secretary;”. See Codification note above.

Pub. L. 101-512, as amended by Pub. L. 102-552, inserted at end “*Provided however*, no refund of rental payments and cost sharing payments shall be required when the land is purchased by or for the United States Fish and Wildlife Service;”. See Codification note above.

Subsec. (a)(7). Pub. L. 101-624, §1433(a)(5), inserted before semicolon at end “, and the Secretary may permit limited fall and winter grazing on such land where such grazing is incidental to the gleaning of crop residues on the fields in which such land is located for an applicable reduction in rental payment”.

Subsec. (a)(11). Pub. L. 101-624, §1433(a)(6)–(8), added par. (11).

Subsec. (c). Pub. L. 101-624, §1433(b), added subsec. (c) and struck out former subsec. (c) which read as follows: “To the extent practicable, not less than one eighth of the number of acres of land that is placed in the conservation reserve under this subpart in each of the 1986 through 1990 crop years shall be devoted to trees.”

Pub. L. 101-624, §1447(a), substituted “this subpart” for “this subchapter” in subsec. (c) as it existed prior to enactment of Pub. L. 101-624.

Subsecs. (d), (e). Pub. L. 101-624, §1433(b), added subsecs. (d) and (e).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3833 of this title.

### § 3833. Duties of Secretary

In return for a contract entered into by an owner or operator under section 3832 of this title, the Secretary shall—

(1) share the cost of carrying out the conservation measures and practices set forth in the contract for which the Secretary determines that cost sharing is appropriate and in the public interest;

(2) for a period of years not in excess of the term of the contract, pay an annual rental payment in an amount necessary to compensate for—

(A) the conversion of highly erodible cropland normally devoted to the production of an agricultural commodity on a farm or ranch to a less intensive use; and

(B) the retirement of any cropland base and allotment history that the owner or operator agrees to retire permanently; and

(3) provide conservation technical assistance to assist the owner or operator in carrying out the contract.

(Pub. L. 99-198, title XII, §1233, Dec. 23, 1985, 99 Stat. 1511.)

### § 3834. Payments

#### (a) Time of cost-sharing and annual rental payments

The Secretary shall provide payment for obligations incurred by the Secretary under a contract entered into under this subpart—

(1) with respect to any cost-sharing payment obligation incurred by the Secretary, as soon as possible after the obligation is incurred; and

(2) with respect to any annual rental payment obligation incurred by the Secretary—

(A) as soon as practicable after October 1 of each calendar year; or

(B) at the discretion of the Secretary, at any time prior to such date during the year that the obligation is incurred.

#### (b) Federal percentage of cost sharing payments

(1) In making cost sharing payments to an owner or operator under a contract entered into under this subpart, the Secretary shall pay 50 percent of the cost of establishing water quality and conservation measures and practices required under such contracts for which the Secretary determines that cost-sharing is appropriate and in the public interest.

(2) The Secretary shall not make any payment under this subpart to the extent that the total amount of cost sharing payments provided to such owners and operators from all sources would exceed 100 percent of the total establishment costs.

(3) In the case of land devoted to the production of hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract entered into under this subpart after November 28, 1990, or in the case of land converted to such production under section 3835a of this title, the Secretary, in making cost share payments to an owner or operator of such land, shall pay 50 percent of the reasonable and necessary costs, as determined by the Secretary, incurred by such owner or operator for maintaining such plantings that are trees or shrubs, including the cost of replanting (if the trees or shrubs were lost due to conditions beyond the control of the owner or operator), during not less than the 2-year, and not more than the 4-year, period beginning on the date of such plantings, as determined appropriate by the Secretary.

(4) The Secretary may permit owners or operators who contract to devote at least 10 acres of

land to the production of hardwood trees under this subpart to extend the planting of such trees over a 3-year period if at least one-third of such trees are planted in each of the first 2 years.

(5) An owner or operator shall not be eligible to receive or retain cost share assistance under this subsection if such owner or operator receives any other Federal cost share assistance with respect to such land under any other provision of law.

**(c) Annual rental payments; encouragement factor; method of determination; acceptance of contract offers**

(1) In determining the amount of annual rental payments to be paid to owners and operators for converting highly erodible cropland normally devoted to the production of an agricultural commodity to less intensive use, the Secretary may consider, among other things, the amount necessary to encourage owners or operators of highly erodible cropland to participate in the program established by this subpart.

(2) The amounts payable to owners or operators in the form of rental payments under contracts entered into under this subpart may be determined through—

(A) the submission of bids for such contracts by owners and operators in such manner as the Secretary may prescribe; or

(B) such other means as the Secretary determines are appropriate.

(3) In determining the acceptability of contract offers, the Secretary may—

(A) take into consideration the extent to which enrollment of the land that is the subject of the contract offer would improve soil resources, water quality, wildlife habitat, or provide other environmental benefits; and

(B) establish different criteria in various States and regions of the United States based upon the extent to which water quality or wildlife habitat may be improved or erosion may be abated.

(4) In the case of acreage enrolled in the conservation reserve established under this subpart that is to be devoted to hardwood trees, the Secretary may consider bids for contracts under this subsection on a continuous basis.

**(d) Cash or in-kind payments**

(1) Except as otherwise provided in this section, payments under this subpart—

(A) shall be made in cash or in commodities in such amount and on such time schedule as is agreed on and specified in the contract; and

(B) may be made in advance of determination of performance.

(2) If such payment is made with in-kind commodities, such payment shall be made by the Commodity Credit Corporation—

(A) by delivery of the commodity involved to the owner or operator at a warehouse or other similar facility located in the county in which the highly erodible cropland is located or at such other location as is agreed to by the Secretary and the owner or operator;

(B) by the transfer of negotiable warehouse receipts; or

(C) by such other method, including the sale of the commodity in commercial markets, as

is determined by the Secretary to be appropriate to enable the owner or operator to receive efficient and expeditious possession of the commodity.

(3) If stocks of a commodity acquired by the Commodity Credit Corporation are not readily available to make full payment in kind to the owner or operator, the Secretary may substitute full or partial payment in cash for payment in kind.

(4) Payments to a producer under a special conservation reserve enhancement program described in subsection (f)(4) of this section shall be in the form of cash only.

**(e) Regulations: payments upon death, disability, or succession**

If an owner or operator who is entitled to a payment under a contract entered into under this subpart dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person who renders or completes the required performance, the Secretary shall make such payment, in accordance with regulations prescribed by the Secretary and without regard to any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all of the circumstances.

**(f) Rental payments fiscal year limitation; regulations; receipt of other payments unaffected; application of limit to payments received by a State, political subdivision, or agency**

(1) The total amount of rental payments, including rental payments made in the form of in-kind commodities, made to an owner or operator under this subpart for any fiscal year may not exceed \$50,000.

(2)(A) The Secretary shall issue regulations—

(i) defining the term “person” as used in this subsection; and

(ii) prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation contained in this subsection.

(B) The regulations issued by the Secretary on December 18, 1970, under section 1307 of this title, shall be used to determine whether corporations and their stockholders may be considered as separate persons under this subsection.

(3) Rental payments received by an owner or operator shall be in addition to, and not affect, the total amount of payments that such owner or operator is otherwise eligible to receive under this Act, the Food, Agriculture, Conservation, and Trade Act of 1990, or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

(4) The provisions of this subsection that limit payments to any person, and section 1305(d) of the Agricultural Reconciliation Act of 1987, shall not be applicable to payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by that entity that has been approved by the Secretary. The Secretary may enter into such agreements for payments to States, political subdivisions, or agencies thereof that the Secretary determines will advance the purposes of this subpart.

**(g) Contracts unaffected by certain Presidential orders**

Notwithstanding any other provision of law, no order issued for any fiscal year under section 902 of title 2 shall affect any payment under any contract entered into at any time that is subject to this subpart, including contracts entered into prior to November 28, 1990.

**(h) Cost share assistance**

In addition to any payment under this subpart, an owner or operator may receive cost share assistance, rental payments, or tax benefits from a State or subdivision thereof for enrolling lands in the conservation reserve program.

(Pub. L. 99-198, title XII, §1234, Dec. 23, 1985, 99 Stat. 1511; Pub. L. 100-387, title III, §322, Aug. 11, 1988, 102 Stat. 950; Pub. L. 101-624, title XIV, §§1434, 1447(a), Nov. 28, 1990, 104 Stat. 3581, 3605.)

## REFERENCES IN TEXT

November 28, 1990, referred to in subsec. (b)(3), was in the original "the date of enactment of this section", and was translated as meaning the date of enactment of Pub. L. 101-624, which generally amended subsec. (b) of this section, to reflect the probable intent of Congress.

