

(7) Project

The term “project” means a project carried out under the Partners for Fish and Wildlife Program established by section 3773 of this title.

(8) Secretary

The term “Secretary” means the Secretary of the Interior.

(Pub. L. 109-294, § 3, Oct. 3, 2006, 120 Stat. 1352.)

§ 3773. Partners for Fish and Wildlife Program

The Secretary shall carry out the Partners for Fish and Wildlife Program within the United States Fish and Wildlife Service to provide—

(1) technical and financial assistance to private landowners for the conduct of voluntary projects to benefit Federal trust species by promoting habitat improvement, habitat restoration, habitat enhancement, and habitat establishment; and

(2) technical assistance to other public and private entities regarding fish and wildlife habitat restoration on private land.

(Pub. L. 109-294, § 4, Oct. 3, 2006, 120 Stat. 1354.)

§ 3774. Authorization of appropriations

There is authorized to be appropriated to carry out this chapter not more than \$75,000,000 for each of fiscal years 2006 through 2011.

(Pub. L. 109-294, § 5, Oct. 3, 2006, 120 Stat. 1354.)

CHAPTER 58—ERODIBLE LAND AND WETLAND CONSERVATION AND RESERVE PROGRAM

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SUBCHAPTER I—DEFINITIONS

§ 3801. Definitions

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

(1) The term “agricultural commodity” means—

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

(B) sugarcane planted and produced in a State.

(2) BEGINNING FARMER OR RANCHER.—The term “beginning farmer or rancher” has the meaning given the term in section 1991(a)(8) of title 7.

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

(A) applies to highly erodible cropland;

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

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

(4) 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.

(5) 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.

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

(7)(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.

(8) FARM.—The term “farm” means a farm that—

(A) is under the general control of one operator;

(B) has one or more owners;

(C) consists of one or more tracts of land, whether or not contiguous;

(D) is located within a county or region, as determined by the Secretary; and

(E) may contain lands that are incidental to the production of perennial crops, including conserving uses, forestry, and livestock, as determined by the Secretary.

(9) FIELD.—The term “field” means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, or other similar features. At the option of the owner or operator of the farm, croplines may also be used to delineate a field if farming practices make it probable that the croplines are not subject to change. Any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and that is not exempt under section 3812 of this title, shall be considered as part of the field in which the land was included on December 23, 1985, unless the owner and Secretary agree to modification of the boundaries of the field to carry out this chapter.

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

(11)(A) The term “highly erodible land” means land—

(i) that is classified by the Soil Conservation Service as class IV, VI, VII, or VIII land

under the land capability classification system in effect on December 23, 1985; or

(ii) that has, or that if used to produce an agricultural commodity, would have an excessive average annual rate of erosion in relation to the soil loss tolerance level, as established by the Secretary, and as determined by the Secretary through application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope.

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

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

(12) 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.

(13) 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.

(14) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 450b(e) of title 25.

(15) The term “in-kind commodities” means commodities that are normally produced on land that is the subject of an agreement entered into under subchapter IV of this chapter.

(16) INTEGRATED PEST MANAGEMENT.—The term “integrated pest management” means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

(17) LIVESTOCK.—The term “livestock” means all animals raised on farms, as determined by the Secretary.

(18) NONINDUSTRIAL PRIVATE FOREST LAND.—The term “nonindustrial private forest land” means rural land, as determined by the Secretary, that—

(A) has existing tree cover or is suitable for growing trees; and

(B) is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

(19) PERSON AND LEGAL ENTITY.—For purposes of applying payment limitations under subchapter IV, the terms “person” and “legal entity” have the meanings given those terms in section 1308(a) of title 7.

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

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

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

(23) SOCIALLY DISADVANTAGED FARMER OR RANCHER.—The term “socially disadvantaged farmer or rancher” has the meaning given the term in section 2279(e)(2) of title 7.

(24) 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.

(25) TECHNICAL ASSISTANCE.—The term “technical assistance” means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

(A) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices.

(B) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

(26) 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.

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

(A) has a predominance of hydric soils;

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

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

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

(b) The Secretary shall develop—

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

(2) lists of such soils and such vegetation.

(Pub. L. 99-198, title XII, §1201, Dec. 23, 1985, 99 Stat. 1504; Pub. L. 99-349, title I, July 2, 1986, 100

Stat. 714; Pub. L. 101-624, title XIV, §1421(a), Nov. 28, 1990, 104 Stat. 3572; Pub. L. 104-127, title III, §301(a)-(c), Apr. 4, 1996, 110 Stat. 980, 981; Pub. L. 110-234, title II, §2001, May 22, 2008, 122 Stat. 1025; Pub. L. 110-246, §4(a), title II, §2001, June 18, 2008, 122 Stat. 1664, 1753; Pub. L. 113-79, title II, §2713(a), Feb. 7, 2014, 128 Stat. 772.)

REFERENCES IN TEXT

Subchapters I through VIII of this chapter, referred to in subsec. (a), was in the original a reference to subtitles A through I, meaning subtitles A through I of title XII of Pub. L. 99-198. Subtitles A through E and G through I are classified generally to subchapters I through V and VI through VIII of this chapter. Subtitle F of title XII was repealed by Pub. L. 104-127. Section 3851 of this title, contained in subchapter V-A, is based on section 1252 of Pub. L. 99-198, which was directed to be added to the previously repealed subtitle F by Pub. L. 110-246. See Codification note set out under section 3851 of this title.

This chapter, referred to in subsec. (a)(9), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

The date of enactment of this subparagraph, referred to in subsec. (a)(11)(C), is the date of enactment of Pub. L. 104-127, which was approved Apr. 4, 1996.

This Act, referred to in subsec. (a)(27), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79 substituted “VIII” for “V” in introductory provisions.

2008—Subsec. (a)(2) to (27). Pub. L. 110-246, §2001, added pars. (2), (8), (14), (16) to (19), (23), and (25) and redesignated former pars. (2) to (18) as (3) to (7), (9) to (13), (15), (20) to (22), (24), (26), and (27), respectively.

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

Subsec. (a)(7). Pub. L. 104-127, §301(b), added par. (7) and struck out former par. (7) which read as follows: “The term ‘field’ means such term as is defined in section 718.2(b)(9) of title 7 of the Code of Federal Regulations (as of January 1, 1985), except that any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and that is not exempt under section 3812 of this title shall be considered as part of the field in which such land was included on December 23, 1985, unless the Secretary permits modification of the boundaries of the field to carry out subchapters I through V of this chapter.”

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

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

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

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

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

1990—Subsec. (a)(16). Pub. L. 101-624 substituted introductory provisions and subpars. (A) to (C) for “The

term ‘wetland’, except when such term is part of the term ‘converted wetland’, means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.”

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-234, title III, §3001, June 15, 2006, 120 Stat. 474, provided that: “This title [amending section 3831 of this title] may be cited as the ‘Emergency Agricultural Disaster Assistance Act of 2006’.”

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-7, div. N, title II, §201, Feb. 20, 2003, 117 Stat. 538, provided that: “This title [amending sections 3832 and 3841 of this title] may be cited as the ‘Agricultural Assistance Act of 2003’.”

SHORT TITLE OF 2000 AMENDMENT

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

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-624, title XIV, §1401, Nov. 28, 1990, 104 Stat. 3568, provided that: “This title [enacting sections 1003a, 1010, 3824, 3830, 3835a, 3837 to 3837f, 3838 to 3838f, 3839 to 3839d, 3846, 3847, 3861, and 3862 of this title and sections 1361-1, 2814, 3130, 5401 to 5403, 5501 to 5506 and 5822 of Title 7, Agriculture, amending this section, sections 590p, 1002, 1003, 3459, 3461, 3811, 3812, 3821 to 3823, 3831, 3832, 3834, 3835, 3836, 3843, and 3845 of this title, and sections 136a, 136a-1, 136d, 136w-3, 4501, and 4202 of Title 7, and enacting provisions set out as notes under this section and sections 2101 and 3831 of this title and sections 136a and 4201 of Title 7] may be cited as the ‘Conservation Program Improvements Act’.”

REGULATIONS

Pub. L. 110-234, title II, §2904, May 22, 2008, 122 Stat. 1091, and Pub. L. 110-246, §4(a), title II, §2904, June 18, 2008, 122 Stat. 1664, 1819, provided that:

“(a) ISSUANCE.—Except as otherwise provided in this title [see Tables for classification] or an amendment made by this title, not later than 90 days after the date of enactment of this Act [June 18, 2008], the Secretary of Agriculture, in consultation with the Commodity Credit Corporation, shall promulgate such regulations as are necessary to implement this title.

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

“(1) shall be carried out without regard to—

“(A) chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act); and

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

“(2) may—

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

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

“(c) CONGRESSIONAL REVIEW OF AGENCY RULE-MAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808(2) of title 5, United States Code.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

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

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

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

“(1) shall—

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

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

“(2) may—

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

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

“(c) CONGRESSIONAL REVIEW OF AGENCY RULE-MAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808(2) of title 5, United States Code.”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

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

TEMPORARY ADMINISTRATION OF CONSERVATION PROGRAMS

Pub. L. 113-79, title II, §2712, Feb. 7, 2014, 128 Stat. 771, provided that:

“(a) APPLICABILITY.—This section is applicable to activities under—

“(1) the wetlands reserve program, the farmland protection program, and the farm viability program being merged into the agricultural conservation easement program under the amendment made by section 2301 [enacting sections 3865 to 3865d of this title and amending section 3844 of this title];

“(2) the wildlife habitat incentive program being merged into the environmental quality incentives program under the amendments made by subtitle C [subtitle C (§§2201-2208) of title II of Pub. L. 113-79, amending sections 3839aa to 3839aa-4, 3839aa-7, and 3839aa-8 of this title];

“(3) the agricultural water enhancement program, the Chesapeake Bay watershed program, the cooperative conservation partnership initiative, and the Great Lakes basin program being merged into the regional conservation partnership program under the amendment made by section 2401 [enacting sections 3871 to 3871f of this title]; and

“(4) the grassland reserve program being merged into the conservation reserve program under the

amendments made by subtitle A [subtitle A (§§2001-2008) of title II of Pub. L. 113-79, amending sections 3831, 3831b, and 3832 to 3835 of this title and repealing section 3835a of this title] and into the agricultural conservation easement program under the amendment made by section 2301.

“(b) INTERIM ADMINISTRATION.—Subject to subsection (d), with respect to the implementation of the agricultural conservation easement program under subtitle H of title XII of the Food Security Act of 1985 [16 U.S.C. 3865 et seq.], as added by section 2301, the amendments to the environmental quality incentives program made by subtitle C, the regional conservation partnership program under subtitle I of title XII of the Food Security Act of 1985 [16 U.S.C. 3871 et seq.], as added by section 2401, and the amendments to the conservation reserve program made by subtitle A, the Secretary [of Agriculture] shall use the regulations in existence as of the day before the date of enactment of this Act [Feb. 7, 2014] that are applicable to the wetlands reserve program, the grassland reserve program, the farmland protection program, the farm viability program, the wildlife habitat incentive program, the agricultural water enhancement program, the Chesapeake Bay watershed program, the cooperative conservation partnership initiative, and the Great Lakes basin program repealed by this subtitle [subtitle H (§§2701-2713) of title II of Pub. L. 113-79, see Tables for classification], to the extent that the terms and conditions of such regulations are consistent with—

“(1) the provisions of the agricultural conservation easement program and the regional conservation partnership program; and

“(2) the amendments to the environmental quality incentives program and the conservation reserve program made by this title.

“(c) FUNDING.—The Secretary may only use funds authorized in this title [see Tables for classification] or in the amendments made by this title for the specific programs listed in subsection (b), including any restrictions on the use of those funds, for the purposes identified in paragraphs (1) and (2) of subsection (b).

“(d) TERMINATION OF AUTHORITY.—The authority of the Secretary to carry out subsection (b) shall terminate on the date that is 270 days after the date of enactment of this Act.

“(e) PERMANENT ADMINISTRATION.—Effective beginning on the termination date described in subsection (d), the Secretary shall provide technical assistance, financial assistance, and easement enrollment in accordance with any final regulations that the Secretary considers necessary to carry out this title and the amendments made by this title.”

CONTINUATION OF PROGRAMS IN FISCAL YEAR 2008

Pub. L. 110-234, title II, §2903(a), May 22, 2008, 122 Stat. 1091, and Pub. L. 110-246, §4(a), title II, §2903(a), June 18, 2008, 122 Stat. 1664, 1819, provided that: “Except as otherwise provided by an amendment made by this title [see Tables for classification], the Secretary of Agriculture shall continue to carry out any program or activity covered by title XII of the Food Security Act (16 U.S.C. 3801 et seq.) until September 30, 2008, using the provisions of law applicable to the program or activity as they existed on the day before the date of the enactment of this Act [June 18, 2008] and using funds made available under such title for fiscal year 2008 for the program or activity.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

REFORM AND ASSESSMENT OF CONSERVATION PROGRAMS

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

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

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

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

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

CONSERVATION CORRIDOR DEMONSTRATION PROGRAM

Pub. L. 110-114, title V, §5059, Nov. 8, 2007, 121 Stat. 1215, provided that:

“(a) ASSISTANCE.—The Secretary [of the Army] may provide technical assistance to the Secretary of Agriculture for use in carrying out the Conservation Corridor Demonstration Program established under subtitle G of title II of the Farm Security and Rural Investment Act of 2002 (16 U.S.C. 3801 note; 116 Stat. 275).

“(b) COORDINATION AND INTEGRATION.—In carrying out water resources projects in the States on the Delmarva Peninsula, the Secretary [of the Army] shall coordinate and integrate those projects, to the maximum extent practicable, with any activities carried out to implement a conservation corridor plan approved by the Secretary of Agriculture under section 2602 of the Farm Security and Rural Investment Act of 2002 (16 U.S.C. 3801 note; 116 Stat. 275).”

