

**FOOD SECURITY ACT OF 1985**<sup>1-1</sup>

[As Amended Through Public Law 109-171, Feb. 8, 2006]

TITLE XII—CONSERVATION

SUBTITLE A—DEFINITIONS

DEFINITIONS

SEC. 1201.<sup>1201-1</sup> [16 U.S.C. 3801] (a) For purposes of subtitles A through E:

(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)<sup>1201-1</sup> 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 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Secretary, or by the Secretary.

(3)<sup>1201-1</sup> 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.

<sup>1-1</sup> P.L. 99-198, 99 Stat. 1504, Dec. 23, 1985.

<sup>1201-1</sup> Sec. 301(a) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 980, April 4, 1996, amended this section by redesignating former paragraphs (2) through (16) as paragraphs (4) through (18), respectively, and by inserting new paragraphs (2) and (3).

(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 1234 (b) of this Act.

(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) <sup>1201-2</sup> 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 1212, 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 title.

(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 the date of the enactment of this Act; 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

<sup>1201-2</sup>Sec. 301(b) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 980, April 4, 1996, amended this paragraph in its entirety. For the previous version of this paragraph, see p. 5-1 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

the Secretary to be the predominant class or rate of erosion under regulations issued by the Secretary.

(C)<sup>1201-3</sup> 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, United States Code.

(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 subtitle D.

(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 subtitle D.

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

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

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

(17) The term “vegetative cover” means—

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

(B) trees.

(18)<sup>1201-4</sup> 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

<sup>1201-3</sup> Sec. 301(c) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, added this subparagraph.

<sup>1201-4</sup> The last sentence was added by the Urgent Supplemental Appropriation Act, 1986, P.L. 99-349, 100 Stat. 714, July 8, 1986. Sec. 1421(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3572, Nov. 28, 1990, revised the first sentence in its entirety.

(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.<sup>1201-5</sup>

(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.

SUBTITLE B—HIGHLY ERODIBLE LAND CONSERVATION

**SEC. 1211. [16 U.S.C. 3811] PROGRAM INELIGIBILITY.**<sup>1211-1</sup>

(a) IN GENERAL.—Except as provided in section 1212, and notwithstanding any other provision of law,<sup>1211-2</sup> 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—<sup>1211-3</sup>

(1)<sup>1211-4</sup> as to any commodity produced during that crop year by such person—

(A)<sup>1211-5</sup> 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, 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)<sup>1211-6</sup> a disaster payment; or

(D)<sup>1211-7</sup> 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 adminis-

<sup>1201-5</sup>The last sentence was added by the Urgent Supplemental Appropriation Act, 1986, P.L. 99-349, 100 Stat. 714, July 8, 1986.

<sup>1211-1</sup>Sec. 2002(a)(1) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002, amended this sec. by striking the section heading and all that follows through “Except as provided in” and inserting the sec. heading and all that follows through “Except as provided in”.

<sup>1211-2</sup>Sec. 311(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-982, 110 Stat. 1004, April 4, 1996, amended this section by striking “following the date of enactment of this Act,”.

<sup>1211-3</sup>Sec. 1411(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, revised the first sentence by adding the phrase “, or designates” through “determine by the Secretary”.

<sup>1211-4</sup>Sec. 311(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking former subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively. For the previous version of this paragraph, see pp. 5-3 and 5-4 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1211-5</sup>Sec. 311(2)(A) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended subparagraph (A) in its entirety.

<sup>1211-6</sup>Sec. 311(2)(C) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this subparagraph by striking “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”.

<sup>1211-7</sup>Sec. 1411(4) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, deleted “or” after the semicolon.

tered by the Consolidated Farm Service Agency,<sup>1211-8</sup> 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)<sup>1211-9</sup> 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)<sup>1211-10</sup> during the crop year—

(A) a payment made pursuant to a contract entered into under the environmental quality incentives program under chapter 4 of subtitle D;

(B) a payment under any other provision of subtitle D;

(C) a payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202); or

(D) a payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).

(b)<sup>1211-11</sup> **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 subtitle.

#### EXEMPTIONS

SEC. 1212. [16 U.S.C. 3812] (a)<sup>1212-1</sup>(1) During the period beginning on the date of the enactment of this Act 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 the date of enactment of this Act, except as provided in paragraph (2), no person shall become ineligible under section 1211 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,<sup>1212-2</sup> such person shall have until January 1, 1995, to comply with the plan

<sup>1211-8</sup>Sec. 311(2)(D) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this subparagraph by striking “Farmers Home Administration” and inserting “Consolidated Farm Service Agency”.

<sup>1211-9</sup>Sec. 1411(4) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, deleted the period and inserted “; or”.

<sup>1211-10</sup>Sec. 311(3) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph in its entirety. For the previous version of this paragraph, see p. 5-4 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1211-11</sup>Subsec. (b) added by sec. 2002(a)(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233.

<sup>1212-1</sup>Sec. 1412(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, added paragraphs (3) and (4).

<sup>1212-2</sup>Sec. 301(d)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking “that documents” and all that follows through “by the Secretary”. For the previous version of this paragraph, see pp. 5-4 and 5-5 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

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 subchapter B of chapter 1 of subtitle D shall only be required to apply a conservation plan established under this subtitle. 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<sup>1212-3</sup> 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 1211.

(4) On the expiration of a contract entered into under subchapter B of chapter 1 of subtitle D, the provisions of this subtitle shall apply to the acreage that was the subject of such contract.

(b)<sup>1212-4</sup> No person shall become ineligible under section 1211 for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity—

(1) planted before the date of enactment of this Act; or

(2) planted during any crop year beginning before the date of enactment of this Act.

(c)<sup>1212-5</sup> No person shall become ineligible under section 1211 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)<sup>1212-6</sup> 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

<sup>1212-3</sup>Sec. 312 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking "shall, if the conservation plan established under this subtitle for such land requires structures to be constructed," and inserting "shall only" and all that follows through "the person shall".

<sup>1212-4</sup>Sec. 1412(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-124, 104 Stat. 3569, Nov. 28, 1990, amended this subsection by inserting "or" after the semicolon in para. (1); by striking the semicolon in para. (2) and inserting a period.

<sup>1212-5</sup>Sec. 1412(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 28, 1990, redesignated subsec. (b)(3)-(5) as subsec. (c)(1)-(3), respectively and added the first sentence to this Subsection.

<sup>1212-6</sup>Sec. 1421(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 28, 1990, added "for the protection of highly erodible land that has been set aside or".

commodity on any highly erodible land subject to this title;  
or

(2)<sup>1212-7</sup> 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)<sup>1212-8</sup> 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,<sup>1212-9</sup> such person shall have until June 1, 1988, to comply with the plan without being subject to program ineligibility under section 1211.

(d)<sup>1212-10</sup> Section 1211 shall not apply to a loan described in section 1211 made before the date of enactment of this Act.

(e)<sup>1212-11</sup> If a tenant is determined to be ineligible for payments and other benefits under section 1211, 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<sup>1212-12</sup> 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)<sup>1212-13</sup>(1) No<sup>1212-14</sup> person shall become ineligible under section 1211 for program loans, payments, and benefits as a result of the failure of such person to actively apply a conservation

<sup>1212-7</sup> Sec. 1421(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 1990, added “or set aside” each place it appears.

<sup>1212-8</sup> Sec. 3 of P.L. 100-28, 101 Stat. 291, April 24, 1987, added para. (3).

<sup>1212-9</sup> Sec. 301(d)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking “based on” and all that follows through “and the Secretary,” and inserting “, in which case,”. For the previous version of this paragraph, see p. 5-6 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1212-10</sup> Sec. 1412(b) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 28, 1990, redesignated subsec. (c) as subsec. (d).

<sup>1212-11</sup> Sec. 1412(c) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 28, 1990, added this subsection.

<sup>1212-12</sup> Sec. 301(d)(3) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this subparagraph by striking “conservation compliance plan” and inserting “conservation plan”.

<sup>1212-13</sup> Sec. 1412(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3570, Nov. 28, 1990 added this subsection.

<sup>1212-14</sup> Sec. 313(a)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking “Except to the extent provided in paragraph (2), no” and inserting “No”.

plan,<sup>1212-15</sup> if the Secretary determines that the person has acted in good faith and without an intent to violate this subtitle. 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.<sup>1212-16</sup>

(2) If the Secretary determines that a person who has failed to comply with the provisions of section 1211 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,<sup>1212-17</sup> the Secretary shall, in lieu of applying the ineligibility provisions in section 1211, 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 1211 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 1211 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<sup>1212-18</sup> according to the schedule set forth in such plan.