This Act, referred to in subsec. (f)(3), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (f)(3), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 1949, referred to in subsec. (f)(3), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

Section 1305(d) of the Agricultural Reconciliation Act of 1987, referred to in subsec. (f)(4), is section 1305(d) of Pub. L. 100-203, which is set out as a note under section 1308 of Title 7.

## AMENDMENTS

1990—Subsec. (a). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter.

Subsec. (b). Pub. L. 101-624, §1434(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In making cost sharing payments to owners and operators under contracts entered into under this subpart, the Secretary shall pay 50 percent of the cost of establishing conservation measures and practices set forth in such contracts for which the Secretary determines that cost-sharing is appropriate and in the public interest."

Pub. L. 101-624, §1447(a), substituted "this subpart" for "this subchapter" in subsec. (b) as it existed prior to the enactment of Pub. L. 101-624.

Subsec. (c)(1), (2). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter.

Subsec. (c)(3). Pub. L. 101-624, §1434(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "In determining the acceptability of contract offers, the Secretary may—

"(A) take into consideration the extent of erosion on the land that is the subject of the contract and the productivity of the acreage diverted;

"(B) where appropriate, accept contract offers that provide for the establishment of—

"(i) shelterbelts and windbreaks; or

"(ii) permanently vegetated stream borders, filter strips of permanent grass, forbs, shrubs, and trees that will reduce sedimentation substantially;

"(C) establish different criteria in various States and regions of the United States to determine the extent to which erosion may be abated; and

"(D) give priority to offers made by owners and operators who are subject to the highest degree of economic stress, such as a general tightening of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities."

Subsec. (c)(4). Pub. L. 101-624, §1434(b)(2), added par. (4).  
Subsec. (d)(1). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter.

Subsec. (d)(4). Pub. L. 101-624, §1434(c), added par. (4).

Subsec. (e). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter.

Subsec. (f). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter wherever appearing.

Subsec. (f)(3). Pub. L. 101-624, §1434(d), inserted reference to Food, Agriculture, Conservation, and Trade Act of 1990.

Subsecs. (g), (h). Pub. L. 101-624, §1434(e), added subsecs. (g) and (h).

1988—Subsec. (f)(4). Pub. L. 100-387 added par. (4).

## EFFECTIVE DATE OF 1988 AMENDMENT

Section 322 of Pub. L. 100-387 provided that the amendment made by that section is effective beginning with the 1988 crop year.

## CONSERVATION RESEARCH APPLICATION

For provisions directing that enumerated provisions of the Food Security Act of 1985 shall apply to the conservation reserve program under this subchapter with respect to rental payments to persons under contracts entered into after Dec. 22, 1987, with certain exceptions, see section 1305(d) of Pub. L. 100-203, set out as a note under section 1308 of Title 7, Agriculture.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3801, 3847 of this title.

**§ 3835. Contracts****(a) Ownership or operation requirement**

(1) No contract shall be entered into under this subpart concerning land with respect to which the ownership has changed in the 3-year period preceding the first year of the contract period unless—

(A) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(B) the new ownership was acquired before January 1, 1985;

(C) the Secretary determines that the land was acquired under circumstances that give adequate assurance that such land was not acquired for the purpose of placing it in the program established by this subpart; or

(D) the ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law.

(2) Paragraph (1) shall not—

(A) prohibit the continuation of an agreement by a new owner after an agreement has been entered into under this subpart; or

(B) require a person to own the land as a condition of eligibility for entering into the contract if the person—

- (i) has operated the land to be covered by a contract under this section for at least 3 years preceding the date of the contract or since January 1, 1985, whichever is later; and
- (ii) controls the land for the contract period.

**(b) Sales or transfers; options**

If during the term of a contract entered into under this subpart an owner or operator of land subject to such contract sells or otherwise transfers the ownership or right of occupancy of such land, the new owner or operator of such land may—

- (1) continue such contract under the same terms or conditions;
- (2) enter into a new contract in accordance with this subpart; or
- (3) elect not to participate in the program established by this subpart.

**(c) Modification; waiver**

(1) The Secretary may modify a contract entered into with an owner or operator under this subpart if—

- (A) the owner or operator agrees to such modification; and
- (B) the Secretary determines that such modification is desirable—
  - (i) to carry out this subpart;
  - (ii) to facilitate the practical administration of this subpart; or
  - (iii) to achieve such other goals as the Secretary determines are appropriate, consistent with this subpart.

(2) The Secretary may modify or waive a term or condition of a contract entered into under this subpart in order to permit all or part of the land subject to such contract to be devoted to the production of an agricultural commodity during a crop year, subject to such conditions as the Secretary determines are appropriate.

**(d) Termination; notice to Congressional Committees**

(1) The Secretary may terminate a contract entered into with an owner or operator under this subpart if—

- (A) the owner or operator agrees to such termination; and
- (B) the Secretary determines that such termination would be in the public interest.

(2) At least 90 days before taking any action to terminate under paragraph (1) all conservation reserve contracts entered into under this subpart, the Secretary shall provide written notice of such action to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 99-198, title XII, §1235, Dec. 23, 1985, 99 Stat. 1513; Pub. L. 100-233, title VIII, §801, Jan. 6, 1988, 101 Stat. 1710; Pub. L. 101-624, title XIV, §1447(a), Nov. 28, 1990, 104 Stat. 3605.)

AMENDMENTS

1990—Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter wherever appearing.

1988—Subsec. (a)(1)(D). Pub. L. 100-233 added subpar. (D).

CONSERVATION RESERVE

Pub. L. 100-45, §10, May 27, 1987, 101 Stat. 323, provided that: "Section 1235(a) of the Food Security Act of 1985 [16 U.S.C. 3835(a)] should be reviewed by the Secretary of Agriculture to ensure that the provisions thereof relating to exceptions to the three-year ownership requirement with respect to eligibility for the conservation reserve are being implemented in a manner to encourage inclusion of producer-owned land in the conservation reserve. However, any such exception to the three-year requirement should be made only if the Secretary determines that the land involved (1) was not acquired for the purpose of placing the land in the conservation reserve or (2) otherwise meets the criteria for exceptions made under section 1235(a)."

**§ 3835a. Conversion of land subject to contract to other conserving uses**

**(a) Conversion to trees**

**(1) In general**

The Secretary shall permit an owner or operator who has entered into a contract under this subpart that is in effect on November 28, 1990, to convert areas of highly erodible cropland that are subject to such contract, and that are devoted to vegetative cover, from such use to hardwood trees, windbreaks, shelterbelts, or wildlife corridors.

**(2) Terms**

**(A) Extension of contract**

With respect to a contract that is modified under this section that provides for the planting of hardwood trees, windbreaks, shelterbelts, or wildlife corridors, if the original term of the contract was less than 15 years, the owner or operator may extend the contract to a term of not to exceed 15 years.

**(B) Cost share assistance**

The Secretary shall pay 50 percent of the cost of establishing conservation measures and practices authorized under this subsection for which the Secretary determines the cost sharing is appropriate and in the public interest.

**(b) Conversion to wetlands**

The Secretary shall permit an owner or operator who has entered into a contract under this subpart that is in effect on November 28, 1990, to restore areas of highly erodible cropland that are devoted to vegetative cover under such contract to wetlands if—

- (1) such areas are prior converted wetlands;
- (2) the owner or operator of such areas enters into an agreement to provide the Secretary with a long-term or permanent easement under subpart C covering such areas;
- (3) there is a high probability that the prior converted area can be successfully restored to wetland status; and
- (4) the restoration of such areas otherwise meets the requirements of subpart C.

**(c) Limitation**

The Secretary shall not incur, through a conversion under this section, any additional expense on such acres, including the expense in-

volved in the original establishment of the vegetative cover, that would result in cost share for costs in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

**(d) Condition of contract**

An owner or operator shall as a condition of entering into a contract under subsection (a) of this section participate in the Forest Stewardship Program established under section 2103a of this title.

(Pub. L. 99-198, title XII, §1235A, as added Pub. L. 101-624, title XIV, §1435, Nov. 28, 1990, 104 Stat. 3582; amended Pub. L. 102-324, §1(b), July 22, 1992, 106 Stat. 447.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-324 added subpar. (A), redesignated subpar. (C) as (B), and struck out former subpars. (A) and (B). Prior to amendment, subpars. (A) and (B) read as follows:

“(A) EXTENSION OF CONTRACT.—With respect to any contract on land to be devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under this section, if the original term of such contract was less than 15 years, the owner or operator may extend such contract to a term of not to exceed 15 years.

“(B) EASEMENTS.—If such areas are converted to windbreaks, shelterbelts, or wildlife corridors under this section, the owner of such land shall enter into an agreement to provide a conservation easement to the Secretary for the useful life of such plantings.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3831, 3834 of this title.