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

“SEC. 2601. DEFINITIONS.

“In this subtitle:

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

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

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

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

“SEC. 2602. CONSERVATION CORRIDOR DEMONSTRATION PROGRAM.

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

“(b) SUBMISSION OF CONSERVATION CORRIDOR PLAN.—

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

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

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

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

“(I) the economic viability of agriculture; and

“(II) the environmental integrity of the watersheds in the Delmarva Peninsula; and

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

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

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

“(1) shall review the plan; and

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

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

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

“(A) are voluntary;

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

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

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

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

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

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

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

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

“SEC. 2603. IMPLEMENTATION OF CONSERVATION CORRIDOR PLAN.

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

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

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

“(3) provide streamlined and integrated paperwork requirements.

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

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

“(A) the plan;

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

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

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

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

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

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

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

“**SEC. 2604. FUNDING REQUIREMENTS.**

“(a) **COST SHARING.**—

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

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

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

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

CRANBERRY ACREAGE RESERVE PROGRAM

Pub. L. 107-171, title X, §10608, May 13, 2002, 116 Stat. 1515, provided that:

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

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

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

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

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

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

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

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

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

SUBCHAPTER II—HIGHLY ERODIBLE LAND CONSERVATION

§ 3811. Program ineligibility

(a) In general

Except as provided in section 3812 of this title, and notwithstanding any other provision of law,

any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant, or designates land on which highly erodible land is predominant to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, as determined by the Secretary shall be ineligible for—

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

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

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

(C) a disaster payment;

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

(E) any portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), on the condition that if a person is determined to have committed a violation under this subsection during a crop year, ineligibility under this subparagraph shall—

(i) only apply to reinsurance years subsequent to the date of final determination of a violation, including all administrative appeals; and

(ii) not apply to the existing reinsurance year or any reinsurance year prior to the date of final determination;

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

(3) during the crop year—

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

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

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

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

(b) Highly erodible land

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

(Pub. L. 99-198, title XII, §1211, Dec. 23, 1985, 99 Stat. 1506; Pub. L. 101-624, title XIV, §1411, Nov.

28, 1990, 104 Stat. 3569; Pub. L. 102-237, title II, §204(1), Dec. 13, 1991, 105 Stat. 1854; Pub. L. 104-127, title III, §311, Apr. 4, 1996, 110 Stat. 982; Pub. L. 107-171, title II, §2002(a), May 13, 2002, 116 Stat. 233; Pub. L. 113-79, title II, §§2611(a)(1), 2713(b), Feb. 7, 2014, 128 Stat. 762, 772.)

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79, §2713(b), substituted “predominant” for “predominate” in two places in introductory provisions.

Subsec. (a)(1)(E). Pub. L. 113-79, §2611(a)(1), added subpar. (E).

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

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

Par. (1)(A). Pub. L. 104-127, §311(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;”.

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

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

Pub. L. 104-127, §311(2)(C), struck out before semicolon “made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), under section 132 of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), or under any similar provision enacted subsequent to August 14, 1989”.

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-127, title III, §311, Apr. 4, 1996, 110 Stat. 982, provided that the amendment made by that section is effective 90 days after Apr. 4, 1996.

SHORT TITLE

Pub. L. 99-198, title XII, subtitle B, Dec. 23, 1985, 99 Stat. 1506, which is classified generally to this subchapter, is popularly known as the sodbuster provisions.

WIND EROSION ESTIMATION PILOT PROJECT

Pub. L. 104-127, title III, §317, Apr. 4, 1996, 110 Stat. 986, provided that:

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

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

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

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

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

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

§ 3812. Exemptions

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

(1) During the period beginning on December 23, 1985, and ending on the later of January 1,

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

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

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

(2) **ELIGIBILITY BASED ON COMPLIANCE WITH CONSERVATION PLAN.**—

(A) **IN GENERAL.**—If, as of January 1, 1990, or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan, such person shall have until January 1, 1995, to comply with the plan without being subject to program ineligibility.

(B) **MINIMIZATION OF DOCUMENTATION.**—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.

(C) **CROP INSURANCE.**—

(i) **OPERATIONS NEW TO COMPLIANCE.**—Notwithstanding section 3811(a) of this title, in the case of a person that is subject to section 3811 of this title for the first time solely due to the amendment made by section 2611(a) of the Agricultural Act of 2014, any person who produces an agricultural commodity on the land that is the basis of the payments described in section 3811(a)(1)(E) of this title shall have 5 reinsurance years after the date on which such payments become subject to section 3811 of this title to develop and comply with an approved conservation plan so as to maintain eligibility for such payments.

(ii) **EXISTING OPERATIONS WITH PRIOR VIOLATIONS.**—Notwithstanding section 3811(a) of this title, in the case of a person that the Secretary determines would have been in violation of section 3811(a) of this title if the person had continued participation in the programs requiring compliance at any time after February 7, 2014, and is currently in violation of section 3811(a) of this title, the person shall have 2 reinsurance years after the date on which the payments described in section 3811(a)(1)(E) of this title become subject to section 3811 of this title to develop and comply with an approved conservation plan, as determined by the Secretary, so as to maintain eligibility for such payments.

(iii) **APPLICABLE REINSURANCE YEAR.**—Ineligibility for the payment described in section 3811(a)(1)(E) of this title for a violation under this subparagraph during a crop year shall—

(I) only apply to reinsurance years subsequent to the date of a final determination

of a violation, including all administrative appeals; and

(II) not apply to the existing reinsurance year or any reinsurance year prior to the date of the final determination.

(3) Any person who owns or operates highly erodible land that was the subject of a contract entered into under subpart B of part I of subchapter IV of this chapter shall only be required to apply a conservation plan established under this subchapter. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the same area. If the person's conservation plan requires structures to be constructed, the person shall have until 2 years after the expiration of such contract to comply with the conservation plan, or a longer period of time if the Secretary determines compliance is otherwise technically or economically not feasible, or such longer period is otherwise appropriate, before such person will be subject to program ineligibility with respect to such land under section 3811 of this title.

(4) On the expiration of a contract entered into under subpart B of part I of subchapter IV of this chapter, the provisions of this subchapter shall apply to the acreage that was the subject of such contract.

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

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

(1) planted before December 23, 1985; or

(2) planted during any crop year beginning before December 23, 1985.

(c) Ineligibility for loans and payments under section 3811

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

(1) on highly erodible land in an area—

(A) within a conservation district, under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for such district; or

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

(2) on highly erodible land that is planted or set aside in reliance on a determination by the

Soil Conservation Service that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted or set aside on any land after the Soil Conservation Service determines that such land is highly erodible land; or

(3) on highly erodible land planted to alfalfa during each of the 1981 through 1985 crop years as part of a rotation practice approved by the Secretary, if the person has submitted a conservation plan, in which case, such person shall have until June 1, 1988, to comply with the plan without being subject to program ineligibility under section 3811 of this title.

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

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

(e) Limitations on ineligibility for tenants

If a tenant is determined to be ineligible for payments and other benefits under section 3811 of this title, the Secretary may limit such ineligibility only to the farm which is the basis for such ineligibility determination if—

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

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

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

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

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

(f) Graduated penalties

(1) Ineligibility

No person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as a result of the failure of the person to actively apply a conservation plan, if the Secretary determines that the person has acted in good faith and without an intent to violate this subchapter.

(2) Eligible reviewers

A determination of the Secretary, or a designee of the Secretary, under paragraph (1) shall be reviewed by the applicable—

(A) State Executive Director, with the technical concurrence of the State Conservationist; or

(B) district director, with the technical concurrence of the area conservationist.

(3) Period for implementation

A person who meets the requirements of paragraph (1) shall be allowed a reasonable pe-

riod 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 conservation plan of the person.

(4) Penalties

(A) Application

This paragraph applies if the Secretary determines that—

(i) a person has failed to comply with section 3811 of this title with respect to highly erodible cropland, and has acted in good faith and without an intent to violate section 3811 of this title; or

(ii) the violation—

(I) is technical and minor in nature; and

(II) has a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred.

(B) Reduction

If this paragraph applies under subparagraph (A), the Secretary shall, in lieu of applying the ineligibility provisions of section 3811 of this title, reduce program benefits described in section 3811 of this title that the producer would otherwise be eligible to receive in a crop year by an amount commensurate with the seriousness of the violation, as determined by the Secretary.

(5) Subsequent crop years

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

(g) Preparation or revision of conservation plan

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

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

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

(h) Noncommercial production of agricultural commodities

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

(Pub. L. 99-198, title XII, §1212, Dec. 23, 1985, 99 Stat. 1506; Pub. L. 100-28, §§2, 3, Apr. 24, 1987, 101 Stat. 291; Pub. L. 101-624, title XIV, §1412, Nov. 28, 1990, 104 Stat. 3569; Pub. L. 102-237, title II, §204(2), Dec. 13, 1991, 105 Stat. 1854; Pub. L. 104-127, title III, §§301(d), 312-314, Apr. 4, 1996, 110 Stat. 981-983; Pub. L. 110-234, title II, §2002, May 22, 2008, 122 Stat. 1027; Pub. L. 110-246, §4(a), title II, §2002, June 18, 2008, 122 Stat. 1664, 1755; Pub. L. 113-79, title II, §2611(a)(2), Feb. 7, 2014, 128 Stat. 762.)

REFERENCES IN TEXT

Section 2611(a) of the Agricultural Act of 2014, referred to in subsec. (a)(2)(C)(i), is section 2611(a) of Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 762, which amended this section and sections 3811 and 3812a of this title.

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

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (g)(2), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. Title X of the Act enacted section 1446h of Title 7 and amended section 1425a of Title 7. Title XII of the Act, known as the Forest Stewardship Act of 1990, is classified principally to amended chapter 41 (§2101 et seq.) of this title. Title XIII of the Act enacted sections 138 to 138i and 499b-1 of Title 7, amended sections 499c, 608c, and 608e-1 of Title 7, and enacted provisions set out as notes under sections 499a and 1622 of Title 7. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113-79 inserted par. (2) heading, designated first sentence as subpar. (A) and inserted heading, designated second sentence as subpar. (B) and inserted heading, and added subpar. (C).

2008—Subsec. (f). Pub. L. 110-246, §2002, added subsec. (f) and struck out former subsec. (f) which related to graduated sanctions.

1996—Subsec. (a)(2). Pub. L. 104-127, §301(d)(1), in first sentence, struck out “that documents the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedule and that is based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 590h(b) of this title and the Secretary, or by the Secretary” after “applying a conservation plan”.

Subsec. (a)(3). Pub. L. 104-127, §312, substituted “shall only be required to apply a conservation plan established under this subchapter. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the same area. If the person’s conservation plan requires structures to be constructed, the person shall” for “shall, if the conservation plan established under this subchapter for such land requires structures to be constructed.”.

Subsec. (c)(3). Pub. L. 104-127, §301(d)(2), substituted “, in which case,” for “based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 590h(b) of this title and the Secretary.”.

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

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

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

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

Pub. L. 104-127, §301(d)(4)(A), struck out “that documents the decisions of such person with respect to location, land use, tillage systems, and conservation treatment measures and schedules prepared under subsection (a) of this section” after “apply a conservation plan”.

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

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

Subsec. (f)(4). Pub. L. 104-127, §313(c), struck out concluding sentence which read as follows: “A determination or the granting of a variance by the Secretary under this paragraph shall not be counted as a violation for the purposes of paragraph (1)(A).”

Pub. L. 104-127, §301(d)(4)(C), in introductory provisions, struck out “that documents the decisions of such person with respect to location, land use, tillage systems, and conservation treatment measures and schedules prepared under subsection (a) of this section” after “apply a conservation plan”.

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

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

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

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

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

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

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

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

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

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

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

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

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

1987—Subsec. (a)(2). Pub. L. 100-28, §3, inserted “that documents the decisions of the person with respect to location, land use, tillage systems, and conservation

treatment measures and schedule and that is” after “conservation plan”, and inserted at end “In carrying out this subsection, the Secretary, Soil Conservation Service, and local soil conservation districts shall minimize the quantity of documentation a person must submit to comply with this paragraph.”

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

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

(a) Technical requirements

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

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

(b) Measurement of erosion reduction

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

(c) Residue measurement

(1) Responsibilities of 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 3811 of this title at the time application is made for the benefits, the Secretary shall permit the person to certify that the person is complying with the person's conservation plan.

(2) Status reviews

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

(3) Revisions and modifications

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

(4) Crop insurance premium assistance

For the purpose of determining the eligibility of a person for the payment described in section 3811(a)(1)(E) of this title, the Secretary shall apply the procedures described in section 3821(c)(3)(E) of this title and coordinate the certification process so as to avoid duplication or unnecessary paperwork.

(e) Technical assistance

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

(f) Encouragement of on-farm research

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

(Pub. L. 99-198, title XII, §1213, as added Pub. L. 104-127, title III, §315(a)(2), Apr. 4, 1996, 110 Stat. 984; amended Pub. L. 113-79, title II, §2611(a)(3), Feb. 7, 2014, 128 Stat. 763.)

PRIOR PROVISIONS

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

AMENDMENTS

2014—Subsec. (d)(4). Pub. L. 113-79 added par. (4).

§ 3813. Soil surveys

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

(Pub. L. 99-198, title XII, §1214, formerly §1213, Dec. 23, 1985, 99 Stat. 1507; renumbered §1214, Pub. L. 104-127, title III, §315(a)(1), Apr. 4, 1996, 110 Stat. 983.)

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

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

(b) Corrective action

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

(c) Review

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

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

SUBCHAPTER III—WETLAND
CONSERVATION

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

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

- (1) in violation of this section; and
- (2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation.

(b) Ineligibility for certain loans and payments

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

- (1) Contract payments under a production flexibility contract, marketing assistance

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

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

(3) During the crop year:

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

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

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

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

(c) Ineligibility for crop insurance premium assistance**(1) Requirements****(A) In general**

If a person is determined to have committed a violation under subsection (a) or (d) during a crop year, the person shall be ineligible to receive any payment of any portion of premium paid by the Federal Crop Insurance Corporation for a plan or policy of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) pursuant to this subsection.

