

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 not to exceed \$6,250,000 for each of fiscal years 1999 through 2003.

(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; Pub. L. 105-312, title III, §303, Oct. 30, 1998, 112 Stat. 2958.)

AMENDMENTS

1998—Subsec. (h). Pub. L. 105-312 substituted “not to exceed \$6,250,000 for each of fiscal years 1999 through 2003.” for “for each of fiscal years 1992 through 1998 not to exceed \$6,250,000.”

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

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

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

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

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

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

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

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

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

SECTION REFERRED TO IN OTHER SECTIONS

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

CHAPTER 58—ERODIBLE LAND AND WETLAND CONSERVATION AND RESERVE PROGRAM

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 - (a) In general.
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- 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.
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 - (a) Technical requirements.
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 - (a) In general.
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SUBCHAPTER III—WETLAND CONSERVATION

- 3821. Program ineligibility.
 - (a) Production on converted wetland.
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| <p>Sec.</p> <p>3822. Delineation of wetlands; exemptions.</p> <p>3823. Affiliated persons.</p> <p>3824. Fairness of compliance.</p> <p style="text-align: center;">SUBCHAPTER IV—AGRICULTURAL RESOURCES CONSERVATION PROGRAM</p> <p style="text-align: center;">PART I—COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM</p> <p style="text-align: center;">SUBPART A—GENERAL PROVISIONS</p> <p>3830. Comprehensive conservation enhancement program.</p> <p>3830a. Repealed.</p> <p style="text-align: center;">SUBPART B—CONSERVATION RESERVE</p> <p>3831. Conservation reserve.</p> <p>3832. Duties of owners and operators.</p> <p>3833. Duties of the Secretary.</p> <p>3834. Payments.</p> <p>3835. Contracts.</p> <p>3835a. Conversion of land subject to contract to other conserving uses.</p> <p style="text-align: center;">SUBPART C—WETLANDS RESERVE PROGRAM</p> <p>3837. Wetlands reserve program.</p> | <p>(c) Wetland conversion.</p> <p>(d) Prior loans.</p> <p>(e) Wetland.</p> <p>(a) Delineation by Secretary.</p> <p>(b) Exemptions.</p> <p>(c) On-site inspection requirement.</p> <p>(d) Identification of minimal effect exemptions.</p> <p>(e) Nonwetlands.</p> <p>(f) Minimal effect; mitigation.</p> <p>(g) Mitigation appeals.</p> <p>(h) Good faith exemption.</p> <p>(i) Restoration.</p> <p>(j) Determinations; restoration and mitigation plans; monitoring activities.</p> <p>(k) Mitigation banking program.</p> | <p>Sec.</p> <p>(a) Establishment.</p> <p>(b) Enrollment conditions.</p> <p>(c) Eligibility.</p> <p>(d) Other eligible land.</p> <p>(e) Ineligible land.</p> <p>(f) Termination of existing contract.</p> <p>3837a. Easements and agreements.</p> <p>(a) In general.</p> <p>(b) Terms of easement.</p> <p>(c) Restoration plans.</p> <p>(d) Compatible uses.</p> <p>(e) Type and length of easement.</p> <p>(f) Compensation.</p> <p>(g) Violation.</p> <p>3837b. Duties of owners.</p> <p>3837c. Duties of Secretary.</p> <p>(a) In general.</p> <p>(b) Cost-share and technical assistance.</p> <p>(c) Acceptability of offers.</p> <p>(d) Easement priority.</p> <p>3837d. Payments.</p> <p>(a) Time of payment.</p> <p>(b) Payments to others.</p> <p>(c) Payment limitation.</p> <p>(d) Exemption from automatic sequester.</p> <p>3837e. Changes in ownership; agreement modification; termination.</p> <p>(a) Limitations.</p> <p>(b) Modification; termination.</p> <p>3837f. Administration and funding.</p> <p>(a) Delegation of easement administration.</p> <p>(b) Regulations.</p> <p style="text-align: center;">PART II—CONSERVATION SECURITY AND FARMLAND PROTECTION</p> <p style="text-align: center;">SUBPART A—CONSERVATION SECURITY PROGRAM</p> <p>3838. Definitions.</p> <p>3838a. Conservation security program.</p> <p>(a) In general.</p> <p>(b) Eligibility.</p> <p>(c) Conservation security plans.</p> <p>(d) Conservation contracts and practices.</p> <p>(e) Conservation security contracts.</p> <p>(f) Noncompliance due to circumstances beyond the control of producers.</p> <p>3838b. Duties of producers.</p> <p>3838c. Duties of the Secretary.</p> <p>(a) Timing of payments.</p> <p>(b) Annual payments.</p> <p>(c) Minimum practice requirement.</p> <p>(d) Regulations.</p> <p>(e) Transfer or change of interest in land subject to conservation security contract.</p> <p>(f) Enrollment procedure.</p> <p>(g) Technical assistance.</p> <p style="text-align: center;">SUBPART B—FARMLAND PROTECTION PROGRAM</p> <p>3838h. Definitions.</p> <p>3838i. Farmland protection.</p> <p>(a) In general.</p> <p>(b) Conservation plan.</p> <p>(c) Cost sharing.</p> <p>3838j. Farm viability program.</p> <p>(a) In general.</p> <p>(b) Authorization of appropriations.</p> <p style="text-align: center;">SUBPART C—GRASSLAND RESERVE PROGRAM</p> <p>3838n. Grassland reserve program.</p> <p>(a) Establishment.</p> <p>(b) Enrollment conditions.</p> <p>(c) Eligible land.</p> <p>3838o. Requirements relating to easements and agreements.</p> <p>(a) Requirements of landowner.</p> <p>(b) Terms of easement or rental agreement.</p> |
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 (b) Application.
 (c) Approval by Secretary.
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 (a) Duties of owners.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1308-3, 1308-3a, 1308-4, 1515, 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 com-

posed 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 subpar. (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 2000 AMENDMENT

Pub. L. 106-387, §1(a) [title XI, §1101], Oct. 28, 2000, 114 Stat. 1549, 1549A-75, provided that: “This title [amending sections 3831 and 3832 of this title and enacting provisions set out as notes under section 3831 of this title] may be cited as the ‘Conservation of Farmable Wetland Act of 2000’.”

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”.

REGULATIONS

Pub. L. 107-171, title II, §2702, May 13, 2002, 116 Stat. 279, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this title [see Tables for classification] or an amendment made by this title, not later than 90 days after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture, in consultation with the Commodity Credit Corporation, shall promulgate such regulations as are necessary to implement this title.

“(b) APPLICABLE AUTHORITY.—The promulgation of regulations under subsection (a) and administration of this title—

“(1) shall—

“(A) be carried out without regard to chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act); and

“(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804) relating to notices of proposed rulemaking and public participation in rulemaking; and

“(2) may—

“(A) be promulgated with an opportunity for notice and comment; or

“(B) if determined to be appropriate by the Secretary of Agriculture or the Commodity Credit Corporation, as an interim rule effective on publication with an opportunity for notice and comment.

“(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary

shall use the authority provided under section 808(2) of title 5, United States Code.”

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.

REFORM AND ASSESSMENT OF CONSERVATION PROGRAMS

Pub. L. 107-171, title II, §2005, May 13, 2002, 116 Stat. 237, provided that:

“(a) IN GENERAL.—The Secretary of Agriculture shall develop a plan to coordinate land retirement and agricultural working land conservation programs that are administered by the Secretary to achieve the goals of—

- “(1) eliminating redundancy;
- “(2) streamlining program delivery; and
- “(3) improving services provided to agricultural producers (including the reevaluation of the provision of technical assistance).

“(b) REPORT.—Not later than December 31, 2005, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report that describes—

- “(1) the plan developed under subsection (a); and
- “(2) the means by which the Secretary intends to achieve the goals described in subsection (a).”

CONSERVATION CORRIDOR DEMONSTRATION PROGRAM

Pub. L. 107-171, title II, subtitle G, May 13, 2002, 116 Stat. 275, provided that:

“SEC. 2601. DEFINITIONS.

“In this subtitle:

“(1) DELMARVA PENINSULA.—The term ‘Delmarva Peninsula’ means land in the States of Delaware, Maryland, and Virginia located on the east side of the Chesapeake Bay.

“(2) DEMONSTRATION PROGRAM.—The term ‘demonstration program’ means the Conservation Corridor Demonstration Program established under this subtitle.

“(3) CONSERVATION CORRIDOR PLAN; PLAN.—The terms ‘conservation corridor plan’ and ‘plan’ mean a conservation corridor plan required to be submitted and approved as a condition for participation in the demonstration program.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

“SEC. 2602. CONSERVATION CORRIDOR DEMONSTRATION PROGRAM.

“(a) ESTABLISHMENT.—The Secretary shall carry out a demonstration program, to be known as the ‘Conservation Corridor Demonstration Program’, under which any of the States of Delaware, Maryland, and Virginia, a local government of any 1 of those States with jurisdiction over land on the Delmarva Peninsula, or a combination of those States, may submit a conservation corridor plan to integrate agriculture and forestry conservation programs of the Department of Agriculture with State and local efforts to address farm conservation needs.

“(b) SUBMISSION OF CONSERVATION CORRIDOR PLAN.—

“(1) SUBMISSION AND PROPOSAL.—To be eligible to participate in the demonstration program, a State, local government, or combination of States referred to in subsection (a) shall—

“(A) submit to the Secretary a conservation corridor plan that—

“(i) proposes specific criteria and commitment of resources in the geographic region designated in the plan; and

“(ii) describes how the linkage of Federal, State, and local resources will improve—

- “(I) the economic viability of agriculture; and
- “(II) the environmental integrity of the watersheds in the Delmarva Peninsula; and

“(B) demonstrate to the Secretary that, in developing the plan, the State, local government, or combination of States has solicited and taken into account the views of local residents.

“(2) DRAFT MEMORANDUM OF AGREEMENT.—If the conservation corridor plan is submitted by more than 1 State, the plan shall provide a draft memorandum of agreement among entities in each submitting State.

“(c) REVIEW OF PLAN.—Not later than 90 days after the date of receipt of a conservation corridor plan, the Secretary—

“(1) shall review the plan; and

“(2) may approve the plan for implementation under this subtitle if the Secretary determines that the plan meets the requirements specified in subsection (d).

“(d) CRITERIA FOR APPROVAL.—The Secretary may approve a conservation corridor plan only if, as determined by the Secretary, the plan provides for each of the following:

“(1) VOLUNTARY ACTIONS.—Actions taken under the plan—

“(A) are voluntary;

“(B) require the consent of willing landowners; and

“(C) provide a mechanism by which the landowner may withdraw such consent without adverse consequences other than the loss of any payments to the landowner conditioned on continued enrollment of the land.

“(2) LAND OF HIGH CONSERVATION VALUE.—Criteria specified in the plan ensure that land enrolled in each conservation program incorporated through the plan are of exceptionally high conservation value, as determined by the Secretary.

“(3) NO EFFECT ON UNENROLLED LAND.—The enrollment of land in a conservation program incorporated through the plan will neither—

“(A) adversely affect any adjacent land not so enrolled; nor

“(B) create any buffer zone on such unenrolled land.

“(4) GREATER BENEFITS.—The conservation programs incorporated through the plan provide benefits greater than the benefits that would likely be achieved through individual application of the conservation programs.

“(5) SUFFICIENT STAFFING.—Staffing, considering both Federal and non-Federal resources, is sufficient to ensure success of the plan.

“SEC. 2603. IMPLEMENTATION OF CONSERVATION CORRIDOR PLAN.

“(a) MEMORANDUM OF AGREEMENT.—On approval of a conservation corridor plan, the Secretary may enter into a memorandum of agreement with the State, local government, or combination of States that submitted the plan to—

“(1) guarantee specific program resources for implementation of the plan;

“(2) establish various compensation rates to the extent that the parties to the agreement consider justified; and

“(3) provide streamlined and integrated paperwork requirements.

“(b) CONTINUED COMPLIANCE WITH PLAN APPROVAL CRITERIA.—The Secretary shall terminate the memorandum of agreement entered into under subsection (a) with respect to an approved conservation corridor plan and cease the provision of resources for implementation of the plan if the Secretary determines that, in the implementation of the plan—

“(1) the State, local government, or combination of States that submitted the plan has deviated from—

“(A) the plan;

“(B) the criteria specified in section 2602(d) on which approval of the plan was conditioned; or

“(C) the cost-sharing requirements of section 2604(a) or any other condition of the plan; or

“(2) the economic viability of agriculture in the geographic region designated in the plan is being hindered.

“(c) **PROGRESS REPORT.**—At the end of the 3-year period that begins on the date on which funds are first provided with respect to a conservation corridor plan under the demonstration program, the State, local government, or combination of States that submitted the plan shall submit to the Secretary—

“(1) a report on the effectiveness of the activities carried out under the plan; and

“(2) an evaluation of the economic viability of agriculture in the geographic region designated in the plan.

“(d) **DURATION.**—The demonstration program shall be carried out for not less than 3 nor more than 5 years beginning on the date on which funds are first provided under the demonstration program.

“**SEC. 2604. FUNDING REQUIREMENTS.**

“(a) **COST SHARING.**—

“(1) **REQUIRED NON-FEDERAL SHARE.**—Subject to paragraph (2), as a condition on the approval of a conservation corridor plan, the Secretary shall require the State and local participants to contribute financial resources sufficient to cover at least 50 percent of the total cost of the activities carried out under the plan.

“(2) **EXCEPTION.**—The Secretary may reduce the cost-sharing requirement in the case of a specific project or activity under the demonstration program on good cause and on demonstration that the project or activity is likely to achieve extraordinary natural resource benefits.