(4)<sup>1212-19</sup> Notwithstanding any other provision of this subtitle, no person shall become ineligible under section 1211 for program loans, payments, and benefits as a result of the failure of such person to actively apply a conservation plan,<sup>1212-20</sup> if the Secretary—

(A)<sup>1212-21</sup> determines that such failure results in a violation of section 1211 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;

<sup>1212-15</sup> Sec. 301(d)(4)(A) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking "that documents" and all that follows through "under subsection (a)". For the previous version of this paragraph, see pp. 5-6 and 5-7 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1212-16</sup> Sec. 313(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking "such person has—" and all that follows through the period at the end of former subparagraph (B) and inserting "the person has" and all that follows through "person's conservation plan.". For the previous version of this paragraph, see pp. 5-6 and 5-7 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1212-17</sup> Sec. 313(b) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking "meets the requirements of paragraph (1)" and inserting "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".

<sup>1212-18</sup> Sec. 301(d)(4)(B) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking "prepared under subsection (a)".

<sup>1212-19</sup> Sec. 313(c) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 983, April 4, 1996, amended this paragraph by striking a former last sentence. For the previous version of this paragraph, see p. 5-7 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1212-20</sup> Sec. 301(d)(4)(C) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking "that documents" and all that follows through "subsection (a)". For the previous version of this paragraph, see p. 5-7 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1212-21</sup> Sec. 204(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, P.L. 201-237, 105 Stat. 1855, Nov. 28, 1991, deleted "such violations" and inserted "such violation".



(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.<sup>1212-22</sup>

(5)<sup>1212-23</sup> 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)<sup>1212-24</sup> 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)<sup>1212-25</sup> concerning crop flexibility, base adjustment, and conservation assistance options that may be available to such individual to meet the requirements of this section, including the provisions of titles X, XII, and XIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (or the amendments made by such titles).

(h)<sup>1212-26</sup> Section 1211 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 subtitle.

**SEC. 1213. [16 U.S.C. 3812a] DEVELOPMENT AND IMPLEMENTATION OF CONSERVATION PLANS AND CONSERVATION SYSTEMS.**<sup>1213-1</sup>

(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;

<sup>1212-22</sup> Sec. 314(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 983, April 4, 1996, amended this subparagraph by striking “problem” and inserting “problem, including weather, pest, and disease problems”.

<sup>1212-23</sup> Sec. 314(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 983, April 4, 1996, added paragraph (5).

<sup>1212-24</sup> Sec. 1412(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3571, Nov. 28, 1990, added this subsection.

<sup>1212-25</sup> Sec. 204(2) of the Food, Agriculture, Conservation, and Trade Act of 1991, P.L. 102-237, 105 Stat. 1855, Dec. 13, 1991, deleted “XIII,” and inserted “XIII”.

<sup>1212-26</sup> Sec. 1412(f) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3571, Nov. 28, 1991, added this subsection.

<sup>1213-1</sup> Sec. 315(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 984, April 4, 1996, added this section.

(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 THE 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 1211 at the time application is made for the benefits, the Secretary shall permit the person to certify that the person is complying with the person's conservation plan.

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

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

(e) TECHNICAL ASSISTANCE.—The Secretary shall, using available resources and consistent with the Secretary's other conservation responsibilities and objectives, provide technical assistance to a person throughout the development, revision, and application of

the conservation plan and any conservation system of the person. At the request of the person, the Secretary may provide technical assistance regarding conservation measures and management practices for other lands of the person that do not contain highly erodible cropland.

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

#### SOIL SURVEYS

SEC. 1214.<sup>1214-1</sup> [16 U.S.C. 3813] The Secretary shall, as soon as is practicable after the date of enactment of this Act, 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 subtitle. 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.

#### SEC. 1215. [16 U.S.C. 3814] NOTICE AND INVESTIGATION OF POSSIBLE COMPLIANCE DEFICIENCIES.<sup>1215-1</sup>

(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 subtitle 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 subtitle. 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 subtitle.

#### Subtitle C—Wetland Conservation

#### SEC. 1221. [16 U.S.C. 3821] PROGRAM INELIGIBILITY.<sup>1221-1</sup>

(a) PRODUCTION ON CONVERTED WETLAND.—Except as provided in this subtitle 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

<sup>1214-1</sup> Sec. 315(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 983, April 4, 1996, redesignated former section 1213 as section 1214.

<sup>1215-1</sup> Sec. 316 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 985, April 4, 1996, added this section.

<sup>1221-1</sup> Sec. 321 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this section by redesignating subsection (b) as subsection (c) and by striking the section heading and all that follows through the end of subsection (a) and inserting the text printed above. For the previous version of this section, see pp. 5-8 and 5-9 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

(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) 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, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

(2) A loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Consolidated Farm Service Agency, if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to conversion of a wetland (other than as provided in this subtitle) 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 chapter 4 of subtitle D.

(B) A payment under any other provision of subtitle D.

(C) A payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202).

(D) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).

(c) <sup>1221-2</sup> **WETLAND CONVERSION.**—Except <sup>1221-3</sup> as provided in section 1222 and notwithstanding any other provision of law, any person who in any crop year beginning after November 28, 1990, <sup>1221-4</sup> 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) <sup>1221-5</sup> for that crop year and all subsequent crop years.

(d) <sup>1221-6</sup> **PRIOR LOANS.**—This section shall not apply to a loan described in subsection (b) made before December 23, 1985.

<sup>1221-2</sup> Sec. 1421(b)(6) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3572, Nov. 28, 1990, added this subsection. For redesignation, see note 1221-1.

<sup>1221-3</sup> Sec. 321(b)(1)(A) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “Except” and inserting “WETLAND CONVERSION.—Except”.

<sup>1221-4</sup> Sec. 321(b)(1)(B) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “subsequent to the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990” and inserting “beginning after November 28, 1990.”

<sup>1221-5</sup> Sec. 321(b)(1)(C) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “subsections (a) (1) through (3)” and inserting “subsection (b)”.

<sup>1221-6</sup> Sec. 321(b)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, added subsection (d).

(e)<sup>1221-7</sup> 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 subtitle.

**SEC. 1222.**<sup>1222-1</sup> [16 U.S.C. 3822] DELINEATION OF WETLANDS; EXEMPTIONS.

(a)<sup>1222-2</sup> DELINEATION BY THE SECRETARY.—

(1) IN GENERAL.—Subject to subsection (b) 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 1221; 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)<sup>1222-3</sup> EXEMPTIONS.—No person shall become ineligible under section 1221 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.

<sup>1221-7</sup> Sec. 2002(b) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002, added subsection (e).

<sup>1222-1</sup> Sec. 1422 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3573, Nov. 28, 1990, revised this section in its entirety.

<sup>1222-2</sup> Sec. 322(a) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (a) in its entirety. For the previous version of this subsection, see pp. 5-9 and 5-10 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1222-3</sup> Sec. 322(b) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (b) in its entirety. For the previous version of this subsection, see p. 5-10 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

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

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

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

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

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

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

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

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

(iii) circumstances beyond the control of the person.

(H) A converted wetland, if—

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

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

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

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

(2) For the conversion of the following:

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

trol, 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 subtitle unless the Secretary has conducted an on-site visit of the subject land.

(d)<sup>1222-4</sup> IDENTIFICATION OF MINIMAL EFFECT EXEMPTIONS.—For purposes of applying the minimal effect exemption under subsection (f)(1), 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 1221. The Secretary shall ensure that employees of the Department of Agriculture who administer this subtitle receive appropriate train-

<sup>1222-4</sup> Sec. 322(c) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (d) in its entirety. For the previous version of this subsection, see p. 5-10 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

ing to properly apply the minimal effect exemptions determined by the Secretary.

(e) NONWETLANDS.—The Secretary shall exempt from the ineligibility provisions of section 1221 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) <sup>1222-5</sup> MINIMAL EFFECT; MITIGATION.—The Secretary shall exempt a person from the ineligibility provisions of section 1221 for any action associated with the production of an agricultural commodity on a converted wetland, or the conversion of a wetland, if 1 or more of the following conditions apply, as determined by the Secretary:

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

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

(A) in accordance with a wetland conservation plan;

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

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

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

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

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

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

(i) is recorded on public land records;

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

<sup>1222-5</sup>Sec. 322(d) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (f) in its entirety. For the previous version of this subsection, see p. 5-11 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).



(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 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) and the wetland values, acreage, and functions of the converted wetland were adequately mitigated for the purposes of this subtitle.