(B) Applicability

Ineligibility under this subsection shall—

- (i) only apply to reinsurance years subsequent to the date of a final determination of a violation, including all administrative appeals; and
- (ii) not apply to the existing reinsurance year or any reinsurance year prior to the date of the final determination.

(2) Conversions**(A) In general**

Notwithstanding paragraph (1), ineligibility for crop insurance premium assistance shall apply in accordance with this paragraph.

(B) New conversions

In the case of a wetland that the Secretary determines was converted after February 7, 2014—

- (i) the person shall be ineligible to receive crop insurance premium subsidies in subsequent reinsurance years unless the Secretary determines that an exemption pursuant to section 3822 of this title applies; or
- (ii) for any violation that the Secretary determines impacts less than 5 acres of an entire farm, the person may pay a con-

tribution in an amount equal to 150 percent of the cost of mitigation, as determined by the Secretary, to the fund described in section 3841(f) of this title for wetland restoration in lieu of ineligibility to receive crop insurance premium assistance.

(C) Prior conversions

In the case of a wetland that the Secretary determines was converted prior to February 7, 2014, ineligibility under this subsection shall not apply.

(D) Conversions and new policies or plans of insurance

In the case of an agricultural commodity for which an individual policy or plan of insurance is available for the first time to the person after February 7, 2014—

(i) ineligibility shall apply only to conversions that take place after the date on which the policy or plan of insurance first becomes available to the person; and

(ii) the person shall take such steps as the Secretary determines appropriate to mitigate any prior conversion in a timely manner but not to exceed 2 reinsurance years.

(3) Limitations

(A) Mitigation required

Except as otherwise provided in this paragraph, a person subject to a final determination, including all administrative appeals, of a violation described in subsection (d) shall have 1 reinsurance year to initiate a mitigation plan to remedy the violation, as determined by the Secretary, before becoming ineligible under this subsection in the following reinsurance year to receive any payment of any portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(B) Persons covered for the first time

Notwithstanding the requirements of paragraph (1), in the case of a person that is subject to this subsection for the first time solely due to the amendment made by section 2611(b) of the Agricultural Act of 2014, the person shall have 2 reinsurance years after the reinsurance year in which a final determination is made, including all administrative appeals, of a violation described in this subsection to take such steps as the Secretary determines appropriate to remedy or mitigate the violation in accordance with this subsection.

(C) Good faith

If the Secretary determines that a person subject to a final determination, including all administrative appeals, of a violation described in this subsection acted in good faith and without intent to commit a violation described in this subsection as described in section 3822(h) of this title, the person shall have 2 reinsurance years to take such steps as the Secretary determines appropriate to

remedy or mitigate the violation in accordance with this subsection.

(D) Tenant relief

(i) In general

If a tenant is determined to be ineligible for payments and other benefits under this subsection, the Secretary may limit the ineligibility only to the farm that is the basis for the ineligibility determination if the tenant has established, to the satisfaction of the Secretary that—

(I) 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 plan for restoration or mitigation for the farm;

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

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

(ii) Report

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

(E) Certificate of compliance

(i) In general

Beginning with the first full reinsurance year immediately following February 7, 2014, all persons seeking eligibility for the payment of a portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) shall provide certification of compliance with this section as determined by the Secretary.

(ii) Timely evaluation

The Secretary shall evaluate the certification in a timely manner and—

(I) a person who has properly complied with certification shall be held harmless with regard to eligibility during the period of evaluation; and

(II) if the Secretary fails to evaluate the certification in a timely manner and the person is subsequently found to be in violation of this subsection, ineligibility shall not apply to the person for that violation.

(iii) Equitable contribution

(I) In general

If a person fails to notify the Secretary as required and is subsequently found to be in violation of this subsection, the Secretary shall—

(aa) determine the amount of an equitable contribution to conservation by the person for the violation; and

(bb) deposit the contribution in the fund described in section 3841(f) of this title.

(II) Limitation

The contribution shall not exceed the total of the portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance for all years the person is determined to have been in violation subsequent to the date on which certification was first required under this subparagraph.

(4) Duties of the Secretary**(A) In general**

In carrying out this subsection, the Secretary shall use existing processes and procedures for certifying compliance.

(B) Responsibility

The Secretary, acting through the agencies of the Department of Agriculture, shall be solely responsible for determining whether a producer is eligible to receive crop insurance premium subsidies in accordance with this subsection.

(C) Limitation

The Secretary shall ensure that no agent, approved insurance provider, or employee or contractor of an agency or approved insurance provider, bears responsibility or liability for the eligibility of an insured producer under this subsection, other than in cases of misrepresentation, fraud, or scheme and device.

(d) Wetland conversion

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

(e) Prior loans

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

(f) Wetland

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

(Pub. L. 99-198, title XII, §1221, Dec. 23, 1985, 99 Stat. 1507; Pub. L. 101-624, title XIV, §1421(b), Nov. 28, 1990, 104 Stat. 3572; Pub. L. 102-237, title II, §204(3), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 102-552, title III, §308(a), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104-127, title III, §321, Apr. 4, 1996, 110 Stat. 986; Pub. L. 107-171, title II, §2002(b), May 13, 2002, 116 Stat. 233; Pub. L. 113-79, title II, §2611(b), Feb. 7, 2014, 128 Stat. 763.)

REFERENCES IN TEXT

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

classification of this Act to the Code, see section 7201 of Title 7 and Tables.

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

The Consolidated Farm and Rural Development Act, referred to in subsec. (b)(2), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(1)(A), (3)(A), (E)(i), is subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, which is classified generally to subchapter I (§1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 2611(b) of the Agricultural Act of 2014, referred to in subsec. (c)(3)(B), is section 2611(b) of Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 763, which amended this section.

AMENDMENTS

2014—Subsecs. (c) to (f). Pub. L. 113-79 added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-127, title III, §326, Apr. 4, 1996, 110 Stat. 992, provided that: “This subtitle [subtitle C (§§321-326)] of title III of Pub. L. 104-127, enacting section 3823 of this title, amending this section and section 3822 of this title, and repealing former section 3823 of this title] and the amendments made by this subtitle shall become effective 90 days after the date of enactment of this Act [Apr. 4, 1996].”

SHORT TITLE

Pub. L. 99-198, title XII, subtitle C, Dec. 23, 1985, 99 Stat. 1507, which is classified generally to this sub-

chapter, is popularly known as the swampbuster provisions.

§ 3822. Delineation of wetlands; exemptions

(a) Delineation by Secretary

(1) In general

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

(2) Wetland delineation maps

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

(3) Certification

On providing notice to affected persons, the Secretary shall—

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

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

(4) Duration of certification

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

(5) Review of mapping on appeal

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

(6) Reliance on prior certified delineation

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

(b) Exemptions

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

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

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

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

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

(D) A wetland on which the owner or operator of a farm or ranch uses normal cropping

or ranching practices to produce an agricultural commodity in a manner that is consistent for the area where the production is possible as a result of a natural condition, such as drought, and is without action by the producer that destroys a natural wetland characteristic.

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

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

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

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

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

(iii) circumstances beyond the control of the person.

(H) A converted wetland, if—

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

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

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

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

(2) For the conversion of the following:

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

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

(C) A wetland on which the owner or operator of a farm or ranch uses normal cropping or ranching practices to produce an agricultural commodity in a manner that is consistent for the area where the production is

possible as a result of a natural condition, such as drought, and is without action by the producer that destroys a natural wetland characteristic.

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

- (i) the lack of maintenance of drainage, dikes, levees, or similar structures;
- (ii) a lack of management of the lands containing the wetland; or
- (iii) circumstances beyond the control of the person.

(E) A wetland, if—

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

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

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

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

(c) On-site inspection requirement

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

(d) Identification of minimal effect exemptions

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

(e) Nonwetlands

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

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

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

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

(f) Minimal effect; mitigation

The Secretary shall exempt a person from the ineligibility provisions of section 3821 of this title for any action associated with the production of an agricultural commodity on a converted wetland, or the conversion of a wetland, if 1 or more of the following conditions apply, as determined by the Secretary:

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

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

(A) in accordance with a wetland conservation plan;

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

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

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

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

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

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

(i) is recorded on public land records;

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

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

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

(4) The action was authorized by a permit issued under section 1344 of title 33 and the wet-

land values, acreage, and functions of the converted wetland were adequately mitigated for the purposes of this subchapter.

(g) Mitigation appeals

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

(h) Good faith exemption

(1) Exemption described

The Secretary may waive a person's ineligibility under section 3821 of this title for program loans, payments, and benefits as the result of the conversion of a wetland subsequent to November 28, 1990, or the production of an agricultural commodity on a converted wetland, if the Secretary determines that the person has acted in good faith and without intent to violate this subchapter.

(2) Eligible reviewers

A determination of the Secretary, or a designee of the Secretary, under paragraph (1) shall be reviewed by the applicable—

(A) State Executive Director, with the technical concurrence of the State Conservationist; or

(B) district director, with the technical concurrence of the area conservationist.

(3) Period for compliance

The Secretary shall provide a person who the Secretary determines has acted in good faith and without intent to violate this subchapter with a reasonable period, but not to exceed 1 year, during which to implement the measures and practices necessary to be considered to be actively restoring the subject wetland.

(i) Restoration

Any person who is determined to be ineligible for program benefits under section 3821 of this title for any crop year shall not be ineligible for such program benefits under such section for any subsequent crop year if, prior to the beginning of such subsequent crop year, the person has fully restored the characteristics of the converted wetland to its prior wetland state or has otherwise mitigated for the loss of wetland values, as determined by the Secretary, through the restoration, enhancement, or creation of wetland values in the same general area of the local watershed as the converted wetland.

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

Technical determinations, the development of restoration and mitigation plans, and monitoring activities under this section shall be made by the National² Resources Conservation Service.

(k) Mitigation banking

(1) Mitigation banking program

(A) In general

Using authorities available to the Secretary, the Secretary shall operate a pro-

gram or work with third parties to establish mitigation banks to assist persons in complying with the provisions of this section while mitigating any loss of wetland values and functions.

(B) Funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use \$10,000,000, to remain available until expended, to carry out this paragraph.

(2) Applicability

Subsection (f)(2)(C) shall not apply to this subsection.

(3) Policy and criteria

The Secretary shall develop the appropriate policy and criteria that will allow willing persons to access existing mitigation banks, under this section or any other authority, that will serve the purposes of this section without requiring the Secretary to hold an easement, in whole or in part, in a mitigation bank.

(Pub. L. 99-198, title XII, § 1222, Dec. 23, 1985, 99 Stat. 1508; Pub. L. 101-624, title XIV, § 1422, Nov. 28, 1990, 104 Stat. 3573; Pub. L. 104-127, title III, § 322, Apr. 4, 1996, 110 Stat. 987; Pub. L. 110-234, title II, § 2003, May 22, 2008, 122 Stat. 1028; Pub. L. 110-246, § 4(a), title II, § 2003, June 18, 2008, 122 Stat. 1664, 1756; Pub. L. 113-79, title II, § 2609, Feb. 7, 2014, 128 Stat. 761.)

REFERENCES IN TEXT

Section 3843 of this title, referred to in subsec. (g), was omitted and a new section 3843 was added in the general amendment of subchapter V of this chapter by Pub. L. 104-127, title III, § 341, Apr. 4, 1996, 110 Stat. 1008. The new section 3843, which did not relate to appeal procedures, was subsequently repealed by Pub. L. 113-79, title II, § 2710(a), Feb. 7, 2014, 128 Stat. 770.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (k). Pub. L. 113-79 amended subsec. (k) generally. Prior to amendment, text read as follows: “Using authorities available to the Secretary, the Secretary may operate a pilot program for mitigation banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland functions and values. Subsection (f)(2)(C) of this section shall not apply to this subsection.”

2008—Subsec. (h)(2), (3). Pub. L. 110-246, § 2003, added par. (2), redesignated former par. (2) as (3), and inserted “be” before “actively”.

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

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

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

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

¹ See References in Text note below.

² So in original. Probably should be “Natural”.

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

Subsec. (h). Pub. L. 104-127, §322(f), added subsec. (h) and struck out heading and text of former subsec. (h). Text consisted of pars. (1) to (3) relating to good faith exemptions to ineligibility under section 3821 of this title and graduated sanctions.

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

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

Subsec. (k). Pub. L. 104-127, §322(i), added subsec. (k). 1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions relating to eligibility for program benefits in connection with production of crops on certain wetlands, making program ineligibility inapplicable to pre-Dec. 23, 1985, section 3821 loans, and providing for personal exemptions from program ineligibility for actions associated with production of commodities having minimal wetland effect.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 3823. Affiliated persons

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

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

PRIOR PROVISIONS

A prior section 3823, Pub. L. 99-198, title XII, §1223, Dec. 23, 1985, 99 Stat. 1508; Pub. L. 101-624, title XIV, §1423, Nov. 28, 1990, 104 Stat. 3576; Pub. L. 102-237, title II, §204(4), Dec. 13, 1991, 105 Stat. 1855, related to consultation with Secretary of the Interior, prior to repeal by Pub. L. 104-127, title III, §§323, 326, Apr. 4, 1996, 110 Stat. 992, effective 90 days after Apr. 4, 1996.

EFFECTIVE DATE

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

§ 3824. Fairness of compliance

If the actions of an unrelated person or public entity, outside the control of, and without the prior approval of, the landowner or tenant result in a change in the characteristics of cropland that would cause the land to be determined to

be a wetland, the affected land shall not be considered to be wetland for purposes of this subchapter.

