

cal year to carry out an eligible wildlife conservation and appreciation project under this section—

- (1) may not exceed \$250,000;
- (2) may not exceed one third of the total project cost for that fiscal year;
- (3) may not exceed 40 percent of the total project cost for that fiscal year if designated State agencies from two or more States cooperate in implementing such a project; and
- (4) may not be used to defray the administrative cost of State programs.

(e) Non-Federal share of projects

(1) State share

Of the total cost each fiscal year of each project carried out with amounts provided by the Secretary under subsection (a) of this section, at least $\frac{1}{3}$ shall be paid with amounts from State, non-Federal sources, except that if designated State agencies from 2 or more States cooperate in implementing such a project at least 30 percent shall be paid with amounts from such State, non-Federal sources. Payments required by this paragraph may not be in the form of an in-kind contribution.

(2) Private share

Of the total cost each fiscal year of each project carried out with amounts provided by the Secretary under subsection (a) of this section, at least $\frac{1}{3}$ shall be paid with amounts from voluntary contributions by private entities or persons, except that if designated State agencies from 2 or more States cooperate in implementing such a project, at least 30 percent 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

SUBCHAPTER I—DEFINITIONS

Sec.
3801. Definitions.

SUBCHAPTER II—HIGHLY ERODIBLE LAND CONSERVATION

3811. Program ineligibility.
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.

- Sec.
- (b) Persons eligible for program benefits in connection with production of certain planted crops or production of crops on highly erodible land.
 - (c) Ineligibility for loans and payments under section 3811.
 - (d) Program ineligibility inapplicable to pre-December 23, 1985, section 3811 loans.
 - (e) Limitations on ineligibility for tenants.
 - (f) Graduated sanctions.
 - (g) Preparation or revision of conservation plan.
 - (h) Noncommercial production of agricultural commodities.
- 3812a. Development and implementation of conservation plans and conservation systems.
- (a) Technical requirements.
 - (b) Measurement of erosion reduction.
 - (c) Residue measurement.
 - (d) Certification of compliance.
 - (e) Technical assistance.
 - (f) Encouragement of on-farm research.
3813. Soil surveys.
3814. Notice and investigation of possible compliance deficiencies.
- (a) In general.
 - (b) Corrective action.
 - (c) Review.

SUBCHAPTER III—WETLAND CONSERVATION

3821. Program ineligibility.
- (a) Production on converted wetland.
 - (b) Ineligibility for certain loans and payments.
 - (c) Wetland conversion.
 - (d) Prior loans.
3822. Delineation of wetlands; exemptions.
- (a) Delineation by Secretary.
 - (b) Exemptions.
 - (c) On-site inspection requirement.
 - (d) Identification of minimal effect exemptions.
 - (e) Nonwetlands.
 - (f) Minimal effect; mitigation.
 - (g) Mitigation appeals.
 - (h) Good faith exemption.
 - (i) Restoration.
 - (j) Determinations; restoration and mitigation plans; monitoring activities.
 - (k) Mitigation banking program.
3823. Affiliated persons.
3824. Fairness of compliance.

SUBCHAPTER IV—AGRICULTURAL RESOURCES CONSERVATION PROGRAM

PART I—ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM

SUBPART A—GENERAL PROVISIONS

3830. Environmental Conservation Acreage Reserve Program.
- (a) Establishment.
 - (b) Administration.
 - (c) Conservation priority areas.
- SUBPART B—CONSERVATION RESERVE
3831. Conservation reserve.
- (a) In general.
 - (b) Eligible lands.
 - (c) Certain land affected by secretarial action.
 - (d) Maximum enrollment.
 - (e) Duration of contract.
 - (f) Conservation priority areas.
 - (g) Multi-year grasses and legumes.
3832. Duties of owners and operators.

- Sec.
- (a) Terms of contract.
 - (b) Conversion plan provisions.
 - (c) Environmental use.
 - (d) Alley cropping.
 - (e) Foreclosure.
3833. Duties of Secretary.
3834. Payments.
- (a) Time of cost-sharing and annual rental payments.
 - (b) Federal percentage of cost sharing payments.
 - (c) Annual rental payments; encouragement factor; method of determination; acceptance of contract offers.
 - (d) Cash or in-kind payments.
 - (e) Regulations: payments upon death, disability, or succession.
 - (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.
 - (g) Contracts unaffected by certain Presidential orders.
 - (h) Cost share assistance.
3835. Contracts.
- (a) Ownership or operation requirement.
 - (b) Sales or transfers; options.
 - (c) Modification; waiver.
 - (d) Termination; notice to Congressional Committees.
 - (e) Termination by owner or operator.
- 3835a. Conversion of land subject to contract to other conserving uses.
- (a) Conversion to trees.
 - (b) Conversion to wetlands.
 - (c) Limitation.
 - (d) Condition of contract.
3836. Base history.
- (a) Reductions.
 - (b) Basis for participation in other Federal programs.
 - (c) Extension of preservation of cropland base and allotment history.
 - (d) Additional remedy for violations.
- 3836a. Wildlife Habitat Incentive Program.
- (a) In general.
 - (b) Cost-share payments.
 - (c) Funding.

SUBPART C—WETLANDS RESERVE PROGRAM

3837. Wetlands reserve program.
- (a) Establishment.
 - (b) Enrollment conditions.
 - (c) Eligibility.
 - (d) Other eligible land.
 - (e) Ineligible land.
 - (f) Termination of existing contract.
 - (g) Easements.
- 3837a. Easements and agreements.
- (a) In general.
 - (b) Terms of easement.
 - (c) Restoration plans.
 - (d) Compatible uses.
 - (e) Type and length of easement.
 - (f) Compensation.
 - (g) Violation.
 - (h) Restoration cost-share agreements.
- 3837b. Duties of owners.
- 3837c. Duties of Secretary.
- (a) In general.
 - (b) Cost-share and technical assistance.
 - (c) Acceptability of offers.
 - (d) Easement priority.
- 3837d. Payments.
- (a) Time of payment.
 - (b) Payments to others.
 - (c) Payment limitation.

- Sec. (d) Exemption from automatic sequester.
- 3837e. Changes in ownership; agreement modification; termination.
- (a) Limitations.
- (b) Modification; termination.
- 3837f. Administration and funding.
- (a) Delegation of easement administration.
- (b) Regulations.

PART II—AGRICULTURAL WATER QUALITY INCENTIVES
3838 to 3838f. Repealed.

- PART III—ENVIRONMENTAL EASEMENT PROGRAM
3839. Environmental easement program.
- (a) Establishment.
- (b) Eligibility; termination.
- 3839a. Duties of owners; components of plan.
- (a) Duties of owners.
- (b) Components of plan.
- 3839b. Duties of Secretary.
- 3839c. Payments.
- (a) Time of payment.
- (b) Cost sharing payments.
- (c) Easement payments; acceptability of offers.
- (d) Form of payment.
- (e) Payments to others.
- (f) Payment limitation.
- (g) Exemption from automatic sequester.
- 3839d. Changes in ownership; modification of easement.
- (a) Limitations.
- (b) Modification; termination.

PART IV—ENVIRONMENTAL QUALITY INCENTIVES
PROGRAM

- 3839aa. Purposes.
- 3839aa-1. Definitions.
- 3839aa-2. Establishment and administration of environmental quality incentives program.
- (a) Establishment.
- (b) Application and term.
- (c) Structural practices.
- (d) Land management practices.
- (e) Cost-share payments, incentive payments, and technical assistance.
- (f) Modification or termination of contracts.
- (g) Non-Federal assistance.
- 3839aa-3. Evaluation of offers and payments.
- 3839aa-4. Duties of producers.
- 3839aa-5. Environmental quality incentives program plan.
- (a) In general.
- (b) Avoidance of duplication.
- 3839aa-6. Duties of Secretary.
- 3839aa-7. Limitation on payments.
- (a) In general.
- (b) Exception to annual limit.
- (c) Timing of expenditures.
- 3839aa-8. Temporary administration of environmental quality incentives program.
- (a) Interim administration.
- (b) Permanent administration.

PART V—CONSERVATION FARM OPTION

- 3839bb. Conservation farm option.
- (a) In general.
- (b) Eligible owners and producers.
- (c) Purposes.
- (d) Conservation farm plan.
- (e) Contracts.
- (f) Secretarial determinations.
- (g) Commodity Credit Corporation.
- (h) Funding.

SUBCHAPTER V—FUNDING AND ADMINISTRATION

3841. Funding.

- Sec. (a) Mandatory expenses.
- (b) Environmental quality incentives program.
3842. Use of other agencies.
- (a) Committees.
- (b) Other agencies.
3843. Administration.
- (a) Plans.
- (b) Acreage limitation.
- (c) Tenant protection.
- (d) Provision of technical assistance by other sources.
- (e) Regulations.

SUBCHAPTER VI—STATE TECHNICAL
COMMITTEES

3861. Establishment.
- (a) In general.
- (b) Standards.
- (c) Composition.
3862. Responsibilities.
- (a) In general.
- (b) Wetland and wildlife habitat protection guidelines.
- (c) Other duties.
- (d) Authority.
- (e) FACA requirements.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1308-3, 1308-4, 1463, 6932, 6962, 7334.

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) CONSERVATION PLAN.—The term “conservation plan” means the document that—

(A) applies to highly erodible cropland;

(B) describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedule; and

(C) is approved by the local soil conservation district, in consultation with the local committees established under section 590h(b)(5) of this title and the Secretary, or by the Secretary.