**§ 3836. Base history**

**(a) Reductions**

A reduction, based on a ratio between the total cropland acreage on the farm and the acreage placed in the conservation reserve authorized by this subpart, as determined by the Secretary, shall be made during the period of the contract, in the aggregate, in crop bases, quotas, and allotments on the farm with respect to crops for which there is a production adjustment program.

**(b) Basis for participation in other Federal programs**

Notwithstanding sections 3811 and 3821 of this title, the Secretary, by appropriate regulation, may provide for preservation of cropland base and allotment history applicable to acreage converted from the production of agricultural commodities under this section, for the purpose of any Federal program under which the history is used as a basis for participation in the program or for an allotment or other limitation in the program, unless the owner and operator agree under the contract to retire permanently that cropland base and allotment history.

**(c) Extension of preservation of cropland base and allotment history**

The Secretary shall offer the owner or operator of a farm or ranch an opportunity to extend the preservation of cropland base and allotment history pursuant to subsection (b) of this section for such time as the Secretary determines to be appropriate after the expiration date of a con-

tract under this subpart at the request of such owner or operator. In return for such extension, the owner or operator shall agree to continue to abide by the terms and conditions of the original contract, except that—

(1) such owner or operator shall receive no additional cost share, annual rental, or bonus payment; and

(2) the Secretary may permit, subject to such terms and conditions as the Secretary may impose, haying and grazing of acreage subject to such agreement, except during any consecutive 5 month period that is established by the State committee. Each 5 month period shall be established during the period beginning April 1 and ending October 31 of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on such acreage.

**(d) Additional remedy for violations**

In addition to any other remedy prescribed by law, the Secretary may reduce or terminate the amount of cropland base and allotment history preserved pursuant to subsection (c) of this section for acreage with respect to which a violation of a term or condition occurs.

(Pub. L. 99-198, title XII, §1236, Dec. 23, 1985, 99 Stat. 1514; Pub. L. 101-624, title XIV, §§1436, 1447(a), Nov. 28, 1990, 104 Stat. 3583, 3605.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-624, §1447(a), substituted reference to this subpart for reference to this subchapter.

Subsecs. (c), (d). Pub. L. 101-624, §1436, added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3832 of this title.

SUBPART C—WETLANDS RESERVE PROGRAM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3830, 3835a of this title; title 7 section 6962.

**§ 3837. Wetlands reserve program**

**(a) Establishment**

The Secretary shall establish a wetlands reserve program to assist owners of eligible lands in restoring and protecting wetlands.

**(b) Minimum enrollment**

The Secretary shall enroll into the wetlands reserve program—

(1) a total of not less than 330,000 acres by the end of the 1995 calendar year; and

(2) a total of not less than 975,000 acres during the 1991 through 2000 calendar years.

**(c) Eligibility**

For purposes of enrolling land in the wetland reserve established under this subpart during the 1991 through 2000 calendar years, land shall be eligible to be placed into such reserve if the Secretary, in consultation with the Secretary of the Interior at the local level, determines that—

(1) such land is farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on such wetlands, except that converted wetlands where the con-

version was not commenced prior to December 23, 1985, shall not be eligible to be enrolled in the program under this section; and

(2) the likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program taking into consideration the cost of such restoration.

**(d) Other eligible land**

The Secretary may include in the wetland reserve established under this subpart, together with land that is eligible under subsection (c) of this section—

(1) farmed wetland and adjoining lands, enrolled in the conservation reserve, with the highest wetland functions and values, and that are likely to return to production after they leave the conservation reserve;

(2) other wetland of an owner that would not otherwise be eligible if the Secretary determines that the inclusion of such wetland in such easement would significantly add to the functional value of the easement; and

(3) riparian areas that link wetlands that are protected by easements or some other device or circumstance that achieves the same purpose as an easement.

**(e) Ineligible land**

The Secretary may not acquire easements on—

(1) land that contains timber stands established under the conservation reserve under subpart B; or

(2) pasture land established to trees under the conservation reserve under subpart B.

**(f) Termination of existing contract**

The Secretary may terminate or modify an existing contract entered into under section 3831(a) of this title if eligible land that is subject to such contract is transferred into the program established by this subpart.

**(g) Easements**

The Secretary shall enroll lands in the wetland reserve through the purchase of easements as provided for in section 3837a of this title.

(Pub. L. 99-198, title XII, §1237, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3584; amended Pub. L. 102-237, title II, §204(6), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 103-66, title I, §1402(c), Aug. 10, 1993, 107 Stat. 333.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-66, §1402(c)(1), added subsec. (b) and struck out former subsec. (b) “NUMBER OF ACRES” which read as follows: “To the extent practicable, the Secretary shall attempt to enroll into the wetlands reserve program, 1,000,000 acres of land during the 1991 through 1995 calendar years; except that the Secretary may not enroll more than 200,000 acres in 1991, 400,000 acres in the 1991 to 1992 period, 600,000 acres in the 1991 to 1993 period, 800,000 acres in the 1991 to 1994 period, and 1,000,000 acres in the 1991 to 1995 period.”

Subsec. (c). Pub. L. 103-66, §1402(c)(2), substituted “2000” for “1995”.

1991—Subsec. (d). Pub. L. 102-237 substituted “subsection (c)” for “subsection (d)” in introductory provisions.

**§ 3837a. Easements**

**(a) In general**

To be eligible to place land into the wetland reserve under this subpart, the owner of such

land shall enter into an agreement with the Secretary—

(1) to grant an easement on such land to the Secretary;

(2) to implement a wetland easement conservation plan as provided for in this section;

(3) to create and record an appropriate deed restriction in accordance with applicable State law to reflect the easement agreed to under this subpart with respect to such lands; and

(4) to provide a written statement of consent to such easement signed by those holding a security interest in the land.

**(b) Terms of easement**

An owner granting an easement under subsection (a) of this section shall be required to provide for the restoration and protection of the functional values of wetland pursuant to a wetland easement conservation plan that—

(1) permits—

(A) repairs, improvements, and inspections on such land that are necessary to maintain existing public drainage systems if such land is subsequently restored to the condition required by the terms of the easement; and

(B) landowners to control public access on the easement areas while identifying access routes to be used for wetland restoration activities and management and easement monitoring;

(2) prohibits—

(A) the alteration of wildlife habitat and other natural features of such land, unless specifically permitted by the plan;

(B) the spraying of such land with chemicals or the mowing of such land, except where such spraying or mowing is permitted by the plan or is necessary—

(i) to comply with Federal or State noxious weed control laws; or

(ii) to comply with a Federal or State emergency pest treatment program; and

(C) any activities to be carried out on such participating landowner's or successor's land that is immediately adjacent to, and functionally related to, the land that is subject to the easement if such activities will alter, degrade, or otherwise diminish the functional value of the eligible land; and

(D) the adoption of any other practice that would tend to defeat the purposes of this subpart, as determined by the Secretary;

(3) provides for the efficient and effective restoration of the functional values of wetlands; and

(4) includes such additional provisions as the Secretary determines are desirable to carry out this subpart or to facilitate the practical administration thereof.

**(c) Restoration plans**

**(1) Plans**

The development of restoration plans under this section shall be made through the agreement of the local representative of the Soil Conservation Service and a representative of the Fish and Wildlife Service. If agreement cannot be reached at the local level under the

preceding sentence within a reasonable period of time, such plans shall be referred to the State Conservationist, who in developing such plans under this paragraph, shall consult with the Fish and Wildlife Service.

**(2) Report**

The State Conservationist and a representative of the Fish and Wildlife Service shall report to their respective national offices concerning all plans developed under paragraph (1) at the State level as a result of an agreement not being reached at the local level.

**(d) Compatible uses**

Wetland reserve program lands may be used for compatible economic uses, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is specifically permitted by the plan and consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established.

**(e) Type and length of easement**

A conservation easement granted under this section—

(1) shall be in a recordable form; and

(2) shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws.

**(f) Compensation**

Compensation for easements acquired by the Secretary under this subpart shall be made in cash in such amount as is agreed to and specified in the easement agreement, but not to exceed the fair market value of the land less the fair market value of such land encumbered by the easement. Lands may be enrolled through the submission of bids under a procedure established by the Secretary. Compensation may be provided in not less than 5 nor more than 20 annual payments of either equal or unequal size, except in the case of a permanent easement, a single lump-sum payment may be provided, as agreed on by the owner and the Secretary.

**(g) Violation**

On the violation of the terms or conditions of the easement or related agreement entered into under subsection (a) of this section, the easement shall remain in force and the Secretary may require the owner to refund all or part of any payments received by the owner under this subpart, together with interest thereon as determined appropriate by the Secretary.

(Pub. L. 99-198, title XII, §1237A, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3585.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3837 of this title.