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

SUBCHAPTER IV—AGRICULTURAL RESOURCES CONSERVATION PROGRAM

PART I—COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM

SUBPART A—GENERAL PROVISIONS

§ 3830. Repealed. Pub. L. 113-79, title II, §2701, Feb. 7, 2014, 128 Stat. 766

Section, Pub. L. 99-198, title XII, §1230, as added Pub. L. 101-624, title XIV, §1431(2), Nov. 28, 1990, 104 Stat. 3576; amended Pub. L. 103-66, title I, §1402(a), Aug. 10, 1993, 107 Stat. 332; Pub. L. 104-127, title III, §331, Apr. 4, 1996, 110 Stat. 992; Pub. L. 107-171, title II, §2006(b), May 13, 2002, 116 Stat. 237, related to comprehensive conservation enhancement program.

CONSERVATION ASSISTANCE

Pub. L. 106-224, title II, §211, June 20, 2000, 114 Stat. 406, as amended by Pub. L. 107-171, title II, §2503(b)(1)(B), May 13, 2002, 116 Stat. 269, authorized Secretary to use \$40,000,000 of funds of the Commodity Credit Corporation to provide financial assistance to farmers and ranchers to address threats to soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat; comply with Federal and State environmental laws; and make beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation management, land uses, or other measures needed to conserve and improve soil, water, and related natural resources.

FARMLAND PROTECTION PROGRAM

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

[Pub. L. 107-171, title II, §2503(b)(2), May 13, 2002, 116 Stat. 269, provided that: “The amendment made by paragraph (1)(A) [repealing section 388 of Pub. L. 104-127, formerly set out above] shall have no effect on any contract entered into under section 388 of the Federal Agriculture Improvement and Reform Act of 1996 [Pub. L. 104-127] (16 U.S.C. 3830 note) that is in effect as of the date of enactment of this Act [May 13, 2002].”]

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

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

SUBPART B—CONSERVATION RESERVE

CODIFICATION

Subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985, comprising this subpart, was originally designated in Pub. L. 99-198, title XII, Dec. 23, 1985, 99 Stat. 1509, by Pub. L. 101-624, title XIV, §§1431(1), 1432(1), Nov. 28, 1990, 104 Stat. 3576, 3577, and amended by Pub. L. 99-500, Oct. 18, 1986, 100 Stat. 1783, and Pub. L. 99-591, Oct. 30, 1986, 100 Stat. 3341; Pub. L. 99-641, Nov. 10, 1986, 100 Stat. 3556; Pub. L. 100-233, Jan. 6, 1988, 101 Stat. 1568; Pub. L. 100-387, Aug. 11, 1988, 102 Stat. 924; Pub. L. 101-512, Nov. 5, 1990, 104 Stat. 1915; Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L.

102-237, Dec. 13, 1991, 105 Stat. 1818; Pub. L. 102-324, July 22, 1992, 106 Stat. 447; Pub. L. 102-552, Oct. 28, 1992, 106 Stat. 4102; Pub. L. 103-66, Aug. 10, 1993, 107 Stat. 312; Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 888; Pub. L. 106-78, Oct. 22, 1999, 113 Stat. 1135; Pub. L. 106-387, Oct. 28, 2000, 114 Stat. 1549; Pub. L. 107-76, Nov. 28, 2001, 115 Stat. 704. Subchapter B is shown herein, however, as having been added by Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 238, without reference to the intervening amendments because of the extensive revision of the subchapter's provisions by Pub. L. 107-171.

§ 3831. Conservation reserve

(a) In general

Through the 2018 fiscal year, the Secretary shall formulate and carry out a conservation reserve program under which land is enrolled through the use of contracts to assist owners and operators of land specified in subsection (b) of this section to conserve and improve the soil, water, and wildlife resources of such land and to address issues raised by State, regional, and national conservation initiatives.

(b) Eligible land

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

(1) highly erodible cropland that—

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

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

(B) the Secretary determines had a cropping history or was considered to be planted for 4 of the 6 years preceding February 7, 2014 (except for land enrolled in the conservation reserve program as of that date);

(2) 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);

(3) grasslands that—

(A) contain forbs or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use;

(B) are located in an area historically dominated by grasslands; and

(C) could provide habitat for animal and plant populations of significant ecological value if the land is retained in its current use or restored to a natural condition;

(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 or riparian buffers devoted to trees, shrubs, or grasses;

(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; or

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

(5) the portion of land in a field not enrolled in the conservation reserve in a case in which—

(A) more than 50 percent of the land in the field is enrolled as a buffer or filterstrip, or more than 75 percent of the land in the field is enrolled as a conservation practice other than as a buffer or filterstrip; and

(B) the remainder of the field is—

(i) infeasible to farm; and

(ii) enrolled at regular rental rates.

(c) Planting status of certain land

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

(d) Enrollment

(1) Maximum acreage enrolled

The Secretary may maintain in the conservation reserve at any one time during—

(A) fiscal year 2014, no more than 27,500,000 acres;

(B) fiscal year 2015, no more than 26,000,000 acres;

(C) fiscal year 2016, no more than 25,000,000 acres;

(D) fiscal year 2017, no more than 24,000,000 acres; and

(E) fiscal year 2018, no more than 24,000,000 acres.

(2) Grasslands

(A) Limitation

For purposes of applying the limitations in paragraph (1), no more than 2,000,000 acres of the land described in subsection (b)(3) may be enrolled in the program at any one time during the 2014 through 2018 fiscal years.

(B) Priority

In enrolling acres under subparagraph (A), the Secretary may give priority to land with expiring conservation reserve program contracts.

(C) Method of enrollment

In enrolling acres under subparagraph (A), the Secretary shall make the program available to owners or operators of eligible land on a continuous enrollment basis with one or more ranking periods.

(e) Duration of contract

(1) In general

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

(2) Special rule for certain land

In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under a contract entered into under this subpart, the owner or operator of the land may, within the limitations prescribed under paragraph (1), specify the duration of the contract.

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

On application by the appropriate State agency, the Secretary shall designate areas of special environmental sensitivity as conservation priority areas.

(2) Eligible areas

Areas 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 an area's designation if the Secretary finds that the area no longer contains actual and significant adverse water quality or habitat impacts related to agricultural production activities.

(4) Duty of Secretary

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

(g) Multi-year grasses and legumes**(1) In general**

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

(2) Cropping history

Alfalfa, when grown as part of a rotation practice, as determined by the Secretary, is an agricultural commodity subject to the cropping history criteria under subsection (b)(1)(B) for the purpose of determining whether highly erodible cropland has been planted or considered planted for 4 of the 6 years referred to in such subsection.

(h) Eligibility for consideration

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

(i) Balance of natural resource purposes

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

(Pub. L. 99-198, title XII, § 1231, as added Pub. L. 107-171, title II, § 2101(a), May 13, 2002, 116 Stat. 238; amended Pub. L. 109-148, div. B, title I, § 107(a), Dec. 30, 2005, 119 Stat. 2750; Pub. L. 109-234, title III, § 3022, June 15, 2006, 120 Stat. 478; Pub. L. 110-28, title IV, § 4101, May 25, 2007, 121 Stat. 152; Pub. L. 110-234, title II, §§ 2101-2105, 2106(a)(2), (b)(1), May 22, 2008, 122 Stat. 1028, 1029, 1031, 1032; Pub. L. 110-246, § 4(a), title II, §§ 2101-2105, 2106(a)(2), (b)(1), June 18, 2008, 122 Stat. 1664, 1756, 1757, 1759, 1760; Pub. L. 112-240, title VII, § 701(c)(1), Jan. 2, 2013, 126 Stat. 2363; Pub. L. 113-79, title II, § 2001, Feb. 7, 2014, 128 Stat. 713.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3831, Pub. L. 99-198, title XII, § 1231, Dec. 23, 1985, 99 Stat. 1509; Pub. L. 99-500, § 101(a) [title VI, § 643], Oct. 18, 1986, 100 Stat. 1783, 1783-36, and Pub. L. 99-591, § 101(a) [title VI, § 643], Oct. 30, 1986, 100 Stat. 3341, 3341-36; Pub. L. 99-641, title II, § 205, Nov. 10, 1986, 100 Stat. 3563; Pub. L. 101-624, title XIV, §§ 1432(2), 1447(a), Nov. 28, 1990, 104 Stat. 3577, 3605; Pub. L. 102-324, § 1(a), July 22, 1992, 106 Stat. 447; Pub. L. 103-66, title I, § 1402(b), Aug. 10, 1993, 107 Stat. 332; Pub. L. 104-127, title III, § 332(a)(1), (b), Apr. 4, 1996, 110 Stat. 994; Pub. L. 106-387, § 1(a) [title XI, § 1102(a)], Oct. 28, 2000, 114 Stat. 1549, 1549A-75; Pub. L. 107-76, title VII, § 758(a), Nov. 28, 2001, 115 Stat. 741, related to a conservation reserve program to be formulated and carried out by the Secretary through the 2002 calendar year, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79, § 2001(a), substituted “2018” for “2012”.

Subsec. (b)(1)(B). Pub. L. 113-79, § 2001(b)(1), substituted “February 7, 2014” for “the date of enactment of the Food, Conservation, and Energy Act of 2008”.

Subsec. (b)(2), (3). Pub. L. 113-79, § 2001(b)(2), (3), redesignated par. (3) as (2), added par. (3), and struck out former par. (2) which read as follows: “marginal pasture land converted to wetland or established as wildlife habitat prior to November 28, 1990;”.

Subsec. (b)(4)(C). Pub. L. 113-79, § 2001(b)(4), substituted “filterstrips or riparian buffers devoted to trees, shrubs, or grasses” for “filterstrips devoted to trees or shrubs”.

Subsec. (b)(5). Pub. L. 113-79, § 2001(b)(5), added par. (5) and struck out former par. (5) which read as follows:

“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.”

Subsec. (c). Pub. L. 113-79, § 2001(c), substituted “if, during the crop year, the land was devoted to a conserving use.” for “if—” and struck out pars. (1) and (2) which read as follows:

“(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.”

Subsec. (d). Pub. L. 113-79, § 2001(d), amended subsec. (d) generally. Prior to amendment, text read as follows:

“The Secretary may maintain up to 39,200,000 acres in the conservation reserve at any 1 time during the 2002 through 2009 fiscal years (including contracts extended by the Secretary pursuant to section 1437(c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 3831 note; Public Law 101-624)). During fiscal years 2010, 2011, 2012, and 2013, the Secretary may maintain up to 32,000,000 acres in the conservation reserve at any 1 time.”

Subsec. (e)(2), (3). Pub. L. 113-79, §2001(e), added par. (2) and struck out former pars. (2) and (3) which related to duration of contracts for certain land and 1-year extensions, respectively.

Subsec. (f)(1). Pub. L. 113-79, §2001(f)(1), struck out “watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other” before “areas of special”.

Subsec. (f)(2). Pub. L. 113-79, §2001(f)(2), substituted “areas” for “watersheds” in heading and “Areas” for “Watersheds” in text.

Subsec. (f)(3). Pub. L. 113-79, §2001(f)(3), substituted “an area’s designation if the Secretary finds that the area no longer contains actual and significant adverse water quality or habitat impacts related to agricultural production activities.” for “a watershed’s designation—” and struck out subpars. (A) and (B) which read as follows:

“(A) on application by the appropriate State agency; or

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

2013—Subsec. (d). Pub. L. 112-240 substituted “2012, and 2013” for “and 2012”.

2008—Subsec. (a). Pub. L. 110-246, §2101, substituted “2012 fiscal year” for “2007 calendar year” and inserted “and to address issues raised by State, regional, and national conservation initiatives” before period at end.

Subsec. (b)(1)(B). Pub. L. 110-246, §2102(1), substituted “the date of enactment of the Food, Conservation, and Energy Act of 2008” for “May 13, 2002” and substituted semicolon for period at end.

Subsec. (b)(4)(C) to (E). Pub. L. 110-246, §2102(2), in subpar. (C) struck out “or” at end, in subpar. (D) substituted “or” for “and” at end, and in subpar. (E) inserted “or” at end.

Subsec. (d). Pub. L. 110-246, §2103, substituted “2009 fiscal years” for “2007 calendar years” and “(16 U.S.C.)” for “(16 U.S.C.)” and inserted at end “During fiscal years 2010, 2011, and 2012, the Secretary may maintain up to 32,000,000 acres in the conservation reserve at any 1 time.”

Subsec. (f)(1). Pub. L. 110-246, §2104, substituted “the Chesapeake Bay Region” for “the Chesapeake Bay Region (Pennsylvania, Maryland, and Virginia)”.

Subsec. (g). Pub. L. 110-246, §2105, amended subsec. (g) generally. Prior to amendment, text read as follows: “For purposes of this subpart, alfalfa and other multi-year grasses and legumes in a rotation practice, approved by the Secretary, shall be considered agricultural commodities.”

Subsecs. (h) to (j). Pub. L. 110-246, §2106(a)(2), redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out former subsec. (h) which related to pilot program for enrollment of wetland and buffer acreage in conservation reserve during 2002 through 2007 calendar years.

Subsec. (k). Pub. L. 110-246, §2106(b)(1), renumbered subsec. (k) as section 3831a of this title.

2007—Subsec. (k)(2). Pub. L. 110-28 substituted “The” for “During calendar year 2006, the”.

2006—Subsec. (k)(3)(G). Pub. L. 109-234 substituted “\$504,100,000” for “\$404,100,000”.

2005—Subsec. (k). Pub. L. 109-148 added subsec. (k).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

REGULATIONS

Pub. L. 106-387, §1(a) [title XI, §1105], Oct. 28, 2000, 114 Stat. 1549, 1549A-78, required the Secretary of Agriculture, as soon as practicable after Oct. 28, 2000, to promulgate regulations to implement the amendments by section 1(a) [title XI] of Pub. L. 106-387, amending former sections 3831 and 3832 of this title.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113-79, title II, §2008, Feb. 7, 2014, 128 Stat. 720, provided that:

“(a) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subtitle [subtitle A (§§2001-2008) of title II of Pub. L. 113-79, amending this section and sections 3831b and 3832 to 3835 of this title and repealing section 3835a of this title] shall not affect the validity or terms of any contract entered into by the Secretary of Agriculture under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract.