(3) CONSERVATION SYSTEM.—The term “conservation system” means a combination of 1 or more conservation measures or management practices that—

(A) are based on local resource conditions, available conservation technology, and the standards and guidelines contained in the Natural Resources Conservation Service field office technical guides; and

(B) are designed to achieve, in a cost effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions

on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil conditions that existed before the application of the conservation measures and management practices.

(4) 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.

(5) 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.

(6)(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.

(7) FIELD.—The term “field” means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, or other similar features. At the option of the owner or operator of the farm, croplines may also be used to delineate a field if farming practices make it probable that the croplines are not subject to change. 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 the land was included on December 23, 1985, unless the owner and Secretary agree to modification of the boundaries of the field to carry out this chapter.

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

(9)(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.

(C) EQUATIONS.—Not later than 60 days after the date of enactment of this subparagraph, the Secretary shall publish in the Federal Register the universal soil loss equation and wind erosion equation used by the Department of Agriculture as of that date. The Secretary may not change the equations after that date except following notice and comment in a manner consistent with section 553 of title 5.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

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

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

(16) 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.

(17) 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.

(18) 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; Pub. L. 104-127, title III, §301(a)-(c), Apr. 4, 1996, 110 Stat. 980, 981.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), 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 date of enactment of this subparagraph, referred to in subsec. (a)(9)(C), is the date of enactment of Pub. L. 104-127, which was approved Apr. 4, 1996.

AMENDMENTS

1996—Subsec. (a)(2) to (6). Pub. L. 104-127, §301(a), added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (a)(7). Pub. L. 104-127, §301(b), added par. (7) and struck out former par. (7) which read as follows: “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.”

Pub. L. 104-127, §301(a)(1), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Subsec. (a)(8). Pub. L. 104-127, §301(a)(1), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Subsec. (a)(9). Pub. L. 104-127, §301(a)(1), redesignated par. (7) as (9). Former par. (9) redesignated (11).

Subsec. (a)(9)(C). Pub. L. 104-127, §301(c), added subparagraph. (C).

Subsec. (a)(10) to (18). Pub. L. 104-127, §301(a)(1), redesignated pars. (8) to (16) as (10) to (18), respectively.

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 1361-1, 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 3835, 3842, 3843 of this title; title 7 sections 7211, 7231; title 12 section 2219d.

§ 3811. Program ineligibility

Except as provided in section 3812 of this title, and notwithstanding any other provision of law, 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) contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act [7 U.S.C. 7201 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) a disaster payment; or

(D) 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 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 the crop year—

(A) a payment made pursuant to a contract entered into under the environmental quality incentives program under part IV of subchapter IV of this chapter;

(B) a payment under any other provision of subchapter IV of this chapter;

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

(D) a payment, loan, or other assistance under section 1003 or 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; Pub. L. 104-127, title III, §311, Apr. 4, 1996, 110 Stat. 982.)

REFERENCES IN TEXT

The Agricultural Market Transition Act, referred to in par. (1)(A), is title I of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 896, which is classified principally to chapter 100 (§7201 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 7201 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 Consolidated Farm and Rural Development Act, referred to in par. (1)(D), 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, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

AMENDMENTS

1996—Pub. L. 104-127, §311(1), struck out “following December 23, 1985,” before “any person who” in introductory provisions.

Par. (1)(A). Pub. L. 104-127, §311(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “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;”.

Par. (1)(C). Pub. L. 104-127, §311(2)(B), (E), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: “crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);”.

Par. (1)(D). Pub. L. 104-127, §311(2)(E), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 104-127, §311(2)(C), struck out before semicolon “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”.

Par. (1)(E). Pub. L. 104-127, §311(2)(D), (E), substituted “Consolidated Farm Service Agency” for “Farmers Home Administration” and redesignated subpar. (E) as (D).

Par. (3). Pub. L. 104-127, §311(3), added par. (3) and struck out former par. (3) which read as follows: “during such crop year—

“(A) a payment made under section 590h, section 590f 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.”

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).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 311 of Pub. L. 104-127 provided that the amendment made by that section is effective 90 days after Apr. 4, 1996.

WIND EROSION ESTIMATION PILOT PROJECT

Section 317 of Pub. L. 104-127 provided that:

“(a) IN GENERAL.—The Secretary of Agriculture shall conduct a pilot project to review, and modify as appropriate, the use of wind erosion factors under the highly erodible conservation requirements of subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.).

“(b) SELECTION OF COUNTIES AND PRODUCERS.—The pilot project shall be conducted for producers in those counties that—

“(1) have approximately 100 percent of their cropland determined to be highly erodible under title XII of the Act [16 U.S.C. 3801 et seq.];

“(2) have a reasonable likelihood that the use of wind erosion factors under title XII of the Act have resulted in an inequitable application of the highly erodible land requirements of title XII of the Act; and

“(3) if the use of the land classification system under section 1201(a)(9)(A) of the Act [16 U.S.C. 3801(a)(9)(A)] (as redesignated by section 301(a)(1)) may result in a more accurate delineation of the cropland.

“(c) ERRORS IN DELINEATION.—If the Secretary determines that a significant error has occurred in delineating cropland under the pilot project, the Secretary shall, at the request of the owners or operators of the cropland, conduct a new delineation of the cropland using the most accurate available delineation process, as determined by the Secretary.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3812, 3812a, 3836 of this title; title 7 section 7251.

§ 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, 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 only be required to apply a conservation plan established under this subchapter. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the same area. If the person's conservation plan requires structures to be constructed, the person shall 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 produc-

tion 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, in which case, 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 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) 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, if the Secretary determines that the person has acted in good faith and without an intent to violate this subchapter. A person who meets the requirements of this paragraph shall be allowed a reasonable period of time, as determined by the Secretary, but not to exceed 1 year, during which to implement the measures and practices necessary to be considered to be actively applying the person's conservation plan.

(2) If the Secretary determines that a person who has failed to comply with the provisions of section 3811 of this title with respect to highly erodible cropland that was not in production prior to December 23, 1985, and has acted in good faith and without an intent to violate the provisions, 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 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, 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, including weather, pest, and disease problems.

(5) **EXPEDITED PROCEDURES FOR TEMPORARY VARIANCES.**—After consultation with local conservation districts, the Secretary shall establish expedited procedures for the consideration and granting of temporary variances under paragraph (4)(C). If the request for a temporary variance under paragraph (4)(C) involves the use of practices or measures to address weather, pest, or disease problems, the Secretary shall make a decision on whether to grant the variance during the 30-day period beginning on the date of receipt of the request. If the Secretary fails to

render a decision during the period, the temporary variance shall be considered granted.

(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; Pub. L. 104-127, title III, §§301(d), 312-314, Apr. 4, 1996, 110 Stat. 981-983.)

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

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-127, §301(d)(1), in first sentence, struck out "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" after "applying a conservation plan".

Subsec. (a)(3). Pub. L. 104-127, §312, substituted "shall only be required to apply a conservation plan estab-

lished under this subchapter. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the same area. If the person's conservation plan requires structures to be constructed, the person shall" for "shall, if the conservation plan established under this subchapter for such land requires structures to be constructed."

Subsec. (c)(3). Pub. L. 104-127, §301(d)(2), substituted ", in which case," for "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."

Subsec. (e)(1)(A). Pub. L. 104-127, §301(d)(3), substituted "conservation plan" for "conservation compliance plan".

Subsec. (f)(1). Pub. L. 104-127, §313(a), substituted "No person" for "Except to the extent provided in paragraph (2), no person" and substituted "the person has acted in good faith and without an intent to violate this subchapter. A person who meets the requirements of this paragraph shall be allowed a reasonable period of time, as determined by the Secretary, but not to exceed 1 year, during which to implement the measures and practices necessary to be considered to be actively applying the person's conservation plan." for "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."

Pub. L. 104-127, §301(d)(4)(A), struck out "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" after "apply a conservation plan".

Subsec. (f)(2). Pub. L. 104-127, §313(b), substituted "with respect to highly erodible cropland that was not in production prior to December 23, 1985, and has acted in good faith and without an intent to violate the provisions" for "meets the requirements of paragraph (1)".

Subsec. (f)(3). Pub. L. 104-127, §301(d)(4)(B), struck out "prepared under subsection (a) of this section" after "a conservation plan".

Subsec. (f)(4). Pub. L. 104-127, §313(c), struck out concluding sentence which read as follows: "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)."

Pub. L. 104-127, §301(d)(4)(C), in introductory provisions, struck out "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" after "apply a conservation plan".

Subsec. (f)(4)(C). Pub. L. 104-127, §314(1), substituted "problem, including weather, pest, and disease problems" for "problem".

Subsec. (f)(5). Pub. L. 104-127, §314(2), added par. (5).

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, 3843 of this title; title 7 section 1924.

§ 3812a. Development and implementation of conservation plans and conservation systems

(a) Technical requirements

In connection with the standards and guidelines contained in Natural Resources Conservation Service field office technical guides applicable to the development and use of conservation measures and management practices as part of a conservation system, the Secretary shall ensure that the standards and guidelines permit a person to use a conservation system that—

- (1) is technically and economically feasible;
- (2) is based on local resource conditions and available conservation technology;
- (3) is cost-effective; and
- (4) does not cause undue economic hardship on the person applying the conservation system under the person's conservation plan.

(b) Measurement of erosion reduction

For the purpose of determining whether there is a substantial reduction in soil erosion on a field containing highly erodible cropland, the measurement of erosion reduction achieved by the application of a conservation system under a person's conservation plan shall be based on the estimated annual level of erosion at the time of the measurement compared to the estimated annual level of erosion that existed before the implementation of the conservation measures and management practices provided for in the conservation system.