(g) MITIGATION APPEALS.—A person<sup>1222-6</sup> shall be afforded the right to appeal, under section 1243, the imposition of a mitigation agreement requiring greater than one-to-one acreage mitigation to which the person<sup>1222-6</sup> is subject.

(h)<sup>1222-7</sup> GOOD FAITH EXEMPTION.—

(1) EXEMPTION DESCRIBED.—The Secretary may waive a person's ineligibility under section 1221 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 subtitle.

(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 subtitle with a reasonable period, but not to exceed 1 year, during which to implement the measures and practices necessary to be considered to<sup>1222-8</sup> actively restoring the subject wetland.

(i) RESTORATION.—Any person who is determined to be ineligible for program benefits under section 1221 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.<sup>1222-9</sup>

(j)<sup>1222-10</sup> DETERMINATIONS; RESTORATION AND MITIGATION PLANS; MONITORING ACTIVITIES.—Technical determinations, the development of restoration and mitigation plans, and monitoring ac-

<sup>1222-6</sup> Sec. 322(e) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended this subsection by striking "producer" and inserting "person". The amendment was executed to both places where "producer" appeared as the probable intent of Congress.

<sup>1222-7</sup> Sec. 322(f) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (h) in its entirety. For the previous version of this subsection, see p. 5-12 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1222-8</sup> So in original. Probably should be "to be".

<sup>1222-9</sup> Sec. 322(g) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended this subsection by inserting "or has otherwise" and all that follows through "as the converted wetland".

<sup>1222-10</sup> Sec. 322(h) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (j) in its entirety. For the previous version of this subsection, see pp. 5-12 and 5-13 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

tivities under this section shall be made by the National<sup>1222-11</sup> Resources Conservation Service.

(k)<sup>1222-12</sup> 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) shall not apply to this subsection.

**SEC. 1223.**<sup>1223-1</sup> [16 U.S.C. 3823] **AFFILIATED PERSONS.**

If a person is affected by a reduction in benefits under section 1221 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 1221 in proportion to the interest held by the affiliated person.

**SEC. 1224.**<sup>1224-1</sup> [16 U.S.C. 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 subtitle.

Subtitle D—Agricultural Resources Conservation Program<sup>1230-1</sup>

**CHAPTER 1—COMPREHENSIVE CONSERVATION  
ENHANCEMENT PROGRAM**<sup>1230-2</sup>

**Subchapter A—General Provisions**

**SEC. 1230. [16 U.S.C. 3830] COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM.**<sup>1230-3</sup>

(a) ESTABLISHMENT.—

(1) IN GENERAL.—During the 1996 through 2002<sup>1230-4</sup> calendar years, the Secretary shall establish a comprehensive con-

<sup>1222-11</sup> So in original. Probably should be “Natural”.

<sup>1222-12</sup> Sec. 322(i) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, added this subsection.

<sup>1223-1</sup> Sec. 324 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 992, April 4, 1996, added this section. Sec. 323 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 992, April 4, 1996, repealed a former section 23 (relating to consultation with the Secretary of the Interior). For the previous version of this section, see pp. 5-13 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1224-1</sup> Sec. 1424 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3576, Nov. 28, 1990, added this section.

<sup>1230-1</sup> Sec. 1431(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3576, Nov. 28, 1990, deleted “Conservation Reserve” and “Agricultural Resources Conservation Program”.

<sup>1230-2</sup> Sec. 1432 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3577 added this entire chapter.

Sec. 2006(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, amended the heading of chapter 1 in its entirety.

<sup>1230-3</sup> Sec. 331 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 992, April 4, 1996, amended this section in its entirety. For the previous version of this section, see pp. 5-13 and 5-14 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

Sec. 2006(b)(1) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, amended the heading of sec. 1230 in its entirety.

Sec. 2006(b)(3) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, struck former subsec. (c). For the text, see p. 4-19 of Soil Conservation Laws (as of December 27, 2001).

<sup>1230-4</sup> So in original. Probably should be “2002 through 2007”.

servation enhancement program<sup>1230-5</sup> (referred to in this section as “CCEP”)<sup>1230-6</sup> 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<sup>1230-6</sup> 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<sup>1230-6</sup> shall consist of—

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

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

(C) the environmental quality incentives program established under chapter 4.

(b) ADMINISTRATION.—

(1) IN GENERAL.—In carrying out the CCEP,<sup>1230-6</sup> the Secretary shall enter into contracts with owners and operators and acquire interests in land through easements from owners, as provided in this chapter and chapter 4.

(2) PRIOR ENROLLMENTS.—Acreage enrolled in the conservation reserve or wetlands reserve program prior to the date of enactment of this paragraph shall be considered to be placed into the CCEP.<sup>1230-6</sup>

**[SEC. 1230A. [16 U.S.C. 3830a] GOOD FAITH RELIANCE.<sup>1230A-1</sup>]**

### **Subchapter B—Conservation Reserve<sup>1231-1</sup>**

**SEC. 1231. [16 U.S.C. 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) to

<sup>1230-5</sup> Sec. 2006(b)(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, amended subsec. (a)(1) by striking “an environmental conservation acreage reserve program” and inserting “a comprehensive conservation enhancement program”.

<sup>1230-6</sup> Sec. 2006(b)(4) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, amended this sec. by striking “ECARP” each place it appears and inserting “CCEP”.

<sup>1230A-1</sup> Sec. 2006(c) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, repealed former sec. 1230A (related to good faith reliance). For the text see p. 4-19 and 4-20 of Soil Conservation Laws (as of December 27, 2001).

<sup>1231-1</sup> Sec. 2101(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 238, May 13, 2002, amended this subchapter in its entirety. For the previous version of this subchapter, see p. 4-20 through 4-35 of Soil Conservation Laws (as of December 27, 2001).

Sec. 2101(b) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 252, May 13, 2002, requires the Secretary to submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, not later than 18 months after the date of enactment of that Act, a report that describes the economic and social effects on rural communities resulting from the conservation reserve program established under this subchapter.

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 subchapter—

(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 subtitle B; and

(B) the Secretary determines had a cropping history or was considered to be planted for 4 of the 6 years preceding the date of enactment of the Farm Security and Rural Investment Act of 2002 (except for land enrolled in the conservation reserve program as of that date).<sup>1231-2</sup>

(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<sup>1231-3</sup>

(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<sup>1231-4</sup>

(E) enrollment of the land would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer;<sup>1231-5</sup>

(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.

<sup>1231-2</sup> So in original. Probably should be a semicolon.

<sup>1231-3</sup> So in original. Probably should strike “; or” and insert a semicolon.

<sup>1231-4</sup> So in original. Probably should strike “and” at the end and insert “or”.

<sup>1231-5</sup> So in original. Probably should insert “or” after the semicolon at the end.

(c) **PLANTING STATUS OF CERTAIN LAND.**—For purposes of determining the eligibility of land to be placed in the conservation reserve established under this subchapter, 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; <sup>1231-6</sup> Public Law 101-624)).

(e) **DURATION OF CONTRACT.**—

(1) **IN GENERAL.**—For the purpose of carrying out this subchapter, 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 subchapter after October 1, 1990, and land devoted to such uses under contracts modified under section 1235A, 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 subchapter 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

<sup>1231-6</sup> So in original. Probably should be "(16 U.S.C. 3831 note;".

(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 subchapter by whatever means the Secretary determines are appropriate and consistent with the purposes of this subchapter.

(g) MULTI-YEAR GRASSES AND LEGUMES.—For purposes of this subchapter, 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 subchapter.

(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 1222(b)(1)(A)) 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), any acreage 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 the date of enactment of this clause, 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 1232.

(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 1233 and 1234.

(B) CONTINUOUS SIGNUP.—The Secretary shall use continuous signup under section 1234(c)(2)(B) 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 1234.

(i) ELIGIBILITY FOR CONSIDERATION.—On the expiration of a contract entered into under this subchapter, the land subject to the contract shall be eligible to be considered for reenrollment in the conservation reserve.

(j) BALANCE OF NATURAL RESOURCE PURPOSES.—In determining the acceptability of contract offers under this subchapter, the Secretary shall ensure, to the maximum extent practicable, an equitable balance among the conservation purposes of soil erosion, water quality, and wildlife habitat.

(k) EMERGENCY FORESTRY CONSERVATION RESERVE PROGRAM.—

1231-7

(1) DEFINITIONS.—In this subsection:

(A) MERCHANTABLE TIMBER.—The term “merchantable timber” means timber on private nonindustrial forest land on which the average tree has a trunk diameter of at least 6 inches measured at a point no less than 4.5 feet above the ground.

(B) PRIVATE NONINDUSTRIAL FOREST LAND.—The term “private nonindustrial forest land” includes State school trust land.