“(b) UPDATING OF EXISTING CONTRACTS.—The Secretary shall permit an owner or operator of land subject to a contract entered into under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], to update the contract to reflect the activities and uses of land under contract permitted under the terms and conditions of section 1233(b) of that Act [16 U.S.C. 3833(b)] (as amended by section 2004), as determined appropriate by the Secretary.”

STUDY ON ECONOMIC EFFECTS

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

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the economic and social effects on rural communities resulting from the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.).

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

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

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

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

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

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

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

STUDY OF IMPACT OF PILOT PROGRAM

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

STUDY OF LAND USE FOR EXPIRING CONTRACTS AND EXTENSION OF AUTHORITY

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

EXISTING CONSERVATION PROGRAMS

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

§ 3831a. Repealed. Pub. L. 113-79, title II, § 2702(a), Feb. 7, 2014, 128 Stat. 766

Section, Pub. L. 99-198, title XII, §1231A, as added and amended Pub. L. 110-234, title II, §2106(b), May 22, 2008, 122 Stat. 1032, and Pub. L. 110-246, §4(a), title II, §2106(b), June 18, 2008, 122 Stat. 1664, 1760, related to emergency forestry conservation reserve program.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2702, Feb. 7, 2014, 128 Stat. 766, provided that:

"(a) REPEAL.—Except as provided in subsection (b), section 1231A of the Food Security Act of 1985 (16 U.S.C. 3831a) is repealed.

"(b) TRANSITIONAL PROVISIONS.—

"(1) EFFECT ON EXISTING CONTRACTS AND AGREEMENTS.—The amendment made by this section shall not affect the validity or terms of any contract or agreement entered into by the Secretary of Agriculture under section 1231A of the Food Security Act of 1985 (16 U.S.C. 3831a) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract or agreement.

"(2) FUNDING.—The Secretary [of Agriculture] may use funds made available to carry out the conservation reserve program under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) to continue to carry out contracts or agreements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts or agreements as in existence on the day before the date of enactment of the Agricultural Act of 2014."

§ 3831b. Farmable wetland program**(a) Program required****(1) In general**

During the 2008 through 2018 fiscal years, the Secretary shall carry out a farmable wetland program in each State under which the Secretary shall enroll eligible acreage described in subsection (b).

(2) 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 program established under this section.

(b) Eligible acreage**(1) Wetland and related land**

Subject to subsections (c) and (d), an owner or operator may enroll in the conservation reserve, pursuant to the program established under this section, land—

(A) that is wetland (including a converted wetland described in section 3822(b)(1)(A) of this title) that had a cropping history during at least 3 of the immediately preceding 10 crop years;

(B) on which a constructed wetland is to be developed that will receive surface and subsurface flow from row crop agricultural production and is designed to provide nitrogen removal in addition to other wetland functions;

(C) that was devoted to commercial pond-raised aquaculture in any year during the period of calendar years 2002 through 2007; or

(D) that, after January 1, 1990, and before December 31, 2002, was—

(i) cropped during at least 3 of 10 crop years; and

(ii) subject to the natural overflow of a prairie wetland.

(2) Buffer acreage

Subject to subsections (c) and (d), an owner or operator may enroll in the conservation reserve, pursuant to the program established under this section, buffer acreage that—

(A) with respect to land described in subparagraph (A), (B), or (C) of paragraph (1)—

(i) is contiguous to such land¹

(ii) is used to protect such land; and

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

(B) with respect to land described in subparagraph (D) of paragraph (1), enhances a wildlife benefit to the extent practicable in terms of upland to wetland ratios, as determined by the Secretary.

(c) Program limitations**(1) Acreage limitation**

The Secretary may enroll in the conservation reserve, pursuant to the program established under this section, not more than—

(A) 100,000 acres in any State; and

(B) a total of 750,000 acres.

(2) Relationship to maximum enrollment

Subject to paragraph (3), any acreage enrolled in the conservation reserve under this section shall be considered acres maintained in the conservation reserve.

(3) Relationship to other enrolled acreage

Acreage enrolled in the conservation reserve under this section shall not affect for any fiscal year the quantity of—

¹ So in original. Probably should be followed by a semicolon.

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

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

(4) Review; potential increase in enrollment acreage

The Secretary shall conduct a review of the program established under this section with respect to each State that has enrolled land in the conservation reserve pursuant to the program. As a result of the review, the Secretary may increase the number of acres that may be enrolled in a State under the program to not more than 200,000 acres, notwithstanding paragraph (1)(A).

(d) Owner or operator enrollment limitations

(1) Wetland and related land

(A) Wetlands and constructed wetlands

The maximum size of any land described in subparagraph (A) or (B) of subsection (b)(1) that an owner or operator may enroll in the conservation reserve, pursuant to the program established under this section, shall be 40 contiguous acres.

(B) Flooded farmland

The maximum size of any land described in subparagraph (D) of subsection (b)(1) that an owner or operator may enroll in the conservation reserve, pursuant to the program established under this section, shall be 20 contiguous acres.

(C) Coverage

All acres described in subparagraph (A) or (B), including acres that are ineligible for payment, shall be covered by the conservation contract.

(2) Buffer acreage

The maximum size of any buffer acreage described in subsection (b)(2) that an owner or operator may enroll in the conservation reserve under this section shall be determined by the Secretary in consultation with the State Technical Committee.

(3) Tracts

Except for land described in subsection (b)(1)(C) and buffer acreage related to such land, the maximum size of any eligible acreage described in subsection (b)(1) in a tract of an owner or operator enrolled in the conservation reserve under this section shall be 40 acres.

(e) Duties of owners and operators

During the term of a contract entered into under the program established under this section, an owner or operator shall agree—

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

(2) to establish vegetative cover (which may include emerging vegetation in water and bottomland hardwoods, cypress, and other appropriate tree species) on the eligible acreage, as determined by the Secretary;

(3) to a general prohibition of commercial use of the enrolled land; and

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

(f) Duties of the Secretary

(1) In general

Except as provided in paragraphs (2) and (3), in return for a contract entered into under this section, the Secretary shall—

(A) make payments to the owner or operator based on rental rates for cropland; and

(B) provide assistance to the owner or operator in accordance with sections 3833 and 3834 of this title.

(2) Contract offers and payments

The Secretary shall use the method of determination described in section 3834(d)(2)(A)(ii) of this title to determine the acceptability of contract offers and the amount of rental payments under this section.

(3) Incentives

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

(Pub. L. 99-198, title XII, §1231B, as added Pub. L. 110-234, title II, §2106(a)(1), May 22, 2008, 122 Stat. 1029, and Pub. L. 110-246, §4(a), title II, §2106(a)(1), June 18, 2008, 122 Stat. 1664, 1757; amended Pub. L. 113-79, title II, §2002, Feb. 7, 2014, 128 Stat. 714.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 3831(h) of this title prior to repeal by Pub. L. 110-246.

AMENDMENTS

2014—Pub. L. 113-79, §2002(d)(1), substituted “Farmable wetland program” for “Pilot program for enrollment of wetland and buffer acreage in conservation reserve” in section catchline.

Subsec. (a)(1). Pub. L. 113-79, §2002(a), substituted “2018” for “2012” and “a farmable wetland program” for “a program”.

Subsec. (b)(1)(B). Pub. L. 113-79, §2002(b), substituted “surface and subsurface flow from row crop agricultural production” for “flow from a row crop agriculture drainage system”.

Subsec. (c)(1)(B). Pub. L. 113-79, §2002(c), substituted “750,000” for “1,000,000”.

Subsec. (f)(2). Pub. L. 113-79, §2002(d)(2), substituted “section 3834(d)(2)(A)(ii)” for “section 3834(c)(2)(B)”.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 3832. Duties of owners and operators

(a) In general

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

tract, an owner or operator of a farm or ranch shall agree—

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

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

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

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

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

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

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

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

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

(5) to undertake management on the land as needed throughout the term of the contract to implement the conservation plan;

(6) 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;

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

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

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

unless the transferee of 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;

(8) 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 as provided in subsection (b) or (c) of section 3833 of this title;

(9) 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;

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

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

(b) Conservation plans

The plan referred to in subsection (a)(1) shall set forth—

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

(2) the commercial use, if any, to be permitted on the land during the term.

(c) Foreclosure

(1) In general

Notwithstanding any other provision of law, an owner or operator who is a party to a contract entered into under this subpart may not be required to make repayments to the Secretary of amounts received under the contract if the land that is subject to the contract has been foreclosed on and the Secretary determines that forgiving the repayments is appro-

priate in order to provide fair and equitable treatment.

(2) Resumption of control

(A) In general

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

(B) Contract

On the resumption of the control over the land by the owner or operator, the provisions of the contract in effect on the date of the foreclosure shall apply.

(Pub. L. 99-198, title XII, §1232, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 242; amended Pub. L. 108-7, div. N, title II, §212, Feb. 20, 2003, 117 Stat. 545; Pub. L. 110-234, title II, §§2107, 2108, May 22, 2008, 122 Stat. 1032, 1033; Pub. L. 110-246, §4(a), title II, §§2107, 2108, June 18, 2008, 122 Stat. 1664, 1760, 1761; Pub. L. 113-79, title II, §2003, Feb. 7, 2014, 128 Stat. 715.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3832, Pub. L. 99-198, title XII, §1232, Dec. 23, 1985, 99 Stat. 1509; Pub. L. 101-512, title I, Nov. 5, 1990, 104 Stat. 1919; Pub. L. 101-624, title XIV, §§1433, 1447(a), Nov. 28, 1990, 104 Stat. 3579, 3605; Pub. L. 102-237, title II, §204(5), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 102-552, title V, §516(a), Oct. 28, 1992, 106 Stat. 4136; Pub. L. 104-127, title III, §332(a)(2), Apr. 4, 1996, 110 Stat. 994; Pub. L. 106-78, title VII, §§763, 769, Oct. 22, 1999, 113 Stat. 1173, 1174; Pub. L. 106-387, §1(a) [title VIII, §817, title XI, §1103], Oct. 28, 2000, 114 Stat. 1549, 1549A-58, 1549A-77; Pub. L. 107-76, title VII, §§758(b), 759(b)(2), Nov. 28, 2001, 115 Stat. 741, related to duties of owners and operators, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (a)(8). Pub. L. 113-79, §2003(a), substituted “except as provided in subsection (b) or (c) of section 3833 of this title;” for “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)—” and struck out subpars. (A) to (D), which related to managed harvesting, commercial use in response to an emergency, grazing for the control of invasive species, and the installation of wind turbines, respectively.

Subsec. (b). Pub. L. 113-79, §2003(b), amended subsec. (b) generally. Prior to amendment, text read as follows: “The plan referred to in subsection (a)(1) of this section—

“(1) shall set forth—

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

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

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

Subsec. (d). Pub. L. 113-79, §2003(c), struck out subsec. (d). Text read as follows: “In the case of an authorized activity under subsection (a)(8) on land that is subject to a contract under this subpart, the Secretary shall

reduce the rental payment otherwise payable under the contract by an amount commensurate with the economic value of the authorized activity.”

2008—Subsec. (a)(5) to (7). Pub. L. 110-246, §2107, added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 110-246, §2108(a), added par. (8) and struck out former par. (8) which related to prohibition against harvesting, grazing, or other commercial use of the forage, with exception authorizing Secretary to permit managed harvesting and grazing if appropriate requirements were developed and timeframes identified or in a drought or other emergency, and exception for the installation of wind turbines.

Pub. L. 110-246, §2107(1), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9) to (11). Pub. L. 110-246, §2107(1), redesignated pars. (8) to (10) as (9) to (11), respectively.

Subsec. (d). Pub. L. 110-246, §2108(b), added subsec. (d). 2003—Subsec. (a)(7)(A)(iii). Pub. L. 108-7 inserted before semicolon “, 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”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3833. Duties of the Secretary

(a) Cost-share and rental payments

In return for a contract entered into by an owner or operator under the conservation reserve program, 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 or other eligible lands normally devoted to the production of an agricultural commodity on a farm or ranch to a less intensive use;

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

(C) the development and management of grasslands for multiple natural resource conservation benefits, including to soil, water, air, and wildlife.

(b) Specified activities permitted

The Secretary shall permit certain activities or commercial uses of land that is subject to a contract under the conservation reserve program if those activities or uses are consistent with a plan approved by the Secretary and include—

(1) harvesting, grazing, or other commercial use of the forage in response to a drought, flooding, or other emergency, without any reduction in the rental rate;

(2) consistent with the conservation of soil, water quality, and wildlife habitat (including

habitat during primary nesting seasons for birds in the area), and in exchange for a reduction of not less than 25 percent in the annual rental rate for the acres covered by the authorized activity, managed harvesting and other commercial use (including the managed harvesting of biomass), except that in permitting those activities, the Secretary, in coordination with the State technical committee—

(A) shall develop appropriate vegetation management requirements; and

(B) shall identify periods during which the activities may be conducted, such that the frequency is at least every 5 but not more than once every 3 years;

(3) subject to appropriate restrictions during the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by the Secretary in consultation with the State technical committee, and in exchange for a reduction of not less than 25 percent in the annual rental rate for the acres covered by the authorized activity—

(A) prescribed grazing for the control of invasive species, which may be conducted annually;

(B) routine grazing, except that in permitting such routine grazing, the Secretary, in coordination with the State technical committee—

(i) shall develop appropriate vegetation management requirements and stocking rates for the land that are suitable for continued routine grazing; and

(ii) shall identify the periods during which routine grazing may be conducted, such that the frequency is not more than once every 2 years, taking into consideration regional differences such as—

(I) climate, soil type, and natural resources;

(II) the number of years that should be required between routine grazing activities; and

(III) how often during a year in which routine grazing is permitted that routine grazing should be allowed to occur; and

(C) the installation of wind turbines and associated access, 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 threatened or endangered wildlife and wildlife habitat; and

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

(4) the intermittent and seasonal use of vegetative buffer practices incidental to agricultural production on lands adjacent to the buffer such that the permitted use does not destroy the permanent vegetative cover; and

(5) grazing by livestock of a beginning farmer or rancher without any reduction in the rental rate, if the grazing is—

(A) consistent with the conservation of soil, water quality, and wildlife habitat;

(B) subject to appropriate restrictions during the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by the Secretary in consultation with the State technical committee; and

(C) described in subparagraph (A) or (B) of paragraph (3).