(c) Residue measurement

(1) Responsibilities of Secretary

For the purpose of measuring the level of residue on a field, the Secretary shall—

- (A) take into account any residue incorporated into the top 2 inches of soil, as well as the growing crop, in the measurement;
- (B) provide technical guidelines for acceptable residue measurement methods;
- (C) provide a certification system for third parties to perform residue measurements; and
- (D) provide for the acceptance and use of information and data voluntarily provided by the producer regarding the field.

(2) Acceptance of producer measurements

Annual residue measurements supplied by a producer (including measurements performed by a certified third party) shall be used by the Secretary if the Secretary determines that the measurements indicate that the residue level for the field meets the level required under the conservation plan.

(d) Certification of compliance**(1) In general**

For the purpose of determining the eligibility of a person for program benefits specified in section 3811 of this title at the time application is made for the benefits, the Secretary shall permit the person to certify that the person is complying with the person's conservation plan.

(2) Status reviews

If a person makes a certification under paragraph (1), the Secretary shall not be required to carry out a review of the status of compliance of the person with the conservation plan under which the conservation system is being applied.

(3) Revisions and modifications

The Secretary shall permit a person who makes a certification under paragraph (1) with respect to a conservation plan to revise the conservation plan in any manner, if the same level of conservation treatment provided for by the conservation system under the person's conservation plan is maintained. The Secretary may not revise the person's conservation plan without the concurrence of the person.

(e) Technical assistance

The Secretary shall, using available resources and consistent with the Secretary's other conservation responsibilities and objectives, provide technical assistance to a person throughout the development, revision, and application of the conservation plan and any conservation system of the person. At the request of the person, the Secretary may provide technical assistance regarding conservation measures and management practices for other lands of the person that do not contain highly erodible cropland.

(f) Encouragement of on-farm research

To encourage on-farm conservation research, the Secretary may allow a person to include in the person's conservation plan or a conservation system under the plan, on a field trial basis, practices that are not currently approved but that the Secretary considers have a reasonable likelihood of success.

(Pub. L. 99-198, title XII, § 1213, as added Pub. L. 104-127, title III, § 315(a)(2), Apr. 4, 1996, 110 Stat. 984.)

PRIOR PROVISIONS

A prior section 1213 of Pub. L. 99-198 was renumbered section 1214 and is classified to section 3813 of this title.

§ 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, § 1214, formerly § 1213, Dec. 23, 1985, 99 Stat. 1507; renumbered § 1214, Pub. L. 104-127, title III, § 315(a)(1), Apr. 4, 1996, 110 Stat. 983.)

§ 3814. Notice and investigation of possible compliance deficiencies**(a) In general**

An employee of the Department of Agriculture who observes a possible compliance deficiency or other potential violation of a conservation plan or this subchapter while providing on-site technical assistance shall provide to the responsible persons, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan and this subchapter. The employee shall provide the information in lieu of reporting the observation as a compliance violation.

(b) Corrective action

The responsible persons shall attempt to correct the deficiencies as soon as practicable after receiving the information.

(c) Review

If the corrective action is not fully implemented not later than 1 year after the responsible persons receive the information, the Secretary may conduct a review of the status of compliance of the persons with the conservation plan and this subchapter.

(Pub. L. 99-198, title XII, § 1215, as added Pub. L. 104-127, title III, § 316, Apr. 4, 1996, 110 Stat. 985.)

SUBCHAPTER III—WETLAND
CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3835, 3842, 3843 of this title; title 7 sections 7211, 7231; title 12 section 2219d.

§ 3821. Program ineligibility**(a) Production on converted wetland**

Except as provided in this subchapter and notwithstanding any other provision of law, any person who in any crop year produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be—

(1) in violation of this section; and

(2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation.

(b) Ineligibility for certain loans and payments

If a person is determined to have committed a violation under subsection (a) of this section during a crop year, the Secretary shall determine which of, and the amount of, the following loans and payments for which the person shall be ineligible:

(1) Contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.], the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

(2) A loan made 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 Consolidated Farm Service Agency, if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to conversion of a wetland (other than as provided in this subchapter) to produce an agricultural commodity.

(3) During the crop year:

(A) A payment made pursuant to a contract entered into under the environmental quality incentives program under part IV of subchapter IV of this chapter.

(B) A payment under any other provision of subchapter IV of this chapter.

(C) A payment under section 2201 or 2202 of this title.

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

(c) Wetland conversion

Except as provided in section 3822 of this title and notwithstanding any other provision of law, any person who in any crop year beginning after 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 subsection (b) of this section for that crop year and all subsequent crop years.

(d) Prior loans

This section shall not apply to a loan described in subsection (b) of this section made before December 23, 1985.

(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; Pub. L. 104-127, title III, §321, Apr. 4, 1996, 110 Stat. 986.)

REFERENCES IN TEXT

The Agricultural Market Transition Act, referred to in subsec. (b)(1), is title I of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 896, which is classified principally to chapter 100 (§7201 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 7201 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in subsec. (b)(1), 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 Consolidated Farm and Rural Development Act, referred to in subsec. (b)(2), 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, Agriculture. For complete classification of this Act to the

Code, see Short Title note set out under section 1921 of Title 7 and Tables.

AMENDMENTS

1996—Pub. L. 104-127, §321(a)(2), reenacted section catchline without change.

Subsec. (a). Pub. L. 104-127, §321(a)(2), added subsec. (a) and struck out former subsec. (a) which related to ineligibility of persons producing an agricultural commodity on converted wetland to receive certain Federal payments, loans, insurance benefits, and other benefits.

Subsec. (b). Pub. L. 104-127, §321(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-127, §321(b)(1), inserted heading and substituted “beginning after November 28, 1990,” for “subsequent to November 28, 1990,” and “subsection (b)” for “subsections (a)(1) through (3)”.

Pub. L. 104-127, §321(a)(1), redesignated subsec. (b) as (c).

Subsec. (d). Pub. L. 104-127, §321(b)(2), added subsec. (d).

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).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 326 of Pub. L. 104-127 provided that: “This subtitle [subtitle C (§§321-326) of title III of Pub. L. 104-127, enacting section 3823 of this title, amending this section and section 3822 of this title, and repealing former section 3823 of this title] and the amendments made by this subtitle shall become effective 90 days after the date of enactment of this Act [Apr. 4, 1996].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3822, 3823, 3836 of this title; title 7 section 7251.

§ 3822. Delineation of wetlands; exemptions

(a) Delineation by Secretary

(1) In general

Subject to subsection (b) of this section and paragraph (6), the Secretary shall delineate, determine, and certify all wetlands located on subject land on a farm.

(2) Wetland delineation maps

The Secretary shall delineate wetlands on wetland delineation maps. On the request of a person, the Secretary shall make a reasonable effort to make an on-site wetland determination prior to delineation.

(3) Certification

On providing notice to affected persons, the Secretary shall—

(A) certify whether a map is sufficient for the purpose of making a determination of ineligibility for program benefits under section 3821 of this title; and

(B) provide an opportunity to appeal the certification prior to the certification becoming final.

(4) Duration of certification

A final certification made under paragraph (3) shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary.

(5) Review of mapping on appeal

In the case of an appeal of the Secretary's certification, the Secretary shall review and certify the accuracy of the mapping of all land subject to the appeal to ensure that the subject land has been accurately delineated. Prior to rendering a decision on the appeal, the Secretary shall conduct an on-site inspection of the subject land on a farm.

(6) Reliance on prior certified delineation

No person shall be adversely affected because of having taken an action based on a previous certified wetland delineation by the Secretary. The delineation shall not be subject to a subsequent wetland certification or delineation by the Secretary, unless requested by the person under paragraph (4).

(b) Exemptions

No person shall become ineligible under section 3821 of this title for program loans or payments under the following circumstances:

(1) As the result of the production of an agricultural commodity on the following lands:

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

(B) Land that is a nontidal drainage or irrigation ditch excavated in upland.

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

(D) A 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 the 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.

(E) Land that is an artificial lake or pond created by excavating or diking land (that is not a wetland) to collect and retain water and that is used primarily for livestock watering, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, or rice production, or as a settling pond.

(F) A wetland that is temporarily or incidentally created as a result of adjacent development activity.

(G) A converted wetland if the original conversion of the wetland was commenced before December 23, 1985, and the Secretary determines the wetland characteristics returned after that date as a result of—

(i) the lack of maintenance of drainage, dikes, levees, or similar structures;

(ii) a lack of management of the lands containing the wetland; or

(iii) circumstances beyond the control of the person.

(H) A converted wetland, if—

(i) the converted wetland was determined by the Natural Resources Conservation Service to have been manipulated for the production of an agricultural commodity or forage prior to December 23, 1985, and was returned to wetland conditions through a voluntary restoration, enhancement, or creation action subsequent to that determination;

(ii) technical determinations regarding the prior site conditions and the restoration, enhancement, or creation action have been adequately documented by the Natural Resources Conservation Service;

(iii) the proposed conversion action is approved by the Natural Resources Conservation Service prior to implementation; and

(iv) the extent of the proposed conversion is limited so that the conditions will be at least equivalent to the wetland functions and values that existed prior to implementation of the voluntary wetland restoration, enhancement, or creation action.

(2) For the conversion of the following:

(A) An artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water and that is used primarily for livestock watering, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, rice production, or as a settling pond.