(2) PROGRAM.—During calendar year 2006, the Secretary shall carry out an emergency pilot program in States that the Secretary determines have suffered damage to merchantable

<sup>1231-7</sup> Sec. 107(a) of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, P.L. 109-148, 119 Stat. 2750, Dec. 30, 2005, added this subsection. Section 107(b) of that Act provided that: “The amount provided under this section is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.”



timber in counties affected by hurricanes during the 2005 calendar year.

(3) ELIGIBLE ACREAGE.—

(A) IN GENERAL.—Subject to subparagraph (B) and the availability of funds under subparagraph (G), an owner or operator may enroll private nonindustrial forest land in the conservation reserve under this subsection.

(B) DETERMINATION OF DAMAGES.—Eligibility for enrollment shall be limited to owners and operators of private nonindustrial forest land that have experienced a loss of 35 percent or more of merchantable timber in a county affected by hurricanes during the 2005 calendar year.

(C) EXEMPTIONS.—Acreage enrolled in the conservation reserve under this subsection shall not count toward—

(i) county acreage limitations described in section 1243(b); or

(ii) the maximum enrollment described in subsection (d).

(D) DUTIES OF OWNERS AND OPERATORS.—As a condition of entering into a contract under this subsection, during the term of the contract, the owner or operator of private nonindustrial forest land shall agree—

(i) to restore the land, through site preparation and planting of similar species as existing prior to hurricane damages or to the maximum extent practicable with other native species, as determined by the Secretary; and

(ii) to establish temporary vegetative cover the purpose of which is to prevent soil erosion on the eligible acreage, as determined by the Secretary.

(E) DUTIES OF THE SECRETARY.—

(i) IN GENERAL.—In return for a contract entered into by an owner or operator of private nonindustrial forest land under this subsection, the Secretary shall provide, at the option of the landowner—

(I) notwithstanding the limitation in section 1234(f)(1), a lump sum payment; or

(II) annual rental payments.

(ii) CALCULATION OF LUMP SUM PAYMENT.—The lump sum payment described in clause (i)(I) shall be calculated using a net present value formula, as determined by the Secretary, based on the total amount a producer would receive over the duration of the contract.

(iii) CALCULATION OF ANNUAL RENTAL PAYMENTS.—The annual rental payment described in clause (i)(II) shall be equal to the average rental rate for conservation reserve contracts in the county in which the land is located.

(iv) ROLLING SIGNUP.—The Secretary shall offer a rolling signup for contracts under this subsection.

(v) DURATION OF CONTRACTS.—A contract entered into under this subsection shall have a term of 10 years.

(F) BALANCE OF NATURAL RESOURCES.—In determining the acceptability of contract offers under this subsection,

the Secretary shall consider an equitable balance among the purposes of soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss.

(G) FUNDING.—The Secretary shall use \$404,100,000, to remain available until expended, of funds of the Commodity Credit Corporation to carry out this subsection.

(H) DETERMINATIONS BY SECRETARY.—A determination made by the Secretary under this subsection shall be final and conclusive.

(I) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall promulgate such regulations as are necessary to implement this subsection.

(ii) PROCEDURE.—The promulgation of regulations and administration of this subsection shall be made without regard to—

(I) the notice and comment provisions of section 553 of title 5, United States Code;

(II) 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

(III) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”).

(iii) CONGRESSIONAL REVIEW OF AGENCY RULE-MAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

**SEC. 1232. [16 U.S.C. 3832] DUTIES OF OWNERS AND OPERATORS.**

(a) IN GENERAL.—Under the terms of a contract entered into under this subchapter, during the term of the contract, 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 subchapter;

(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 practically 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 received by the owner or operator, or accept such payment adjustments or make such refunds as the Secretary considers appropriate and consistent with the objectives of this subchapter;

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, except that this clause shall not apply to the 2002 calendar year, and the Secretary shall repay the owner or operator (in a manner determined by the Secretary) for any reduction in rental payments made to the owner or operator as the result of the application of this clause to the 2002 calendar year;<sup>1232-1</sup> 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 subchapter;

(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 subchapter; and

<sup>1232-1</sup> Sec. 212 of the Agricultural Assistance Act of 2003, P.L. 108-7, 117 Stat. 545, Feb. 20, 2003, amended clause (iii) by inserting before the semicolon the following: “, except that this clause shall not apply to the 2002 calendar year, and the Secretary shall repay the owner or operator (in a manner determined by the Secretary) for any reduction in rental payments made to the owner or operator as the result of the application of this clause to the 2002 calendar year”.

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

(b) CONSERVATION PLANS.—The plan referred to in subsection (a)(1)—

(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 subchapter 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.

#### **SEC. 1233. [16 U.S.C. 3833] DUTIES OF THE SECRETARY.**

In return for a contract entered into by an owner or operator under section 1232, 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.

#### **SEC. 1234. [16 U.S.C. 3834] PAYMENTS.**

(a) TIMING.—The Secretary shall provide payment for obligations incurred by the Secretary under a contract entered into under this subchapter—

(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 subchapter, 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 subchapter 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 subchapter after November 28, 1990; and

(ii) land converted to such production under section 1235A.

(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 subchapter to extend the planting of the trees over a 3-year period if at least  $\frac{1}{3}$  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 crop-

land to participate in the program established by this subchapter.

(2) METHOD OF DETERMINATION.—The amounts payable to owners or operators in the form of rental payments under contracts entered into under this subchapter 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 subchapter 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 subchapter—

(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) 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 subchapter 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 subchapter 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 101 of the Agricultural Act of 1970 (7 U.S.C. 1307), 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 subchapter.

(g) OTHER STATE OR LOCAL ASSISTANCE.—In addition to any payment under this subchapter, 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.

**SEC. 1235. [16 U.S.C. 3835] CONTRACTS.**

(a) OWNERSHIP OR OPERATION REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no contract shall be entered into under this subchapter 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 subchapter; 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 subchapter; 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 subchapter, 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 subchapter; or

(3) elect not to participate in the program established by this subchapter.

(c) MODIFICATIONS.—

(1) IN GENERAL.—The Secretary may modify a contract entered into with an owner or operator under this subchapter 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 subchapter;

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

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

(2) PRODUCTION OF AGRICULTURAL COMMODITIES.—The Secretary may modify or waive a term or condition of a contract entered into under this subchapter 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 subchapter 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 subchapter, 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 subchapter 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 subchapter 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 subchapter 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 subtitles B and C 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.

**SEC. 1235A. [16 U.S.C. 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 subchapter 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 subchapter 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 subchapter 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 subchapter 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) participate in the Forest Stewardship Program established under section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a).

**Subchapter C—Wetlands Reserve Program** <sup>1237-1</sup>

**SEC. 1237. [16 U.S.C. 3837] WETLANDS RESERVE PROGRAM.** <sup>1237-2</sup>

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

(b) <sup>1237-3</sup> 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 <sup>1237-4</sup> 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 subchapter during the 1991 through 2007 <sup>1237-5</sup> 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) <sup>1237-6</sup> such land maximizes wildlife benefits and wetland values and functions;

(2) <sup>1237-6</sup> such land is farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on such wetlands, except that converted wetlands where the conversion was not commenced prior to December 23, 1985, shall not be eligible to be enrolled in the program under this section; and

(3) <sup>1237-6</sup> 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) <sup>1237-7</sup> OTHER ELIGIBLE LAND.—The Secretary may include in the wetland reserve established under this subchapter, together

<sup>1237-1</sup> Sec. 1438 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3584, Nov. 28, 1990, added this subchapter.

<sup>1237-2</sup> Sec. 2202(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 252, May 13, 2002, struck former subsec. (g). For the text, see p. 4-37 of Soil Conservation Laws (as of December 27, 2001).

<sup>1237-3</sup> Sec. 2202(1) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 252, May 13, 2002, amended subsec. (b) in its entirety. For the previous version of this subsection, see p. 4-36 of Soil Conservation Laws (as of December 27, 2001).

<sup>1237-4</sup> Sec. 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2003, P.L. 108-7, 117 Stat. 45, Feb. 20, 2003, provides that “None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to enroll in excess of 245,833 acres in the calendar year 2003 wetlands reserve program as authorized by 16 U.S.C. 3837.”

<sup>1237-5</sup> Sec. 1402(c)(2) of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 333, Aug. 10, 1993, amended this subsection by striking “1995” and inserting “2000”. Sec. 333(b)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 995, April 4, 1996, amended this subsection by striking “2000” and inserting “2002”. Sec. 2201 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 252, May 13, 2002, amended this subsection by striking “2002” and inserting “2007”.