“(b) **RESERVATION OF FUNDS.**—The Secretary may consider directing funds on a priority basis to the demonstration program and to projects in areas identified by the plan.

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this subtitle for each of fiscal years 2002 through 2007.”

CRANBERRY ACREAGE RESERVE PROGRAM

Pub. L. 107-171, title X, §10608, May 13, 2002, 116 Stat. 515, provided that:

“(a) **DEFINITIONS.**—In this section:

“(1) **ELIGIBLE AREA.**—The term ‘eligible area’ means a wetland or buffer strip adjacent to a wetland that, as determined by the Secretary—

“(A)(i) is used, and has a history of being used, for the cultivation of cranberries; or

“(ii) is an integral component of a cranberry-growing operation;

“(B) is located in an environmentally sensitive area.

“(2) **SECRETARY.**—The term ‘Secretary’ means the Secretary of Agriculture.

“(b) **PROGRAM.**—The Secretary shall establish a program to purchase permanent easements in eligible areas from willing sellers.

“(c) **PURCHASE PRICE.**—The Secretary shall ensure, to the maximum extent practicable, that each easement purchased under this section is for an amount that appropriately reflects the range of values for agricultural and nonagricultural land in the region in which the eligible area subject to the easement is located (including whether that land is located in 1 or more environmentally sensitive areas, as determined by the Secretary).

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$10,000,000.”

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 3831, 3835, 3838c, 3843 of this title; title 7 sections 7211, 7231, 7915, 7931, 7955, 7957, 7996; title 12 section 2219d.

§ 3811. Program ineligibility

(a) In general

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 Consolidated Farm Service Agency, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land;

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

(3) during 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.

(b) Highly erodible land

The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subchapter.

(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; Pub. L. 107-171, title II, §2002(a), May 13, 2002, 116 Stat. 233.)

REFERENCES IN TEXT

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

The Consolidated Farm and Rural Development Act, referred to in subsec. (a)(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

2002—Pub. L. 107-171 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

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 590l or section 590p(b) of this title;

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

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

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

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

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

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 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 production of a crop of an agricultural commodity or the designation of land to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity (hereafter in this subsection referred to as "set aside")—

- (1) on highly erodible land in an area—
 - (A) within a conservation district, under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for such district; or

(B) not within a conservation district, under a conservation system determined by the Secretary to be adequate for the protection of highly erodible land that has been set aside or for the production of such agricultural commodity on any highly erodible land subject to this chapter; or

(2) on highly erodible land that is planted or set aside in reliance on a determination by the Soil Conservation Service that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted or set aside on any land after the Soil Conservation Service determines that such land is highly erodible land; or

(3) on highly erodible land planted to alfalfa during each of the 1981 through 1985 crop years as part of a rotation practice approved by the Secretary, if the person has submitted a conservation plan, 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, includ-

ing 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 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” 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, 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 ap-

plication 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, 3838c, 3843 of this title; title 7 sections 7211, 7231, 7915, 7931, 7955, 7957, 7996; 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 con-

version 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.

(e) Wetland

The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subchapter.

(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; Pub. L. 107-171, title II, §2002(b), May 13, 2002, 116 Stat. 233.)

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

2002—Subsec. (e). Pub. L. 107-171 added subsec. (e).

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 “sub-section (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 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, enhance-

ment, 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 need-

ed 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 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

¹ See References in Text note below.

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

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 sections 3821, 3831 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.)

SUBCHAPTER IV—AGRICULTURAL RESOURCES CONSERVATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3801, 3811, 3821, 3841, 3843, 3844 of this title; title 7 sections 1308, 1308-3.

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

PART I—COMPREHENSIVE CONSERVATION
ENHANCEMENT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3839aa-2, 3843 of this title; title 7 sections 7911, 7952.

SUBPART A—GENERAL PROVISIONS

§ 3830. Comprehensive conservation enhancement program

(a) Establishment

(1) In general

During the 1996 through 2002 calendar years, the Secretary shall establish a comprehensive conservation enhancement program (referred to in this section as “CCEP”) 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 CCEP 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 CCEP 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 CCEP, 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 CCEP.

(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; Pub. L. 107-171, title II, § 2006(b), May 13, 2002, 116 Stat. 237.)

AMENDMENTS

2002—Pub. L. 107-171, § 2006(b)(1), substituted “Comprehensive conservation enhancement program” for “Environmental conservation acreage reserve program” in section catchline.

Subsec. (a)(1). Pub. L. 107-171, § 2006(b)(2), (4), substituted “a comprehensive conservation enhancement program” for “an environmental conservation acreage reserve program” and “CCEP” for “ECARP”.

Subsecs. (a)(2), (3), (b). Pub. L. 107-171, § 2006(b)(4), substituted “CCEP” for “ECARP” wherever appearing.

Subsec. (c). Pub. L. 107-171, § 2006(b)(3), struck out heading and text of subsec. (c). Text read as follows:

“(1) DESIGNATION.—The Secretary may designate watersheds, multistate areas, or regions of special environmental 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.”

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”.

CONSERVATION ASSISTANCE

Pub. L. 106-224, title II, § 211, June 20, 2000, 114 Stat. 406, as amended by Pub. L. 107-171, title II, § 2503(b)(1)(B), May 13, 2002, 116 Stat. 269, provided that:

“(a) ESTABLISHMENT.—The Secretary shall use \$40,000,000 of funds of the Commodity Credit Corporation to provide financial assistance to farmers and ranchers to—

“(1) address threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat;

“(2) comply with Federal and State environmental laws; and

“(3) make 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.

“(b) TYPE OF ASSISTANCE.—Assistance under this section may be made in the form of cost share payments or incentive payments, as determined by the Secretary.

“(c) AREAS.—The Secretary shall provide assistance under this section to areas that are not designated under section 1230(c) of the Food Security Act of 1985 ([former] 16 U.S.C. 3830(c)).”

FARMLAND PROTECTION PROGRAM

Pub. L. 104-127, title III, § 388, Apr. 4, 1996, 110 Stat. 1020, directed Secretary of Agriculture to establish and carry out a farmland protection program, prior to repeal by Pub. L. 107-171, title II, § 2503(b)(1)(A), May 13, 2002, 116 Stat. 269.

[Pub. L. 107-171, title II, § 2503(b)(2), May 13, 2002, 116 Stat. 269, provided that: “The amendment made by paragraph (1)(A) [repealing section 388 of Pub. L.

104-127, formerly set out above] shall have no effect on any contract entered into under section 388 of the Federal Agriculture Improvement and Reform Act of 1996 [Pub. L. 104-127] (16 U.S.C. 3830 note) that is in effect as of the date of enactment of this Act [May 13, 2002].”]

§ 3830a. Repealed. Pub. L. 107-171, title I, § 1613(j)(3), title II, § 2006(c), May 13, 2002, 116 Stat. 221, 237

Section, Pub. L. 99-198, title XII, §1230A, as added Pub. L. 106-387, §1(a) [title VII, §755], Oct. 28, 2000, 114 Stat. 1549, 1549A-42, related to good faith reliance.

SUBPART B—CONSERVATION RESERVE

CODIFICATION

Subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985, comprising this subpart, was originally designated in Pub. L. 99-198, title XII, Dec. 23, 1985, 99 Stat. 1509, by Pub. L. 101-624, title XIV, §§1431(1), 1432(1), Nov. 28, 1990, 104 Stat. 3576, 3577, and amended by Pub. L. 99-500, Oct. 18, 1986, 100 Stat. 1783, and Pub. L. 99-591, Oct. 30, 1986, 100 Stat. 3341; Pub. L. 99-641, Nov. 10, 1986, 100 Stat. 3556; Pub. L. 100-233, Jan. 6, 1988, 101 Stat. 1568; Pub. L. 100-387, Aug. 11, 1988, 102 Stat. 924; Pub. L. 101-512, Nov. 5, 1990, 104 Stat. 1915; Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 102-237, Dec. 13, 1991, 105 Stat. 1818; Pub. L. 102-324, July 22, 1992, 106 Stat. 447; Pub. L. 102-552, Oct. 28, 1992, 106 Stat. 4102; Pub. L. 103-66, Aug. 10, 1993, 107 Stat. 312; Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 888; Pub. L. 106-78, Oct. 22, 1999, 113 Stat. 1135; Pub. L. 106-387, Oct. 28, 2000, 114 Stat. 1549; Pub. L. 107-76, Nov. 28, 2001, 115 Stat. 704. Subchapter B is shown herein, however, as having been added by Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 238, without reference to the intervening amendments because of the extensive revision of the subchapter's provisions by Pub. L. 107-171.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3812, 3830, 3837, 3838a, 3841, 3843 of this title; title 7 sections 6932, 6962.

§ 3831. Conservation reserve

(a) In general

Through the 2007 calendar year, the Secretary shall formulate and carry out a conservation reserve program under which land is enrolled through the use of contracts to assist owners and operators of land specified in subsection (b) of this section to conserve and improve the soil, water, and wildlife resources of such land.

(b) Eligible land

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

(1) highly erodible cropland that—

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

(ii) cannot be farmed in accordance with a plan that complies with the requirements of subchapter II of this chapter; and

(B) the Secretary determines had a cropping history or was considered to be planted for 4 of the 6 years preceding May 13, 2002 (except for land enrolled in the conservation reserve program as of May 13, 2002).

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

(3) marginal pasture land to be devoted to appropriate vegetation, including trees, in or

near riparian areas, or devoted to similar water quality purposes (including marginal pastureland converted to wetland or established as wildlife habitat);

(4) cropland that is otherwise ineligible if the Secretary determines that—

(A) if permitted to remain in agricultural production, the land would—

(i) contribute to the degradation of soil, water, or air quality; or

(ii) pose an on-site or off-site environmental threat to soil, water, or air quality;

(B) the land is a—

(i) newly-created, permanent grass sod waterway; or

(ii) a contour grass sod strip established and maintained as part of an approved conservation plan;

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

(D) the land poses an off-farm environmental threat, or a threat of continued degradation of productivity due to soil salinity, if permitted to remain in production; and

(E) enrollment of the land would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer;

(5) the portion of land in a field not enrolled in the conservation reserve in a case in which more than 50 percent of the land in the field is enrolled as a buffer, if—

(A) the land is enrolled as part of the buffer; and

(B) the remainder of the field is—

(i) infeasible to farm; and

(ii) enrolled at regular rental rates.

(c) Planting status of certain land

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

(1) during the crop year, the land was devoted to a conserving use; or

(2)(A) during the crop year or during any of the 2 years preceding the crop year, the land was enrolled in the water bank program; and

(B) the contract of the owner or operator of the cropland expired or will expire in calendar year 2000, 2001, or 2002.

(d) Maximum enrollment

The Secretary may maintain up to 39,200,000 acres in the conservation reserve at any 1 time during the 2002 through 2007 calendar years (including contracts extended by the Secretary pursuant to section 1437(c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 3831 note; Public Law 101-624)).

(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 land**(A) In general**

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 the land may, within the limitations prescribed under this section, specify the duration of the contract.

(B) Hardwood trees

In the case of land that is devoted to hardwood trees under a contract entered into under this subpart prior to October 1, 1990, the Secretary may extend the contract for a term of not to exceed 5 years, as agreed to by the owner or operator of such land and the Secretary.

(3) 1-year extension

In the case of a contract described in paragraph (1) the term of which expires during calendar year 2002, an owner or operator of land enrolled under the contract may extend the contract for 1 additional year.

(f) Conservation priority areas**(1) Designation**

On 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) on application by the appropriate State agency; or

(B) in the case of an area covered by this subsection, if the Secretary finds that the area no longer contains actual and significant adverse water quality or habitat impacts related to agricultural production activities.

(4) Duty of Secretary

In carrying out this subsection, the Secretary shall attempt to maximize water quality and habitat benefits in the watersheds described in paragraph (1) by promoting a significant level of enrollment of land within the watersheds in the program under this subpart by whatever means the Secretary determines are 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.

(h) Pilot program for enrollment of wetland and buffer acreage in conservation reserve**(1) Program****(A) In general**

During the 2002 through 2007 calendar years, the Secretary shall carry out a program in each State under which the Secretary shall include eligible acreage described in paragraph (2) in the program established under this subpart.

(B) Participation among States

The Secretary shall ensure, to the maximum extent practicable, that owners and operators in each State have an equitable opportunity to participate in the pilot program established under this subsection.

(2) Eligible acreage**(A) In general**

Subject to subparagraphs (B) through (D), an owner or operator may enroll in the conservation reserve under this subsection—

(i) a wetland (including a converted wetland described in section 3822(b)(1)(A) of this title) that was cropped during at least 3 of the immediately preceding 10 crop years; and

(ii) buffer acreage that—

(I) is contiguous to the wetland described in clause (i);

(II) is used to protect the wetland; and

(III) is of such width as the Secretary determines is necessary to protect the wetland, taking into consideration and accommodating the farming practices (including the straightening of boundaries to accommodate machinery) used with respect to the cropland that surrounds the wetland.

(B) Exclusions

An owner or operator may not enroll in the conservation reserve under this subsection—

(i) any wetland, or land on a floodplain, that is, or is adjacent to, a perennial riverine system wetland identified on the final national wetland inventory map of the Secretary of the Interior; or

(ii) in the case of an area that is not covered by the final national inventory map, any wetland, or land on a floodplain, that is adjacent to a perennial stream identified on a 1-24,000 scale map of the United States Geological Survey.

(C) Program limitations**(i) In general**

The Secretary may enroll in the conservation reserve under this subsection not more than—

(I) 100,000 acres in any 1 State referred to in paragraph (1); and

(II) not more than a total of 1,000,000 acres.