(B) A wetland that is temporarily or incidentally created as a result of adjacent development activity.

(C) A 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 the 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.

(D) A wetland previously identified as a converted wetland (if the original conversion of the wetland was commenced before December 23, 1985), but that the Secretary determines returned to wetland status after that date as a result of—

(i) the lack of maintenance of drainage, dikes, levees, or similar structures;

(ii) a lack of management of the lands containing the wetland; or

(iii) circumstances beyond the control of the person.

(E) A wetland, if—

(i) the wetland was determined by the Natural Resources Conservation Service to have been manipulated for the production of an agricultural commodity or forage prior to December 23, 1985, and was returned to wetland conditions through a voluntary restoration, enhancement, or creation action subsequent to that determination;

(ii) technical determinations regarding the prior site conditions and the restoration, enhancement, or creation action

have been adequately documented by the Natural Resources Conservation Service;

(iii) the proposed conversion action is approved by the Natural Resources Conservation Service prior to implementation; and

(iv) the extent of the proposed conversion is limited so that the conditions will be at least equivalent to the wetland functions and values that existed prior to implementation of the voluntary wetland restoration, enhancement, or creation action.

(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) Identification of minimal effect exemptions

For purposes of applying the minimal effect exemption under subsection (f)(1) of this section, the Secretary shall identify by regulation categorical minimal effect exemptions on a regional basis to assist persons in avoiding a violation of the ineligibility provisions of section 3821 of this title. The Secretary shall ensure that employees of the Department of Agriculture who administer this subchapter receive appropriate training to properly apply the minimal effect exemptions determined by the Secretary.

(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 1 or more of the following conditions apply, as determined by the Secretary:

(1) The 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 wetlands in the area, including the value to waterfowl and wildlife.

(2) The wetland and the wetland values, acreage, and functions are mitigated by the person through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland, and the restoration, enhancement, or creation is—

(A) in accordance with a wetland conservation plan;

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

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

(D) in the case of enhancement or restoration of wetlands, on not greater than a 1-for-1 acreage basis unless more acreage is needed to provide equivalent functions and values that will be lost as a result of the wetland conversion to be mitigated;

(E) in the case of creation of wetlands, on greater than a 1-for-1 acreage basis if more acreage is needed to provide equivalent functions and values that will be lost as a result of the wetland conversion that is mitigated;

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

(G) with respect to the restored, enhanced, or created wetland, made subject to an easement that—

(i) is recorded on public land records;

(ii) remains in force for as long as the converted wetland for which the restoration, enhancement, or creation to be mitigated remains in agricultural use or is not returned to its original wetland classification with equivalent functions and values; and

(iii) prohibits making alterations to the restored, enhanced, or created wetland that lower the wetland's functions and values.

(3) The wetland was converted after December 23, 1985, but before November 28, 1990, and the wetland values, acreage, and functions are mitigated by the producer through the requirements of subparagraphs (A), (B), (C), (D), (F), and (G) of paragraph (2).

(4) The action was authorized by a permit issued under section 1344 of title 33 and the wetland values, acreage, and functions of the converted wetland were adequately mitigated for the purposes of this subchapter.

(g) Mitigation appeals

A person shall be afforded the right to appeal, under section 3843¹ of this title, the imposition of a mitigation agreement requiring greater than one-to-one acreage mitigation to which the person is subject.

(h) Good faith exemption

(1) Exemption described

The Secretary may waive 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, if the Secretary determines that the person has acted in good faith and without intent to violate this subchapter.

(2) Period for compliance

The Secretary shall provide a person who the Secretary determines has acted in good faith and without intent to violate this subchapter with a reasonable period, but not to

¹ See References in Text note below.

exceed 1 year, during which to implement the measures and practices necessary to be considered to² actively restoring the subject wetland.

(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 or has otherwise mitigated for the loss of wetland values, as determined by the Secretary, through the restoration, enhancement, or creation of wetland values in the same general area of the local watershed as the converted wetland.

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

Technical determinations, the development of restoration and mitigation plans, and monitoring activities under this section shall be made by the National³ Resources Conservation Service.

(k) Mitigation banking program

Using authorities available to the Secretary, the Secretary may operate a pilot program for mitigation banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland functions and values. Subsection (f)(2)(C) of this section shall not apply to this subsection.

(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; Pub. L. 104-127, title III, §322, Apr. 4, 1996, 110 Stat. 987.)

REFERENCES IN TEXT

Section 3843 of this title, referred to in subsec. (g), was omitted and a new section 3843 was added in the general amendment of subchapter V of this chapter by Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1008. The new section 3843 does not relate to appeal procedures.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-127, §322(a), added subsec. (a) and struck out heading and text of former subsec. (a). Text consisted of pars. (1) to (4) relating to delineation of wetlands.

Subsec. (b). Pub. L. 104-127, §322(b), added subsec. (b) and struck out heading and text of former subsec. (b). Text consisted of pars. (1)(A) to (D) and (2)(A) and (B) relating to exemptions.

Subsec. (d). Pub. L. 104-127, §322(c), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "Section 3821 of this title shall not apply to a loan described in section 3821 of this title made before December 23, 1985."

Subsec. (f). Pub. L. 104-127, §322(d), added subsec. (f) and struck out heading and text of former subsec. (f). Text consisted of pars. (1) to (3) relating to minimal effect and mitigation exemptions.

Subsec. (g). Pub. L. 104-127, §322(e), which directed substitution of "person" for "producer", was executed by making the substitution in two places.

Subsec. (h). Pub. L. 104-127, §322(f), added subsec. (h) and struck out heading and text of former subsec. (h).

Text consisted of pars. (1) to (3) relating to good faith exemptions to ineligibility under section 3821 of this title and graduated sanctions.

Subsec. (i). Pub. L. 104-127, §322(g), inserted before period at end "or has otherwise mitigated for the loss of wetland values, as determined by the Secretary, through the restoration, enhancement, or creation of wetland values in the same general area of the local watershed as the converted wetland".

Subsec. (j). Pub. L. 104-127, §322(h), added subsec. (j) and struck out heading and text of former subsec. (j). Text provided that technical determinations and the development of restoration and mitigation plans be made through agreement of local representative of Soil Conservation Service and representative of the Fish and Wildlife Service and required reporting of determinations and monitoring.

Subsec. (k). Pub. L. 104-127, §322(i), added subsec. (k). 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.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-127 effective 90 days after Apr. 4, 1996, see section 326 of Pub. L. 104-127, set out as a note under section 3821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3821 of this title.

§ 3823. Affiliated persons

If a person is affected by a reduction in benefits under section 3821 of this title and the affected person is affiliated with other persons for the purpose of receiving the benefits, the benefits of each affiliated person shall be reduced under section 3821 of this title in proportion to the interest held by the affiliated person.

(Pub. L. 99-198, title XII, §1223, as added Pub. L. 104-127, title III, §324, Apr. 4, 1996, 110 Stat. 992.)

PRIOR PROVISIONS

A prior section 3823, 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, related to consultation with Secretary of the Interior, prior to repeal by Pub. L. 104-127, title III, §§323, 326, Apr. 4, 1996, 110 Stat. 992, effective 90 days after Apr. 4, 1996.

EFFECTIVE DATE

Section effective 90 days after Apr. 4, 1996, see section 326 of Pub. L. 104-127, set out as an Effective Date of 1996 Amendment note under section 3821 of this title.

§ 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.)

² So in original. Probably should be followed by "be".

³ So in original. Probably should be "Natural".

SUBCHAPTER IV—AGRICULTURAL
RESOURCES CONSERVATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3801, 3811, 3821, 3842, 3843 of this title; title 7 sections 1308, 1308-3.

PART I—ENVIRONMENTAL CONSERVATION
ACREAGE RESERVE PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3839aa-2, 3843 of this title.

SUBPART A—GENERAL PROVISIONS

§ 3830. Environmental conservation acreage reserve program

(a) Establishment

(1) In general

During the 1996 through 2002 calendar years, the Secretary shall establish an environmental conservation acreage reserve program (referred to in this section as “ECARP”) to be implemented through contracts and the acquisition of easements to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat.

(2) Means

The Secretary shall carry out the ECARP by—

(A) providing for the long-term protection of environmentally sensitive land; and

(B) providing technical and financial assistance to farmers and ranchers to—

(i) improve the management and operation of the farms and ranches; and

(ii) reconcile productivity and profitability with protection and enhancement of the environment.

(3) Programs

The ECARP shall consist of—

(A) the conservation reserve program established under subpart B;

(B) the wetlands reserve program established under subpart C; and

(C) the environmental quality incentives program established under part IV of this subchapter.

(b) Administration

(1) In general

In carrying out the ECARP, the Secretary shall enter into contracts with owners and operators and acquire interests in land through easements from owners, as provided in this part and part IV of this subchapter.

(2) Prior enrollments

Acreage enrolled in the conservation reserve or wetlands reserve program prior to April 4, 1996, shall be considered to be placed into the ECARP.

(c) Conservation priority areas

(1) Designation

The Secretary may designate watersheds, multistate areas, or regions of special environ-

mental sensitivity as conservation priority areas that are eligible for enhanced assistance under this part and part IV of this subchapter.

(2) Assistance

The Secretary may designate areas as conservation priority areas to assist, to the maximum extent practicable, agricultural producers within the conservation priority areas to comply with nonpoint source pollution requirements under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and other Federal and State environmental laws and to meet other conservation needs.