(c) Authorized activities on grasslands

For eligible land described in section 3831(b)(3) of this title, the Secretary shall permit the following activities:

(1) 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 appropriate to that locality.

(2) Haying, mowing, or harvesting for seed production, subject to appropriate restrictions during the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by the Secretary in consultation with the State technical committee.

(3) Fire presuppression, fire-related rehabilitation, and construction of fire breaks.

(4) Grazing-related activities, such as fencing and livestock watering.

(d) Resource conserving use

(1) In general

Beginning on the date that is 1 year before the date of termination of a contract under the program, the Secretary shall allow an owner or operator to make conservation and land improvements for economic use that facilitate maintaining protection of enrolled land after expiration of the contract.

(2) Conservation plan

The Secretary shall require an owner or operator carrying out the activities described in paragraph (1) to develop and implement a conservation plan.

(3) Re-enrollment prohibited

Land improved under paragraph (1) may not be re-enrolled in the conservation reserve program for 5 years after the date of termination of the contract.

(4) Payment reduction

In the case of an activity carried out under paragraph (1), the Secretary shall reduce the payment otherwise payable under the contract by an amount commensurate with the economic value of the activity.

(Pub. L. 99-198, title XII, §1233, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 245; amended Pub. L. 113-79, title II, §2004, Feb. 7, 2014, 128 Stat. 715.)

PRIOR PROVISIONS

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

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section also related to duties of the Secretary.

§ 3834. Payments**(a) Timing**

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

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

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

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

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

(b) Cost sharing payments**(1) In general**

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

(2) Limitation

The Secretary shall not make any payment to an owner or operator under this subpart to the extent that the total amount of cost sharing payments provided to the owner or operator from all sources would exceed 100 percent of the total cost of establishing measures and practices described in paragraph (1).

(3) Trees, windbreaks, shelterbelts, and wildlife corridors**(A) Applicability**

This paragraph applies to land devoted to the production of hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract entered into under this subpart after November 28, 1990.

(B) Payments**(i) Percentage**

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 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).

(ii) Duration

The Secretary shall make payments as described in clause (i) for a period of not less than 2 years, but not more than 4 years, beginning on the date of the planting of the trees or shrubs.

(4) Hardwood tree planting

The Secretary may permit owners or operators that contract to devote at least 10 acres

of land to the production of hardwood trees under this subpart to extend the planting of the trees over a 3-year period if at least $\frac{1}{3}$ 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) Incentive payments**(1) In general**

The Secretary may make incentive payments to an owner or operator of eligible land in an amount sufficient to encourage proper thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land.

(2) Limitation

A payment described in paragraph (1) may not exceed 150 percent of the total cost of thinning and other practices conducted by the owner or operator.

(d) 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 or other eligible lands normally devoted to the production of an agricultural commodity to less intensive use, the Secretary may consider, among other things, the amount necessary to encourage owners or operators of highly erodible cropland or other eligible lands to participate in the program established by this subpart.

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

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

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

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

(B) Grasslands

In the case of eligible land described in section 3831(b)(3) of this title, the Secretary shall make annual payments in an amount that is not more than 75 percent of the grazing value of the land covered by the contract.

(3) Acceptance of contract offers**(A) Evaluation of offers**

In determining the acceptability of contract offers, the Secretary may 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, or wildlife habitat or provide other environmental benefits.

(B) Establishment of different criteria in various States and regions

The Secretary may establish different criteria for determining the acceptability of contract offers 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.

(C) Local preference

In determining the acceptability of contract offers for new enrollments, the Secretary shall accept, to the maximum extent practicable, an offer from an owner or operator that is a resident of the county in which the land is located or of a contiguous county if, as determined by the Secretary, the land would provide at least equivalent conservation benefits to land under competing offers.

(4) Hardwood tree acreage

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

(5) Rental rates

(A) Annual estimates

The Secretary (acting through the National Agricultural Statistics Service) shall, not less frequently than once every other year, conduct a survey of per acre estimates of county average market dryland and irrigated cash rental rates for cropland and pastureland in all counties or equivalent subdivisions within each State that have 20,000 acres or more of cropland and pastureland.

(B) Public availability of estimates

The estimates derived from the survey conducted under subparagraph (A) shall be maintained on a website of the Department of Agriculture for use by the general public.

(C) Use

The Secretary may use the estimates derived from the survey conducted under subparagraph (A) relating to dryland cash rental rates as a factor in determining rental rates under this section in a manner determined appropriate by the Secretary.

(e) Payment schedule

(1) In general

Except as otherwise provided in this section, payments under this subpart shall be made in cash in such amount and on such time schedule as is agreed on and specified in the contract.

(2) Advance payment

Payments under this subpart may be made in advance of determination of performance.

(f) Payments on death, disability, or succession

If an owner or operator that is entitled to a payment under a contract entered into under this subpart dies, becomes incompetent, is otherwise unable to receive the payment, or is succeeded by another person that renders or completes the required performance, the Sec-

retary 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.

(g) Payment limitation for rental payments

(1) In general

The total amount of rental payments received by a person or legal entity, directly or indirectly, under this subpart for any fiscal year may not exceed \$50,000.

(2) Special conservation reserve enhancement program

(A) In general

The provisions of this subsection that limit payments to any person or legal entity, and section 1305(d) of the Agricultural Reconciliation Act of 1987 (7 U.S.C. 1308 note; Public Law 100-203), shall not be applicable to payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by that entity that has been approved by the Secretary.

(B) Agreements

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

(h) Other State or local assistance

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

(Pub. L. 99-198, title XII, §1234, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 245; amended Pub. L. 110-234, title II, §§2109, 2110(a), (b)(1), (c), May 22, 2008, 122 Stat. 1034, 1035; Pub. L. 110-246, §4(a), title II, §§2109, 2110(a), (b)(1), (c), June 18, 2008, 122 Stat. 1664, 1762, 1763; Pub. L. 113-79, title II, §2005, Feb. 7, 2014, 128 Stat. 718.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3834, Pub. L. 99-198, title XII, §1234, Dec. 23, 1985, 99 Stat. 1511; Pub. L. 100-387, title III, §322, Aug. 11, 1988, 102 Stat. 950; Pub. L. 101-624, title XIV, §§1434, 1447(a), Nov. 28, 1990, 104 Stat. 3581, 3605, related to payments for obligations, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-79, §2005(b)(1)(A), struck out “Federal percentage of” before “cost sharing payments” in heading.

Subsec. (b)(3)(A). Pub. L. 113-79, §2005(a), amended subpar. (A) generally. Prior to amendment, text read as follows: “This paragraph applies to—

“(i) land devoted to the production of hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract entered into under this subpart after November 28, 1990;

“(ii) land converted to such production under section 3835a of this title; and

“(iii) land on which an owner or operator agrees to conduct thinning authorized by section 3832(a)(9) of this title, if the thinning is necessary to improve the condition of resources on the land.”

Subsec. (b)(3)(B)(i). Pub. L. 113–79, §2005(b)(1)(B)(i), struck out “or thinning” before period at end.

Subsec. (b)(3)(B)(ii). Pub. L. 113–79, §2005(b)(1)(B)(ii), amended cl. (ii) generally. Prior to amendment, text read as follows: “The Secretary shall make payments as described in clause (i) for a period of not less than 2 years, but not more than 4 years, beginning on the date of—

“(I) the planting of the trees or shrubs; or

“(II) the thinning of existing stands to improve the condition of resources on the land.”

Subsecs. (c), (d). Pub. L. 113–79, §2005(b)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 113–79, §2005(c)(1), inserted “or other eligible lands” after “highly erodible cropland” in two places.

Subsec. (d)(2). Pub. L. 113–79, §2005(c)(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The amounts payable to owners or operators in the form of rental payments under contracts entered into under this subpart may be determined through—

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

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

Subsec. (d)(5)(A). Pub. L. 113–79, §2005(c)(3)(A), substituted “, not less frequently than once every other year, conduct a survey” for “conduct an annual survey”.

Subsec. (d)(5)(B). Pub. L. 113–79, §2005(c)(3)(B), struck out “annual” before “survey”.

Subsec. (d)(5)(C). Pub. L. 113–79, §2005(c)(3)(C), added subpar. (C).

Subsec. (e). Pub. L. 113–79, §2005(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to cash or in-kind payments.

Pub. L. 113–79, §2005(b)(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 113–79, §2005(b)(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 113–79, §2005(e)(1), struck out “, including rental payments made in the form of in-kind commodities,” after “total amount of rental payments”.

Subsec. (g)(2) to (4). Pub. L. 113–79, §2005(e)(2), (3), redesignated par. (4) as (2) and struck out par. (3). Prior to amendment, text of par. (3) read as follows: “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.”

Subsec. (h). Pub. L. 113–79, §2005(b)(2), redesignated subsec. (g) as (h).

2008—Subsec. (b)(3). Pub. L. 110–246, §2109, added par. (3) and struck out former par. (3) which related to the making of payments to an owner or operator of land devoted to the production of hardwood trees, windbreaks, shelterbelts, or wildlife corridors.

Subsec. (c)(3). Pub. L. 110–246, §2110(a), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “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 qual-

ity, 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.”

Subsec. (c)(5). Pub. L. 110–246, §2110(b)(1), added par. (5).

Subsec. (f)(1). Pub. L. 110–246, §2110(c)(1), substituted “received by a person or legal entity, directly or indirectly,” for “made to a person”.

Subsec. (f)(2). Pub. L. 110–246, §2110(c)(2), struck out par. (2) which related to promulgation of regulations defining the term “person” as used in subsec. (f) and providing terms and conditions determined necessary to ensure a fair and reasonable application of the subsec. (f) limitation.

Subsec. (f)(4)(A). Pub. L. 110–246, §2110(c)(3), substituted “any person or legal entity” for “any person”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

FIRST SURVEY PURSUANT TO SUBSECTION (c)(5)

Pub. L. 110–234, title II, §2110(b)(2), May 22, 2008, 122 Stat. 1035, and Pub. L. 110–246, §4(a), title II, §2110(b)(2), June 18, 2008, 122 Stat. 1664, 1763, provided that: “The first survey required by paragraph (5) of section 1234(c) [now 1234(d)] of the Food Security Act of 1985 (16 U.S.C. 3834(c) [now 16 U.S.C. 3834(d)]), as added by subsection (a), shall be conducted not later than 1 year after the date of enactment of this Act [June 18, 2008].”

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

CONSERVATION RESEARCH APPLICATION

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

§ 3835. Contracts

(a) Ownership or operation requirements

(1) In general

Except as provided in paragraph (2), no contract shall be entered into under this subpart concerning land with respect to which the ownership has changed in the 1-year period preceding the first year of the contract period unless—

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

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

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

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

(2) Exceptions

Paragraph (1) shall not—

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

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

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

(ii) controls the land for the contract period.

(b) Sales or transfers

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

(1) continue the contract under the same terms or conditions;

(2) enter into a new contract in accordance with this subpart; or

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

(c) Modifications

(1) In general

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

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

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

(i) to carry out this subpart;

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

(iii) to facilitate a transition of land subject to the contract from a retired or retiring owner or operator to a beginning farmer or rancher or socially disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods; or

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

(2) Production of agricultural commodities

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

(d) Termination

(1) In general

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

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

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

(2) Notice to congressional committees

At least 90 days before taking any action to terminate under paragraph (1) all conservation

reserve contracts entered into under this subpart, the Secretary shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate written notice of the action.

(e) Early termination by owner or operator

(1) Early termination

(A) In general

During fiscal year 2015, the Secretary shall allow a participant that entered into a contract under this subpart 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) Land devoted to hardwood trees.

(D) Wildlife habitat, duck nesting habitat, pollinator habitat, upland bird habitat buffer, wildlife food plots, State acres for wildlife enhancement, shallow water areas for wildlife, and rare and declining habitat.

(E) Farmable wetland and restored wetland.

(F) Land that contains diversions, erosion control structures, flood control structures, contour grass strips, living snow fences, salinity reducing vegetation, cross wind trap strips, and sediment retention structures.

(G) Land located within a federally designated wellhead protection area.

(H) Land that is covered by an easement under the conservation reserve program.

(I) Land located within an average width, according to the applicable Natural Resources Conservation Service field office technical guide, of a perennial stream or permanent water body.

(J) Land enrolled under the conservation reserve enhancement program.

(3) Effective date

The contract termination shall become effective upon approval by the Secretary.

(4) Prorated rental payment

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

(5) Renewed enrollment

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

(6) Conservation requirements

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

(f) Transition option for certain farmers or ranchers**(1) Transition to covered farmer or rancher**

In the case of a contract modification approved in order to facilitate the transfer of land subject to a contract from a retired farmer or rancher to a beginning farmer or rancher, a veteran farmer or rancher (as defined in section 2279(e) of title 7), or a socially disadvantaged farmer or rancher (in this subsection referred to as a “covered farmer or rancher”), the Secretary shall—

(A) beginning on the date that is 1 year before the date of termination of the contract—

(i) allow the covered farmer or rancher, in conjunction with the retired or retiring owner or operator, to make conservation and land improvements, including preparing to plant an agricultural crop; and

(ii) allow the covered farmer or rancher to begin the certification process under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.);

(B) beginning on the date of termination of the contract, require the retired or retiring owner or operator to sell or lease (under a long-term lease or a lease with an option to purchase) to the covered farmer or rancher the land subject to the contract for production purposes;

(C) require the covered farmer or rancher to develop and implement a conservation plan;

(D) provide to the covered farmer or rancher an opportunity to enroll in the conservation stewardship program or the environmental quality incentives program by not later than the date on which the covered farmer or rancher takes possession of the land through ownership or lease; and

(E) continue to make annual payments to the retired or retiring owner or operator for not more than an additional 2 years after the date of termination of the contract, if the retired or retiring owner or operator is not a family member (as defined in section 1308 of title 7) of the covered farmer or rancher.