<sup>1237-6</sup> Sec. 333(b) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 995, April 4, 1996, amended this subsection by redesignating former paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and inserting new paragraph (1).

<sup>1237-7</sup> Sec. 204(6) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 105 Stat. 1855, Dec. 13, 1991, deleted “subsection (d)” and inserted “subsection (c)”.

with land that is eligible under subsection (c), land that maximizes wildlife benefits and that is—<sup>1237-8</sup>

(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<sup>1237-9</sup>

(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 subchapter B; or

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

(f) TERMINATION OF EXISTING CONTRACT.—The Secretary may terminate or modify an existing contract entered into under section 1231(a) if eligible land that is subject to such contract is transferred into the program established by this subchapter.

**SEC. 1237A. [16 U.S.C. 3837a] EASEMENTS AND AGREEMENTS.**<sup>1237A-1</sup>

(a) IN GENERAL.—To be eligible to place land into the wetland reserve under this subchapter, 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 subchapter 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) 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

<sup>1237-8</sup> Sec. 333(c)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 995, April 4, 1996, amended this subsection by inserting “, land that maximizes wildlife benefits and that is”.

<sup>1237-9</sup> Sec. 333(c)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 995, April 4, 1996, amended this paragraph by striking “and” at the end and inserting “or”.

<sup>1237A-1</sup> Sec. 333(d)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 996, April 4, 1996, amended the section heading by inserting “AND AGREEMENTS”.

Sec. 2203 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 252, May 13, 2002, struck former subsec. (h). For the text, see p. 4-39 of Soil Conservation Laws (as of December 27, 2001).

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 subchapter, 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 subchapter or to facilitate the practical administration thereof.

(c) <sup>1237A-2</sup> 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 subchapter 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. <sup>1237A-3</sup>

<sup>1237A-2</sup> Sec. 333(d)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended this subsection in its entirety. For the previous version of this subsection, see pp. 5-27 and 5-28 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1237A-3</sup> Sec. 333(d)(3) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 996, April 4, 1996, amended the third sentence in its entirety. For

(g) VIOLATION.—On the violation of the terms or conditions of the easement or related agreement entered into under subsection (a), 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 subchapter, together with interest thereon as determined appropriate by the Secretary.

**SEC. 1237B. [16 U.S.C. 3837b] DUTIES OF OWNERS.**

Under the terms of an agreement entered into under this subchapter, an owner and operator of the land that is subject to an easement under this subchapter 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.

**SEC. 1237C. [16 U.S.C. 3837c] DUTIES OF THE SECRETARY.**

(a) IN GENERAL.—In return for the granting of an easement by an owner under this subchapter, 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)<sup>1237C-1</sup> COST-SHARE AND TECHNICAL ASSISTANCE.—

(1) EASEMENTS.—Effective beginning October 1, 1996, in making cost-share payments under subsection (a)(1), 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 1237A(h), the Secretary shall pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

(3) TECHNICAL ASSISTANCE.—The Secretary shall provide owners with technical assistance to assist owners in complying with the terms of easements and restoration cost-share agreements.

(c) ACCEPTABILITY OF OFFERS.—In determining the acceptability of easement offers, the Secretary may take into consideration—

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

(2) the productivity of the land; and

the previous version of this sentence, see pp. 5-29 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

<sup>1237C-1</sup> Sec. 333(e) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 996, April 4, 1996, amended subsection (b) in its entirety. For the previous version of this subsection, see pp. 5-29 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

(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 subchapter, 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.

**SEC. 1237D. [16 U.S.C. 3837d] PAYMENTS.**

(a) TIME OF PAYMENT.—The Secretary shall provide payment for obligations incurred by the Secretary under this subchapter—

(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 subchapter 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 subchapter for any year may not exceed \$50,000, except such limitation shall not apply with respect to payments for perpetual or 30-year<sup>1237D-1</sup> 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 subchapter.

<sup>1237D-1</sup> Sec. 751 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, P.L. 105-277, 112 Stat. 2681-32, Oct. 21, 1998, amended this para. by inserting “or 30-year” after “perpetual”.



(d) EXEMPTION FROM AUTOMATIC SEQUESTER.—Notwithstanding any other provision of law, no order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 902) shall affect any payment under this subchapter.

**SEC. 1237E. [16 U.S.C. 3837e] CHANGES IN OWNERSHIP; AGREEMENT MODIFICATION; TERMINATION.**

(a) LIMITATIONS.—No easement shall be created under this subchapter 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) <sup>1237E-1</sup>(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 subchapter.

(b) MODIFICATION; TERMINATION.—

(1) MODIFICATION.—The Secretary may modify an easement acquired from, or a related agreement with, an owner under this subchapter if—

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

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

(i) to carry out this subchapter;

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

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

(2) TERMINATION.—

(A) IN GENERAL.—The Secretary may terminate an easement created with an owner under this subchapter 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 subchapter, 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.

**SEC. 1237F. [16 U.S.C. 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.

<sup>1237E-1</sup> Sec. 2204 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 253, May 13, 2002, amended para. (2) in its entirety.

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this subchapter, the Secretary shall issue such regulations as are necessary to carry out this subchapter.

## CHAPTER 2—CONSERVATION SECURITY AND FARMLAND PROTECTION<sup>1238-1</sup>

### Subchapter A—Conservation Security Program<sup>1238-1</sup>

#### SEC. 1238. [16 U.S.C. 3838] DEFINITIONS.

In this subchapter:

(1) **BASE PAYMENT.**—The term “base payment” means an amount that is—

(A) determined in accordance with the rate described in section 1238C(b)(1)(A); and

(B) paid to a producer under a conservation security contract in accordance with clause (i) of subparagraph (C), (D), or (E) of section 1238C(b)(1), as appropriate.

(2) **BEGINNING FARMER OR RANCHER.**—The term “beginning farmer or rancher” has the meaning given the term under section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

(3) **CONSERVATION PRACTICE.**—The term “conservation practice” means a conservation farming practice described in section 1238A(d)(4) that—

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

(B) promotes 1 or more of the purposes described in section 1238A(a).

(4) **CONSERVATION SECURITY CONTRACT.**—The term “conservation security contract” means a contract described in section 1238A(e).

(5) **CONSERVATION SECURITY PLAN.**—The term “conservation security plan” means a plan described in section 1238A(c).

(6) **CONSERVATION SECURITY PROGRAM.**—The term “conservation security program” means the program established under section 1238A(a).

(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 1238C(b)(1)(C)(iii).

(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.**—

<sup>1238-1</sup> The heading of chapter 2 and subchapter A were added by sec. 2001(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 223, May 13, 2002. Sec. 2001(b) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002, requires the Secretary to promulgate regulations implementing the amendment made by 2001(a) of that Act not later than 270 days after the date of enactment of that Act.

A previous version of chapter 2 (relating to agricultural water quality incentives) was added by sec. 1439 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3590, Nov. 28, 1990, and repealed by sec. 336(h) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1007, April 4, 1996. For the previous version of this chapter, see pp. 5-31 through 5-38 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

(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 1238A(d)(5)(A).

(14) TIER II CONSERVATION SECURITY CONTRACT.—The term “Tier II conservation security contract” means a contract described in section 1238A(d)(5)(B).

(15) TIER III CONSERVATION SECURITY CONTRACT.—The term “Tier III conservation security contract” means a contract described in section 1238A(d)(5)(C).

**SEC. 1238A. [16 U.S.C. 3838a] CONSERVATION SECURITY PROGRAM.**

(a) IN GENERAL.—The Secretary shall establish and, for each of fiscal years 2003 through 2011,<sup>1238A-1</sup> 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 1238C(g) for the development of conservation security contracts), a producer shall—

<sup>1238A-1</sup> Sec. 1202(a) of the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4, Feb. 8, 2006, amended subsec. (a) by striking “2007” and inserting “2011”.

(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); 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 subchapter B of chapter 1 shall not be eligible for enrollment in the conservation security program.

(B) WETLANDS RESERVE PROGRAM.—Land enrolled in the wetlands reserve program established under subchapter C of chapter 1 shall not be eligible for enrollment in the conservation security program.

(C) GRASSLAND RESERVE PROGRAM.—Land enrolled in the grassland reserve program established under subchapter C of chapter 2 shall not be eligible for enrollment in the conservation security program.