(3) Producers

The Secretary may provide technical assistance, cost-share payments, and incentive payments to producers in a conservation priority area under this part and part IV of this subchapter based on—

(A) the significance of the soil, water, wildlife habitat, and related natural resource problems in a watershed, multistate area, or region; and

(B) the structural practices or land management practices that best address the problems, and that maximize environmental benefits for each dollar expended, as determined by the Secretary.

(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; Pub. L. 104-127, title III, §331, Apr. 4, 1996, 110 Stat. 992.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (c)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

1996—Pub. L. 104-127 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) requiring Secretary to establish and implement an Environmental Conservation Acreage Reserve Program during 1991 through 1995 calendar years.

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”.

FARMLAND PROTECTION PROGRAM

Section 388 of Pub. L. 104-127 provided that:

“(a) IN GENERAL.—The Secretary of Agriculture shall establish and carry out a farmland protection program under which the Secretary shall purchase conservation easements or other interests in not less than 170,000, nor more than 340,000, acres of land with prime, unique, or other productive soil that is subject to a pending offer from a State or local government for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

“(b) CONSERVATION PLAN.—Any highly erodible cropland for which a conservation easement or other interest is purchased under this section shall be subject to the requirements of a conservation plan that requires, at the option of the Secretary, the conversion of the cropland to less intensive uses.

“(c) FUNDING.—The Secretary shall use not more than \$35,000,000 of the funds of the Commodity Credit Corporation to carry out this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3839aa-3 of this title.

SUBPART B—CONSERVATION RESERVE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3812, 3830, 3836a, 3837, 3839bb, 3841, 3843 of this title; title 7 sections 6932, 6962.

§ 3831. Conservation reserve

(a) In general

Through the 2002 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 2002 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 filter-strips 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 es-

tablished 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 may maintain up to 36,400,000 acres in the conservation reserve at any one time during the 1986 through 2002 calendar years (including contracts extended by the Secretary pursuant to section 1437(c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 16 U.S.C. 3831 note)).

(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; Pub. L. 104-127, title III, §332(a)(1), (b), Apr. 4, 1996, 110 Stat. 994.)

CODIFICATION

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

AMENDMENTS

1996—Subsecs. (a), (b)(3). Pub. L. 104-127, §332(a)(1), substituted “2002” for “1995”.

Subsec. (d). Pub. L. 104-127, §332(b), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: “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.”

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 3837, 3839 of this title; title 7 sections 7211, 7212.

§ 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)¹ 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 2002 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 sub-

¹ See References in Text note below.

ject 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; Pub. L. 104-127, title III, §332(a)(2), Apr. 4, 1996, 110 Stat. 994.)

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.

Section 3843 of this title, referred to in subsec. (a)(11), was omitted and a new section 3843 was added in the general amendment of subchapter V of this chapter by Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1008. The new section 3843 does not contain a subsec. (f). However, provisions similar to those contained in subsec. (f) appear in subsec. (b) of that section.

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

1996—Subsec. (c). Pub. L. 104-127 substituted “2002” for “1995”.

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 agen-

cies 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 section 3801 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 1-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 1 year 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.

(e) Termination by owner or operator

(1) Early termination authorized

Subject to the other provisions of this subsection, the Secretary shall allow a partici-

pant who entered into a contract before January 1, 1995, to terminate the contract at any time if the contract has been in effect for at least 5 years. The termination shall not relieve the participant of liability for a contract violation occurring before the date of the termination. The participant shall provide the Secretary with reasonable notice of the participant's desire to terminate the contract.

(2) Certain lands excepted

The following lands shall not be subject to an early termination of contract under this subsection:

(A) Filterstrips, waterways, strips adjacent to riparian areas, windbreaks, and shelterbelts.

(B) Land with an erodibility index of more than 15.

(C) Other lands of high environmental value (including wetlands), as determined by the Secretary.

(3) Effective date

The contract termination shall become effective 60 days after the date on which the owner or operator submits the notice required under paragraph (1).

(4) Prorated rental payment

If a contract entered into under this subpart is terminated under this subsection before the end of the fiscal year for which a rental payment is due, the Secretary shall provide a prorated rental payment covering the portion of the fiscal year during which the contract was in effect.

(5) Renewed enrollment

The termination of a contract entered into under this subpart shall not affect the ability of the owner or operator who requested the termination to submit a subsequent bid to enroll the land that was subject to the contract into the conservation reserve.

(6) Conservation requirements

If land that was subject to a contract is returned to production of an agricultural commodity, the conservation requirements under subchapters II and III of this chapter shall apply to the use of the land to the extent that the requirements are similar to those requirements imposed on other similar lands in the area, except that the requirements may not be more onerous than the requirements imposed on other lands.

(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; Pub. L. 104-127, title III, §332(c), Apr. 4, 1996, 110 Stat. 994.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-127, §332(c)(1)(A), substituted “1-year” for “3-year” in introductory provisions.

Subsec. (a)(2)(B)(i). Pub. L. 104-127, §332(c)(1)(B), substituted “1 year” for “3 years”.

Subsec. (e). Pub. L. 104-127, §332(c)(2), added subsec. (e).

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.

§ 3836a. Wildlife Habitat Incentive Program

(a) In general

The Secretary of Agriculture, in consultation with the State technical committees established under section 1261 of the Food Security Act of 1985 (16 U.S.C. 3861), shall establish a program under the Natural Resources Conservation Service to be known as the “Wildlife Habitat Incentive Program”.

(b) Cost-share payments

Under the program, the Secretary shall make cost-share payments to landowners to develop upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat approved by the Secretary.

(c) Funding

To carry out this section, a total of \$50,000,000 shall be made available for fiscal years 1996 through 2002 from funds made available to carry out subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.).

(Pub. L. 104-127, title III, §387, Apr. 4, 1996, 110 Stat. 1020.)

REFERENCES IN TEXT

The Food Security Act of 1985, referred to in subsec. (c), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as

amended. Subchapter B of chapter 1 of subtitle D of title XII of the Act is classified generally to subpart B (§ 3831 et seq.) of part I of subchapter IV of this chapter. 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.

CODIFICATION

Section was enacted as part of the Federal Agriculture Improvement and Reform Act of 1996, and not as part of title XII of the Food Security Act of 1985 which comprises this chapter.

SUBPART C—WETLANDS RESERVE PROGRAM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3830, 3835a, 3839bb, 3841, 3843 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) Enrollment conditions

(1) Maximum enrollment

The total number of acres enrolled in the wetlands reserve program shall not exceed 975,000 acres.

(2) Methods of enrollment

(A) In general

Subject to subparagraph (B), effective beginning October 1, 1996, to the maximum extent practicable, the Secretary shall enroll into the wetlands reserve program—

- (i) $\frac{1}{3}$ of the acres through the use of permanent easements;
- (ii) $\frac{1}{3}$ of the acres through the use of 30-year easements; and
- (iii) $\frac{1}{3}$ of the acres through the use of restoration cost-share agreements.

(B) Temporary easements

Effective beginning October 1, 1996, the Secretary shall not enroll acres in the wetlands reserve program through the use of new permanent easements until the Secretary has enrolled at least 75,000 acres in the program through the use of temporary easements.

(c) Eligibility

For purposes of enrolling land in the wetland reserve established under this subpart during the 1991 through 2002 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 maximizes wildlife benefits and wetland values and functions;
- (2) 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 conversion was not commenced prior to December 23, 1985, shall not be eligible to be enrolled in the program under this section; and
- (3) 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, land that maximizes wildlife benefits and that is—

- (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; or
- (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; Pub. L. 104-127, title III, §333(a)-(c), Apr. 4, 1996, 110 Stat. 995.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-127, §333(a), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “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.”

Subsec. (c). Pub. L. 104-127, §333(b), substituted “2002” for “2000” in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (d). Pub. L. 104-127, §333(c), in introductory provisions, inserted “, land that maximizes wildlife benefits and that is” after “subsection (c) of this section” and, in par. (2), substituted “or” for “and” at end.

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.

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Section 333(f) of Pub. L. 104-127 provided that: “The amendments made by this section [amending this section and sections 3837a and 3837c of this title] shall not affect the validity or terms of any agreements entered into by the Secretary of Agriculture under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837 et seq.) before the date of enactment of this Act [Apr. 4, 1996] or any payments required to be made in connection with the agreements.”

§ 3837a. Easements and agreements

(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

The development of a restoration plan, including any compatible use, under this section shall be made through the local Natural Resources Conservation Service representative, in consultation with the State technical committee.

(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 30, annual payments of equal or unequal size, as agreed to 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.

(h) Restoration cost-share agreements

The Secretary may enroll land into the wetlands reserve program through an agreement that requires the landowner to restore wetlands on the land, if the agreement does not provide the Secretary with an easement.

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

Stat. 3585; amended Pub. L. 104-127, title III, § 333(d), Apr. 4, 1996, 110 Stat. 996.)

AMENDMENTS

1996—Pub. L. 104-127, § 333(d)(1), inserted “and agreements” after “Easements” in section catchline.

Subsec. (c). Pub. L. 104-127, § 333(d)(2), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

“(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.”

Subsec. (f). Pub. L. 104-127, § 333(d)(3), substituted “Compensation may be provided in not less than 5, nor more than 30, annual payments of equal or unequal size, as agreed to by the owner and the Secretary.” for “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.”

Subsec. (h). Pub. L. 104-127, § 333(d)(4), added subsec. (h).