**§ 3837b. Duties of owners**

Under the terms of an agreement entered into under this subpart, an owner and operator of the land that is subject to an easement under this subpart shall agree to comply with the terms of the easement and related agreements and shall agree to the permanent retirement of any existing cropland base and allotment history for such

land under any program administered by the Secretary.

(Pub. L. 99-198, title XII, §1237B, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587.)

**§ 3837c. Duties of Secretary**

**(a) In general**

In return for the granting of an easement by an owner under this subpart, the Secretary shall—

(1) share the cost of carrying out the establishment of conservation measures and practices, and the protection of the wetland functions and values, as set forth in the plan to the extent that the Secretary determines that cost sharing is appropriate and in the public interest; and

(2) provide necessary technical assistance to assist owners in complying with the terms and conditions of the easement and the plan.

**(b) Cost share assistance**

In making cost share payments under subsection (a)(1) of this section, the Secretary shall pay the owner an amount that is not less than 50 percent but not more than 75 percent of eligible costs with respect to an easement which is not permanent, and not less than 75 percent but not more than 100 percent of eligible costs with respect to a permanent easement.

**(c) Acceptability of offers**

In determining the acceptability of easement offers, the Secretary may take into consideration—

(1) the extent to which the purposes of the easement program would be achieved on the land;

(2) the productivity of the land; and

(3) the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

**(d) Easement priority**

In carrying out this subpart, to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent conservation easements before shorter term conservation easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife.

(Pub. L. 99-198, title XII, §1237C, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587.)

**§ 3837d. Payments**

**(a) Time of payment**

The Secretary shall provide payment for obligations incurred by the Secretary under this subpart—

(1) with respect to any cost sharing obligation as soon as possible after the obligation is incurred; and

(2) with respect to any annual easement payment obligation incurred by the Secretary as

soon as possible after October 1 of each calendar year.

**(b) Payments to others**

If an owner who is entitled to a payment under this subpart dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person who renders or completes the required performance, the Secretary shall make such payment, in accordance with regulations prescribed by the Secretary and without regard to any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all of the circumstances.

**(c) Payment limitation**

**(1) In general**

The total amount of easement payments made to a person under this subpart for any year may not exceed \$50,000, except such limitation shall not apply with respect to payments for perpetual easements.

**(2) Regulations**

The Secretary shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation contained in this subsection.

**(3) Other payments**

Easement payments received by an owner shall be in addition to, and not affect, the total amount of payments that such owner is otherwise eligible to receive under this Act, the Food, Agriculture, Conservation, and Trade Act of 1990, or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

**(4) State wetland and environmental enhancement**

The provisions of this subsection that limit payments to any person, and section 1305(d) of the Agricultural Reconciliation Act of 1987 (7 U.S.C. 1308 note), shall not be applicable to payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental easement enhancement program carried out by that entity that has been approved by the Secretary. The Secretary may enter into such agreements for payments to States, political subdivisions, or agencies thereof that the Secretary determines will advance the purposes of this subpart.

**(d) Exemption from automatic sequester**

Notwithstanding any other provision of law, no order issued under section 902 of title 2 shall affect any payment under this subpart.

(Pub. L. 99-198, title XII, §1237D, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3588.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(3), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (c)(3), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 1949, referred to in subsec. (c)(3), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

Section 1305(d) of the Agricultural Reconciliation Act of 1987, referred to in subsec. (c)(4), is section 1305(d) of Pub. L. 100-203, which is set out as a note under section 1308 of Title 7.

**§ 3837e. Changes in ownership; agreement modification; termination**

**(a) Limitations**

No easement shall be created under this subpart on land that has changed ownership in the preceding 12 months unless—

(1) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(2) the new ownership was acquired before January 1, 1990; or

(3) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program established by this subpart.

**(b) Modification; termination**

**(1) Modification**

The Secretary may modify an easement acquired from, or a related agreement with, an owner under this subpart if—

(A) the current owner agrees to such modification; and

(B) the Secretary determines that such modification is desirable—

(i) to carry out this subpart;

(ii) to facilitate the practical administration of this subpart; or

(iii) to achieve such other goals as the Secretary determines are appropriate and consistent with this subpart.

**(2) Termination**

**(A) In general**

The Secretary may terminate an easement created with an owner under this subpart if—

(i) the current owner agrees to such termination; and

(ii) the Secretary determines that such termination would be in the public interest.

**(B) Notice**

At least 90 days before taking any action to terminate under paragraph (A) all easements entered into under this subpart, the Secretary shall provide written notice of such action to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 99-198, title XII, §1237E, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589.)

**§ 3837f. Administration and funding****(a) Delegation of easement administration**

The Secretary may delegate any of the easement management, monitoring, and enforcement responsibilities of the Secretary to Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

**(b) Regulations**

Not later than 180 days after November 28, 1990, the Secretary shall issue such regulations as are necessary to carry out this subpart.

(Pub. L. 99-198, title XII, §1237F, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589.)

PART II—AGRICULTURAL WATER QUALITY  
INCENTIVES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3811, 3821, 3831, 3845 of this title.

**§ 3838. Policy**

The policy of Congress is that water quality protection, including source reduction of agricultural pollutants, henceforth shall be an important goal of the programs and policies of the Department of Agriculture. Furthermore, agricultural producers in environmentally sensitive areas should request assistance to develop and implement on-farm water quality protection plans in order to assist in compliance with State and Federal environmental laws and to enhance the environment.

(Pub. L. 99-198, title XII, §1238, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590.)

**§ 3838a. Definitions**

As used in this part—

**(1) Agricultural water quality protection practice**

The term “agricultural water quality protection practice” means a farm-level practice or a system of practices designed to protect water quality by mitigating or reducing the release of agricultural pollutants, including nutrients, pesticides, animal waste, sediment, salts, biological contaminants, and other materials, into the environment.

**(2) Source reduction**

The term “source reduction” means minimizing the generation, emission, or discharge of agricultural pollutants or wastes through the modification of agricultural production systems and practices.

(Pub. L. 99-198, title XII, §1238A, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590.)

**§ 3838b. Agricultural water quality protection program****(a) Incentives****(1) In general**

During the 1991 through 1995 calendar years, the Secretary shall formulate and carry out a

voluntary incentive program, in accordance with this part, through agreements to assist owners and operators of a farm in developing and implementing a water quality protection plan pursuant to this section.

**(2) Agreements**

The Secretary shall enter into agreements of 3 to 5 years upon the request of owners and operators of farms in eligible areas but shall not enter into any such agreements after December 31, 1995.

**(3) Duties of owners and operators**

In order to receive annual incentive payments, an owner or operator of a farm must agree—

(A) to implement a water quality protection plan approved by the Secretary subject to the agreement established under this part;

(B) not to conduct any practices on the farm that would tend to defeat the purposes of this part;

(C) to comply with such additional provisions as the Secretary determines are desirable and are included in the agreement to carry out the water quality protection plan or to facilitate the practical administration of the program;

(D) on the violation of a term or condition of the agreement at any time the owner or operator has control of the land to refund any incentive or cost share payment received with interest and forfeit any such future payments as determined by the Secretary;

(E) on the transfer of the right and interest of the owner or operator in land subject to the agreement, unless the transferee of such right and interest agrees with the Secretary to assume all obligations of the agreement, to refund any such cost share and incentive payments received under this part, as determined by the Secretary;

(F) to accurately report nutrient, pesticide and animal waste materials usage rates on management areas for three previous years; and

(G) to supply production evidence, well test results, soil tests, tissue tests, nutrient application levels, pesticide application levels, and animal waste material usage levels, to the Soil Conservation Service or another designee of the Secretary including the local conservation district for each year of the agreement, as determined necessary by the Secretary.

**(4) Wetland or wildlife habitat options****(A) Cost share assistance**

Owners and operators who voluntarily agree to develop and implement agricultural production practices, in concert with their water quality protection plan, that preserve and enhance wetland or wildlife habitat, shall also be eligible to receive cost share assistance for the implementation of such practices. The Secretary shall develop procedures for approving such agricultural practices, as a part of and consistent with the objectives of the water quality protection plan, that qualify for cost share assistance.

**(B) Wetland preservation and wildlife habitat improvement options**

**(i) Wetland preservation**

The Secretary shall encourage owners and operators who choose the wetland preservation option to implement, improve and maintain agricultural production practices, in concert with their water quality protection plan, that are designed to preserve and enhance existing wetland.

**(ii) Wildlife habitat improvement**

The Secretary shall encourage owners and operators who choose the wildlife habitat improvement option to implement, improve and maintain agricultural production practices, in concert with their water quality protection plan, that are designed to improve on-farm wildlife habitat, including the establishment of perennial cover, the protection of riparian areas, wildlife corridors, and areas of critical habitat for endangered species.