(D) CONVERSION TO CROPLAND.—Land that is used for crop production after the date of enactment of this subchapter that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date (except for land enrolled in the conservation reserve program under subchapter B of chapter 1) or that has been maintained using long-term crop rotation practices,<sup>1238A-2</sup> 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) 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 de-

<sup>1238A-2</sup> So in original. Probably should strike “chapter 1) or that has been maintained using long-term crop rotation practices,” and insert “chapter 1 or that has been maintained using long-term crop rotation practices).”

scribed 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 subchapter 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 subtitle G; 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 subchapter B of chapter 1; and

(cc) the wetlands reserve program under subchapter C of chapter 1; 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 re-

quirements) of the conservation 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), 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.

**SEC. 1238B. [16 U.S.C. 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.

**SEC. 1238C. [16 U.S.C. 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 subchapter, 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 subchapter 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) for a producer that receives a payment under another program administered by the Secretary that is contingent on complying with requirements under subtitle B or C (relating to the use of highly erodible land or wetland), a payment under this subchapter 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 subtitles, 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).

(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 subchapter, 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.

### **Subchapter B—Farmland Protection Program** <sup>1238H-1</sup>

#### **SEC. 1238H. [16 U.S.C. 3838h] DEFINITIONS.**

In this subchapter:

- (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 the Internal Revenue Code of 1986;
    - (ii) is an organization described in section 501(c)(3) of that Code that is exempt from taxation under section 501(a) of that Code;
    - (iii) is described in section 509(a)(2) of that Code;
  - or
  - (iv) is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that Code.
- (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 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (4) **PROGRAM.**—The term “program” means the farmland protection program established under section 1238I(a).

#### **SEC. 1238I. [16 U.S.C. 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

<sup>1238H-1</sup> Sec. 2503(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 267, May 13, 2002, added subchapter B “at the end” of chapter 2. Sec. 2401 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 258, May 13, 2002, earlier added subchapter C “at the end” of chapter 2. Subchapter B was inserted after subchapter A to effectuate the probable intent of Congress.

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 subchapter 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) provided under section 1241(d)<sup>1238I-1</sup> 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) that is not provided under section 1241(d), 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) 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).

**SEC. 1238J. [16 U.S.C. 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.

**Subchapter C—Grassland Reserve Program**<sup>1238N-1</sup>

**SEC. 1238N. [16 U.S.C. 3838n] GRASSLAND RESERVE PROGRAM.**

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

(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.**—

<sup>1238I-1</sup> So in original. Probably should be “section 1241(a)(4)”.

<sup>1238N-1</sup> Subchapter C was added by sec. 2401 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 258, May 13, 2002. For placement of this subchapter in chapter 2, see note 1238H-1.

(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.

**SEC. 12380. [16 U.S.C. 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) 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), 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 subchapter.

(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 subchapter.

(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 subchapter, with interest on the payments as determined appropriate by the Secretary.

**SEC. 1238P. [16 U.S.C. 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 subchapter, the Secretary shall, in accordance with this section—

- (1) make easement or rental agreement payments to the owner in accordance with subsection (b); and
- (2) make payments to the owner for the Federal share of the cost of restoration in accordance with subsection (c).

(b) **PAYMENTS.**—

(1) **EASEMENT PAYMENTS.**—

(A) **AMOUNT.**—In return for the granting of an easement by an owner under this subchapter, 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 subchapter, 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 subchapter dies, becomes incompetent, is other-



wise 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.

**SEC. 1238Q. [16 U.S.C. 3838q] DELEGATION TO PRIVATE ORGANIZATIONS.**

(a) **IN GENERAL.**—The Secretary may transfer title of ownership to an easement under this subchapter to <sup>1238Q-1</sup> 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 subchapter, 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 subchapter 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 subchapter if (as determined by the Secretary) the private organization—

(1)(A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code; or

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

(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) <sup>1238Q-2</sup> **TRANSFER OF TITLE OF OWNERSHIP OF EASEMENT.—**Reversion—If a private organization or State agency holding an easement on land under this subchapter dissolves or fails to enforce the terms of the easement, the easement shall revert to the Secretary.

<sup>1238Q-1</sup> Sec. 797(1) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005, P.L. 108-447, 118 Stat. 2852, Dec. 8, 2004, amended subsec. (a) by striking “permit” and inserting “transfer title of ownership to an easement under this subchapter to”.

<sup>1238Q-2</sup> Sec. 797(2) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005, P.L. 108-447, 118 Stat. 2852, Dec. 8, 2004, amended subsec. (d) in its entirety.

**CHAPTER 3—ENVIRONMENTAL EASEMENT  
PROGRAM**<sup>1239-1</sup>

**SEC. 1239. [16 U.S.C. 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 chapter referred to as the “easement program”) in accordance with this chapter, 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 subtitle (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), or other cropland that—

(A)<sup>1239-2</sup> 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 subtitle D; or

(B) pasture land established to trees under the conservation reserve under subtitle D.

(3) **TERMINATION OF EXISTING CONTRACT.**—The Secretary may terminate or modify any existing contract entered into under section 1231(a) if eligible land that is subject to such contract is transferred into the program established by this chapter.

**SEC. 1239A. [16 U.S.C. 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 chapter, 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) 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 chapter, the owner of the farm or

<sup>1239-1</sup> Sec. 1440 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3597, Nov. 28, 1990, added this chapter.

<sup>1239-2</sup> Sec. 204(7) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, P.L. 102-237, Dec. 13, 1991, deleted “corridors,” and inserted “corridors;”.

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 chapter 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 chapter 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 chapter, 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 chapter, 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) (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.

**SEC. 1239B. [16 U.S.C 3839b] DUTIES OF THE SECRETARY.**

In return for the granting of an easement by an owner under this chapter, 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.

**SEC. 1239C. [16 U.S.C. 3839c] PAYMENTS.**

(a) **TIME OF PAYMENT.**—The Secretary shall provide payment for obligations incurred by the Secretary under this chapter—

(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 chapter, the Secretary may pay up to 100 percent of the cost of establishing conservation measures and practices pursuant to this chapter.

(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 chapter, 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 chapter—

(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 chapter 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 chapter 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 chapter.

(g) EXEMPTION FROM AUTOMATIC SEQUESTER.—Notwithstanding any other provision of law, no order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (2 U.S.C. 902) shall affect any payment under this chapter.

**SEC. 1239D. [16 U.S.C. 3839d] CHANGES IN OWNERSHIP; MODIFICATION OF EASEMENT.**

(a) LIMITATIONS.—No easement shall be created under this chapter 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 chapter.

(b) MODIFICATION; TERMINATION.—

(1) MODIFICATION.—The Secretary may modify an easement acquired from, or a related agreement with, an owner under this chapter 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 chapter;

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

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

(2) TERMINATION.—

(A) IN GENERAL.—The Secretary may terminate an easement created with an owner under this chapter 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 chapter, 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.

#### **[CHAPTER 4—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM<sup>1240-1</sup>]**

##### **SEC. 1240. [16 U.S.C. 3839aa] PURPOSES.**

The purposes of the environmental quality incentives program established by this chapter 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.

##### **SEC. 1240A. [16 U.S.C. 3839aa-1] DEFINITIONS.**

In this chapter:

(1) BEGINNING FARMER OR RANCHER.—The term “beginning farmer or rancher” has the meaning provided under section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1999(a)).

(2) ELIGIBLE LAND.—

<sup>1240-1</sup> Sec. 2301 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 253, May 13, 2002, amended chapter 4 in its entirety. For the previous version of this chapter, see p. 4-47 through 4-52 of Soil Conservation Laws (as of December 27, 2001). The omission of a chapter heading was so in original.

Sec. 760 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2003, P.L. 108-7, 117 Stat. 45, Feb. 20, 2003, provides that “None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel who carry out an environmental quality incentives program authorized by chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) in excess of \$695,000,000.”

(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.

**SEC. 1240B. [16 U.S.C. 3839aa-2] ESTABLISHMENT AND ADMINISTRATION OF ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—During each of the 2002 through 2010<sup>1240B-1</sup> 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 chapter—

(A) a producer that implements a structural practice in accordance with this chapter 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 chapter shall be eligible to receive incentive payments.

(b) PRACTICES AND TERM.—

<sup>1240B-1</sup> Sec. 1203(a) of the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4, Feb. 8, 2006, amended para. (1) by striking “2007” and inserting “2010”.

(1) PRACTICES.—A contract under this chapter may apply to 1 or more structural practices, land management practices, and comprehensive nutrient management practices.

(2) TERM.—A contract under this chapter 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 chapter 1 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 chapter 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 chapter 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 chapter shall be targeted at practices relating to livestock production.