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Amendments made by section 333 of Pub. L. 104-127 not to affect validity or terms of agreements entered into by Secretary of Agriculture under this subpart before Apr. 4, 1996, or payments required to be made in connection with such agreements, see section 333(f) of Pub. L. 104-127, set out as a note under section 3837 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3837, 3837c 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 and technical assistance

(1) Easements

Effective beginning October 1, 1996, in making cost-share payments under subsection (a)(1) of this section, the Secretary shall—

- (A) in the case of a permanent easement, pay the owner an amount that is not less than 75 percent, but not more than 100 percent, of the eligible costs; and

- (B) in the case of a 30-year easement, pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

(2) Restoration cost-share agreements

In making cost-share payments in connection with a restoration cost-share agreement entered into under section 3837a(h) of this title, the Secretary shall pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

(3) Technical assistance

The Secretary shall provide owners with technical assistance to assist owners in complying with the terms of easements and restoration cost-share agreements.

(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; amended Pub. L. 104-127, title III, § 333(e), Apr. 4, 1996, 110 Stat. 996.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-127 added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “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.”

EFFECT OF 1996 AMENDMENTS ON EXISTING
AGREEMENTS

Amendments made by section 333 of Pub. L. 104-127 not to affect validity or terms of agreements entered into by Secretary of Agriculture under this subpart before Apr. 4, 1996, or payments required to be made in connection with such agreements, see section 333(f) of Pub. L. 104-127, set out as a note under section 3837 of this title.

§ 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 Sec-

retary 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

§§ 3838 to 3838f. Repealed. Pub. L. 104-127, title III, § 336(h), Apr. 4, 1996, 110 Stat. 1007

Section 3838, Pub. L. 99-198, title XII, §1238, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, related to policy of Congress on water quality protection.

Section 3838a, Pub. L. 99-198, title XII, §1238A, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, defined terms for purposes of this part.

Section 3838b, Pub. L. 99-198, title XII, §1238B, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, directed Secretary to formulate and carry out agricultural water quality protection program.

Section 3838c, Pub. L. 99-198, title XII, §1238C, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3594, related to lands eligible for enrollment in water quality protection program.

Section 3838d, Pub. L. 99-198, title XII, §1238D, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3595, related to technical assistance for water quality protection.

Section 3838e, Pub. L. 99-198, title XII, §1238E, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596, related to demonstration and pilot programs.

Section 3838f, Pub. L. 99-198, title XII, §1238F, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596, related to report to Congress.

PART III—ENVIRONMENTAL EASEMENT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3839aa-2, 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.)

PART IV—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 590h, 2106a, 3811, 3821, 3830, 3839bb, 3841, 3843, 3862 of this title; title 7 sections 1344, 1377, 1831a; title 43 section 1592.

§ 3839aa. Purposes

The purposes of the environmental quality incentives program established by this part are to—

(1) combine into a single program the functions of—

(A) the agricultural conservation program authorized by sections 590g and 590h of this title (as in effect before the amendments made by section 336(a)(1) of the Federal Agriculture Improvement and Reform Act of 1996);

(B) the Great Plains conservation program established under section 590p(b) of this title (as in effect before the amendment made by section 336(b)(1) of the Federal Agriculture Improvement and Reform Act of 1996);

(C) the water quality incentives program established under part II of this subchapter (as in effect before the amendment made by section 336(h) of the Federal Agriculture Improvement and Reform Act of 1996); and

(D) the Colorado River Basin salinity control program established under section 1592(c) of title 43 (as in effect before the amendment made by section 336(c)(1) of the Federal Agriculture Improvement and Reform Act of 1996); and

(2) carry out the single program in a manner that maximizes environmental benefits per dollar expended, and that provides—

(A) flexible technical and financial assistance to farmers and ranchers that face the most serious threats to soil, water, and related natural resources, including grazing lands, wetlands, and wildlife habitat;

(B) assistance to farmers and ranchers in complying with this chapter and Federal and State environmental laws, and encourages environmental enhancement;

(C) assistance to farmers and ranchers in making beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management, land uses, or other measures needed to conserve and improve soil, water, and related natural resources; and

(D) for the consolidation and simplification of the conservation planning process to reduce administrative burdens on producers.

(Pub. L. 99-198, title XII, §1240, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 996.)

REFERENCES IN TEXT

Section 336 of the Federal Agriculture Improvement and Reform Act of 1996, referred to in par. (1), is section 336 of Pub. L. 104-127. Section 336(a)(1) amended sections 590h, 590k, 590n, and 590o of this title, section 336(b)(1) repealed section 590p of this title, section

336(c)(1) amended section 1592 of Title 43, Public Lands, and section 336(h) repealed part II (§3838 et seq.) of this subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3839aa-7 of this title.

§ 3839aa-1. Definitions

In this part:

(1) Eligible land

The term “eligible land” means agricultural land (including cropland, rangeland, pasture, and other land on which crops or livestock are produced), including agricultural land that the Secretary determines poses a serious threat to soil, water, or related resources by reason of the soil types, terrain, climatic, soil, topographic, flood, or saline characteristics, or other factors or natural hazards.

(2) Land management practice

The term “land management practice” means a site-specific nutrient or manure management, integrated pest management, irrigation management, tillage or residue management, grazing management, or other land management practice carried out on eligible land that the Secretary determines is needed to protect, in the most cost-effective manner, water, soil, or related resources from degradation.

(3) Livestock

The term “livestock” means dairy cattle, beef cattle, laying hens, broilers, turkeys, swine, sheep, and such other animals as determined by the Secretary.

(4) Producer

The term “producer” means a person who is engaged in livestock or agricultural production (as defined by the Secretary).

(5) Structural practice

The term “structural practice” means—

(A) the establishment on eligible land of a site-specific animal waste management facility, terrace, grassed waterway, contour grass strip, filterstrip, tailwater pit, permanent wildlife habitat, or other structural practice that the Secretary determines is needed to protect, in the most cost-effective manner, water, soil, or related resources from degradation; and

(B) the capping of abandoned wells on eligible land.

(Pub. L. 99-198, title XII, §1240A, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 997.)

§ 3839aa-2. Establishment and administration of environmental quality incentives program

(a) Establishment

(1) In general

During the 1996 through 2002 fiscal years, the Secretary shall provide technical assistance, cost-share payments, incentive payments, and education to producers, who enter into contracts with the Secretary, through an environ-

mental quality incentives program in accordance with this part.

(2) Eligible practices

(A) Structural practices

A producer who implements a structural practice shall be eligible for any combination of technical assistance, cost-share payments, and education.

(B) Land management practices

A producer who performs a land management practice shall be eligible for any combination of technical assistance, incentive payments, and education.

(b) Application and term

A contract between a producer and the Secretary under this part may—

(1) apply to 1 or more structural practices or 1 or more land management practices, or both; and

(2) have a term of not less than 5, nor more than 10, years, as determined appropriate by the Secretary, depending on the practice or practices that are the basis of the contract.

(c) Structural practices

(1) Offer selection process

The Secretary shall, to the maximum extent practicable, establish a process for selecting applications for financial assistance if there are numerous applications for assistance for structural practices that would provide substantially the same level of environmental benefits. The process shall be based on—

(A) a reasonable estimate of the projected cost of the proposals and other factors identified by the Secretary for determining which applications will result in the least cost to the program authorized by this part; and

(B) the priorities established under this subchapter and such other factors determined by the Secretary that maximize environmental benefits per dollar expended.

(2) Concurrence of owner

If the producer making an offer to implement a structural practice is a tenant of the land involved in agricultural production, for the offer to be acceptable, the producer shall obtain the concurrence of the owner of the land with respect to the offer.

(d) Land management practices

The Secretary shall establish an application and evaluation process for awarding technical assistance or incentive payments, or both, to a producer in exchange for the performance of 1 or more land management practices by the producer.

(e) Cost-share payments, incentive payments, and technical assistance

(1) Cost-share payments

(A) In general

The Federal share of cost-share payments to a producer proposing to implement 1 or more structural practices shall be not more than 75 percent of the projected cost of the practice, as determined by the Secretary,

taking into consideration any payment received by the producer from a State or local government.

(B) Limitation

A producer who owns or operates a large confined livestock operation (as defined by the Secretary) shall not be eligible for cost-share payments to construct an animal waste management facility.

(C) Other payments

A producer shall not be eligible for cost-share payments for structural practices on eligible land under this part if the producer receives cost-share payments or other benefits for the same land under part I or III of this subchapter.

(2) Incentive payments

The Secretary shall make incentive payments in an amount and at a rate determined by the Secretary to be necessary to encourage a producer to perform 1 or more land management practices.

(3) Technical assistance

(A) Funding

The Secretary shall allocate funding under this part for the provision of technical assistance according to the purpose and projected cost for which the technical assistance is provided for a fiscal year. The allocated amount may vary according to the type of expertise required, quantity of time involved, and other factors as determined appropriate by the Secretary. Funding shall not exceed the projected cost to the Secretary of the technical assistance provided for a fiscal year.

(B) Other authorities

The receipt of technical assistance under this part shall not affect the eligibility of the producer to receive technical assistance under other authorities of law available to the Secretary.

(C) Private sources

The Secretary shall ensure that the processes of writing and developing proposals and plans for contracts under this part, and of assisting in the implementation of structural practices and land management practices covered by the contracts, are open to individuals in agribusiness, including agricultural producers, representatives from agricultural cooperatives, agricultural input retail dealers, and certified crop advisers. The requirements of this subparagraph shall also apply to any other conservation program of the Department of Agriculture that provides incentive payments, technical assistance, or cost-share payments.