**(5) Duties of Secretary**

In return for an incentive agreement voluntarily entered into under this part, the Secretary shall assist the owner or operator in the protection and improvement of surface and groundwater quality and related resources by—

(A) providing an eligibility assessment of the farming operation as a basis for developing the water quality protection plan and any options associated with such plan;

(B) providing technical assistance in developing and implementing agricultural water quality protection plans;

(C) providing an annual incentive payment for developing and implementing agricultural production practices in accordance with an approved water quality protection plan submitted by the owner or operator;

(D) providing cost share assistance for implementing the wetland preservation or wildlife habitat improvement options;

(E) providing participants with information, education, and training to aid in implementation of a plan; and

(F) encouraging the owner or operator to obtain cost share assistance under other Federal, State, or local cost share programs.

**(6) Payments**

**(A) Terms**

Payments shall be made under this section for a period of not less than 3 nor more than 5 years, as determined appropriate by the Secretary, and as specified in the contract entered into under the program established under this part.

**(B) Amounts**

**(i) Incentive**

In determining the amount of incentive payment to be made to a participant under this part, the Secretary shall consider, among other things, the amount necessary on a per acre basis to encourage producers to participate, additional costs incurred by the producer, and the production values

forgone, if any, in implementing the practices.

**(ii) Limitation**

Cost share payments shall be made in an amount not to exceed 50 percent of the cost of the eligible practice.

**(C) Limitations**

Payments to a participant agreeing to implement a plan on acres devoted to the production of an agricultural commodity under this part shall not exceed—

(i) \$3500 per person per year in the form of incentive payments; and

(ii) not more than an additional \$1500 per person per contract in the form of cost share assistance.

**(D) Manner**

The Secretary may make a lump sum payment to an owner or operator of the total incentive payments required under a contract entered into under this part, as reduced to present value, if such lump sum payment is necessary to enable the producer to pay the initial costs of implementing a practice required under such contract.

**(E) Other programs**

Payments received by an owner or operator under this part shall be in addition to, and not affect, the total amount of payments that such owner or operator is otherwise eligible to receive under this Act, the Food, Agriculture, Conservation, and Trade Act of 1990, or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), except that payments for a practice or practices shall not be made under this part if payments or assistance is provided for such practice under any other Federal program.

**(7) Modifications**

The Secretary may modify an agreement entered into with a participant under this part if the participant agrees to such modification and the Secretary determines such modifications are desirable—

(A) to carry out this part;

(B) if natural causes prevent the implementation, improvement or maintenance of practices as required under such contract;

(C) if the contract cannot be carried out without economic losses that threaten the viability of the farming operation;

(D) if the owner or operator and the Secretary agree on contract modifications that will not compromise the water quality goals and objectives in the existing contract and that will be no less effective or timely in achieving such goals and objectives than the existing contract;

(E) to facilitate the practical administration of this part; or

(F) to achieve such other goals as the Secretary determines are appropriate, consistent with this part.

**(8) Termination**

The Secretary may terminate an agreement entered into with a participant under this part if—

- (A)(i) the producer agrees to such termination; or
- (ii) the producer violates the terms and conditions of the agreement; and
- (B) the Secretary determines that such termination would be in the public interest.

**(9) Refunds**

The Secretary shall obtain refunds of incentive and cost share payments with interest, to the extent determined by the Secretary to be in the public interest, if an agreement is terminated or violated.

**(10) Base and yield protection**

An owner or operator agreeing to implement an approved water quality protection plan pursuant to this part shall, by regulations established by the Secretary, receive program payment yield and base protection on the farm during the agreement period.

**(11) Acreage levels**

The Secretary shall, to the extent practicable, seek to enter into agreements with participants to place into the program a total of 10 million acres during the 1991 through 1995 calendar years.

**(b) Content of plans**

Agricultural water quality protection plans should include as applicable—

- (1) a description of the prevailing farm enterprises, cropping patterns, and cultural practices, and other information that may be relevant to protecting water quality on the farm;
- (2) a description of farm resources, including soil characteristics, proximity to water bodies, and other relevant characteristics of the farm related to water quality;
- (3) to the extent practicable, specific, quantitative water quality protection goals and objectives that will minimize contamination or degradation of surface or ground water;
- (4) water quality protection practices that will, if implemented by a producer, assist such producer in complying with State and Federal environmental laws, and where appropriate, will complement conservation plans prepared for highly erodible lands under section 3812 of this title;
- (5) the specific agricultural production practices that will be implemented, improved and maintained, including practices that ensure continued farm productivity and profitability by promoting the efficient use of fertilizers, other crop nutrients, and pesticides, as well as management practices that are to be avoided, in order to carry out and achieve the water quality goals and objectives of the producer;
- (6) to the extent practicable, water quality protection practices for safe storage, mixing and loading of pesticides and fertilizers, and storage and handling of animal waste;
- (7) the timing and sequence for implementing such practices that will assist the producer in complying with State and Federal environmental laws, taking into consideration schedules that may be established in such laws;
- (8) information that will enable evaluation of the effectiveness of the plan in protecting water quality; and

- (9) recommendations of application rates and disposal methods of nutrients, pesticides, and animal waste materials as recommended by the Secretary.

**(c) Plan development**

The Secretary, acting through the Assistant Secretary for Natural Resources and Environment, shall establish a procedure to enable agricultural producers to develop agricultural water quality protection plans pursuant to this section.

**(d) Protection of confidentiality**

The Secretary shall protect the confidentiality of the information contained in these plans to the extent confidentiality is provided under current law to information contained in conservation plans under section 3812 of this title. The Secretary shall provide notice to producers that information contained in the plans developed under this subsection will be available to the public upon request.

**(e) Acceptance of contracts**

The Secretary shall begin accepting contracts within one year after November 28, 1990.

**(f) Federal or State provisions**

Acceptance of an agreement under this section or receipt of assistance pursuant to section 3838d of this title shall not be deemed to satisfy the requirements of any State or Federal law.

(Pub. L. 99-198, title XII, §1238B, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(6)(E), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (a)(6)(E), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 1949, referred to in subsec. (a)(6)(E), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3838c, 3862 of this title.

**§ 3838c. Eligible lands**

**(a) Eligible lands**

Lands eligible for enrollment in the program pursuant to section 3838b of this title or for technical assistance pursuant to section 3838d of this title shall include—

- (1) areas that are not more than 1,000 feet from a public well unless a larger wellhead area is deemed desirable for inclusion by the Secretary in consultation with the Environmental Protection Agency and the State agency responsible for the State's operations under the Safe Drinking Water Act (42 U.S.C. 300h-7);

(2) areas that are in shallow Karst topography areas where sinkholes convey runoff water directly into ground water;

(3) areas that are considered to be critical cropland areas within hydrologic units identified in a plan submitted by the State under section 1329 of title 33 as having priority problems that result from agricultural nonpoint sources of pollution;

(4) areas where agricultural nonpoint sources have been determined to pose a significant threat to habitat utilized by threatened and endangered species;

(5) areas recommended by State lead agencies for environmental protection as designated by a Governor of a State;

(6) in consultation with the Secretary, other areas recommended by the Administrator of the Environmental Protection Agency or the Secretary of the Interior;

(7) lands that are not located within the designated or approved areas but that are located such that if permitted to continue to operate under existing management practices would defeat the purpose of the program as determined by the Secretary; or

(8) areas contributing to identified water quality problems in areas designated by the Secretary.

#### (b) Priority lands

In accepting agreements pursuant to this section and providing assistance pursuant to section 3838d of this title, the Secretary shall give priority to lands on which agricultural production has been determined to contribute to, or creates, the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State laws governing surface and ground water quality, in consultation with State officials having responsibility for monitoring and protecting water quality, the management of which provide the greatest public benefit as determined by the Secretary.

(Pub. L. 99-198, title XII, §1238C, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3594.)

#### REFERENCES IN TEXT

The Safe Drinking Water Act (42 U.S.C. 300h-7), referred to in subsec. (a)(1), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of Title 42 and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3838e of this title.

### § 3838d. Technical assistance for water quality protection

#### (a) In general

Upon request, the Secretary shall provide technical assistance to agricultural producers on eligible lands to assist such producers in developing and implementing agricultural water quality protection plans.

#### (b) Field office technical guidance for water quality protection

##### (1) Development

The Secretary shall develop guidance materials describing a process to assist agricultural producers in preparing and implementing on-farm agricultural water quality protection plans necessary to assist in complying with State and Federal environmental laws, and to implement the agricultural water quality protection policy established by this part.