(h) <sup>1240B-2</sup> FUNDING FOR FEDERALLY RECOGNIZED NATIVE AMERICAN INDIAN TRIBES AND ALASKA NATIVE CORPORATIONS.—The Secretary may enter into alternative funding arrangements with federally recognized Native American Indian Tribes and Alaska Native Corporations (including their affiliated membership organizations) if the Secretary determines that the goals and objectives of the program will be met by such arrangements, and that statutory limitations regarding contracts with individual producers as defined under this Subtitle will not be exceeded by any Tribal or Native Corporation member.

**SEC. 1240C. [16 U.S.C. 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.

**SEC. 1240D. [16 U.S.C. 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;

<sup>1240B-2</sup> Subsec. (h) added by sec. 794(a) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005, P.L. 108-447, 118 Stat. 2852, Dec. 8, 2004.

(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.

**SEC. 1240E. [16 U.S.C. 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 chapter and comparable conservation programs.

**SEC. 1240F. [16 U.S.C. 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.

**SEC. 1240G. [16 U.S.C. 3839aa-7] LIMITATION ON PAYMENTS.**

An individual or entity may not receive, directly or indirectly, cost-share or incentive payments under this chapter that, in the aggregate, exceed \$450,000 for all contracts entered into under this chapter by the individual or entity during any six-year period,<sup>1240G-1</sup> (excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 1240B(h))<sup>1240G-2</sup> regardless of the number of contracts entered into under this chapter by the individual or entity.

<sup>1240G-1</sup> Sec. 1203(b) of the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4, Feb. 8, 2006, amended this sec. by striking “the period of fiscal years 2002 through 2007” and inserting “any six-year period”.

<sup>1240G-2</sup> Sec. 794(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005, P.L. 108-447, 118 Stat. 2852, Dec. 8, 2004, amended this sec. by inserting after “2007,” the following: “(excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 1240B(h))”.

**SEC. 1240H. [16 U.S.C. 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 chapter 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.

**SEC. 1240I. [16 U.S.C. 3839aa-9] GROUND AND SURFACE WATER CONSERVATION.**

(a) **ESTABLISHMENT.**—In carrying out the program under this chapter, subject to subsection (b), 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 groundwater 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 1241(a)(6) to carry out this chapter, 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 the date of enactment of this section.

## CHAPTER 5—OTHER CONSERVATION PROGRAMS <sup>1240M-1</sup>

### SEC. 1240M. [16 U.S.C. 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;

<sup>1240M-1</sup> Sec. 2502(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 264, May 13, 2002, amended chapter 5 in its entirety. For the previous version of this chapter (relating to a conservation farm option), see p. 4-52 through 4-54 of Soil Conservation Laws (as of December 27, 2001).

(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 4 of the Beef Research and Information Act (7 U.S.C. 2903) 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 activities, 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.

**SEC. 1240N. [16 U.S.C. 3839bb-1] WILDLIFE HABITAT INCENTIVE PROGRAM.**

(a) IN GENERAL.—The Secretary, in consultation with the State technical committees established under section 1261, 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 1241(a)(7) 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, ensure that regional issues of concern relating to wildlife habitat are addressed in an appropriate manner.

**SEC. 1240O. [16 U.S.C. 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 the date of enactment of this section, 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.

**SEC. 1240P. [16 U.S.C. 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.

## Subtitle E—Funding and Administration <sup>1241-1</sup>

**SEC. 1241. [16 U.S.C. 3841] COMMODITY CREDIT CORPORATION.**<sup>1241-1</sup>

(a)<sup>1241-2</sup> 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 subtitle D (including the provision of technical assistance):

(1) The conservation reserve program under subchapter B of chapter 1.

<sup>1241-1</sup> Sec. 2701 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 278, May 13, 2002, amended secs. 1241 and 1242 in their entirety. For the previous version of this subtitle, see p. 4-55 through 4-58 of Soil Conservation Laws (as of December 27, 2001).

<sup>1241-2</sup> The matter under the paragraph entitled “CONSERVATION OPERATIONS” under the heading “NATURAL RESOURCES CONSERVATION SERVICE” of title II of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2003, P.L. 108-7, 117 Stat. 25, Feb. 20, 2003, provides that “None of the funds made available under the paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).”

(2) The wetlands reserve program under subchapter C of chapter 1.

(3) The conservation security program under subchapter A of chapter 2, using not more than—

(A) \$1,954,000,000 for the period of fiscal years 2006 through 2010; and

(B) \$5,650,000,000 for the period of fiscal years 2006 through 2015.<sup>1241-3</sup>

(4) The farmland protection program under subchapter B of chapter 2, 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 subchapter C of chapter 2, using, to the maximum extent practicable \$254,000,000 for the period of fiscal years 2003 through 2007.

(6)<sup>1241-4</sup> The environmental quality incentives program under chapter 4, 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;

(E) \$1,270,000,000 in each of fiscal years 2007 through 2009; and

(F) \$1,300,000,000 in fiscal year 2010.

(7) The wildlife habitat incentives program under section 1240N, 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)<sup>1241-5</sup> TECHNICAL ASSISTANCE.—Effective for fiscal year 2005 and each subsequent fiscal year, Commodity Credit Corporation funds made available for each of the programs specified in paragraphs (1) through (7) of subsection (a)—

<sup>1241-3</sup>Sec. 216(c) of the Agricultural Assistance Act of 2003, P.L. 108-7, 117 Stat. 546, Feb. 20, 2003, amended para. (3) by inserting before the period at the end the following: “, using not more than \$3,773,000,000 for the period of fiscal years 2003 through 2013”.

Sec. 101 of the Miscellaneous Appropriations and Offsets Act, 2004, P.L. 108-199, Jan. 23, 2004, amended para. (3) by striking “, using not more than \$3,773,000,000 for the period of fiscal years 2003 through 2013”.

Sec. 101(e) of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, P.L. 108-324, 118 Stat. 1235, Oct. 13, 2004, amended para. (3) by inserting before the period at the end “, using not more than \$6,037,000,000 for the period of fiscal years 2005 through 2014”.

Sec. 1202(b) of the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4, Feb. 8, 2006, amended para. (3) by striking “not more than \$6,037,000,000” and all that follows through “2014.” and inserting “not more than—” and following subparas. (A) and (B).

<sup>1241-4</sup>Sec. 1203(c) of the Deficit Reduction Act of 2005, P.L. 109-171, 120 Stat. 4, Feb. 8, 2006, amended this para. by striking former subpara. (E) and inserting subparas. (E) and (F).

<sup>1241-5</sup>Effective Oct. 1, 2004, sec. 1 of Public Law 108-498, 118 Stat. 4020, Dec. 23, 2004, amended subsec. (b) in its entirety. Previously, effective Feb. 20, 2003, sec. 2106 of the Emergency Wartime Supplemental Appropriations Act, 2003, P.L. 108-11, 117 Stat. 590, Apr. 16, 2003, amended subsec. (b) in its entirety. Previously, sec. 213(1) of the Agricultural Assistance Act of 2003, P.L. 108-7, 117 Stat. 545, Feb. 20, 2003, amended subsec. (b) in its entirety. See footnote 1241-2.



(1) shall be available for the provision of technical assistance for the programs for which funds are made available; and

(2) shall not be available for the provision of technical assistance for conservation programs specified in subsection (a) other than the program for which the funds were made available.

(c) <sup>1241-6</sup> RELATIONSHIP TO OTHER LAW.—The use of Commodity Credit Corporation funds under subsection (b) to provide technical assistance shall not be considered an allotment or fund transfer from the Commodity Credit Corporation for purposes of the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).

(d) <sup>1241-6</sup> REGIONAL EQUITY.—Before April 1 of each fiscal year, the Secretary shall give priority for funding under the conservation programs under subtitle D (excluding the conservation reserve program under subchapter B of chapter 1, the wetlands reserve program under subchapter C of chapter 1, and the conservation security program under subchapter A of chapter 2) to approved applications in any State that has not received, for the fiscal year, an aggregate amount of at least \$12,000,000 for those conservation programs.

**SEC. 1242. [16 U.S.C. 3842] DELIVERY OF TECHNICAL ASSISTANCE.** <sup>1241-1</sup>

(a) IN GENERAL.—The Secretary shall provide technical assistance under this title 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 the date of enactment of the Farm Security and Rural Investment Act of 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 title (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 the date of enactment of the Farm Security and Rural Investment Act of 2002 may continue to provide technical assistance under this section

<sup>1241-6</sup> Sec. 213(2) of the Agricultural Assistance Act of 2003, P.L. 108-7, 117 Stat. 545, Feb. 20, 2003, redesignated former subsec. (c) as subsec. (d) and inserted a new subsec. (c).

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 title.