(ii) Relationship to program maximum

Subject to clause (iii), for the purposes of subsection (d) of this section, any acre-

age enrolled in the conservation reserve under this subsection shall be considered acres maintained in the conservation reserve.

(iii) Relationship to other enrolled acreage

Acreage enrolled under this subsection shall not affect for any fiscal year the quantity of—

(I) acreage enrolled to establish conservation buffers as part of the program announced on March 24, 1998 (63 Fed. Reg. 14109); or

(II) acreage enrolled into the conservation reserve enhancement program announced on May 27, 1998 (63 Fed. Reg. 28965).

(iv) Review; potential increase in enrollment acreage

Not later than 3 years after May 13, 2002, the Secretary shall—

(I) conduct a review of the program under this subsection with respect to each State that has enrolled land in the program; and

(II) notwithstanding clause (i)(I), increase the number of acres that may be enrolled by a State under clause (i)(I) to not more than 150,000 acres, as determined by the Secretary.

(D) Owner or operator limitations

(i) Wetland

(I) In general

The maximum size of any wetland described in subparagraph (A)(i) of an owner or operator enrolled in the conservation reserve under this subsection shall be 10 contiguous acres, of which not more than 5 acres shall be eligible for payment.

(II) Coverage

All acres described in subclause (I) (including acres that are ineligible for payment) shall be covered by the conservation contract.

(ii) Buffer acreage

The maximum size of any buffer acreage described in subparagraph (A)(ii) of an owner or operator enrolled in the conservation reserve under this subsection shall be the greater of—

(I) 3 times the size of any wetland described in subparagraph (A)(i) to which the buffer acreage is contiguous; or

(II) 150 feet on either side of the wetland.

(iii) Tracts

The maximum size of any eligible acreage described in subparagraph (A) in a tract (as determined by the Secretary) of an owner or operator enrolled in the conservation reserve under this subsection shall be 40 acres.

(3) Duties of owners and operators

Under a contract entered into under this subsection, during the term of the contract, an owner or operator of a farm or ranch shall agree—

(A) to restore the hydrology of the wetland within the eligible acreage to the maximum extent practicable, as determined by the Secretary;

(B) to establish vegetative cover (which may include emerging vegetation in water) on the eligible acreage, as determined by the Secretary; and

(C) to carry out other duties described in section 3832 of this title.

(4) Duties of the Secretary

(A) In general

Except as provided in subparagraphs (B) and (C), in return for a contract entered into by an owner or operator under this subsection, the Secretary shall make payments and provide assistance to the owner or operator in accordance with sections 3833 and 3834 of this title.

(B) Continuous signup

The Secretary shall use continuous signup under section 3834(c)(2)(B) of this title to determine the acceptability of contract offers and the amount of rental payments under this subsection.

(C) Incentives

The amounts payable to owners and operators in the form of rental payments under contracts entered into under this subsection shall reflect incentives that are provided to owners and operators to enroll filterstrips in the conservation reserve under section 3834 of this title.

(i) Eligibility for consideration

On the expiration of a contract entered into under this subpart, the land subject to the contract shall be eligible to be considered for re-enrollment in the conservation reserve.

(j) Balance of natural resource purposes

In determining the acceptability of contract offers under this subpart, the Secretary shall ensure, to the maximum extent practicable, an equitable balance among the conservation purposes of soil erosion, water quality, and wildlife habitat.

(Pub. L. 99-198, title XII, § 1231, as added Pub. L. 107-171, title II, § 2101(a), May 13, 2002, 116 Stat. 238.)

PRIOR PROVISIONS

A prior section 3831, 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; Pub. L. 106-387, § 1(a) [title XI, § 1102(a)], Oct. 28, 2000, 114 Stat. 1549, 1549A-75; Pub. L. 107-76, title VII, § 758(a), Nov. 28, 2001, 115 Stat. 741, related to a conservation reserve program to be formulated and carried out by the Secretary through the 2002 calendar year, prior to the general amendment of this subpart by Pub. L. 107-171.

REGULATIONS

Pub. L. 106-387, § 1(a) [title XI, § 1105], Oct. 28, 2000, 114 Stat. 1549, 1549A-78, required the Secretary of Agri-

culture, as soon as practicable after Oct. 28, 2000, to promulgate regulations to implement the amendments by section 1(a) [title XI] of Pub. L. 106-387, amending former sections 3831 and 3832 of this title.

STUDY ON ECONOMIC EFFECTS

Pub. L. 107-171, title II, §2101(b), May 13, 2002, 116 Stat. 252, provided that:

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the economic and social effects on rural communities resulting from the conservation reserve program established under 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.).

“(2) COMPONENTS.—The study under paragraph (1) shall include analyses of—

“(A) the impact that enrollments in the conservation reserve program have on rural businesses, civic organizations, and community services (such as schools, public safety, and infrastructure), particularly in communities with a large percentage of whole farm enrollments;

“(B) the effect that those enrollments have on rural population and beginning farmers (including a description of any connection between the rate of enrollment and the incidence of absentee ownership);

“(C)(i) the manner in which differential per acre payment rates potentially impact the types of land (by productivity) enrolled;

“(ii) changes to the per acre payment rates that may affect that impact; and

“(iii) the manner in which differential per acre payment rates could facilitate retention of productive agricultural land in agriculture; and

“(D) the effect of enrollment on opportunities for recreational activities (including hunting and fishing).”

STUDY OF IMPACT OF PILOT PROGRAM

Pub. L. 106-387, §1(a) [title XI, §1104], Oct. 28, 2000, 114 Stat. 1549, 1549A-78, required the Secretary of Agriculture to conduct a study of the impact of the pilot program established under former section 3831(h) of this title, as added by section 1(a) [title XI, §1102(a)] of Pub. L. 106-387, and to report on the results of the study to committees of Congress not later than Mar. 1, 2003.

STUDY OF LAND USE FOR EXPIRING CONTRACTS AND EXTENSION OF AUTHORITY

Pub. L. 101-624, title XIV, §1437, Nov. 28, 1990, 104 Stat. 3584, required the Secretary of Agriculture to conduct a study of cropland subject to expiring conservation reserve contracts entered into prior to Nov. 28, 1990, and to report on the study to committees of Congress not later than Dec. 31, 1993, and authorized the Secretary, during calendar years 1996 to 2000, to extend up to 10 years contracts entered into under this subpart prior to Nov. 28, 1990, or to purchase long-term or permanent easements as provided for in part III of this subchapter, at the option of the owner or operator on land that the Secretary has determined under the study 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, 7911, 7952, 7959.

§ 3832. Duties of owners and operators

(a) In general

Under the terms of a contract entered into under this subpart, during the term of the con-

tract, an owner or operator of a farm or ranch shall 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 land 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 the land for agricultural purposes, except as permitted by the Secretary;

(4) to establish approved vegetative cover (which may include emerging vegetation in water), water cover for the enhancement of wildlife, or, where practicable, maintain existing cover on the land, except that—

(A) the water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes; and

(B) the Secretary shall not terminate the contract for failure to establish approved vegetative or water cover on the land if—

(i) the failure to plant the cover was due to excessive rainfall or flooding;

(ii) the land subject to the contract that could practicably be planted to the cover is planted to the cover; and

(iii) the land on which the owner or operator was unable to plant the cover is planted to the cover after the wet conditions that prevented the planting subsides;

(5) on a violation of a term or condition of the contract at any time the owner or operator has control of the 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 on the payments as determined by the Secretary, if the Secretary, after considering the recommendations of the soil conservation district and the Natural Resources Conservation Service, determines that the 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 the 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 re-

ceived 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 the land agrees with the Secretary to assume all obligations of the contract, except that no refund of rental payments and cost sharing payments shall be required if the land is purchased by or for the United States Fish and Wildlife Service, or the transferee and the Secretary agree to modifications to the contract, in a case in which the modifications are consistent with the objectives of the program, as determined by the Secretary;

(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, consistent with the conservation of soil, water quality, and wildlife habitat (including habitat during nesting seasons for birds in the area)—

(A) managed harvesting and grazing (including the managed harvesting of biomass), except that in permitting managed harvesting and grazing, the Secretary—

(i) shall, in coordination with the State technical committee—

(I) develop appropriate vegetation management requirements; and

(II) identify periods during which harvesting and grazing under this paragraph may be conducted;

(ii) may permit harvesting and grazing or other commercial use of the forage on the land that is subject to the contract in response to a drought or other emergency; and

(iii) shall, in the case of routine managed harvesting or grazing or harvesting or grazing conducted in response to a drought or other emergency, reduce the rental payment otherwise payable under the contract by an amount commensurate with the economic value of the activity; and

(B) the installation of wind turbines, except that in permitting the installation of wind turbines, the Secretary shall determine the number and location of wind turbines that may be installed, taking into account—

(i) the location, size, and other physical characteristics of the land;

(ii) the extent to which the land contains wildlife and wildlife habitat; and

(iii) the purposes of the conservation reserve program under this subpart;

(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 land 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 of this subpart.

(b) Conservation plans

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 the term; and

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

(c) Foreclosure

(1) In general

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 the contract if the land that is subject to the contract has been foreclosed on and the Secretary determines that forgiving the repayments is appropriate in order to provide fair and equitable treatment.

(2) Resumption of control

(A) In general

This subsection shall not void the responsibilities of an owner or operator under the contract if the owner or operator resumes control over the land that is subject to the contract within the period specified in the contract.

(B) Contract

On the resumption of the control over the land 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, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 242.)

PRIOR PROVISIONS

A prior section 3832, 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; Pub. L. 106-78, title VII, §§763, 769, Oct. 22, 1999, 113 Stat. 1173, 1174; Pub. L. 106-387, §1(a) [title VIII, §817, title XI, §1103], Oct. 28, 2000, 114 Stat. 1549, 1549A-58,

1549A-77; Pub. L. 107-76, title VII, §§758(b), 759(b)(2), Nov. 28, 2001, 115 Stat. 741, related to duties of owners and operators, prior to the general amendment of this subpart by Pub. L. 107-171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3831, 3833 of this title.

§ 3833. Duties of the 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; and

(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.

(Pub. L. 99-198, title XII, §1233, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 245.)

PRIOR PROVISIONS

A prior section 3833, Pub. L. 99-198, title XII, §1233, Dec. 23, 1985, 99 Stat. 1511, related to duties of Secretary, prior to the general amendment of this subpart by Pub. L. 107-171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3831 of this title.

§ 3834. Payments

(a) Timing

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 practicable 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 option 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 general

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 each contract for which the Secretary determines that cost sharing is appropriate and in the public interest.

(2) Limitation

The Secretary shall not make any payment to an owner or operator under this subpart to

the extent that the total amount of cost sharing payments provided to the owner or operator from all sources would exceed 100 percent of the total cost of establishing measures and practices described in paragraph (1).

(3) Hardwood trees, windbreaks, shelterbelts, and wildlife corridors

(A) Applicability

This paragraph applies to—

(i) 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; and

(ii) land converted to such production under section 3835a of this title.

(B) Payments

In making cost share payments to an owner or operator of land described in subparagraph (A), the Secretary shall pay 50 percent of the reasonable and necessary costs, as determined by the Secretary, incurred by the owner or operator for maintaining 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 the planting of the trees or shrubs, as determined appropriate by the Secretary.

(4) Hardwood tree planting

The Secretary may permit owners or operators that contract to devote at least 10 acres of land to the production of hardwood trees under this subpart to extend the planting of the trees over a 3-year period if at least 1/3 of the trees are planted in each of the first 2 years.

(5) Other Federal cost share assistance

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

(c) Annual rental payments

(1) In general

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) Method of determination

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) Acceptance of contract offers

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 on the extent to which water quality or wildlife habitat may be improved or erosion may be abated.

(4) Hardwood tree acreage

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) In general

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) Method of providing in-kind payments

If the payment to an owner or operator is made with in-kind commodities, the 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) Cash payments

(A) Commodity Credit Corporation stocks

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.

(B) Special conservation reserve enhancement program

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

(e) Payments on death, disability, or succession

If an owner or operator that is entitled to a payment under a contract entered into under

this subpart dies, becomes incompetent, is otherwise unable to receive the payment, or is succeeded by another person that renders or completes the required performance, the Secretary shall make the 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 for rental payments

(1) In general

The total amount of rental payments, including rental payments made in the form of in-kind commodities, made to a person under this subpart for any fiscal year may not exceed \$50,000.

(2) Regulations

(A) In general

The Secretary shall promulgate regulations—

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

(ii) providing such terms and conditions as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established by this subsection.

(B) Corporations and stockholders

The regulations promulgated by the Secretary on December 18, 1970, under section 1307 of title 7, shall be used to determine whether corporations and their stockholders may be considered as separate persons under this subsection.

(3) Other payments

Rental payments received by an owner or operator shall be in addition to, and not affect, the total amount of payments that the owner or operator is otherwise eligible to receive under the Farm Security and Rural Investment Act of 2002.

(4) Special conservation reserve enhancement program

(A) In general

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; Public Law 100-203), 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.

(B) Agreements

The Secretary may enter into such agreements for payments to States (including political subdivisions and agencies of States) that the Secretary determines will advance the purposes of this subpart.

(g) Other State or local 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 land in the conservation reserve program.

(Pub. L. 99-198, title XII, §1234, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 245.)

REFERENCES IN TEXT

The Farm Security and Rural Investment Act of 2002, referred to in subsec. (f)(3), is Pub. L. 107-171, May 13, 2002, 116 Stat. 134. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of Title 7, Agriculture, and Tables.

PRIOR PROVISIONS

A prior section 3834, 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, related to payments for obligations, prior to the general amendment of this subpart by Pub. L. 107-171.

CONSERVATION RESEARCH APPLICATION

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3801, 3831 of this title.