##### (2) Content

The guidance materials required under this subsection shall reflect local agronomic, economic and ecological conditions to the extent practicable, and include and describe in detail—

(A) procedures to identify potential sources of pollution on a farm;

(B) to the extent practicable, a range of water quality protection practices, and their economic cost and benefit, that is suitable to local ecological characteristics and prevailing farm enterprises and that complement conservation plans prepared for highly erodible lands under section 3812 of this title;

(C) storage, mixing, and loading practices for on-farm pesticide and fertilizer use to protect water quality;

(D) information regarding relevant State and Federal environmental laws that may impact upon the producer;

(E) criteria to evaluate the effectiveness of on-farm plans in protecting water quality and provide aggregate data to aid in evaluating compliance with State and Federal environmental laws; and

(F) means to evaluate the economic costs and benefits of agricultural water quality protection practices, including source reduction practices.

##### (3) Deadline

Local guidance materials shall be developed no later than two years after November 28, 1990, and up-dated periodically, but not less than every two years.

##### (4) Consultation

The Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and relevant State agencies in developing guidance materials under this section to ensure that such materials contain accurate and up-to-date technical information on practices designed to protect water quality.

#### (c) Personnel

The Secretary shall designate the Soil Conservation Service as the lead agency for purposes of providing technical assistance in connection with implementing this part, and shall assign such personnel from the Extension Service, Agricultural Research Service, and other agencies as are necessary to fulfill the purposes of this part. The Secretary may request the services of the State water quality agencies, State fish and wildlife agencies, State forestry agencies, or any other source deemed appro-

priate to assist in providing the technical assistance necessary for the development and implementation of the water quality protection plans.

**(d) Limitation of liability**

No person shall be permitted to bring or pursue any claim or action against any official or entity based upon or resulting from any technical assistance provided to assist in complying with State or Federal environmental laws under subsection (b)(1) of this section.

(Pub. L. 99-198, title XII, §1238D, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3595.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3838b, 3838c of this title.

**§ 3838e. Demonstration and pilot programs**

**(a) Demonstration and model farm programs**

To the extent practicable and consistent with the requirements of the program established under this part and the priority described in section 3838c(b) of this title, the Secretary may enter into contracts under this part with owners and operators to facilitate the participation by such owners or operators in demonstration or model farm programs that are sponsored by governmental or private nonprofit entities and are designed to provide education on, disseminate information about, and demonstrate the practical application of agricultural production practices that reduce the potential for contamination or degradation of surface water or ground water while emphasizing practices that enhance profitability and productivity.

**(b) Pilot programs**

To complement and enhance the effectiveness of the program established under this part, the Secretary may establish pilot programs, for implementation in areas determined to be priority areas under section 3838c(b) of this title, that shall be designed to provide assistance to address a wide range of farming operations and production conditions that enhance the efficient use of farm inputs and reduce waste.

(Pub. L. 99-198, title XII, §1238E, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596.)

**§ 3838f. Report to Congress**

Not later than September 30, 1992, the Secretary shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report describing the degree of participation in the planning process and program established in this subchapter, including the number of plans that have been prepared, information on the number of plans that are in implementation, including the number and acreage of farms engaged in planning by type of environmentally sensitive area, information relevant for evaluating the effectiveness of agricultural water quality plans in protecting water quality, and other information pertinent to implementation of this part. A final report shall be submitted no later than September 30, 1994.

(Pub. L. 99-198, title XII, §1238F, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596.)

PART III—ENVIRONMENTAL EASEMENT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3811, 3821, 3843 of this title.

**§ 3839. Environmental easement program**

**(a) Establishment**

The Secretary shall, during the 1991 through 1995 calendar years, formulate and carry out an environmental easement program (hereafter in this part referred to as the “easement program”) in accordance with this part, through the acquisition of permanent easements or easements for the maximum term permitted under applicable State law from willing owners of eligible farms or ranches in order to ensure the continued long-term protection of environmentally sensitive lands or reduction in the degradation of water quality on such farms or ranches through the continued conservation and improvement of soil and water resources.

**(b) Eligibility; termination**

**(1) In general**

The Secretary may acquire easements under this section on land placed in the conservation reserve under this subchapter (other than such land that is likely to continue to remain out of production and that does not pose an off-farm environmental threat), land under the Water Bank Act [16 U.S.C. 1301 et seq.], or other cropland that—

(A) contains riparian corridors;

(B) is an area of critical habitat for wildlife, especially threatened or endangered species; or

(C) contains other environmentally sensitive areas, as determined by the Secretary, that would prevent a producer from complying with other Federal, State, or local environmental goals if commodities were to be produced on such land.

**(2) Ineligible land**

The Secretary may not acquire easements on—

(A) land that contains timber stands established under the conservation reserve under this subchapter; or

(B) pasture land established to trees under the conservation reserve under this subchapter.

**(3) Termination of existing contract**

The Secretary may terminate or modify any existing contract entered into under section 3831(a) of this title if eligible land that is subject to such contract is transferred into the program established by this part.

(Pub. L. 99-198, title XII, §1239, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597; amended Pub. L. 102-237, title II, §204(7), Dec. 13, 1991, 105 Stat. 1855.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (b)(1), is Pub. L. 91-559, Dec. 19, 1970, 84 Stat. 1468, as amended,

which is classified generally to chapter 29 (§1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

1991—Subsec. (b)(1)(A). Pub. L. 102-237 substituted a semicolon for comma after “corridors”.

**§ 3839a. Duties of owners; components of plan**

**(a) Duties of owners**

**(1) Plan**

In conjunction with the creation of an easement on any lands under this part, the owner of the farm or ranch wherein such lands are located must agree to implement a natural resource conservation management plan under subsection (b) of this section approved by the Secretary in consultation with the Secretary of the Interior.

**(2) Agreement**

In return for the creation of an easement on any lands under this part, the owner of the farm or ranch wherein such lands are located must agree to the following:

(A) To the creation and recordation of an appropriate deed restriction in accordance with applicable State law to reflect the easement agreed to under this part with respect to such lands.

(B) To provide a written statement of consent to such easement signed by those holding a security interest in the land.

(C) To comply with such additional provisions as the Secretary determines are desirable and are included in the easement to carry out this part or to facilitate the practical administration thereof.

(D) To specify the location of any timber harvesting on land subject to the easement. Harvesting and commercial sales of Christmas trees and nuts shall be prohibited on such land, except that no such easement or related agreement shall prohibit activities consistent with customary forestry practices, such as pruning, thinning, or tree stand improvement on lands converted to forestry uses.

(E) To limit the production of any agricultural commodity on such lands only to production for the benefit of wildlife.

(F) Not to conduct any harvesting or grazing, nor otherwise make commercial use of the forage, on land that is subject to the easement unless specifically provided for in the easement or related agreement.

(G) Not to adopt any other practice that would tend to defeat the purposes of this part, as determined by the Secretary.

**(3) Violation**

On the violation of the terms or conditions of the easement or related agreement entered into under this section, the easement shall remain in force and the Secretary may require the owner to refund all or part of any payments received by the owner under this part, together with interest thereon as determined appropriate by the Secretary.

**(b) Components of plan**

The natural resource conservation management plan referred to in subsection (a)(1) of this section (hereafter referred to as the “plan”)—

(1) shall set forth—

(A) the conservation measures and practices to be carried out by the owner of the land subject to the easement; and

(B) the commercial use, if any, to be permitted on such land during the term of the easement; and

(2) shall provide for the permanent retirement of any existing cropland base and allotment history for such land under any program administered by the Secretary.

(Pub. L. 99-198, title XII, §1239A, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597.)

**§ 3839b. Duties of Secretary**

In return for the granting of an easement by an owner under this part, the Secretary shall—

(1) share the cost of carrying out the establishment of conservation measures and practices set forth in the plan for which the Secretary determines that cost sharing is appropriate and in the public interest;

(2) pay for a period not to exceed 10 years annual easement payments in the aggregate not to exceed the lesser of—

(A) \$250,000; or

(B) the difference in the value of the land with and without an easement;

(3) provide necessary technical assistance to assist owners in complying with the terms and conditions of the easement and the plan; and

(4) permit the land to be used for wildlife activities, including hunting and fishing, if such use is permitted by the owner.

(Pub. L. 99-198, title XII, §1239B, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3598.)

**§ 3839c. Payments**

**(a) Time of payment**

The Secretary shall provide payment for obligations incurred by the Secretary under this part—

(1) with respect to any cost sharing obligation as soon as possible after the obligation is incurred; and

(2) with respect to any annual easement payment obligation incurred by the Secretary as soon as possible after October 1 of each calendar year.

**(b) Cost sharing payments**

In making cost sharing payments to owners under this part, the Secretary may pay up to 100 percent of the cost of establishing conservation measures and practices pursuant to this part.

**(c) Easement payments; acceptability of offers**

**(1) Determination of amount**

The Secretary shall determine the amount payable to owners in the form of easement payments under this part, and in making such determination may consider, among other

things, the amount necessary to encourage owners to participate in the easement program.