**SEC. 1243. [16 U.S.C. 3843] ADMINISTRATION OF CCEP.** <sup>1243-1</sup>

(a) PLANS.—The Secretary shall, to the extent practicable, avoid duplication in—

(1) the conservation plans required for—

(A) highly erodible land conservation under subtitle B;

(B) the conservation reserve program established under subchapter B of chapter 1 of subtitle D; and

(C) the wetlands reserve program established under subchapter C of chapter 1 of subtitle D; and

(2) the environmental quality incentives program established under chapter 4 of subtitle D.

(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 subchapters B and C, respectively, of chapter 1 of subtitle D. Not more than 10 percent of the cropland in a county may be subject to an easement acquired under the subchapters.

(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 1212.

(3) SHELTERBELTS AND WINDBREAKS.—The limitations established under this subsection shall not apply to cropland that is subject to an easement under chapter 1 or 3 of subtitle D 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 subtitles B through D.

(d) PROVISION OF TECHNICAL ASSISTANCE BY OTHER SOURCES.—In the preparation and application of a conservation compliance plan under subtitle B or similar plan required as a condition for assistance from the Department of Agriculture, the Secretary shall

<sup>1243-1</sup> Sec. 2006(d) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 237, May 13, 2002, amended the heading of sec. 1243 in its entirety.

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 the date of enactment of the Federal Agriculture Improvement and Reform Act of 1996, the Secretary shall issue regulations to implement the conservation reserve and wetlands reserve programs established under chapter 1 of subtitle D.

(f) <sup>1243-1</sup> PARTNERSHIPS AND COOPERATION.—

(1) IN GENERAL.—In carrying out any program under subtitle D, the Secretary may use resources provided under that subtitle 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 title 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 title.

(B) PLAN.—Each party to a stewardship agreement under subparagraph (A) shall submit to the Secretary, for

<sup>1243-1</sup> Subsec. (f) added by sec. 2003 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002.

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 subtitle D, subject to subparagraph (B), the Secretary shall use not more than 5 percent of the funds made available for each fiscal year under section 1241(a) to carry out activities that are authorized under conservation programs under subtitle D.

(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 subtitle D during the fiscal year in which the funding becomes available.

**SEC. 1244. [16 U.S.C. 3844] ADMINISTRATIVE REQUIREMENTS FOR CONSERVATION PROGRAMS.**<sup>1244-1</sup>

(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 1238) 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, United States Code, 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—

<sup>1244-1</sup> Sec. 1244 added by sec. 2004(a) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 235, May 13, 2002.

(i) provided to the Secretary or a contractor of the Secretary (including information provided under subtitle D) 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, United States Code) 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, United States Code.

(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 benefit by the owner, operator, or producer under, this title 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 1770(c) 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<sup>1244-2</sup> to review information collected or disclosed under this subsection.

### Subtitle F—Other Conservation Provisions

#### TECHNICAL ASSISTANCE FOR WATER RESOURCES

SEC. 1251. [16 U.S.C 2005a] (a) Notwithstanding any other provisions of law, the Secretary of Agriculture may formulate plans and provide technical assistance to property owners and agencies of State and local governments and interstate river basin commissions, at their request, to—

(1) protect the quality and quantity of subsurface water, including water in the Nation's aquifers;

(2) enable property owners to reduce their vulnerability to flood hazards that also may effect water resources; and

(3) control the salinity in the Nation's agricultural water resources.

(b) The Secretary shall submit by February 15, 1987, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the plans and technical assistance authorized in subsection (a). Such report shall include any recommendations as to whether the plan and assistance should be extended, how any plan and assistance could be improved, and any other relevant information and data relating to costs and other elements of the plan or assistance that would be helpful to such Committees.

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#### SEC. 1256. [16 U.S.C 2101 note] TREE PLANTING INITIATIVE.

(a) MAINTENANCE, AFFORESTATION, AND REFORESTATION OF FOREST LANDS.—

(1) POLICY.—It is the policy of the United States to—

(A) promote the retention and management of lands currently in forest cover as forested lands;

(B) provide for the reforestation of Federal, State, and private nonindustrial forest lands following timber harvest or loss of cover due to fire, insect damage, disease or damaging weather;

(C) encourage the reforestation of previously forested lands and the afforestation of marginal agricultural lands; and

(D) promote the planting of trees and the proper management of existing forest lands to reduce soil erosion, improve water quality, enhance fish and wildlife habitat, and provide for the sustained production of the commodity and

<sup>1244-2</sup>Sec. 8(b) of P.L. 108-271, 118 Stat. 814, July 7, 2004, provides that references to "General Accounting Office" shall be deemed to refer to the "General Accountability Office".

noncommodity resources that these lands can provide to meet the Nation's needs.

(2) IMPLEMENTATION OF POLICY.—The Secretary is encouraged to use the following programs to accomplish the policy identified in subsection (a)(1):

(A) The conservation reserve established under subchapter B of chapter 1.

(B) The agricultural conservation program authorized by sections 7 through 15, 16(a), 16(f), and 17 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590g through 590o, 590p(a), 590p(f), and 590(g) and sections 1001 through 1008 and 1010 of the Agricultural Act of 1970 (16 U.S.C. 1501 through 1508 and 1510).

(C) The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(D) The provisions of title XII of the Food, Agriculture, Conservation, and Trade Act of 1990.

(b) AGREEMENTS WITH STATE FORESTRY AGENCIES.—The Secretary shall encourage owners and operators of cropland who enter into agreements in accordance with this section to enlist the cooperative assistance of the State Forester or equivalent State official in obtaining technical and financial assistance for tree planting and maintenance activities in accordance with the provisions of title XII of the Food, Agriculture, Conservation, and Trade Act of 1990.

## Subtitle G—State Technical Committees<sup>1261-1</sup>

### SEC. 1261. [16 U.S.C. 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 title.

(b) STANDARDS.—Not later than 180 days after enactment of this section, the Secretary shall develop standards to be used by the State technical committee in the development of technical guidelines under section 1262(b) for the implementation of the conservation provisions of this title.

(c)<sup>1261-2</sup> COMPOSITION.—Each State technical committee established under subsection (a) shall be composed of professional resource managers that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences. Such committee shall include such representatives as may serve from among—

- (1) the Soil Conservation Service;
- (2) the Agricultural Stabilization and Conservation Service;
- (3) the Forest Service;
- (4) the Extension Service;
- (5) the Farmers Home Administration;
- (6) the Fish and Wildlife Service;
- (7) State departments and agencies which the Secretary deems appropriate, including:

<sup>1261-1</sup> Sec. 1446 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3604, Nov. 28, 1990, added this subtitle.

<sup>1261-2</sup> Sec. 342(a) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1009, April 4, 1996, added paragraphs (9) through (12) and made conforming amendments to paragraphs (7) and (8).

- (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.

**SEC. 1262. [16 U.S.C. 3862] RESPONSIBILITIES.**

(a) **IN GENERAL.**—Each Committee established under section 1261 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 title. 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 1628 of the Food, Agriculture, Conservation, and Trade Act of 1990. Each State technical committee shall provide public notice of, and permit public attendance at meetings considering, issues of concern related to carrying out this title.<sup>1262-1</sup>

(b) **WETLAND AND WILDLIFE HABITAT PROTECTION GUIDELINES.**—

(1) **DEVELOPMENT OF TECHNICAL GUIDES.**—Not later than one year after the date of enactment of this section each State technical committee shall develop technical guides for the implementation of the wetland preservation and wildlife habitat improvement options of the agricultural water quality protection program under section 1238B. 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.<sup>1262-2</sup>

(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 nat-

<sup>1262-1</sup> Sec. 342(b)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1009, April 4, 1996, added this sentence.

<sup>1262-2</sup> Sec. 342(b)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1009, April 4, 1996, added this sentence.



ural resource conservation, and other practices useful in developing practices pursuant to such option.

(B) STANDARDS AND INSTRUCTIONS.—The technical guides required under subsection (a) 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) <sup>1262-3</sup> 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 chapter 4 of subtitle D; and

(9) other matters determined appropriate by the Secretary.

(d) AUTHORITY.—Each Committee established under section 1261 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 title, and to the factual, technical, or scientific findings and recommendations under the Committee's responsibility.

(e) <sup>1262-1</sup> FACA REQUIREMENTS.—The committees established under section 1261 shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

<sup>1262-3</sup> Sec. 342(b)(3) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1009, April 4, 1996, redesignated former paragraph (8) as paragraph (9) and added a new paragraph (8).

<sup>1262-1</sup> Sec. 246(f)(3) of the Department of Agriculture Reorganization Act of 1994, P.L. 103-354, 108 Stat. 3225, October 13, 1994, added this subsection.