§ 3835. Contracts

(a) Ownership or operation requirements

(1) In general

Except as provided in paragraph (2), 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 the land was not acquired for the purpose of placing the land 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) Exceptions

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

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

(1) continue the 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) Modifications

(1) In general

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

(A) the owner or operator agrees to the modification; and

(B) the Secretary determines that the 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) Production of agricultural commodities

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

(1) In general

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

(A) the owner or operator agrees to the termination; and

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

(2) Notice to congressional committees

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 to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate written notice of the action.

(e) Early termination by owner or operator

(1) Early termination

(A) In general

The Secretary shall allow a participant that entered into a contract under this subpart before January 1, 1995, to terminate the contract at any time if the contract has been in effect for at least 5 years.

(B) Liability for contract violation

The termination shall not relieve the participant of liability for a contract violation occurring before the date of the termination.

(C) Notice to Secretary

The participant shall provide the Secretary with reasonable notice of the desire of the participant to terminate the contract.

(2) Certain land excepted

The following land 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 land of high environmental value (including wetland), 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)(C).

(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 that 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 land in the area, except that the requirements may not be more onerous than the requirements imposed on other land.

(Pub. L. 99-198, title XII, § 1235, as added Pub. L. 107-171, title II, § 2101(a), May 13, 2002, 116 Stat. 249.)

PRIOR PROVISIONS

A prior section 3835, 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, related to contracts, prior to the general amendment of this subpart by Pub. L. 107-171.

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 that 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 the contract, and that are devoted to vegetative cover, from that 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 wetland

The Secretary shall permit an owner or operator that 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 the contract to wetland if—

(1) the areas are prior converted wetland;

(2) the owner or operator of the areas enters into an agreement to provide the Secretary with a long-term or permanent easement under subpart C covering the areas;

(3) there is a high probability that the prior converted area can be successfully restored to wetland status; and

(4) the restoration of the 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 the acres, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs under this section 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. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 251.)

PRIOR PROVISIONS

Prior sections 3835a and 3836 were omitted in the general amendment of this subpart by Pub. L. 107-171.

Section 3835a, 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, related to conversion of land subject to contract to other conserving uses.

Section 3836, 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; Pub. L. 107-76, title VII, §759(b)(1), Nov. 28, 2001, 115 Stat. 741, related to cropland base and allotment history.

A prior section 3836a, Pub. L. 104-127, title III, §387, Apr. 4, 1996, 110 Stat. 1020, related to Wildlife Habitat Incentive Program, prior to repeal by Pub. L. 107-171, title II, §2502(b), May 13, 2002, 116 Stat. 267. See section 3839bb-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

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

SUBPART C—WETLANDS RESERVE PROGRAM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3830, 3835a, 3838a, 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 2,275,000 acres, of which, to the maximum extent practicable, the Secretary shall enroll 250,000 acres in each calendar year.

(2) Methods of enrollment

The Secretary shall enroll acreage into the wetlands reserve program through the use of permanent easements, 30-year easements, restoration cost share agreements, or any combination of those options.

(c) Eligibility

For purposes of enrolling land in the wetland reserve established under this subpart during the 1991 through 2007 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 con-

version 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.

(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; Pub. L. 105-277, div. A, §101(a) [title VII, §752], Oct. 21, 1998, 112 Stat. 2681, 2681-32; Pub. L. 107-171, title II, §§2201, 2202, May 13, 2002, 116 Stat. 252.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-171, §2202(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

“(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) ½ of the acres through the use of permanent easements;
- “(ii) ¼ of the acres through the use of 30-year easements; and
- “(iii) ¼ 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) For purposes of subparagraph (A), to the maximum extent practicable should be interpreted to mean that acceptance of wetlands reserve program bids may be in proportion to landowner interest expressed in program options.”

Subsec. (c). Pub. L. 107-171, § 2201, substituted “2007” for “2002” in introductory provisions.

Subsec. (g). Pub. L. 107-171, § 2202(2), struck out heading and text of subsec. (g). Text read as follows: “The Secretary shall enroll lands in the wetland reserve through the purchase of easements as provided for in section 3837a of this title.”

1998—Subsec. (b)(2)(C). Pub. L. 105-277 added subpar. (C).

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.

(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; Pub. L. 107-171, title II, §2203, May 13, 2002, 116 Stat. 252.)

AMENDMENTS

2002—Subsec. (h). Pub. L. 107-171 struck out heading and text of subsec. (h). Text read as follows: “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.”

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 section 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)¹ 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 com-

¹ See References in Text note below.

plying 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.)

REFERENCES IN TEXT

Section 3837a(h) of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 107-171, title II, §2203, May 13, 2002, 116 Stat. 252.

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 or 30-year easements.

(2) Regulations

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

(3) Other payments

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

(4) State wetland and environmental enhancement

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

(d) Exemption from automatic sequester

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

(Pub. L. 99-198, title XII, §1237D, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3588; amended Pub. L. 105-277, div. A, §101(a) [title VII, §751], Oct. 21, 1998, 112 Stat. 2681, 2681-32.)

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.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105-277 inserted “or 30-year” after “perpetual”.

§ 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)(A) the ownership change occurred because of foreclosure on the land; and

(B) immediately before the foreclosure, the owner of the land exercises a right of redemption from the mortgage holder in accordance with State law; 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; amended Pub. L. 107-171, title II, §2204, May 13, 2002, 116 Stat. 253.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107-171 added par. (2) and struck out former par. (2) which read as follows: “the new ownership was acquired before January 1, 1990; or”.

§ 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—CONSERVATION SECURITY AND FARMLAND PROTECTION

SUBPART A—CONSERVATION SECURITY PROGRAM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 3841 of this title.

§ 3838. Definitions

In this subpart:

(1) Base payment

The term “base payment” means an amount that is—

(A) determined in accordance with the rate described in section 3838c(b)(1)(A) of this title; and

(B) paid to a producer under a conservation security contract in accordance with clause (i) of subparagraph (C), (D), or (E) of section 3838c(b)(1) of this title, as appropriate.

(2) Beginning farmer or rancher

The term “beginning farmer or rancher” has the meaning given the term under section 1991(a) of title 7.

(3) Conservation practice

The term “conservation practice” means a conservation farming practice described in section 3838a(d)(4) of this title that—

(A) requires planning, implementation, management, and maintenance; and

(B) promotes 1 or more of the purposes described in section 3838a(a) of this title.

(4) Conservation security contract

The term “conservation security contract” means a contract described in section 3838a(e) of this title.

(5) Conservation security plan

The term “conservation security plan” means a plan described in section 3838a(c) of this title.

(6) Conservation security program

The term “conservation security program” means the program established under section 3838a(a) of this title.

(7) Enhanced payment

The term “enhanced payment” means the amount paid to a producer under a conservation security contract that is equal to the amount described in section 3838c(b)(1)(C)(iii) of this title.

(8) Nondegradation standard

The term “nondegradation standard” means the level of measures required to adequately protect, and prevent degradation of, 1 or more natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the Natural Resources Conservation Service.

(9) Producer**(A) In general**

The term “producer” means an owner, operator, landlord, tenant, or sharecropper that—

- (i) shares in the risk of producing any crop or livestock; and
- (ii) is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

(B) Hybrid seed growers

In determining whether a grower of hybrid seed is a producer, the Secretary shall not take into consideration the existence of a hybrid seed contract.

(10) Resource-conserving crop rotation

The term “resource-conserving crop rotation” means a crop rotation that—

- (A) includes at least 1 resource-conserving crop (as defined by the Secretary);
- (B) reduces erosion;
- (C) improves soil fertility and tilth;
- (D) interrupts pest cycles; and
- (E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).

(11) Resource management system

The term “resource management system” means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

(12) Secretary

The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service.

(13) Tier I conservation security contract

The term “Tier I conservation security contract” means a contract described in section 3838a(d)(5)(A) of this title.

(14) Tier II conservation security contract

The term “Tier II conservation security contract” means a contract described in section 3838a(d)(5)(B) of this title.

(15) Tier III conservation security contract

The term “Tier III conservation security contract” means a contract described in section 3838a(d)(5)(C) of this title.

(Pub. L. 99–198, title XII, §1238, as added Pub. L. 107–171, title II, §2001(a), May 13, 2002, 116 Stat. 223.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 104–127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

REGULATIONS

Pub. L. 107–171, title II, §2001(b), May 13, 2002, 116 Stat. 233, provided that: “Not later than 270 days after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall promulgate regulations implementing the amendment made by subsection (a) [enacting this subpart].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3844 of this title.

§ 3838a. Conservation security program**(a) In general**

The Secretary shall establish and, for each of fiscal years 2003 through 2007, carry out a conservation security program to assist producers of agricultural operations in promoting, as is applicable with respect to land to be enrolled in the program, conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes, as determined by the Secretary.

(b) Eligibility**(1) Eligible producers**

To be eligible to participate in the conservation security program (other than to receive technical assistance under section 3838c(g) of this title for the development of conservation security contracts), a producer shall—

- (A) develop and submit to the Secretary, and obtain the approval of the Secretary of, a conservation security plan that meets the requirements of subsection (c)(1) of this section; and
- (B) enter into a conservation security contract with the Secretary to carry out the conservation security plan.

(2) Eligible land

Except as provided in paragraph (3), private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland), land under the jurisdiction of an Indian tribe (as defined by the Secretary), and forested land that is an incidental part of an agricultural operation shall be eligible for enrollment in the conservation security program.

(3) Exclusions**(A) Conservation reserve program**

Land enrolled in the conservation reserve program under subpart B of part I of this subchapter shall not be eligible for enrollment in the conservation security program.

(B) Wetlands reserve program

Land enrolled in the wetlands reserve program established under subpart C of part I of this subchapter shall not be eligible for enrollment in the conservation security program.

(C) Grassland reserve program

Land enrolled in the grassland reserve program established under subpart C of this part shall not be eligible for enrollment in the conservation security program.

(D) Conversion to cropland

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding May 13, 2002 (except for land enrolled in the conservation reserve program under subpart B of part I of this subchapter) or that has been maintained using long-term crop rotation practices, as determined by the Secretary, shall not be the basis for any payment under the conservation security program.

(4) Economic uses

The Secretary shall permit a producer to implement, with respect to all eligible land covered by a conservation security plan, economic uses that—

- (A) maintain the agricultural nature of the land; and
- (B) are consistent with the natural resource and conservation objectives of the conservation security program.

(c) Conservation security plans**(1) In general**

A conservation security plan shall—

- (A) identify the designated land and resources to be conserved under the conservation security plan;
- (B) describe the tier of conservation security contract, and the particular conservation practices to be implemented, maintained, or improved, in accordance with subsection (d) of this section on the land covered by the conservation security contract for the specified term; and
- (C) contain a schedule for the implementation, maintenance, or improvement of the conservation practices described in the conservation security plan during the term of the conservation security contract.

(2) Resource planning

The Secretary may assist producers that enter into conservation security contracts in developing a comprehensive, long-term strategy for improving and maintaining all natural resources of the agricultural operation of the producer.

(d) Conservation contracts and practices**(1) In general****(A) Establishment of tiers**

The Secretary shall establish, and offer to eligible producers, 3 tiers of conservation contracts under which a payment under this subpart may be received.

(B) Eligible conservation practices**(i) In general**

The Secretary shall make eligible for payment under a conservation security contract land management, vegetative, and structural practices.

(ii) Determination

In determining the eligibility of a practice described in clause (i), the Secretary shall require, to the maximum extent practicable, that the lowest cost alternatives be used to fulfill the purposes of the conservation security plan, as determined by the Secretary.

(2) On-farm research and demonstration or pilot testing

With respect to land enrolled in the conservation security program, the Secretary may approve a conservation security plan that includes—

- (A) on-farm conservation research and demonstration activities; and
- (B) pilot testing of new technologies or innovative conservation practices.

(3) Use of handbook and guides; State and local conservation concerns**(A) Use of handbook and guides**

In determining eligible conservation practices and the criteria for implementing or maintaining the conservation practices under the conservation security program, the Secretary shall use the National Handbook of Conservation Practices of the Natural Resources Conservation Service.

(B) State and local conservation priorities

The conservation priorities of a State or locality in which an agricultural operation is situated shall be determined by the State Conservationist, in consultation with—

- (i) the State technical committee established under subchapter VI of this chapter; and
- (ii) local agricultural producers and conservation working groups.

(4) Conservation practices

Conservation practices that may be implemented by a producer under a conservation security contract (as appropriate for the agricultural operation of a producer) include—

- (A) nutrient management;
- (B) integrated pest management;
- (C) water conservation (including through irrigation) and water quality management;
- (D) grazing, pasture, and rangeland management;
- (E) soil conservation, quality, and residue management;
- (F) invasive species management;
- (G) fish and wildlife habitat conservation, restoration, and management;
- (H) air quality management;
- (I) energy conservation measures;
- (J) biological resource conservation and regeneration;
- (K) contour farming;
- (L) strip cropping;
- (M) cover cropping;

- (N) controlled rotational grazing;
- (O) resource-conserving crop rotation;
- (P) conversion of portions of cropland from a soil-depleting use to a soil-conserving use, including production of cover crops;
- (Q) partial field conservation practices;
- (R) native grassland and prairie protection and restoration; and
- (S) any other conservation practices that the Secretary determines to be appropriate and comparable to other conservation practices described in this paragraph.

(5) Tiers

Subject to paragraph (6), to carry out this subsection, the Secretary shall establish the following 3 tiers of conservation contracts:

(A) Tier I conservation security contracts

A conservation security plan for land enrolled under a Tier I conservation security contract shall—

- (i) be for a period of 5 years; and
- (ii) include conservation practices appropriate for the agricultural operation, that, at a minimum (as determined by the Secretary)—
 - (I) address at least 1 significant resource of concern for the enrolled portion of the agricultural operation at a level that meets the appropriate nondegradation standard; and
 - (II) cover active management of conservation practices that are implemented or maintained under the conservation security contract.