**(2) Acceptability of offers**

In determining the acceptability of easement offers, the Secretary may take into consideration—

(A) the extent to which the purposes of the easement program would be achieved on the land;

(B) the productivity of the land; and

(C) the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

**(d) Form of payment**

Except as otherwise provided in this section, payments under this part—

(1) shall be made in cash in such amount and at such time as is agreed on and specified in the easement or related agreement; and

(2) may be made in advance of a determination of performance.

**(e) Payments to others**

If an owner who is entitled to a payment under this part dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person who renders or completes the required performance, the Secretary shall make such payment, in accordance with regulations prescribed by the Secretary and without regard to any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all of the circumstances.

**(f) Payment limitation**

**(1) In general**

The total amount of easement payments made to a person under this part for any year may not exceed \$50,000.

**(2) Regulations**

The Secretary shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation contained in this subsection.

**(3) Other payments**

Easement payments received by an owner shall be in addition to, and not affect, the total amount of payments that such owner is otherwise eligible to receive under this Act, the Food, Agriculture, Conservation, and Trade Act of 1990, or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

**(4) State environmental enhancement**

The provisions of this subsection that limit payments to any person, and section 1305(d) of the Agricultural Reconciliation Act of 1987 (7 U.S.C. 1308 note), shall not be applicable to payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under an environmental easement enhancement program carried out by that entity that has been approved by the Secretary. The Secretary may enter into such agreements for payments to States, political subdivisions, or agencies thereof that

the Secretary determines will advance the purposes of this part.

**(g) Exemption from automatic sequester**

Notwithstanding any other provision of law, no order issued under section 902 of title 2 shall affect any payment under this part.

(Pub. L. 99-198, title XII, §1239C, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3599.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f)(3), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (f)(3), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 1949, referred to in subsec. (f)(3), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

Section 1305(d) of the Agricultural Reconciliation Act of 1987, referred to in subsec. (f)(4), is section 1305(d) of Pub. L. 100-203, which is set out as a note under section 1308 of Title 7.

**§ 3839d. Changes in ownership; modification of easement**

**(a) Limitations**

No easement shall be created under this part on land that has changed ownership in the preceding 12 months unless—

(1) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(2) the new ownership was acquired before January 1, 1990; or

(3) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program established by this part.

**(b) Modification; termination**

**(1) Modification**

The Secretary may modify an easement acquired from, or a related agreement with, an owner under this part if—

(A) the current owner of the land agrees to such modification; and

(B) the Secretary determines that such modification is desirable—

(i) to carry out this part;

(ii) to facilitate the practical administration of this part; or

(iii) to achieve such other goals as the Secretary determines are appropriate and consistent with this part.

**(2) Termination**

**(A) In general**

The Secretary may terminate an easement created with an owner under this part if—

(i) the current owner of the land agrees to such termination; and

(ii) the Secretary determines that such termination would be in the public interest.

**(B) Notice**

At least 90 days before taking any action to terminate under subparagraph (A) all easements entered into under this part, the Secretary shall provide written notice of such action to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 99-198, title XII, §1239D, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3600.)

**SUBCHAPTER V—ADMINISTRATION**

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in section 3843 of this title.

**§ 3841. Use of Commodity Credit Corporation**

(a)(1) During each of the fiscal years ending September 30, 1986, and September 30, 1987, the Secretary shall use the facilities, services, authorities, and funds of the Commodity Credit Corporation to carry out subchapter IV of this chapter.

(2) During the fiscal year ending September 30, 1988, and each fiscal year thereafter, the Secretary may use the facilities, services, authorities, and funds of the Commodity Credit Corporation to carry out subchapter IV of this chapter, except that the Secretary may not use funds of the Corporation for such purpose unless the Corporation has received funds to cover such expenditures from appropriations made to carry out this subchapter.

(b) The authority provided by subchapters I through V of this chapter shall be in addition to, and not in place of, other authority granted to the Secretary and the Commodity Credit Corporation.

(Pub. L. 99-198, title XII, §1241, Dec. 23, 1985, 99 Stat. 1514.)

**AVAILABILITY OF FUNDS AFTER FISCAL YEAR 1987 FOR CONSERVATION RESERVE PROGRAM; SIGNUP AGREEMENT NOT TO REDUCE TOTAL PRODUCTION BELOW NEEDED LEVELS**

Pub. L. 99-263, Mar. 24, 1986, 100 Stat. 59, provided: "That after fiscal year 1987, funds available to the Corporation may be used to carry out section 1241(a)(1) of the Food Security Act of 1985 [16 U.S.C. 3841(a)(1)], only to such extent or in such amounts as provided in advance in appropriations Acts. The signup agreement should not reduce total production below levels needed to meet domestic needs, maintain the supply line, and provide for an adequate supply for export by either the Commodity Credit Corporation or private corporations or individuals at competitive prices; since by law the proceeds from sales become available for use by the Commodity Credit Corporation, such sales should reduce future appropriations".

**§ 3842. Use of other agencies**

(a) In carrying out subchapters II, III, and IV of this chapter, the Secretary shall use the services of local, county, and State committees established under section 590h(b) of this title.

(b)(1) In carrying out subchapter IV of this chapter, the Secretary may utilize the services of the Soil Conservation Service and the Forest Service, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, local, county, and State committees established under section 590h of this title, soil and water conservation districts, and other appropriate agencies.

(2) In carrying out subchapter IV of this chapter, at the State and county levels, the Secretary shall consult with, to the extent practicable, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, soil-conservation districts, and other appropriate agencies.

(Pub. L. 99-198, title XII, §1242, Dec. 23, 1985, 99 Stat. 1515.)

**§ 3843. Administration**

**(a) Appeal procedure**

The Secretary shall establish, by regulation, an appeal procedure under which a person who is adversely affected by any determination made under subchapters I through V of this chapter may seek review of such determination.

**(b) Landlord's eligibility unaffected by ineligibility of tenant or sharecropper**

Ineligibility under section 3811 or 3812 of this title of a tenant or sharecropper for benefits shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on lands other than those operated by the tenant or sharecropper.

**(c) Safeguards for tenants and sharecroppers**

In carrying out subchapters II through V of this chapter, the Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under the program established by subchapter IV of this chapter.

**(d) Determinations**

In making determinations under this chapter and in conducting appeals from any determination made under this chapter, the Secretary shall act as expeditiously as possible but shall provide adequate safeguards to protect the interests of the persons involved in such determination.

**(e) Maintenance of data**

The Secretary shall maintain data concerning the number and status of appeals pending in excess of 120 days or resolved under this chapter.

**(f) Limitations on enrollments**

(1) The Secretary shall not enroll more than a total of 25 percent of the cropland in any county into the Environmental Conservation Acreage Reserve Program under part I of subchapter IV of this chapter and the Environmental Easement Program under part III of subchapter IV of this chapter, and not more than 10 percent of such cropland may be subject to an easement acquired under those parts. The Secretary may exceed these limitations in a county to the extent that the Secretary determines that—

(A) such action would not adversely affect the local economy of such county; and

(B) producers in such county are having difficulties complying with conservation plans or other environmental requirements.

(2) The limitations established under this subsection shall not apply to cropland that is subject to an easement under part I of subchapter IV of this chapter or part III of subchapter IV of this chapter that is used for the establishment of shelterbelts and windbreaks.

(3) In making a determination under this subsection, the Secretary shall not require the written consent of a member of Congress.

(Pub. L. 99-198, title XII, §1243, Dec. 23, 1985, 99 Stat. 1515; Pub. L. 101-624, title XIV, §1442, Nov. 28, 1990, 104 Stat. 3602.)

#### REFERENCES IN TEXT

Parts I and III of subchapter IV of this chapter, referred to in subsec. (f)(1), (2), were in the original references to chapters 1 and 3, respectively, and were translated as references to chapters 1 and 3 of subtitle D meaning chapters 1 and 3 of subtitle D of title XII of Pub. L. 99-198, to reflect the probable intent of Congress.

#### AMENDMENTS

1990—Subsecs. (d) to (f). Pub. L. 101-624 added subsecs. (d) to (f).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3822, 3832 of this title.

### § 3844. Regulations

Not later than 180 days after December 23, 1985, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out subchapters I through V of this chapter, including regulations that—

(1) define the term “person”;

(2) govern the determination of persons who shall be ineligible for program benefits under subchapters II and III of this chapter, so as to ensure a fair and reasonable determination of ineligibility; and

(3) protect the interests of landlords, tenants, and sharecroppers.

(Pub. L. 99-198, title XII, §1244, Dec. 23, 1985, 99 Stat. 1515.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3823 of this title.