(2) Reenrollment

The Secretary shall provide a covered farmer or rancher with the option to reenroll any

applicable partial field conservation practice that—

(A) is eligible for enrollment under the continuous signup option pursuant to section 3834(d)(2)(A)(ii) of this title; and

(B) is part of an approved conservation plan.

(g) Final year of contract

The Secretary shall not consider an owner or operator to be in violation of a term or condition of the conservation reserve contract if—

(1) during the year prior to expiration of the contract, the land is enrolled in the conservation stewardship program; and

(2) the activity required under the conservation stewardship program pursuant to such enrollment is consistent with this subpart.

(h) Land enrolled in agricultural conservation easement program

The Secretary may terminate or modify a contract entered into under this subpart if eligible land that is subject to such contract is transferred into the agricultural conservation easement program under subchapter VII.

(Pub. L. 99-198, title XII, §1235, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 249; amended Pub. L. 110-234, title II, §2111, May 22, 2008, 122 Stat. 1035; Pub. L. 110-246, §4(a), title II, §2111, June 18, 2008, 122 Stat. 1664, 1763; Pub. L. 113-79, title II, §2006, Feb. 7, 2014, 128 Stat. 719.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (f)(1)(A)(ii), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3835, Pub. L. 99-198, title XII, §1235, Dec. 23, 1985, 99 Stat. 1513; Pub. L. 100-233, title VIII, §801, Jan. 6, 1988, 101 Stat. 1710; Pub. L. 101-624, title XIV, §1447(a), Nov. 28, 1990, 104 Stat. 3605; Pub. L. 104-127, title III, §332(c), Apr. 4, 1996, 110 Stat. 994, related to contracts, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (e)(1)(A). Pub. L. 113-79, §2006(a)(1), substituted “During fiscal year 2015, the Secretary” for “The Secretary” and struck out “before January 1, 1995,” after “under this subpart”.

Subsec. (e)(2)(C) to (J). Pub. L. 113-79, §2006(a)(2), added subpars. (C) to (J) and struck out former subpar. (C) which read as follows: “Other land of high environmental value (including wetland), as determined by the Secretary.”

Subsec. (e)(3). Pub. L. 113-79, §2006(a)(3), substituted “upon approval by the Secretary” for “60 days after the date on which the owner or operator submits the notice required under paragraph (1)(C)”.

Subsec. (f)(1). Pub. L. 113-79, §2006(b)(1)(A), substituted “Transition to covered farmer or rancher” for “Duties of the Secretary” in heading and, in introduc-

tory provisions, substituted “In the case of a contract modification approved in order to facilitate the transfer of land subject to a contract from a retired farmer or rancher to a beginning farmer or rancher, a veteran farmer or rancher (as defined in section 2279(e) of title 7), or a” for “In the case of a contract modification approved in order to facilitate the transfer, as described in subsection (c)(1)(B)(iii), of land to a beginning farmer or rancher or”.

Subsec. (f)(1)(A)(i). Pub. L. 113–79, §2006(b)(1)(B), inserted “, including preparing to plant an agricultural crop” after “improvements”.

Subsec. (f)(1)(D). Pub. L. 113–79, §2006(b)(1)(C), substituted “the covered farmer or rancher” for “the farmer or rancher”.

Subsec. (f)(1)(E). Pub. L. 113–79, §2006(b)(1)(D), substituted “section 1308” for “section 1308–1(b)(3)(B)”.

Subsec. (f)(2)(A). Pub. L. 113–79, §2006(b)(2), substituted “option pursuant to section 3834(d)(2)(A)(ii)” for “requirement of section 3831(h)(4)(B)”.

Subsecs. (g), (h). Pub. L. 113–79, §2006(c), added subsecs. (g) and (h).

2008—Subsec. (c)(1)(B)(iii), (iv). Pub. L. 110–246, §2111(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (f). Pub. L. 110–246, §2111(b), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

CONSERVATION RESERVE

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

§ 3835a. Repealed. Pub. L. 113–79, title II, § 2007, Feb. 7, 2014, 128 Stat. 720

Section, Pub. L. 99–198, title XII, §1235A, as added Pub. L. 107–171, title II, §2101(a), May 13, 2002, 116 Stat. 251, related to conversion of land subject to contract to other conserving uses.

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

Section 3835a, Pub. L. 99–198, title XII, §1235A, as added Pub. L. 101–624, title XIV, §1435, Nov. 28, 1990, 104 Stat. 3582; amended Pub. L. 102–324, §1(b), July 22, 1992, 106 Stat. 447, related to conversion of land subject to contract to other conserving uses.

Section 3836, Pub. L. 99–198, title XII, §1236, Dec. 23, 1985, 99 Stat. 1514; Pub. L. 101–624, title XIV, §§1436, 1447(a), Nov. 28, 1990, 104 Stat. 3583, 3605; Pub. L. 107–76, title VII, §759(b)(1), Nov. 28, 2001, 115 Stat. 741, related to cropland base and allotment history.

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

SUBPART C—WETLANDS RESERVE PROGRAM

§§ 3837 to 3837f. Repealed. Pub. L. 113–79, title II, § 2703(a), Feb. 7, 2014, 128 Stat. 767

Section 3837, Pub. L. 99–198, title XII, §1237, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat.

3584; amended Pub. L. 102–237, title II, §204(6), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 103–66, title I, §1402(c), Aug. 10, 1993, 107 Stat. 333; Pub. L. 104–127, title III, §333(a)–(c), Apr. 4, 1996, 110 Stat. 995; Pub. L. 105–277, div. A, §101(a) [title VII, §752], Oct. 21, 1998, 112 Stat. 2681, 2681–32; Pub. L. 107–171, title II, §§2201, 2202, May 13, 2002, 116 Stat. 252; Pub. L. 110–234, title II, §§2201–2203(a), May 22, 2008, 122 Stat. 1036, 1037; Pub. L. 110–246, §4(a), title II, §§2201–2203(a), June 18, 2008, 122 Stat. 1664, 1764, 1765, related to establishment of wetlands reserve program by Secretary.

Section 3837a, Pub. L. 99–198, title XII, §1237A, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3585; amended Pub. L. 104–127, title III, §333(d), Apr. 4, 1996, 110 Stat. 996; Pub. L. 107–171, title II, §2203, May 13, 2002, 116 Stat. 252; Pub. L. 110–234, title II, §§2204–2206, May 22, 2008, 122 Stat. 1038, 1039; Pub. L. 110–246, §4(a), title II, §§2204–2206, June 18, 2008, 122 Stat. 1664, 1766, 1767, related to easements and agreements.

Section 3837b, Pub. L. 99–198, title XII, §1237B, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587, related to duties of owners.

Section 3837c, Pub. L. 99–198, title XII, §1237C, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587; amended Pub. L. 104–127, title III, §333(e), Apr. 4, 1996, 110 Stat. 996; Pub. L. 110–234, title II, §2207, May 22, 2008, 122 Stat. 1039; Pub. L. 110–246, §4(a), title II, §2207, June 18, 2008, 122 Stat. 1664, 1767, related to duties of Secretary.

Section 3837d, Pub. L. 99–198, title XII, §1237D, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3588; amended Pub. L. 105–277, div. A, §101(a) [title VII, §751], Oct. 21, 1998, 112 Stat. 2681, 2681–32; Pub. L. 110–234, title II, §§2208, 2209, May 22, 2008, 122 Stat. 1040; Pub. L. 110–246, §4(a), title II, §§2208, 2209, June 18, 2008, 122 Stat. 1664, 1768, related to payments.

Section 3837e, Pub. L. 99–198, title XII, §1237E, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589; amended Pub. L. 107–171, title II, §2204, May 13, 2002, 116 Stat. 253; Pub. L. 110–234, title II, §2203(b), May 22, 2008, 122 Stat. 1037; Pub. L. 110–246, §4(a), title II, §2203(b), June 18, 2008, 122 Stat. 1664, 1765, related to changes in ownership; agreement modification; termination.

Section 3837f, Pub. L. 99–198, title XII, §1237F, as added Pub. L. 101–624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589; Pub. L. 110–234, title II, §2203(c), May 22, 2008, 122 Stat. 1037; Pub. L. 110–246, §4(a), title II, §2203(c), June 18, 2008, 122 Stat. 1664, 1765, related to administration and funding.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113–79, title II, §2703, Feb. 7, 2014, 128 Stat. 767, provided that:

“(a) REPEAL.—Except as provided in subsection (b), subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837 et seq.) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS, AGREEMENTS, AND EASEMENTS.—The amendment made by this section [repealing sections 3837 to 3837f of this title] shall not affect the validity or terms of any contract, agreement, or easement entered into by the Secretary of Agriculture under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3837 et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract, agreement, or easement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3837 et seq.), any funds made available from the Commodity Credit Corporation to carry out the wetlands reserve program under that subchapter for fiscal years 2009 through 2013 shall be made available to carry out contracts, agreements, or easements referred to in paragraph

(1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance), provided that no such contract, agreement, or easement is modified so as to increase the amount of the payment received.

“(B) OTHER.—The Secretary [of Agriculture] may use funds made available to carry out the agricultural conservation easement program under subtitle H of title XII of the Food Security Act of 1985 [16 U.S.C. 3865 et seq.], as added by section 2301, to continue to carry out contracts, agreements, and easements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts, agreements, and easements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Pub. L. 104-127, title III, § 333(f), Apr. 4, 1996, 110 Stat. 996, provided that: “The amendments made by this section [amending former sections 3837, 3837a, and 3837c of this title] shall not affect the validity or terms of any agreements entered into by the Secretary of Agriculture under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3837 et seq.) before the date of enactment of this Act [Apr. 4, 1996] or any payments required to be made in connection with the agreements.”

PART II—CONSERVATION SECURITY AND FARMLAND PROTECTION

SUBPART A—CONSERVATION SECURITY PROGRAM

§ 3838. Definitions

In this subpart:

(1) Base payment

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

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

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

(2) Beginning farmer or rancher

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

(3) Conservation practice

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

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

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

(4) Conservation security contract

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

(5) Conservation security plan

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

(6) Conservation security program

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

(7) Enhanced payment

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

(8) Nondegradation standard

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

(9) Producer

(A) In general

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

(i) shares in the risk of producing any crop or livestock; and

(ii) is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

(B) Hybrid seed growers

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

(10) Resource-conserving crop rotation

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

(A) includes at least 1 resource-conserving crop (as defined by the Secretary);

(B) reduces erosion;

(C) improves soil fertility and tilth;

(D) interrupts pest cycles; and

(E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).

(11) Resource management system

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

(12) Secretary

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

(13) Tier I conservation security contract

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

(14) Tier II conservation security contract

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

(15) Tier III conservation security contract

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

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

PRIOR PROVISIONS

A prior section 3838, Pub. L. 99-198, title XII, § 1238, as added Pub. L. 101-624, title XIV, § 1439, Nov. 28, 1990, 104 Stat. 3590, related to policy of Congress on water quality protection, prior to repeal by Pub. L. 104-127, title III, § 336(h), Apr. 4, 1996, 110 Stat. 1007.

REGULATIONS

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

§ 3838a. Conservation security program

(a) In general

The Secretary shall establish and, for each of fiscal years 2003 through 2011, carry out a conservation security program to assist producers of agricultural operations in promoting, as is applicable with respect to land to be enrolled in the program, conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes, as determined by the Secretary.

(b) Eligibility

(1) Eligible producers

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

(A) develop and submit to the Secretary, and obtain the approval of the Secretary of, a conservation security plan that meets the requirements of subsection (c)(1) of this section; and

(B) enter into a conservation security contract with the Secretary to carry out the conservation security plan.

(2) Eligible land

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

(3) Exclusions

(A) Conservation reserve program

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

(B) Wetlands reserve program

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

(C) Grassland reserve program

Land enrolled in the grassland reserve program established under subpart D of this

part shall not be eligible for enrollment in the conservation security program.

(D) Conversion to cropland

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

(4) Economic uses

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

(A) maintain the agricultural nature of the land; and

(B) are consistent with the natural resource and conservation objectives of the conservation security program.

(c) Conservation security plans

(1) In general

A conservation security plan shall—

(A) identify the designated land and resources to be conserved under the conservation security plan;

(B) describe the tier of conservation security contract, and the particular conservation practices to be implemented, maintained, or improved, in accordance with subsection (d) of this section on the land covered by the conservation security contract for the specified term; and

(C) contain a schedule for the implementation, maintenance, or improvement of the conservation practices described in the conservation security plan during the term of the conservation security contract.

(2) Resource planning

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

(d) Conservation contracts and practices

(1) In general

(A) Establishment of tiers

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

(B) Eligible conservation practices

(i) In general

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

(ii) Determination

In determining the eligibility of a practice described in clause (i), the Secretary

shall require, to the maximum extent practicable, that the lowest cost alternatives be used to fulfill the purposes of the conservation security plan, as determined by the Secretary.