(B) Tier II conservation security contracts

A conservation security plan for land enrolled under a Tier II conservation security contract shall—

- (i) be for a period of not less than 5 nor more than 10 years, as determined by the producer;
- (ii) include conservation practices appropriate for the agricultural operation, that, at a minimum—
 - (I) address at least 1 significant resource of concern for the entire agricultural operation, as determined by the Secretary, at a level that meets the appropriate nondegradation standard; and
 - (II) cover active management of conservation practices that are implemented or maintained under the conservation security contract.

(C) Tier III conservation security contracts

A conservation security plan for land enrolled under a Tier III conservation security contract shall—

- (i) be for a period of not less than 5 nor more than 10 years, as determined by the producer; and
- (ii) include conservation practices appropriate for the agricultural operation that, at a minimum—
 - (I) apply a resource management system that meets the appropriate nondegradation standard for all resources of concern of the entire agricultural operation, as determined by the Secretary; and

- (II) cover active management of conservation practices that are implemented or maintained under the conservation security contract.

(6) Minimum requirements

The minimum requirements for each tier of conservation contracts implemented under paragraph (5) shall be determined and approved by the Secretary.

(e) Conservation security contracts

(1) In general

On approval of a conservation security plan of a producer, the Secretary shall enter into a conservation security contract with the producer to enroll the land covered by the conservation security plan in the conservation security program.

(2) Modification

(A) Optional modifications

A producer may apply to the Secretary for a modification of the conservation security contract of the producer that is consistent with the purposes of the conservation security program.

(B) Other modifications

(i) In general

The Secretary may, in writing, require a producer to modify a conservation security contract before the expiration of the conservation security contract if the Secretary determines that a change made to the type, size, management, or other aspect of the agricultural operation of the producer would, without the modification of the contract, significantly interfere with achieving the purposes of the conservation security program.

(ii) Participation in other programs

If appropriate payment reductions and other adjustments (as determined by the Secretary) are made to the conservation security contract of a producer, the producer may—

- (I) simultaneously participate in—
 - (aa) the conservation security program;
 - (bb) the conservation reserve program under subpart B of part I of this subchapter; and
 - (cc) the wetlands reserve program under subpart C of part I of this subchapter; and

- (II) may remove land enrolled in the conservation security program for enrollment in a program described in item (bb) or (cc) of subclause (I).

(3) Termination

(A) Optional termination

A producer may terminate a conservation security contract and retain payments received under the conservation security contract, if—

- (i) the producer is in full compliance with the terms and conditions (including any maintenance requirements) of the con-

servation security contract as of the date of the termination; and

(ii) the Secretary determines that termination of the contract would not defeat the purposes of the conservation security plan of the producer.

(B) Other termination

A producer that is required to modify a conservation security contract under paragraph (2)(B)(i) may, in lieu of modifying the contract—

(i) terminate the conservation security contract; and

(ii) retain payments received under the conservation security contract, if the producer has fully complied with the terms and conditions of the conservation security contract before termination of the contract, as determined by the Secretary.

(4) Renewal

(A) In general

Except as provided in subparagraph (B), at the option of a producer, the conservation security contract of the producer may be renewed for an additional period of not less than 5 nor more than 10 years.

(B) Tier I renewals

In the case of a Tier I conservation security contract of a producer, the producer may renew the contract only if the producer agrees—

(i) to apply additional conservation practices that meet the nondegradation standard on land already enrolled in the conservation security program; or

(ii) to adopt new conservation practices with respect to another portion of the agricultural operation that address resource concerns and meet the nondegradation standard under the terms of the Tier I conservation security contract.

(f) Noncompliance due to circumstances beyond the control of producers

The Secretary shall include in the conservation security contract a provision, and may permit modification of a conservation security contract under subsection (e)(1) of this section, to ensure that a producer shall not be considered in violation of a conservation security contract for failure to comply with the conservation security contract due to circumstances beyond the control of the producer, including a disaster or related condition, as determined by the Secretary.

(Pub. L. 99-198, title XII, §1238A, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 225.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 3838b. Duties of producers

Under a conservation security contract, a producer shall agree, during the term of the conservation security contract—

(1) to implement the applicable conservation security plan approved by the Secretary;

(2) to maintain, and make available to the Secretary at such times as the Secretary may request, appropriate records showing the effective and timely implementation of the conservation security plan;

(3) not to engage in any activity that would interfere with the purposes of the conservation security program; and

(4) on the violation of a term or condition of the conservation security contract—

(A) if the Secretary determines that the violation warrants termination of the conservation security contract—

(i) to forfeit all rights to receive payments under the conservation security contract; and

(ii) to refund to the Secretary all or a portion of the payments received by the producer under the conservation security contract, including any advance payments and interest on the payments, as determined by the Secretary; or

(B) if the Secretary determines that the violation does not warrant termination of the conservation security contract, to refund to the Secretary, or accept adjustments to, the payments provided to the producer, as the Secretary determines to be appropriate.

(Pub. L. 99-198, title XII, §1238B, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 230.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

§ 3838c. Duties of the Secretary

(a) Timing of payments

The Secretary shall make payments under a conservation security contract as soon as practicable after October 1 of each fiscal year.

(b) Annual payments

(1) Criteria for determining amount of payments

(A) Base payment

A base payment under this paragraph shall be (as determined by the Secretary)—

(i) the average national per-acre rental rate for a specific land use during the 2001 crop year; or

(ii) another appropriate rate for the 2001 crop year that ensures regional equity.

(B) Payments

A payment for a conservation practice under this paragraph shall be determined in accordance with subparagraphs (C) through (E).

(C) Tier I conservation security contracts

The payment for a Tier I conservation security contract shall consist of the total of the following amounts:

(i) An amount equal to 5 percent of the applicable base payment for land covered by the contract.

(ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county costs of practices for the 2001 crop year that are included in the conservation security contract, as determined by the Secretary, including the costs of—

(I) the adoption of new management, vegetative, and land-based structural practices;

(II) the maintenance of existing land management and vegetative practices; and

(III) the maintenance of existing land-based structural practices that are approved by the Secretary but not already covered by a Federal or State maintenance requirement.

(iii) An enhanced payment that is determined by the Secretary in a manner that ensures equity across regions of the United States, if the producer—

(I) implements or maintains multiple conservation practices that exceed minimum requirements for the applicable tier of participation (including practices that involve a change in land use, such as resource-conserving crop rotation, managed rotational grazing, or conservation buffer practices);

(II) addresses local conservation priorities in addition to resources of concern for the agricultural operation;

(III) participates in an on-farm conservation research, demonstration, or pilot project;

(IV) participates in a watershed or regional resource conservation plan that involves at least 75 percent of producers in a targeted area; or

(V) carries out assessment and evaluation activities relating to practices included in a conservation security plan.

(D) Tier II conservation security contracts

The payment for a Tier II conservation security contract shall consist of the total of the following amounts:

(i) An amount equal to 10 percent of the applicable base payment for land covered by the conservation security contract.

(ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county cost of adopting or maintaining practices for the 2001 crop year that are included in the conservation security contract, as described in subparagraph (C)(ii).

(iii) An enhanced payment that is determined in accordance with subparagraph (C)(iii).

(E) Tier III conservation security contracts

The payment for a Tier III conservation security contract shall consist of the total of the following amounts:

(i) An amount equal to 15 percent of the base payment for land covered by the conservation security contract.

(ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county cost of adopting or maintaining practices for the 2001 crop year that are included in the conservation security contract, as described in subparagraph (C)(ii).

(iii) An enhanced payment that is determined in accordance with subparagraph (C)(iii).

(2) Limitation on payments

(A) In general

Subject to paragraphs (1) and (3), the Secretary shall make an annual payment, directly or indirectly, to an individual or entity covered by a conservation security contract in an amount not to exceed—

(i) in the case of a Tier I conservation security contract, \$20,000;

(ii) in the case of a Tier II conservation security contract, \$35,000; or

(iii) in the case of a Tier III conservation security contract, \$45,000.

(B) Limitation on base payments

In applying the payment limitation under each of clauses (i), (ii), and (iii) of subparagraph (A), an individual or entity may not receive, directly or indirectly, payments described in clause (i) of paragraph (1)(C), (1)(D), or (1)(E), as appropriate, in an amount that exceeds—

(i) in the case of Tier I contracts, 25 percent of the applicable payment limitation; or

(ii) in the case of Tier II contracts and Tier III contracts, 30 percent of the applicable payment limitation.

(C) Other USDA payments

A producer shall not receive payments under the conservation security program and any other conservation program administered by the Secretary for the same practices on the same land.

(D) Commensurate share

To be eligible to receive a payment under this subpart, an individual or entity shall make contributions (including contributions of land, labor, management, equipment, or capital) to the operation of the farm that are at least commensurate with the share of the proceeds of the operation of the individual or entity.

(3) Equipment or facilities

A payment to a producer under this subpart shall not be provided for—

(A) construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or

(B) the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice, as determined by the Secretary.

(c) Minimum practice requirement

In determining a payment under subsection (b) of this section for a producer that receives a

payment under another program administered by the Secretary that is contingent on complying with requirements under subchapter II or III of this chapter (relating to the use of highly erodible land or wetland), a payment under this subpart on land subject to those requirements shall be for practices only to the extent that the practices exceed minimum requirements for the producer under those subchapters, as determined by the Secretary.

(d) Regulations

The Secretary shall promulgate regulations that—

(1) provide for adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing payments, on a fair and equitable basis; and

(2) prescribe such other rules as the Secretary determines to be necessary to ensure a fair and reasonable application of the limitations established under subsection (b) of this section.

(e) Transfer or change of interest in land subject to conservation security contract

(1) In general

Except as provided in paragraph (2), the transfer, or change in the interest, of a producer in land subject to a conservation security contract shall result in the termination of the conservation security contract.

(2) Transfer of duties and rights

Paragraph (1) shall not apply if, not later than 60 days after the date of the transfer or change in the interest in land, the transferee of the land provides written notice to the Secretary that all duties and rights under the conservation security contract have been transferred to, and assumed by, the transferee.

(f) Enrollment procedure

In entering into conservation security contracts with producers under this subpart, the Secretary shall not use competitive bidding or any similar procedure.

(g) Technical assistance

For each of fiscal years 2003 through 2007, the Secretary shall provide technical assistance to producers for the development and implementation of conservation security contracts, in an amount not to exceed 15 percent of amounts expended for the fiscal year.

(Pub. L. 99-198, title XII, §1238C, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 230.)

PRIOR PROVISIONS

Prior sections 3838c to 3838f were repealed by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

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.

SECTION REFERRED TO IN OTHER SECTIONS

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

SUBPART B—FARMLAND PROTECTION PROGRAM

CODIFICATION

Section 2503(a) of Pub. L. 107-171, which directed that subchapter B (this subpart) be added at the end of chapter 2 (this part) of the Food Security Act of 1985, was executed by adding subchapter B after subchapter A of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (subpart A of this part) to reflect the probable intent of Congress and a prior amendment by section 2401 of Pub. L. 107-171, which had added subchapter C (subpart C of this part) at the end of chapter 2 of subtitle D of title XII of the Food Security Act of 1985.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 3841 of this title.

§ 3838h. Definitions

In this subpart:

(1) Eligible entity

The term “eligible entity” means—

(A) any agency of any State or local government or an Indian tribe (including a farmland protection board or land resource council established under State law); or

(B) any organization that—

(i) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of title 26;

(ii) is an organization described in section 501(c)(3) of that title that is exempt from taxation under section 501(a) of that title;

(iii) is described in section 509(a)(2) of that title; or

(iv) is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that title.

(2) Eligible land

(A) In general

The term “eligible land” means land on a farm or ranch that—

(i) (I) has prime, unique, or other productive soil; or

(II) contains historical or archaeological resources; and

(ii) is subject to a pending offer for purchase from an eligible entity.

(B) Inclusions

The term “eligible land” includes, on a farm or ranch—

(i) cropland;

(ii) rangeland;

(iii) grassland;

(iv) pasture land; and

(v) forest land that is an incidental part of an agricultural operation, as determined by the Secretary.

(3) Indian tribe

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

(4) Program

The term “program” means the farmland protection program established under section 3838i(a) of this title.

(Pub. L. 99-198, title XII, §1238H, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 267.)

§ 3838i. Farmland protection**(a) In general**

The Secretary, acting through the Natural Resources Conservation Service, shall establish and carry out a farmland protection program under which the Secretary shall purchase conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity 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 subpart 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) Cost sharing**(1) Farmland protection****(A) Share provided under this subsection**

The share of the cost of purchasing a conservation easement or other interest in eligible land described in subsection (a) of this section provided under section 3841(d) of this title shall not exceed 50 percent of the appraised fair market value of the conservation easement or other interest in eligible land.

(B) Share not provided under this subsection

As part of the share of the cost of purchasing a conservation easement or other interest in eligible land described in subsection (a) of this section that is not provided under section 3841(d) of this title, an eligible entity may include a charitable donation by the private landowner from which the eligible land is to be purchased of not more than 25 percent of the fair market value of the conservation easement or other interest in eligible land.

(2) Bidding down

If the Secretary determines that 2 or more applications for the purchase of a conservation easement or other interest in eligible land described in subsection (a) of this section are comparable in achieving the purposes of this section, the Secretary shall not assign a higher priority to any 1 of those applications solely on the basis of lesser cost to the farmland protection program established under subsection (a) of this section.