(f) Modification or termination of contracts

(1) Voluntary modification or termination

The Secretary may modify or terminate a contract entered into with a producer under this part if—

(A) the producer agrees to the modification or termination; and

(B) the Secretary determines that the modification or termination is in the public interest.

(2) Involuntary termination

The Secretary may terminate a contract under this part if the Secretary determines that the producer violated the contract.

(g) Non-Federal assistance

The Secretary may request the services of a State water quality agency, State fish and wildlife agency, State forestry agency, or any other governmental or private resource considered appropriate to assist in providing the technical assistance necessary for the development and implementation of a structural practice or land management practice.

(Pub. L. 99-198, title XII, §1240B, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 998.)

§ 3839aa-3. Evaluation of offers and payments

In providing technical assistance, cost-share payments, and incentive payments to producers, the Secretary shall accord a higher priority to assistance and payments that—

- (1) are provided in conservation priority areas established under section 3830(c) of this title;
- (2) maximize environmental benefits per dollar expended; or
- (3) are provided in watersheds, regions, or conservation priority areas in which State or local governments have provided, or will provide, financial or technical assistance to producers for the same conservation or environmental purposes.

(Pub. L. 99-198, title XII, §1240C, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000.)

§ 3839aa-4. Duties of producers

To receive technical assistance, cost-share payments, or incentive payments under this part, a producer shall agree—

- (1) to implement an environmental quality incentives program plan that describes conservation and environmental goals to be achieved through a structural practice or land management practice, or both, that is approved by the Secretary;
- (2) not to conduct any practices on the farm or ranch that would tend to defeat the purposes of this part;
- (3) on the violation of a term or condition of the contract at any time the producer has control of the land, to refund any cost-share or incentive payment received with interest, and forfeit any future payments under this part, as determined by the Secretary;
- (4) on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees with the Secretary to assume all obligations of the contract, to refund all cost-share payments and incentive payments received under this part, as determined by the Secretary;
- (5) to supply information as required by the Secretary to determine compliance with the environmental quality incentives program plan and requirements of the program; and

(6) to comply with such additional provisions as the Secretary determines are necessary to carry out the environmental quality incentives program plan.

(Pub. L. 99-198, title XII, §1240D, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000.)

§ 3839aa-5. Environmental quality incentives program plan**(a) In general**

To be eligible to enter into a contract under the environmental quality incentives program, an owner or producer of a livestock or agricultural operation must submit to the Secretary for approval a plan of operations that incorporates such conservation practices, and is based on such principles, as the Secretary considers necessary to carry out the program, including a description of structural practices and land management practices to be implemented and the objectives to be met by the plan's implementation.

(b) Avoidance of duplication

The Secretary shall, to the maximum extent practicable, eliminate duplication of planning activities under the environmental quality incentives program and comparable conservation programs.

(Pub. L. 99-198, title XII, §1240E, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001.)

§ 3839aa-6. Duties of Secretary

To the extent appropriate, the Secretary shall assist a producer in achieving the conservation and environmental goals of an environmental quality incentives program plan by—

- (1) providing an eligibility assessment of the farming or ranching operation of the producer as a basis for developing the plan;
- (2) providing technical assistance in developing and implementing the plan;
- (3) providing technical assistance, cost-share payments, or incentive payments for developing and implementing 1 or more structural practices or 1 or more land management practices, as appropriate;
- (4) providing the producer with information, education, and training to aid in implementation of the plan; and
- (5) encouraging the producer to obtain technical assistance, cost-share payments, or grants from other Federal, State, local, or private sources.

(Pub. L. 99-198, title XII, §1240F, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001.)

§ 3839aa-7. Limitation on payments**(a) In general**

The total amount of cost-share and incentive payments paid to a producer under this part may not exceed—

- (1) \$10,000 for any fiscal year; or
- (2) \$50,000 for any multiyear contract.

(b) Exception to annual limit

The Secretary may exceed the limitation on the annual amount of a payment under sub-

section (a)(1) of this section on a case-by-case basis if the Secretary determines that a larger payment is—

(1) essential to accomplish the land management practice or structural practice for which the payment is made; and

(2) consistent with the maximization of environmental benefits per dollar expended and the purposes of this part specified in section 3839aa of this title.

(c) Timing of expenditures

Expenditures under a contract entered into under this part during a fiscal year may not be made by the Secretary until the subsequent fiscal year.

(Pub. L. 99-198, title XII, §1240G, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001.)

§ 3839aa-8. Temporary administration of environmental quality incentives program

(a) Interim administration

(1) In general

During the period beginning on April 4, 1996, and ending on the termination date provided under paragraph (2), to ensure that technical assistance, cost-share payments, and incentive payments continue to be administered in an orderly manner until such time as assistance can be provided through final regulations issued to implement the environmental quality incentives program established under this part, the Secretary shall continue to—

(A) provide technical assistance, cost-share payments, and incentive payments under the terms and conditions of the agricultural conservation program, the Great Plains conservation program, the water quality incentives program, and the Colorado River Basin salinity control program, to the extent the terms and conditions of the program are consistent with the environmental quality incentives program; and

(B) use for those purposes—

(i) any funds remaining available for the agricultural conservation program, the Great Plains conservation program, the water quality incentives program, and the Colorado River Basin salinity control program; and

(ii) as the Secretary determines to be necessary, any funds authorized to be used to carry out the environmental quality incentives program.

(2) Termination of authority

The authority of the Secretary to carry out paragraph (1) shall terminate on the date that is 180 days after April 4, 1996.

(b) Permanent administration

Effective beginning on the termination date provided under subsection (a)(2) of this section, the Secretary shall provide technical assistance, cost-share payments, and incentive payments for structural practices and land management practices related to crop and livestock production in accordance with final regulations issued to carry out the environmental quality incentives program.

(Pub. L. 99-198, title XII, §1240H, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1002.)

PART V—CONSERVATION FARM OPTION

§ 3839bb. Conservation farm option

(a) In general

The Secretary shall establish conservation farm option pilot programs for producers of wheat, feed grains, cotton, and rice.

(b) Eligible owners and producers

An owner or producer with a farm that has contract acreage enrolled in the agricultural market transition program established under the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.] shall be eligible to participate in the conservation farm option offered under a pilot program under subsection (a) of this section if the owner or producer meets the conditions established under section (e) of this section.

(c) Purposes

The purposes of the conservation farm option pilot programs shall include—

(1) conservation of soil, water, and related resources;

(2) water quality protection or improvement;

(3) wetland restoration, protection, and creation;

(4) wildlife habitat development and protection; or

(5) other similar conservation purposes.

(d) Conservation farm plan

(1) In general

To be eligible to enter into a conservation farm option contract, an owner or producer must prepare and submit to the Secretary, for approval, a conservation farm plan that shall become a part of the conservation farm option contract.

(2) Requirements

A conservation farm plan shall—

(A) describe the resource-conserving crop rotations, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contract period;

(B) contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;

(C) comply with highly erodible land and wetland conservation requirements of this chapter; and

(D) contain such other terms as the Secretary may require.

(e) Contracts

(1) In general

On approval of a conservation farm plan, the Secretary may enter into a contract with the owner or producer that specifies the acres being enrolled and the practices being adopted.

(2) Duration of contract

The contract shall be for a period of 10 years. The contract may be renewed for a period of

not to exceed 5 years on mutual agreement of the Secretary and the owner or producer.

(3) Consideration

In exchange for payments under this subsection, the owner or producer shall not participate in and shall forgo payments under—

(A) the conservation reserve program established under subpart B of part I of this subchapter;

(B) the wetlands reserve program established under subpart C of part I of this subchapter; and

(C) the environmental quality incentives program established under part IV of this subchapter.

(4) Owner or producer responsibilities under the agreement

Under the terms of the contract entered into under this section, an owner or producer shall agree to—

(A) actively comply with the terms and conditions of the approved conservation farm plan;

(B) keep such records as the Secretary may reasonably require for purposes of evaluation of the implementation of the conservation farm plan; and

(C) not engage in any activity that would defeat the purposes of the conservation farm option pilot program.

(5) Payments

The Secretary shall offer an owner or producer annual payments under the contract that are equivalent to the payments the owner or producer would have received under the conservation reserve program, the wetlands reserve program, and the environmental quality incentives program.

(6) Balance of benefits

The Secretary shall not permit an owner or producer to terminate a conservation reserve program contract and enter a conservation farm option contract if the Secretary determines that such action will reduce net environmental benefits.

(f) Secretarial determinations

(1) Acreage estimates

Prior to each year during which the Secretary intends to offer conservation reserve program contracts, the Secretary shall estimate the number of acres that—

(A) will be retired under the conservation farm option under the terms and conditions the Secretary intends to offer for that program; and

(B) would be retired under the conservation reserve program if the conservation farm option were not available.

(2) Total land retirement

The Secretary shall announce a number of acres to be enrolled in the conservation reserve program that will result in a total number of acres retired under the conservation reserve program and the conservation farm option that does not exceed the amount estimated under paragraph (1)(B) for the current or future years.

(3) Limitation

The Secretary shall not enroll additional conservation reserve program contracts to offset the land retired under the conservation farm option.

(g) Commodity Credit Corporation

The Secretary shall use the funds, authorities, and facilities of the Commodity Credit Corporation to carry out this subsection.

(h) Funding

Of the funds of the Commodity Credit Corporation, the Corporation shall make available to carry out this section—

- (1) \$7,500,000 for fiscal year 1997;
- (2) \$15,000,000 for fiscal year 1998;
- (3) \$25,000,000 for fiscal year 1999;
- (4) \$37,500,000 for fiscal year 2000;
- (5) \$50,000,000 for fiscal year 2001; and
- (6) \$62,500,000 for fiscal year 2002.