### § 3845. Authorization of appropriations

#### (a) Environmental conservation acreage reserve program and water quality incentive program

There is authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out parts I and II of subchapter IV of this chapter. Amounts available to carry out subchapter IV of this chapter before November 28, 1990, shall remain available to carry out such parts.

#### (b) Other conservation matters

In addition to subsection (a) of this section, there is authorized to be appropriated without

fiscal year limitation such sums as may be necessary to carry out this chapter, other than parts I and II of subchapter IV of this chapter.

(Pub. L. 99-198, title XII, §1245, Dec. 23, 1985, 99 Stat. 1516; Pub. L. 101-624, title XIV, §1443, Nov. 28, 1990, 104 Stat. 3602; Pub. L. 102-552, title V, §516(b)(1), Oct. 28, 1992, 106 Stat. 4137.)

#### REFERENCES IN TEXT

November 28, 1990, referred to in subsec. (a), was in the original “the date of enactment of this section”, and was translated as meaning the date of enactment of Pub. L. 101-624, which generally amended this section to reflect the probable intent of Congress.

#### AMENDMENTS

1992—Subsec. (b). Pub. L. 102-552 made technical amendment to reference to this chapter the first place appearing to correct reference to corresponding provision of original act.

1990—Pub. L. 101-624 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out this chapter.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 516(b)(2) of Pub. L. 102-552 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3602) [amending this section] took effect.”

### § 3846. Monitoring and evaluation

#### (a) In general

Not later than June 30, 1993, the Secretary shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a comprehensive report that evaluates, in accordance with subsection (b) of this section, the programs and policies established and operated under this chapter.

#### (b) Requirements

In conducting the evaluations required under subsection (a) of this section, the Secretary shall—

(1) assess the progress made toward the national objective of nondegradation of the soil resources through the implementation of the relevant provisions of this chapter, identify obstacles to the attainment of such goal, and recommend ways in which to overcome such obstacles;

(2) perform on-site evaluations of 5 percent, or such reasonable amount as necessary to produce a statistically valid survey, of all affected acreage of—

(A) conservation practices on highly erodible lands;

(B) estimates of erosion reductions that may result from the implementation of conservation plans; and

(C) the technical adequacy and feasibility of such plans;

(3) collect data concerning the social and economic impacts, violations, appeals, and such other matters under this chapter as the Secretary determines to be necessary to assess the overall impact of this chapter, which data

collection shall not impose an additional recordkeeping or reporting requirement on the producer; and

(4) assess the contribution toward the national objectives of wetlands preservation, wildlife and waterfowl habitat improvement, and water quality improvement through the implementation of the relevant provisions of this chapter, identify obstacles to furthering progress toward such objectives, and recommend ways in which to overcome such obstacles.

(Pub. L. 99-198, title XII, §1246, as added Pub. L. 101-624, title XIV, §1444, Nov. 28, 1990, 104 Stat. 3602.)

#### **§ 3847. Assistance for control of spread of weeds and pests**

##### **(a) In general**

The Secretary, in consultation with State experiment stations, the Administrator of the Extension Service, the Chief of the Soil Conservation Service, and State pest and weed control boards, shall make available to owners and operators of land that is subject to a contract under subchapter IV of this chapter, weed and pest control technical information and materials that—

(1) address common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the conservation reserve; and

(2) are otherwise consistent with maintaining the conservation and environmental objectives of the conservation reserve.

##### **(b) Conservation measure**

At the Secretary's discretion, the control of insect pests on conservation reserve acreage that is most likely to incur a crop pest infestation that adversely affects surrounding commercial land may be considered a conservation measure or practice for the purposes of section 3834(b) of this title.

(Pub. L. 99-198, title XII, §1247, as added Pub. L. 101-624, title XIV, §1445, Nov. 28, 1990, 104 Stat. 3603; amended Pub. L. 102-237, title II, §204(8), Dec. 13, 1991, 105 Stat. 1855.)

##### AMENDMENTS

1991—Subsec. (b). Pub. L. 102-237 substituted “section 3834(b)” for “subsection 3834(b)”.

#### SUBCHAPTER VI—STATE TECHNICAL COMMITTEES

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 sections 1441-2, 1444-2, 1444f, 1445b-3a, 5831.

#### **§ 3861. Establishment**

##### **(a) In general**

The Secretary shall establish in each State a technical committee to assist the Secretary in the technical considerations relating to implementation of the conservation provisions under this chapter.

##### **(b) Standards**

Not later than 180 days after November 28, 1990, the Secretary shall develop standards to be

used by the State technical committee in the development of technical guidelines under section 3862(b) of this title for the implementation of the conservation provisions of this chapter.

##### **(c) Composition**

Each State technical committee established under subsection (a) of this section shall be composed of professional resource managers that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences. Such committee shall include such representatives as may serve from among—

(1) the Soil Conservation Service;

(2) the Agricultural Stabilization and Conservation Service;

(3) the Forest Service;

(4) the Extension Service;

(5) the Farmers Home Administration;

(6) the Fish and Wildlife Service;

(7) State departments and agencies which the Secretary deems appropriate, including:

(A) the State fish and wildlife agency;

(B) the State forester or equivalent State official;

(C) the State water resources agency;

(D) the State department of agriculture; and

(E) the State association of soil and water conservation districts; and

(8) other agency personnel with expertise in soil, water, wetland, and wildlife management as the Secretary determines appropriate.

(Pub. L. 99-198, title XII, §1261, as added Pub. L. 101-624, title XIV, §1446, Nov. 28, 1990, 104 Stat. 3604.)

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3862 of this title; title 7 sections 1441-2, 1444-2, 1444f, 1445b-3a.

#### **§ 3862. Responsibilities**

##### **(a) In general**

Each Committee established under section 3861 of this title shall meet regularly to provide information, analysis, and recommendations to appropriate officials of the Department of Agriculture who are charged with implementing the conservation provisions of this chapter. Such information, analysis, and recommendations shall be provided in a manner that will assist the Department of Agriculture in determining matters of fact, technical merit, or scientific question. Data, analysis, and recommendations shall be provided in writing and shall reflect the best professional information and judgment of the Committee. The Secretary shall coordinate activities conducted under this section with those conducted under section 5831 of title 7.

##### **(b) Wetland and wildlife habitat protection guidelines**

###### **(1) Development of technical guides**

Not later than one year after November 28, 1990, each State technical committee shall develop technical guides for the implementation of the wetland preservation and wildlife habitat improvement options of the agricultural water quality protection program under section 3838b of this title.

**(2) Content of guides****(A) In general**

The technical guides required under this subsection shall include detailed information on the selection of crops and crop-plant varieties, cover crops, rotation practices, tillage systems, nutrient management, biological control practices (including biologically intensive integrated pest management practices), soil, water, and natural resource conservation, and other practices useful in developing practices pursuant to such option.

**(B) Standards and instructions**

The technical guides required under subsection (a) of this section shall provide standards and practical instructions for implementation of wetland protection and wildlife habitat improvement practices based on existing scientific and technical knowledge.

**(C) Contracts**

The Secretary may enter into contracts to assist in the development and periodic revision of the technical guides described in this subsection.

**(c) Other duties**

Each technical committee shall provide assistance and offer recommendations with respect to the technical aspects of—

- (1) wetland protection, restoration, and mitigation requirements;
- (2) criteria to be used in evaluating bids for enrollment of environmentally-sensitive lands in the conservation reserve program;
- (3) guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;
- (4) highly erodible lands exemptions and appeals;
- (5) wetland and conservation compliance exemptions and appeals;
- (6) addressing common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the conservation reserve program;
- (7) guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands; and
- (8) other matters determined appropriate by the Secretary.

**(d) Authority**

Each Committee established under section 3861 of this title is advisory and shall have no implementation or enforcement authority. However, the Secretary shall give strong consideration to the recommendations of such Committees in administering the programs under this chapter, and to the factual, technical, or scientific findings and recommendations under the Committee's responsibility.

**(e) FACA requirements**

The committees established under section 3861 of this title shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 99-198, title XII, §1262, as added Pub. L. 101-624, title XIV, §1446, Nov. 28, 1990, 104 Stat.

3604; amended Pub. L. 103-354, title II, §246(f)(3), Oct. 13, 1994, 108 Stat. 3225.)

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

## AMENDMENTS

1994—Subsec. (e). Pub. L. 103-354 added subsec. (e).

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3861 of this title.

**CHAPTER 59—WETLANDS RESOURCES**

## SUBCHAPTER I—GENERAL PROVISIONS

Sec.

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(a) Findings.

(b) Purpose.

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3931. National wetlands inventory project.

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(a) In general.

(b) Contents of reports.

## SUBCHAPTER I—GENERAL PROVISIONS

**§ 3901. Findings and statement of purpose****(a) Findings**

The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and