(Pub. L. 99-198, title XII, §1238I, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 268.)

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 3838j. Farm viability program**(a) In general**

The Secretary may provide to eligible entities identified by the Secretary grants for use in carrying out farm viability programs developed by the eligible entities and approved by the Secretary.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section such sums as are necessary for each of fiscal years 2002 through 2007.

(Pub. L. 99-198, title XII, §1238J, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 269.)

SUBPART C—GRASSLAND RESERVE PROGRAM

CODIFICATION

Section 2401 of Pub. L. 107-171, which directed that subchapter C (this subpart) be added at the end of chapter 2 of the Food Security Act of 1985, was executed by adding subchapter C at the end of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (this part) to reflect the probable intent of Congress.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3838a, 3841 of this title.

§ 3838n. Grassland reserve program**(a) Establishment**

The Secretary shall establish a grassland reserve program (referred to in this subpart as the “program”) to assist owners in restoring and conserving eligible land described in subsection (c) of this section.

(b) Enrollment conditions**(1) Maximum enrollment**

The total number of acres enrolled in the program shall not exceed 2,000,000 acres of restored or improved grassland, rangeland, and pastureland.

(2) Methods of enrollment**(A) In general**

Except as provided in subparagraph (B), the Secretary shall enroll in the program from a willing owner not less than 40 contiguous acres of land through the use of—

(i) a 10-year, 15-year, or 20-year rental agreement;

(ii)(I) a 30-year rental agreement or permanent or 30-year easement; or

(II) in a State that imposes a maximum duration for easements, an easement for the maximum duration allowed under State law.

(B) Waiver

The Secretary may enroll in the program such parcels of land that are less than 40 acres as the Secretary determines are appropriate to achieve the purposes of the program.

(3) Limitation on use of easements and rental agreements

Of the total amount of funds expended under the program to acquire easements and rental agreements described in paragraph (2)(A)—

(A) not more than 40 percent shall be used for rental agreements described in paragraph (2)(A)(i); and

(B) not more than 60 percent shall be used for easements and rental agreements described in paragraph (2)(A)(ii).

(c) Eligible land

Land shall be eligible to be enrolled in the program if the Secretary determines that the land is private land that is—

(1) grassland, land that contains forbs, or shrubland (including improved rangeland and pastureland); or

(2) land that—

(A) is located in an area that has been historically dominated by grassland, forbs, or shrubland; and

(B) has potential to serve as habitat for animal or plant populations of significant ecological value if the land is—

(i) retained in the current use of the land; or

(ii) restored to a natural condition; or

(3) land that is incidental to land described in paragraph (1) or (2), if the incidental land is determined by the Secretary to be necessary for the efficient administration of an agreement or easement.

(Pub. L. 99-198, title XII, §1238N, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 258.)

§ 3838o. Requirements relating to easements and agreements

(a) Requirements of landowner

(1) In general

To be eligible to enroll land in the program through the grant of an easement, the owner of the land shall enter into an agreement with the Secretary—

(A) to grant an easement that applies to the land to the Secretary;

(B) to create and record an appropriate deed restriction in accordance with applicable State law to reflect the easement;

(C) to provide a written statement of consent to the easement signed by persons holding a security interest or any vested interest in the land;

(D) to provide proof of unencumbered title to the underlying fee interest in the land that is the subject of the easement; and

(E) to comply with the terms of the easement and restoration agreement.

(2) Agreements

To be eligible to enroll land in the program under an agreement, the owner or operator of the land shall agree—

(A) to comply with the terms of the agreement (including any related restoration agreements); and

(B) to the suspension of any existing cropland base and allotment history for the land under a program administered by the Secretary.

(b) Terms of easement or rental agreement

An easement or rental agreement under subsection (a) of this section shall—

(1) permit—

(A) common grazing practices, including maintenance and necessary cultural practices, on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to that locality;

(B) subject to appropriate restrictions during the nesting season for birds in the local area that are in significant decline or are conserved in accordance with Federal or State law, as determined by the Natural Resources Conservation Service State conservationist, haying, mowing, or harvesting for seed production; and

(C) fire rehabilitation and construction of fire breaks and fences (including placement of the posts necessary for fences);

(2) prohibit—

(A) the production of crops (other than hay), fruit trees, vineyards, or any other agricultural commodity that requires breaking the soil surface; and

(B) except as permitted under this subsection or subsection (d) of this section, the conduct of any other activity that would disturb the surface of the land covered by the easement or rental agreement; and

(3) include such additional provisions as the Secretary determines are appropriate to carry out or facilitate the administration of this subpart.

(c) Evaluation and ranking of easement and rental agreement applications

(1) In general

The Secretary shall establish criteria to evaluate and rank applications for easements and rental agreements under this subpart.

(2) Considerations

In establishing the criteria, the Secretary shall emphasize support for—

(A) grazing operations;

(B) plant and animal biodiversity; and

(C) grassland, land that contains forbs, and shrubland under the greatest threat of conversion.

(d) Restoration agreements

(1) In general

The Secretary shall prescribe the terms of a restoration agreement by which grassland, land that contains forbs, or shrubland that is subject to an easement or rental agreement entered into under the program shall be restored.

(2) Requirements

The restoration agreement shall describe the respective duties of the owner and the Secretary (including the Federal share of restoration payments and technical assistance).

(e) Violations

On a violation of the terms or conditions of an easement, rental agreement, or restoration agreement entered into under this section—

(1) the easement or rental agreement shall remain in force; and

(2) the Secretary may require the owner to refund all or part of any payments received by

the owner under this subpart, with interest on the payments as determined appropriate by the Secretary.

(Pub. L. 99-198, title XII, §1238O, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 259.)

§ 3838p. Duties of Secretary

(a) In general

In return for the granting of an easement, or the execution of a rental agreement, by an owner under this subpart, the Secretary shall, in accordance with this section—

(1) make easement or rental agreement payments to the owner in accordance with subsection (b) of this section; and

(2) make payments to the owner for the Federal share of the cost of restoration in accordance with subsection (c) of this section.

(b) Payments

(1) Easement payments

(A) Amount

In return for the granting of an easement by an owner under this subpart, the Secretary shall make easement payments to the owner in an amount equal to—

(i) in the case of a permanent easement, the fair market value of the land less the grazing value of the land encumbered by the easement; and

(ii) in the case of a 30-year easement or an easement for the maximum duration allowed under applicable State law, 30 percent of the fair market value of the land less the grazing value of the land for the period during which the land is encumbered by the easement.

(B) Schedule

Easement payments may be provided in not less than 1 payment nor more than 10 annual payments of equal or unequal amount, as agreed to by the Secretary and the owner.

(2) Rental agreement payments

In return for entering into a rental agreement by an owner under this subpart, the Secretary shall make annual payments to the owner during the term of the rental agreement in an amount that is not more than 75 percent of the grazing value of the land covered by the contract.

(c) Federal share of restoration

The Secretary shall make payments to an owner under this section of not more than—

(1) in the case of grassland, land that contains forbs, or shrubland that has never been cultivated, 90 percent of the costs of carrying out measures and practices necessary to restore functions and values of that land; or

(2) in the case of restored grassland, land that contains forbs, or shrubland, 75 percent of those costs.

(d) Payments to others

If an owner that is entitled to a payment under this subpart dies, becomes incompetent, is otherwise unable to receive the payment, or is

succeeded by another person who renders or completes the required performance, the Secretary shall make the payment, in accordance with regulations promulgated 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 the circumstances.

(Pub. L. 99-198, title XII, §1238P, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 261.)

§ 3838q. Delegation to private organizations

(a) In general

The Secretary may permit a private conservation or land trust organization (referred to in this section as a “private organization”) or a State agency to hold and enforce an easement under this subpart, in lieu of the Secretary, subject to the right of the Secretary to conduct periodic inspections and enforce the easement, if—

(1) the Secretary determines that granting the permission will promote protection of grassland, land that contains forbs, and shrubland;

(2) the owner authorizes the private organization or State agency to hold and enforce the easement; and

(3) the private organization or State agency agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the private organization or State agency.

(b) Application

A private organization or State agency that seeks to hold and enforce an easement under this subpart shall apply to the Secretary for approval.

(c) Approval by Secretary

The Secretary may approve a private organization to hold and enforce an easement under this subpart if (as determined by the Secretary) the private organization—

(1)(A) is an organization described in section 501(c)(3) of title 26 that is exempt from taxation under section 501(a) of that title; or

(B) is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that title;

(2) has the relevant experience necessary to administer grassland and shrubland easements;

(3) has a charter that describes the commitment of the private organization to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and

(4) has the resources necessary to effectuate the purposes of the charter.

(d) Reassignment

(1) In general

If a private organization holding an easement on land under this subpart terminates, not later than 30 days after termination of the private organization, the owner of the land shall reassign the easement to—

(A) a new private organization that is approved by the Secretary; or

(B) the Secretary.

(2) Notification of Secretary

(A) In general

If the easement is reassigned to a new private organization, not later than 60 days after the date of reassignment, the owner and the new organization shall notify the Secretary in writing that a reassignment for termination has been made.

(B) Failure to notify

If the owner and the new organization fail to notify the Secretary of the reassignment in accordance with subparagraph (A), the easement shall revert to the control of the Secretary.

(Pub. L. 99-198, title XII, §1238Q, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 262.)

PART III—ENVIRONMENTAL EASEMENT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 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. 3559, 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

CODIFICATION

Chapter 4 of subtitle D of title XII of the Food Security Act of 1985, comprising this part, was originally added to Pub. L. 99-198 by Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 996. Chapter 4 is shown herein, however, as having been added by Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 253, because of the extensive revision of the chapter's provisions by Pub. L. 107-171.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 590h, 2106a, 3811, 3821, 3830, 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 promote agricultural production and environmental quality as compatible goals, and to optimize environmental benefits, by—

- (1) assisting producers in complying with local, State, and national regulatory requirements concerning—

- (A) soil, water, and air quality;
- (B) wildlife habitat; and
- (C) surface and ground water conservation;

(2) avoiding, to the maximum extent practicable, the need for resource and regulatory programs by assisting producers in protecting soil, water, air, and related natural resources and meeting environmental quality criteria established by Federal, State, tribal, and local agencies;

(3) providing flexible assistance to producers to install and maintain conservation practices that enhance soil, water, related natural resources (including grazing land and wetland), and wildlife while sustaining production of food and fiber;

(4) assisting producers to make beneficial, cost effective changes to cropping systems,

grazing management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural land; and

(5) consolidating and streamlining conservation planning and regulatory compliance processes to reduce administrative burdens on producers and the cost of achieving environmental goals.

(Pub. L. 99-198, title XII, § 1240, as added Pub. L. 107-171, title II, § 2301, May 13, 2002, 116 Stat. 253.)

PRIOR PROVISIONS

A prior section 3839aa, Pub. L. 99-198, title XII, § 1240, as added Pub. L. 104-127, title III, § 334, Apr. 4, 1996, 110 Stat. 996, related to purposes, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-1. Definitions

In this part:

(1) Beginning farmer or rancher

The term “beginning farmer or rancher” has the meaning provided under section 1991(a) of title 7.

(2) Eligible land

(A) In general

The term “eligible land” means land on which agricultural commodities or livestock are produced.

(B) Inclusions

The term “eligible land” includes—

- (i) cropland;
- (ii) grassland;
- (iii) rangeland;
- (iv) pasture land;
- (v) private, nonindustrial forest land; and
- (vi) other agricultural land that the Secretary determines poses a serious threat to soil, air, water, or related resources.

(3) 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, air quality management, or other land management practice carried out on eligible land that the Secretary determines is needed to protect from degradation, in the most cost-effective manner, water, soil, or related resources.

(4) Livestock

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

(5) Practice

The term “practice” means 1 or more structural practices, land management practices, and comprehensive nutrient management planning practices.

(6) 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, constructed wetland, 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. 107-171, title II, § 2301, May 13, 2002, 116 Stat. 253.)

PRIOR PROVISIONS

A prior section 3839aa-1, Pub. L. 99-198, title XII, § 1240A, as added Pub. L. 104-127, title III, § 334, Apr. 4, 1996, 110 Stat. 997, related to definitions of terms, prior to the general amendment of this part by Pub. L. 107-171.

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

(a) Establishment

(1) In general

During each of the 2002 through 2007 fiscal years, the Secretary shall provide cost-share payments and incentive payments to producers that enter into contracts with the Secretary under the program.

(2) Eligible practices

With respect to practices implemented under this part—

(A) a producer that implements a structural practice in accordance with this part shall be eligible to receive cost-share payments; and

(B) a producer that implements a land management practice, or develops a comprehensive nutrient management plan, in accordance with this part shall be eligible to receive incentive payments.

(b) Practices and term

(1) Practices

A contract under this part may apply to 1 or more structural practices, land management practices, and comprehensive nutrient management practices.

(2) Term

A contract under this part shall have a term that—

(A) at a minimum, is equal to the period beginning on the date on which the contract is entered into and ending on the date that is 1 year after the date on which all practices under the contract have been implemented; but

(B) not to exceed 10 years.

(c) Bidding down

If the Secretary determines that the environmental values of 2 or more applications for cost-share payments or incentive payments are comparable, the Secretary shall not assign a higher priority to the application only because it would present the least cost to the program established under the program.

(d) Cost-share payments

(1) In general

Except as provided in paragraph (2), the cost-share payments provided to a producer

proposing to implement 1 or more practices under the program shall be not more than 75 percent of the cost of the practice, as determined by the Secretary.

(2) Exceptions

(A) Limited resource and beginning farmers

The Secretary may increase the amount provided to a producer under paragraph (1) to not more than 90 percent if the producer is a limited resource or beginning farmer or rancher, as determined by the Secretary.