(Pub. L. 99-198, title XII, §1240M, as added Pub. L. 104-127, title III, §335, Apr. 4, 1996, 110 Stat. 1002.)

REFERENCES IN TEXT

The Agricultural Market Transition Act, referred to in subsec. (b), is title I of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 896, which is classified principally to chapter 100 (§7201 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 7201 of Title 7 and Tables.

SUBCHAPTER V—FUNDING AND ADMINISTRATION

CODIFICATION

Subtitle E of title XII of the Food Security Act, comprising this subchapter, was originally enacted by Pub. L. 99-198, title XII, Dec. 23, 1985, 99 Stat. 1514, and amended by Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 102-237, Dec. 13, 1991, 105 Stat. 1818; Pub. L. 102-552, Oct. 28, 1992, 106 Stat. 4102; and Pub. L. 104-66, Dec. 21, 1995, 109 Stat. 707. Subtitle E is shown herein, however, as having been added by Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1007, without reference to the intervening amendments because of the extensive revision of the subtitle's provisions by Pub. L. 104-127.

§ 3841. Funding

(a) Mandatory expenses

For each of fiscal years 1996 through 2002, the Secretary shall use the funds of the Commodity Credit Corporation to carry out the programs authorized by—

(1) subpart B of part I of subchapter IV of this chapter (including contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 16 U.S.C. 3831 note));

(2) subpart C of part I of subchapter IV of this chapter; and

(3) part IV of subchapter IV of this chapter.

(b) Environmental quality incentives program

(1) In general

Of the funds of the Commodity Credit Corporation, the Secretary shall make available \$130,000,000 for fiscal year 1996, and \$200,000,000 for each of fiscal years 1997 through 2002, for

providing technical assistance, cost-share payments, incentive payments, and education under the environmental quality incentives program under part IV of subchapter IV of this chapter.

(2) Livestock production

For each of fiscal years 1996 through 2002, 50 percent of the funding available for technical assistance, cost-share payments, incentive payments, and education under the environmental quality incentives program shall be targeted at practices relating to livestock production.

(Pub. L. 99-198, title XII, §1241, as added Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1007.)

PRIOR PROVISIONS

A prior section 3841, Pub. L. 99-198, title XII, §1241, Dec. 23, 1985, 99 Stat. 1514, related to use of Commodity Credit Corporation, prior to the general amendment of this subchapter by Pub. L. 104-127.

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, which provided that after fiscal year 1987, funds available to Corporation could be used to carry out 16 U.S.C. 3841(a)(1), only to such extent or in such amounts as provided in advance in appropriations acts, that signup agreements should not reduce total production below certain levels, and that since by law proceeds from sales become available for use by Commodity Credit Corporation, such sales should reduce future appropriations, was repealed by Pub. L. 104-127, title III, §336(g), Apr. 4, 1996, 110 Stat. 1007, insofar as it related to availability of appropriations.

§ 3842. Use of other agencies

(a) Committees

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) Other agencies

(1) Use

In carrying out subchapters III and IV of this chapter, the Secretary may utilize the services of the Natural Resources 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(b) of this title, soil and water conservation districts, and other appropriate agencies.

(2) Consultation

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, as added Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1008.)

PRIOR PROVISIONS

A prior section 3842, Pub. L. 99-198, title XII, §1242, Dec. 23, 1985, 99 Stat. 1515, related to use of other agen-

cies, prior to the general amendment of this subchapter by Pub. L. 104-127.

§ 3843. Administration

(a) Plans

The Secretary shall, to the extent practicable, avoid duplication in—

(1) the conservation plans required for—

(A) highly erodible land conservation under subchapter II of this chapter;

(B) the conservation reserve program established under subpart B of part I of subchapter IV of this chapter; and

(C) the wetlands reserve program established under subpart C of part I of subchapter IV of this chapter; and

(2) the environmental quality incentives program established under part IV of subchapter IV of this chapter.

(b) Acreage limitation

(1) In general

The Secretary shall not enroll more than 25 percent of the cropland in any county in the programs administered under the conservation reserve and wetlands reserve programs established under subparts B and C, respectively, of part I of subchapter IV of this chapter. Not more than 10 percent of the cropland in a county may be subject to an easement acquired under the subparts.

(2) Exception

The Secretary may exceed the limitations in paragraph (1) if the Secretary determines that—

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

(B) operators in the county are having difficulties complying with conservation plans implemented under section 3812 of this title.

(3) Shelterbelts and windbreaks

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

(c) Tenant protection

Except for a person who is a tenant on land that is subject to a conservation reserve contract that has been extended by the Secretary, 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 programs established under subchapters II through IV of this chapter.

(d) Provision of technical assistance by other sources

In the preparation and application of a conservation compliance plan under subchapter II of this chapter or similar plan required as a condition for assistance from the Department of Agriculture, the Secretary shall permit persons to secure technical assistance from approved sources, as determined by the Secretary, other than the Natural Resources Conservation Service. If the Secretary rejects a technical deter-

mination made by such a source, the basis of the Secretary's determination must be supported by documented evidence.

(e) Regulations

Not later than 90 days after April 4, 1996, the Secretary shall issue regulations to implement the conservation reserve and wetlands reserve programs established under part I of subchapter IV of this chapter.

(Pub. L. 99-198, title XII, § 1243, as added Pub. L. 104-127, title III, § 341, Apr. 4, 1996, 110 Stat. 1008.)

PRIOR PROVISIONS

Prior sections 3843 to 3845 were omitted in the general amendment of this subchapter by Pub. L. 104-127.

Section 3843, 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, related to administration of this chapter.

Section 3844, Pub. L. 99-198, title XII, § 1244, Dec. 23, 1985, 99 Stat. 1515, related to issuance of regulations to carry out subchapters I to V of this chapter.

Section 3845, 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, related to authorization of appropriations.

A prior section 3846, Pub. L. 99-198, title XII, § 1246, as added Pub. L. 101-624, title XIV, § 1444, Nov. 28, 1990, 104 Stat. 3602, directed Secretary to report to Congress on erodible land and wetland conservation program, prior to repeal by Pub. L. 104-66, title I, § 1011(a), Dec. 21, 1995, 109 Stat. 709.

A prior section 3847, 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, which related to assistance for control of spread of weeds and pests, was omitted in the general amendment of this subchapter by Pub. L. 104-127.

SECTION REFERRED TO IN OTHER SECTIONS

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

SUBCHAPTER VI—STATE TECHNICAL COMMITTEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 section 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 com-

mittee 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;
- (8) other agency personnel with expertise in soil, water, wetland, and wildlife management as the Secretary determines appropriate;
- (9) agricultural producers with demonstrable conservation expertise;
- (10) nonprofit organizations with demonstrable conservation expertise;
- (11) persons knowledgeable about conservation techniques; and
- (12) agribusiness.

(Pub. L. 99-198, title XII, § 1261, as added Pub. L. 101-624, title XIV, § 1446, Nov. 28, 1990, 104 Stat. 3604; amended Pub. L. 104-127, title III, § 342(a), Apr. 4, 1996, 110 Stat. 1009.)

AMENDMENTS

1996—Subsec. (c)(9) to (12). Pub. L. 104-127 added pars. (9) to (12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3836a, 3862 of this title.

§ 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. Each State technical committee shall provide public notice of, and permit public attendance at meetings considering, issues of concern related to carrying out this chapter.

(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 de-

velop technical guides for the implementation of the wetland preservation and wildlife habitat improvement options of the agricultural water quality protection program under section 3838b¹ of this title. Each State technical committee shall establish criteria and guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides.

(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;
- (8) establishing criteria and priorities for State initiatives under the environmental quality incentives program under part IV of subchapter IV of this chapter; and
- (9) 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; Pub. L. 104-127, title III, §342(b), Apr. 4, 1996, 110 Stat. 1009.)

REFERENCES IN TEXT

Section 3838b of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

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

1996—Subsec. (a). Pub. L. 104-127, §342(b)(1), inserted at end “Each State technical committee shall provide public notice of, and permit public attendance at meetings considering, issues of concern related to carrying out this chapter.”

Subsec. (b)(1). Pub. L. 104-127, §342(b)(2), inserted at end “Each State technical committee shall establish criteria and guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides.”

Subsec. (c)(7) to (9). Pub. L. 104-127, §342(b)(3), struck out “and” at end of par. (7), added par. (8), and redesignated former par. (8) as (9).

1994—Subsec. (e). Pub. L. 103-354 added subsec. (e).

PUBLIC NOTICE AND COMMENT FOR REVISIONS TO CERTAIN STATE TECHNICAL GUIDES

Section 343 of Pub. L. 104-127 provided that: “After the date of enactment of this Act [Apr. 4, 1996], the Secretary of Agriculture shall provide for public notice and comment under section 553 of title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service State technical guides that are used to carry out subtitles A, B, and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq. [3811 et seq., 3821 et seq.])”

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.
3901. Findings and statement of purpose.
- (a) Findings.
 - (b) Purpose.
3902. Definitions.

SUBCHAPTER II—REVENUES FOR REFUGE OPERATIONS AND THE MIGRATORY BIRD CONSERVATION FUND

3911. Sale of admission permit at certain refuge units.
- (a) Sale of admission permits.
 - (b) Exceptions.
 - (c) Distribution of amounts collected.

¹ See References in Text note below.