(B) Cost-share assistance from other sources

Except as provided in paragraph (3), any cost-share payments received by a producer from a State or private organization or person for the implementation of 1 or more practices on eligible land of the producer shall be in addition to the payments provided to the producer under paragraph (1).

(3) Other payments

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

(e) Incentive payments

(1) In general

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.

(2) Special rule

In determining the amount and rate of incentive payments, the Secretary may accord great significance to a practice that promotes residue, nutrient, pest, invasive species, or air quality management.

(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) Allocation of funding

For each of fiscal years 2002 through 2007, 60 percent of the funds made available for cost-share payments and incentive payments under this part shall be targeted at practices relating to livestock production.

(Pub. L. 99-198, title XII, §1240B, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 254.)

PRIOR PROVISIONS

A prior section 3839aa-2, Pub. L. 99-198, title XII, §1240B, as added Pub. L. 104-127, title III, §334, Apr. 4,

1996, 110 Stat. 998, related to establishment and administration of environmental quality incentives program, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-3. Evaluation of offers and payments

In evaluating applications for cost-share payments and incentive payments, the Secretary shall accord a higher priority to assistance and payments that—

(1) encourage the use by producers of cost-effective conservation practices; and

(2) address national conservation priorities.

(Pub. L. 99-198, title XII, §1240C, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256.)

PRIOR PROVISIONS

A prior section 3839aa-3, Pub. L. 99-198, title XII, §1240C, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000, related to evaluation of offers and payments, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-4. Duties of producers

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

(1) to implement an environmental quality incentives program plan (including a comprehensive nutrient management plan, if applicable) that describes conservation and environmental purposes to be achieved through 1 or more practices that are approved by the Secretary;

(2) not to conduct any practices on the farm or ranch that would tend to defeat the purposes of the program;

(3) on the violation of a term or condition of the contract at anytime the producer has control of the land—

(A) if the Secretary determines that the violation warrants termination of the contract—

(i) to forfeit all rights to receive payments under the contract; and

(ii) to refund to the Secretary all or a portion of the payments received by the owner or operator under the contract, including any interest on the payments, as determined by the Secretary; or

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

(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 the program, as determined by the Secretary;

(5) to supply information as required by the Secretary to determine compliance with the 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 program plan.

(Pub. L. 99-198, title XII, §1240D, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256.)

PRIOR PROVISIONS

A prior section 3839aa-4, Pub. L. 99-198, title XII, §1240D, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000, related to duties of producers, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-5. Environmental quality incentives program plan

(a) In general

To be eligible to receive cost-share payments or incentive payments under the program, a producer shall submit to the Secretary for approval a plan of operations that—

- (1) specifies practices covered under the program;
- (2) includes such terms and conditions as the Secretary considers necessary to carry out the program, including a description of the purposes to be met by the implementation of the plan; and
- (3) in the case of a confined livestock feeding operation, provides for development and implementation of a comprehensive nutrient management plan, if applicable.

(b) Avoidance of duplication

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

(Pub. L. 99-198, title XII, §1240E, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256.)

PRIOR PROVISIONS

A prior section 3839aa-5, Pub. L. 99-198, title XII, §1240E, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to environmental quality incentives program plan, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-6. Duties of the Secretary

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

- (1) providing cost-share payments or incentive payments for developing and implementing 1 or more practices, as appropriate; and
- (2) providing the producer with information and training to aid in implementation of the plan.

(Pub. L. 99-198, title XII, §1240F, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257.)

PRIOR PROVISIONS

A prior section 3839aa-6, Pub. L. 99-198, title XII, §1240F, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to duties of Secretary, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-7. Limitation on payments

An individual or entity may not receive, directly or indirectly, cost-share or incentive payments under this part that, in the aggregate, ex-

ceed \$450,000 for all contracts entered into under this part by the individual or entity during the period of fiscal years 2002 through 2007, regardless of the number of contracts entered into under this part by the individual or entity.

(Pub. L. 99-198, title XII, §1240G, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257.)

PRIOR PROVISIONS

A prior section 3839aa-7, Pub. L. 99-198, title XII, §1240G, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to limitation on payments, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-8. Conservation innovation grants

(a) In general

The Secretary may pay the cost of competitive grants that are intended to stimulate innovative approaches to leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production, through the program.

(b) Use

The Secretary may provide grants under this section to governmental and nongovernmental organizations and persons, on a competitive basis, to carry out projects that—

- (1) involve producers that are eligible for payments or technical assistance under the program;
- (2) implement projects, such as—
 - (A) market systems for pollution reduction; and
 - (B) innovative conservation practices, including the storing of carbon in the soil; and
- (3) leverage funds made available to carry out the program under this part with matching funds provided by State and local governments and private organizations to promote environmental enhancement and protection in conjunction with agricultural production.

(c) Cost share

The amount of a grant made under this section to carry out a project shall not exceed 50 percent of the cost of the project.

(Pub. L. 99-198, title XII, §1240H, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257.)

PRIOR PROVISIONS

A prior section 3839aa-8, Pub. L. 99-198, title XII, §1240H, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1002, related to temporary administration of environmental quality incentives program, prior to the general amendment of this part by Pub. L. 107-171.

§ 3839aa-9. Ground and surface water conservation

(a) Establishment

In carrying out the program under this part, subject to subsection (b) of this section, the Secretary shall promote ground and surface water conservation by providing cost-share payments, incentive payments, and loans to producers to carry out eligible water conservation activities

with respect to the agricultural operations of producers, to—

- (1) improve irrigation systems;
- (2) enhance irrigation efficiencies;
- (3) convert to—
 - (A) the production of less water-intensive agricultural commodities; or
 - (B) dryland farming;
- (4) improve the storage of water through measures such as water banking and ground-water recharge;
- (5) mitigate the effects of drought; or
- (6) institute other measures that improve groundwater and surface water conservation, as determined by the Secretary, in the agricultural operations of producers.

(b) Net savings

The Secretary may provide assistance to a producer under this section only if the Secretary determines that the assistance will facilitate a conservation measure that results in a net savings in groundwater or surface water resources in the agricultural operation of the producer.

(c) Funding

Of the funds of the Commodity Credit Corporation, in addition to amounts made available under section 3841(a)(6) of this title to carry out this part, the Secretary shall use—

- (1) to carry out this section—
 - (A) \$25,000,000 for fiscal year 2002;
 - (B) \$45,000,000 for fiscal year 2003; and
 - (C) \$60,000,000 for each of fiscal years 2004 through 2007; and
- (2) \$50,000,000 to carry out water conservation activities in Klamath Basin, California and Oregon, to be made available as soon as practicable after May 13, 2002.

(Pub. L. 99-198, title XII, § 1240I, as added Pub. L. 107-171, title II, § 2301, May 13, 2002, 116 Stat. 257.)

PART V—OTHER CONSERVATION PROGRAMS

§ 3839bb. Conservation of private grazing land

(a) Purpose

It is the purpose of this section to authorize the Secretary to provide a coordinated technical, educational, and related assistance program to conserve and enhance private grazing land resources and provide related benefits to all citizens of the United States by—

- (1) establishing a coordinated and cooperative Federal, State, and local grazing conservation program for management of private grazing land;
- (2) strengthening technical, educational, and related assistance programs that provide assistance to owners and managers of private grazing land;
- (3) conserving and improving wildlife habitat on private grazing land;
- (4) conserving and improving fish habitat and aquatic systems through grazing land conservation treatment;
- (5) protecting and improving water quality;
- (6) improving the dependability and consistency of water supplies;
- (7) identifying and managing weed, noxious weed, and brush encroachment problems on private grazing land; and

(8) integrating conservation planning and management decisions by owners and managers of private grazing land, on a voluntary basis.

(b) Definitions

In this section:

(1) Department

The term “Department” means the Department of Agriculture.

(2) Private grazing land

The term “private grazing land” means private, State-owned, tribally-owned, and any other non-federally owned rangeland, pastureland, grazed forest land, and hay land.

(3) Secretary

The term “Secretary” means the Secretary of Agriculture.

(c) Private grazing land conservation assistance

(1) Assistance to grazing landowners and others

Subject to the availability of appropriations for this section, the Secretary shall establish a voluntary program to provide technical, educational, and related assistance to owners and managers of private grazing land and public agencies, through local conservation districts, to enable the landowners, managers, and public agencies to voluntarily carry out activities that are consistent with this section, including—

- (A) maintaining and improving private grazing land and the multiple values and uses that depend on private grazing land;
- (B) implementing grazing land management technologies;
- (C) managing resources on private grazing land, including—
 - (i) planning, managing, and treating private grazing land resources;
 - (ii) ensuring the long-term sustainability of private grazing land resources;
 - (iii) harvesting, processing, and marketing private grazing land resources; and
 - (iv) identifying and managing weed, noxious weed, and brush encroachment problems;
- (D) protecting and improving the quality and quantity of water yields from private grazing land;
- (E) maintaining and improving wildlife and fish habitat on private grazing land;
- (F) enhancing recreational opportunities on private grazing land;
- (G) maintaining and improving the aesthetic character of private grazing land;
- (H) identifying the opportunities and encouraging the diversification of private grazing land enterprises; and
- (I) encouraging the use of sustainable grazing systems, such as year-round, rotational, or managed grazing.

(2) Program elements

(A) Funding

If funding is provided to carry out this section, it shall be provided through a specific line-item in the annual appropriations for the Natural Resources Conservation Service.

(B) Technical assistance and education

Personnel of the Department trained in pasture and range management shall be made available under the program to deliver and coordinate technical assistance and education to owners and managers of private grazing land, at the request of the owners and managers.

(d) Grazing technical assistance self-help**(1) Findings**

Congress finds that—

(A) there is a severe lack of technical assistance for farmers and ranchers that graze livestock;

(B) Federal budgetary constraints preclude any significant expansion, and may force a reduction of, current levels of technical support; and

(C) farmers and ranchers have a history of cooperatively working together to address common needs in the promotion of their products and in the drainage of wet areas through drainage districts.

(2) Establishment of grazing demonstration

In accordance with paragraph (3), the Secretary may establish 2 grazing management demonstration districts at the recommendation of the grazing land conservation initiative steering committee.

(3) Procedure**(A) Proposal**

Within a reasonable time after the submission of a request of an organization of farmers or ranchers engaged in grazing, the Secretary shall propose that a grazing management district be established.

(B) Funding

The terms and conditions of the funding and operation of the grazing management district shall be proposed by the producers.

(C) Approval

The Secretary shall approve the proposal if the Secretary determines that the proposal—

- (i) is reasonable;
- (ii) will promote sound grazing practices; and
- (iii) contains provisions similar to the provisions contained in the beef promotion and research order issued under section 2903 of title 7 in effect on April 4, 1996.

(D) Area included

The area proposed to be included in a grazing management district shall be determined by the Secretary on the basis of an application by farmers or ranchers.

(E) Authorization

The Secretary may use authority under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to operate, on a demonstration basis, a grazing management district.

(F) Activities

The activities of a grazing management district shall be scientifically sound activi-

ties, as determined by the Secretary in consultation with a technical advisory committee composed of ranchers, farmers, and technical experts.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$60,000,000 for each of fiscal years 2002 through 2007.

(Pub. L. 99-198, title XII, §1240M, as added Pub. L. 104-127, title III, §335, Apr. 4, 1996, 110 Stat. 1002; amended Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 264.)

REFERENCES IN TEXT

The Agricultural Adjustment Act, referred to in subsec. (d)(3)(E), is title I of act May 12, 1933, ch. 25, 48 Stat. 31, as amended, which is classified generally to chapter 26 (§601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables.

AMENDMENTS

2002—Pub. L. 107-171 amended section catchline and text generally. Prior to amendment, section required the Secretary to establish conservation farm option pilot programs for producers of wheat, feed grains, cotton, and rice.

§ 3839bb-1. Wildlife habitat incentive program**(a) In general**

The Secretary, in consultation with the State technical committees established under section 3861 of this title, shall establish within the Natural Resources Conservation Service a program to be known as the wildlife habitat incentive program (referred to in this section as the “program”).

(b) Cost-share payments**(1) In general**

Under the program, the Secretary shall make cost-share payments to landowners to develop—

- (A) upland wildlife habitat;
- (B) wetland wildlife habitat;
- (C) habitat for threatened and endangered species;
- (D) fish habitat; and
- (E) other types of wildlife habitat approved by the Secretary.

(2) Increased cost share for long-term agreements**(A) In general**

In a case in which the Secretary enters into an agreement or contract to protect and restore plant and animal habitat that has a term of at least 15 years, the Secretary may provide cost-share payments in addition to amounts provided under paragraph (1).

(B) Funding limitation

The Secretary may use, for a fiscal year, not more than 15 percent of funds made available under section 3841(a)(7) of this title for the fiscal year to carry out contracts and agreements described in subparagraph (A).

(c) Regional equity

In carrying out this section, the Secretary shall, to the maximum extent practicable, en-

sure that regional issues of concern relating to wildlife habitat are addressed in an appropriate manner.

(Pub. L. 99-198, title XII, §1240N, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 266.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3841 of this title.

§ 3839bb-2. Grassroots source water protection program

(a) In general

The Secretary shall establish a national grassroots water protection program to more effectively use onsite technical assistance capabilities of each State rural water association that, as of May 13, 2002, operates a wellhead or groundwater protection program in the State.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2002 through 2007.

(Pub. L. 99-198, title XII, §1240O, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 267.)

§ 3839bb-3. Great Lakes basin program for soil erosion and sediment control

(a) In general

The Secretary, in consultation with the Great Lakes Commission created by Article IV of the Great Lakes Basin Compact (82 Stat. 415) and in cooperation with the Administrator of the Environmental Protection Agency and the Secretary of the Army, may carry out the Great Lakes basin program for soil erosion and sediment control (referred to in this section as the “program”).

(b) Assistance

In carrying out the program, the Secretary may—

(1) provide project demonstration grants, provide technical assistance, and carry out information and education programs to improve water quality in the Great Lakes basin by reducing soil erosion and improving sediment control; and

(2) provide a priority for projects and activities that directly reduce soil erosion or improve sediment control.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2002 through 2007.

(Pub. L. 99-198, title XII, §1240P, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 267.)

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 was 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. Subsequently, subtitle E was amended by Pub. L. 107-171 to add new sections 3841, 3842, and 3844 and to repeal former sections 3841 and 3842.

§ 3841. Commodity Credit Corporation

(a) In general

For each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subchapter IV of this chapter (including the provision of technical assistance):

(1) The conservation reserve program under subpart B of part I of this subchapter.

(2) The wetlands reserve program under subpart C of part I of this subchapter.

(3) The conservation security program under subpart A of part II of this subchapter.

(4) The farmland protection program under subpart B of part II of this subchapter, using, to the maximum extent practicable—

(A) \$50,000,000 in fiscal year 2002;

(B) \$100,000,000 in fiscal year 2003;

(C) \$125,000,000 in each of fiscal years 2004 and 2005;

(D) \$100,000,000 in fiscal year 2006; and

(E) \$97,000,000 in fiscal year 2007.

(5) The grassland reserve program under subpart C of part II of this subchapter, using, to the maximum extent practicable \$254,000,000 for the period of fiscal years 2003 through 2007.

(6) The environmental quality incentives program under part IV of this subchapter, using, to the maximum extent practicable—

(A) \$400,000,000 in fiscal year 2002;

(B) \$700,000,000 in fiscal year 2003;

(C) \$1,000,000,000 in fiscal year 2004;

(D) \$1,200,000,000 in each of fiscal years 2005 and 2006; and

(E) \$1,300,000,000 in fiscal year 2007.

(7) The wildlife habitat incentives program under section 3839bb-1 of this title, using, to the maximum extent practicable—

(A) \$15,000,000 in fiscal year 2002;

(B) \$30,000,000 in fiscal year 2003;

(C) \$60,000,000 in fiscal year 2004; and

(D) \$85,000,000 in each of fiscal years 2005 through 2007.

(b) Section 714i of title 15

Nothing in this section affects the limit on expenditures for technical assistance imposed by section 714i of title 15.

(c) Regional equity

Before April 1 of each fiscal year, the Secretary shall give priority for funding under the conservation programs under subchapter IV of this chapter (excluding the conservation reserve program under subpart B of part I of this subchapter, the wetlands reserve program under subpart C of part I of this subchapter, and the conservation security program under subpart A of part II of this subchapter) to approved appli-

cations in any State that has not received, for the fiscal year, an aggregate amount of at least \$12,000,000 for those conservation programs.

(Pub. L. 99-198, title XII, § 1241, as added Pub. L. 107-171, title II, § 2701, May 13, 2002, 116 Stat. 278.)

CODIFICATION

Section 2701 of Pub. L. 107-171, which directed that subtitle E of the Food Security Act of 1985 be amended by striking section 1241 and adding a new section 1241 (this section), was executed by striking section 1241 of subtitle E of title XII of the Food Security Act of 1985 and adding the new section 1241 in lieu thereof, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3841, Pub. L. 99-198, title XII, § 1241, as added Pub. L. 104-127, title III, § 341, Apr. 4, 1996, 110 Stat. 1007, related to funding for the Commodity Credit Corporation, prior to repeal by Pub. L. 107-171, title II, § 2701, May 13, 2002, 116 Stat. 278. See Codification note above.

Another 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3838i, 3839aa-9, 3839bb-1, 3843 of this title.

§ 3842. Delivery of technical assistance

(a) In general

The Secretary shall provide technical assistance under this chapter to a producer eligible for that assistance—

(1) directly; or

(2) at the option of the producer, through a payment, as determined by the Secretary, to the producer for an approved third party, if available.

(b) Certification of third-party providers

(1) In general

Not later than 180 days after May 13, 2002, the Secretary shall, by regulation, establish a system for—

(A) approving individuals and entities to provide technical assistance to carry out programs under this chapter (including criteria for the evaluation of providers or potential providers of technical assistance); and

(B) establishing the amounts and methods for payments for that assistance.

(2) Expertise

In promulgating regulations to carry out this subsection the Secretary shall ensure that persons with expertise in the technical aspects of conservation planning, watershed planning, environmental engineering (including commercial entities, nonprofit entities, State or local governments or agencies, and other Federal agencies), are eligible to become approved providers of the technical assistance.

(3) Interim assistance

(A) In general

A person that has provided technical assistance in accordance with an agreement between the person and the Secretary before

May 13, 2002, may continue to provide technical assistance under this section until the date on which the Secretary establishes the system described in paragraph (1).

(B) Evaluation

If a person described in subparagraph (A) seeks to continue to provide technical assistance after the date referred to in subparagraph (A), the Secretary shall evaluate the person using criteria referred to in paragraph (1).

(4) Non-Federal assistance

The Secretary may request the services of, and enter into cooperative agreements or contracts with, non-Federal entities to assist the Secretary in providing technical assistance necessary to develop and implement conservation programs under this chapter.

(Pub. L. 99-198, title XII, § 1242, as added Pub. L. 107-171, title II, § 2701, May 13, 2002, 116 Stat. 279.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(A), (4), 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.

CODIFICATION

Section 2701 of Pub. L. 107-171, which directed that subtitle E of the Food Security Act of 1985 be amended by striking section 1242 and adding a new section 1242 (this section), was executed by striking section 1242 of subtitle E of title XII of the Food Security Act of 1985 and adding the new section 1242 in lieu thereof, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 3842, Pub. L. 99-198, title XII, § 1242, as added Pub. L. 104-127, title III, § 341, Apr. 4, 1996, 110 Stat. 1008, related to use of other agencies, prior to repeal by Pub. L. 107-171, title II, § 2701, May 13, 2002, 116 Stat. 278. See Codification note above.

Another prior section 3842, Pub. L. 99-198, title XII, § 1242, Dec. 23, 1985, 99 Stat. 1515, related to use of other agencies, prior to the general amendment of this subchapter by Pub. L. 104-127.

§ 3843. Administration of CCEP

(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 determination 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.

(f) Partnerships and cooperation

(1) In general

In carrying out any program under subchapter IV of this chapter, the Secretary may use resources provided under that subchapter to enter into stewardship agreements with State and local agencies, Indian tribes, and nongovernmental organizations and to designate special projects, as recommended by the State Conservationist, after consultation with the State technical committee, to enhance technical and financial assistance provided to owners, operators, and producers to address natural resource issues related to agricultural production.

(2) Criteria for special projects

The purposes of special projects carried out under this subsection shall be to encourage—

(A) producers to cooperate in the installation and maintenance of conservation practices that affect multiple agricultural operations;

(B) the sharing of information and technical and financial resources among producers;

(C) cumulative conservation benefits in geographic areas; and

(D) the development and demonstration of innovative conservation methods.

(3) Incentives

To realize the purposes of the special projects under paragraph (1), the Secretary may provide special incentives to owners, operators, and producers participating in the special projects to encourage partnerships and enrollments of optimal conservation value.

(4) Flexibility

(A) In general

The Secretary may enter into stewardship agreements with States (including State agencies and units of local government), Indian tribes, and nongovernmental organizations that have a history of working with agricultural producers to allow greater flexibility to adjust the application of eligibility criteria, approved practices, innovative conservation practices, and other elements of the programs under this chapter to better reflect unique local circumstances and purposes in a manner that is consistent with—

(i) conservation enhancement and long-term productivity of the natural resource base; and

(ii) the purposes and requirements of this chapter.

(B) Plan

Each party to a stewardship agreement under subparagraph (A) shall submit to the Secretary, for approval by the Secretary, a special project area plan for each program to be carried out by the party that includes—

(i) a description of the requested resources and adjustments to program implementation (including a description of how those adjustments will accelerate the achievement of conservation benefits);

(ii) an analysis of the contribution those adjustments will make to the effectiveness of programs in achieving the purposes of the special project;

(iii) a timetable for reevaluating the need for or performance of the proposed adjustments;

(iv) a description of non-Federal programs and resources that will contribute to achieving the purposes of the special project; and

(v) a plan for the evaluation of progress toward the purposes of the special project.

(5) Funding

(A) In general

In addition to resources from programs under subchapter IV of this chapter, subject

to subparagraph (B), the Secretary shall use not more than 5 percent of the funds made available for each fiscal year under section 3841(a) of this title to carry out activities that are authorized under conservation programs under subchapter IV of this chapter.

(B) Unused funding

Any funds made available for a fiscal year under subparagraph (A) that are not obligated by April 1 of the fiscal year may be used to carry out other activities under conservation programs under subchapter IV of this chapter during the fiscal year in which the funding becomes available.

(Pub. L. 99-198, title XII, §1243, as added Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1008; amended Pub. L. 107-171, title II, §§2003, 2006(d), May 13, 2002, 116 Stat. 233, 237.)

PRIOR PROVISIONS

A prior 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, which related to administration of this chapter, was omitted in the general amendment of this subchapter by Pub. L. 104-127.

AMENDMENTS

2002—Pub. L. 107-171, §2006(d), substituted “Administration of CCEP” for “Administration” in section catchline.

Subsec. (f). Pub. L. 107-171, §2003, added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3822 of this title.

§ 3844. Administrative requirements for conservation programs

(a) Beginning farmers and ranchers and Indian tribes

In carrying out any conservation program administered by the Secretary, the Secretary may provide to beginning farmers and ranchers and Indian tribes (as those terms are defined in section 3838 of this title) and limited resource agricultural producers incentives to participate in the conservation program to—

- (1) foster new farming and ranching opportunities; and
- (2) enhance environmental stewardship over the long term.

(b) Privacy of personal information relating to natural resources conservation programs

(1) Information received for technical and financial assistance

(A) In general

In accordance with section 552(b)(3) of title 5, except as provided in subparagraph (C) and paragraph (2), information described in subparagraph (B)—

- (i) shall not be considered to be public information; and
- (ii) shall not be released to any person or Federal, State, local agency or Indian tribe (as defined by the Secretary) outside the Department of Agriculture.

(B) Information

The information referred to in subparagraph (A) is information—

(i) provided to the Secretary or a contractor of the Secretary (including information provided under subchapter IV of this chapter) for the purpose of providing technical or financial assistance to an owner, operator, or producer with respect to any natural resources conservation program administered by the Natural Resources Conservation Service or the Farm Service Agency; and

(ii) that is proprietary (within the meaning of section 552(b)(4) of title 5) to the agricultural operation or land that is a part of an agricultural operation of the owner, operator, or producer.

(C) Exception

Nothing in this section affects the availability of payment information (including payment amounts and the names and addresses of recipients of payments) under section 552 of title 5.

(2) Exceptions

(A) Release and disclosure for enforcement

The Secretary may release or disclose to the Attorney General information covered by paragraph (1) to the extent necessary to enforce the natural resources conservation programs referred to in paragraph (1)(B)(i).

(B) Disclosure to cooperating persons and agencies

(i) In general

The Secretary may release or disclose information covered by paragraph (1) to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in providing technical and financial assistance described in paragraph (1)(B)(i) or collecting information from data gathering sites.

(ii) Use of information

The person or Federal, State, local, or tribal agency that receives information described in clause (i) may release the information only for the purpose of assisting the Secretary—

- (I) in providing the requested technical or financial assistance; or
- (II) in collecting information from data gathering sites.

(C) Statistical and aggregate information

Information covered by paragraph (1) may be disclosed to the public if the information has been transformed into a statistical or aggregate form without naming any—

- (i) individual owner, operator, or producer; or
- (ii) specific data gathering site.

(D) Consent of owner, operator, or producer

(i) In general

An owner, operator, or producer may consent to the disclosure of information described in paragraph (1).

(ii) Condition of other programs

The participation of the owner, operator, or producer in, and the receipt of any bene-

fit by the owner, operator, or producer under, this chapter or any other program administered by the Secretary may not be conditioned on the owner, operator, or producer providing consent under this paragraph.

(3) Violations; penalties

Section 2276(c) of title 7 shall apply with respect to the release of information collected in any manner or for any purpose prohibited by this subsection.

(4) Data collection, disclosure, and review

Nothing in this subsection—

(A) affects any procedure for data collection or disclosure through the National Resources Inventory; or

(B) limits the authority of Congress or the General Accounting Office to review information collected or disclosed under this subsection.

(Pub. L. 99-198, title XII, §1244, as added Pub. L. 107-171, title II, §2004(a), May 13, 2002, 116 Stat. 235.)

PRIOR PROVISIONS

Prior sections 3844 and 3845 were omitted in the general amendment of this subchapter by Pub. L. 104-127. 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.

SUBCHAPTER VI—STATE TECHNICAL COMMITTEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3838a of this title; 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 com-

posed of professional resource managers that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences. Such committee shall include such representatives as may serve from among—

- (1) the Soil Conservation Service;
- (2) the Agricultural Stabilization and Conservation Service;
- (3) the Forest Service;
- (4) the Extension Service;
- (5) the Farmers Home Administration;
- (6) the Fish and Wildlife Service;
- (7) State departments and agencies which the Secretary deems appropriate, including:
 - (A) the State fish and wildlife agency;
 - (B) the State forester or equivalent State official;
 - (C) the State water resources agency;
 - (D) the State department of agriculture;
 and
 - (E) the State association of soil and water conservation districts;
- (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 section 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.