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

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

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

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

(A) Use of handbook and guides

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

(B) State and local conservation priorities

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

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

(4) Conservation practices

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

- (A) nutrient management;
- (B) integrated pest management;
- (C) water conservation (including through irrigation) and water quality management;
- (D) grazing, pasture, and rangeland management;
- (E) soil conservation, quality, and residue management;
- (F) invasive species management;
- (G) fish and wildlife habitat conservation, restoration, and management;
- (H) air quality management;
- (I) energy conservation measures;
- (J) biological resource conservation and regeneration;
- (K) contour farming;
- (L) strip cropping;
- (M) cover cropping;
- (N) controlled rotational grazing;
- (O) resource-conserving crop rotation;
- (P) conversion of portions of cropland from a soil-depleting use to a soil-conserving use, including production of cover crops;
- (Q) partial field conservation practices;
- (R) native grassland and prairie protection and restoration; and
- (S) any other conservation practices that the Secretary determines to be appropriate

and comparable to other conservation practices described in this paragraph.

(5) Tiers

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

(A) Tier I conservation security contracts

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

- (i) be for a period of 5 years; and
- (ii) include conservation practices appropriate for the agricultural operation, that, at a minimum (as determined by the Secretary)—

(I) address at least 1 significant resource of concern for the enrolled portion of the agricultural operation at a level that meets the appropriate nondegradation standard; and

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

(B) Tier II conservation security contracts

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

- (i) be for a period of not less than 5 nor more than 10 years, as determined by the producer;
- (ii) include conservation practices appropriate for the agricultural operation, that, at a minimum—

(I) address at least 1 significant resource of concern for the entire agricultural operation, as determined by the Secretary, at a level that meets the appropriate nondegradation standard; and

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

(C) Tier III conservation security contracts

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

- (i) be for a period of not less than 5 nor more than 10 years, as determined by the producer; and
- (ii) include conservation practices appropriate for the agricultural operation that, at a minimum—

(I) apply a resource management system that meets the appropriate nondegradation standard for all resources of concern of the entire agricultural operation, as determined by the Secretary; and

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

(6) Minimum requirements

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

(e) Conservation security contracts**(1) In general**

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

(2) Modification**(A) Optional modifications**

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

(B) Other modifications**(i) In general**

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

(ii) Participation in other programs

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

(I) simultaneously participate in—

(aa) the conservation security program;

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

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

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

(3) Termination**(A) Optional termination**

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

(i) the producer is in full compliance with the terms and conditions (including any maintenance requirements) of the 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) of this section, to ensure that a producer shall not be considered in violation of a conservation security contract for failure to comply with the conservation security contract due to circumstances beyond the control of the producer, including a disaster or related condition, as determined by the Secretary.

(g) Prohibition on conservation security program contracts; effect on existing contracts**(1) Prohibition**

A conservation security contract may not be entered into or renewed under this subpart after September 30, 2008.

(2) Exception

This subpart, and the terms and conditions of the conservation security program, shall continue to apply to—

(A) conservation security contracts entered into on or before September 30, 2008; and

(B) any conservation security contract entered into after that date, but for which the application for the contract was received during the 2008 sign-up period.

(3) Effect on payments

The Secretary shall make payments under this subpart with respect to conservation security contracts described in paragraph (2) during the remaining term of the contracts.

(4) Regulations

A contract described in paragraph (2) may not be administered under the regulations is—

sued to carry out the conservation stewardship program.

(Pub. L. 99-198, title XII, §1238A, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 225; amended Pub. L. 109-171, title I, §1202(a), Feb. 8, 2006, 120 Stat. 5; Pub. L. 110-234, title II, §2301(b), (c), May 22, 2008, 122 Stat. 1047, 1048; Pub. L. 110-246, §4(a), title II, §2301(b), (c), June 18, 2008, 122 Stat. 1664, 1775, 1776.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3838a, Pub. L. 99-198, title XII, §1238A, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, defined terms for purposes of this part, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110-246, §2301(c), substituted “subpart D” for “subpart C”.

Subsec. (g). Pub. L. 110-246, §2301(b), added subsec. (g).

2006—Subsec. (a). Pub. L. 109-171 substituted “2011” for “2007”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3838b. Duties of producers

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

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

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

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

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

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

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

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

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

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

PRIOR PROVISIONS

A prior section 3838b, Pub. L. 99-198, title XII, §1238B, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, directed Secretary to formulate and carry out agricultural water quality protection program, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

§ 3838c. Duties of the Secretary

(a) Timing of payments

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

(b) Annual payments

(1) Criteria for determining amount of payments

(A) Base payment

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

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

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

(B) Payments

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

(C) Tier I conservation security contracts

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

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

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

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

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

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

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

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

managed rotational grazing, or conservation buffer practices);

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

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

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

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

(D) Tier II conservation security contracts

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

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

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

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

(E) Tier III conservation security contracts

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

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

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

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

(2) Limitation on payments

(A) In general

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

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

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

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

(B) Limitation on base payments

In applying the payment limitation under each of clauses (i), (ii), and (iii) of subparagraph (A), an individual or entity may not

receive, directly or indirectly, payments described in clause (i) of paragraph (1)(C), (1)(D), or (1)(E), as appropriate, in an amount that exceeds—

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

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

(C) Other USDA payments

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

(D) Commensurate share

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

(3) Equipment or facilities

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

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

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

(c) Minimum practice requirement

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

(d) Regulations

The Secretary shall promulgate regulations that—

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

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

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

(1) In general

Except as provided in paragraph (2), the transfer, or change in the interest, of a producer in land subject to a conservation secu-

rity contract shall result in the termination of the conservation security contract.

(2) Transfer of duties and rights

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

(f) Enrollment procedure

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

(g) Technical assistance

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

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

PRIOR PROVISIONS

A prior section 3838c, Pub. L. 99-198, title XII, §1238C, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3594, related to lands eligible for enrollment in water quality protection program, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

SUBPART B—CONSERVATION STEWARDSHIP PROGRAM

PRIOR PROVISIONS

A prior subpart B, consisting of sections 3838h to 3838j, was redesignated subpart C of this part by Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768, and subsequently repealed by Pub. L. 113-79, title II, §2704(a), Feb. 7, 2014, 128 Stat. 767.

AMENDMENTS

2014—Pub. L. 113-79, title II, §2101(a), Feb. 7, 2014, 128 Stat. 721, amended subpart heading generally.

§ 3838d. Definitions

In this subpart:

(1) Agricultural operation

The term “agricultural operation” means all eligible land, whether or not contiguous, that is—

(A) under the effective control of a producer at the time the producer enters into a contract under the program; and

(B) operated with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations, as determined by the Secretary.

(2) Conservation activities

(A) In general

The term “conservation activities” means conservation systems, practices, or management measures.

(B) Inclusions

The term “conservation activities” includes—

(i) structural measures, vegetative measures, and land management measures, including agriculture drainage management systems, as determined by the Secretary; and

(ii) planning needed to address a priority resource concern.

(3) Conservation stewardship plan

The term “conservation stewardship plan” means a plan that—

(A) identifies and inventories priority resource concerns;

(B) establishes benchmark data and conservation objectives;

(C) describes conservation activities to be implemented, managed, or improved; and

(D) includes a schedule and evaluation plan for the planning, installation, and management of the new and existing conservation activities.

(4) Eligible land

(A) In general

The term “eligible land” means—

(i) private or tribal land on which agricultural commodities, livestock, or forest-related products are produced; and

(ii) lands associated with the land described in clause (i) on which priority resource concerns could be addressed through a contract under the program.

(B) Inclusions

The term “eligible land” includes—

(i) cropland;

(ii) grassland;

(iii) rangeland;

(iv) pasture land;

(v) nonindustrial private forest land; and

(vi) other land in agricultural areas (including cropped woodland, marshes, and agricultural land used or capable of being used for the production of livestock), as determined by the Secretary.

(5) Priority resource concern

The term “priority resource concern” means a natural resource concern or problem, as determined by the Secretary, that—

(A) is identified at the national, State, or local level as a priority for a particular area of a State;

(B) represents a significant concern in a State or region; and

(C) is likely to be addressed successfully through the implementation of conservation activities under this program.

(6) Program

The term “program” means the conservation stewardship program established by this subpart.

(7) Stewardship threshold

The term “stewardship threshold” means the level of management required, as determined by the Secretary, to conserve and improve the quality and condition of a natural resource.

(Pub. L. 99-198, title XII, §1238D, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1768; Pub. L. 113-79, title II, §2101(a), Feb. 7, 2014, 128 Stat. 721.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3838d, Pub. L. 99-198, title XII, §1238D, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3595, related to technical assistance for water quality protection, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section defined terms for this subpart.

EFFECTIVE DATE

Enactment of this subpart and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113-79, title II, §2101(b), Feb. 7, 2014, 128 Stat. 728, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending sections 3838d to 3838g of this title] shall not affect the validity or terms of any contract entered into by the Secretary of Agriculture under subchapter B of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838d et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract.

“(2) CONSERVATION STEWARDSHIP PROGRAM.—Funds made available under section 1241(a)(4) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(4)) (as amended by section 2601(a) of this title) may be used to administer and make payments to program participants that enrolled into contracts during any of fiscal years 2009 through 2013.”

§ 3838e. Conservation stewardship program

(a) Establishment and purpose

During each of fiscal years 2014 through 2018, the Secretary shall carry out a conservation stewardship program to encourage producers to address priority resource concerns and improve and conserve the quality and condition of natural resources in a comprehensive manner—

- (1) by undertaking additional conservation activities; and
- (2) by improving, maintaining, and managing existing conservation activities.

(b) Exclusions

(1) Land enrolled in other conservation programs

Subject to paragraph (2), the following land (even if covered by the definition of eligible land) is not eligible for enrollment in the program:

- (A) Land enrolled in the conservation reserve program, unless—
 - (i) the conservation reserve contract will expire at the end of the fiscal year in

which the land is to be enrolled in the program; and

- (ii) conservation reserve program payments for land enrolled in the program cease before the first program payment is made to the applicant under this subpart.

(B) Land enrolled in a wetland reserve easement through the agricultural conservation easement program.

(C) Land enrolled in the conservation security program.

(2) Conversion to cropland

Eligible land used for crop production after February 7, 2014, 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 shall not be the basis for any payment under the program, unless the land does not meet such requirement because—

(A) the land had previously been enrolled in the conservation reserve program;

(B) the land has been maintained using long-term crop rotation practices, as determined by the Secretary; or

(C) the land is incidental land needed for efficient operation of the farm or ranch, as determined by the Secretary.

(Pub. L. 99-198, title XII, §1238E, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1041, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1769; amended Pub. L. 112-55, div. A, title VII, §716(b), Nov. 18, 2011, 125 Stat. 582; Pub. L. 113-79, title II, §2101(a), Feb. 7, 2014, 128 Stat. 722.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3838e, Pub. L. 99-198, title XII, §1238E, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596, related to demonstration and pilot programs, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section related to conservation stewardship program.

2011—Subsec. (a). Pub. L. 112-55 substituted “2014” for “2012”.

§ 3838f. Stewardship contracts

(a) Submission of contract offers

To be eligible to participate in the conservation stewardship program, a producer shall submit to the Secretary a contract offer for the agricultural operation that—

- (1) demonstrates to the satisfaction of the Secretary that the producer, at the time of the contract offer, meets or exceeds the stewardship threshold for at least 2 priority resource concerns; and

- (2) would, at a minimum, meet or exceed the stewardship threshold for at least 1 additional priority resource concern by the end of the stewardship contract by—

- (A) installing and adopting additional conservation activities; and

(B) improving, maintaining, and managing existing conservation activities across the entire agricultural operation in a manner that increases or extends the conservation benefits in place at the time the contract offer is accepted by the Secretary.

(b) Evaluation of contract offers

(1) Ranking of applications

In evaluating contract offers submitted under subsection (a), the Secretary shall rank applications based on—

(A) the level of conservation treatment on all applicable priority resource concerns at the time of application;

(B) the degree to which the proposed conservation activities effectively increase conservation performance;

(C) the number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract;

(D) the extent to which other priority resource concerns will be addressed to meet or exceed the stewardship threshold by the end of the contract period;

(E) the extent to which the actual and anticipated conservation benefits from the contract are provided at the least cost relative to other similarly beneficial contract offers; and

(F) the extent to which priority resource concerns will be addressed when transitioning from the conservation reserve program to agricultural production.

(2) Prohibition

The Secretary may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(3) Additional criteria

The Secretary may develop and use such additional criteria that the Secretary determines are necessary to ensure that national, State, and local priority resource concerns are effectively addressed.

(c) Entering into contracts

After a determination that a producer is eligible for the program under subsection (a), and a determination that the contract offer ranks sufficiently high under the evaluation criteria under subsection (b), the Secretary shall enter into a conservation stewardship contract with the producer to enroll the eligible land to be covered by the contract.

(d) Contract provisions

(1) Term

A conservation stewardship contract shall be for a term of 5 years.

(2) Required provisions

The conservation stewardship contract of a producer shall—

(A) state the amount of the payment the Secretary agrees to make to the producer for each year of the conservation stewardship contract under section 3838g(d) of this title;

(B) require the producer—

(i) to implement a conservation stewardship plan that describes the program purposes to be achieved through 1 or more conservation activities;

(ii) to maintain and supply information as required by the Secretary to determine compliance with the conservation stewardship plan and any other requirements of the program; and

(iii) not to conduct any activities on the agricultural operation that would tend to defeat the purposes of the program;

(C) permit all economic uses of the eligible land that—

(i) maintain the agricultural nature of the land; and

(ii) are consistent with the conservation purposes of the conservation stewardship contract;

(D) include a provision to ensure that a producer shall not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the producer, including a disaster or related condition, as determined by the Secretary;

(E) include provisions requiring that upon the violation of a term or condition of the contract at any time the producer has control of the land—

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

(I) the producer shall forfeit all rights to receive payments under the contract; and

(II) the producer shall refund all or a portion of the payments received by the producer under the contract, including any interest on the payments, as determined by the Secretary; or

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

(F) include provisions in accordance with paragraphs (3) and (4); and

(G) include any additional provisions the Secretary determines are necessary to carry out the program.

(3) Change of interest in land subject to a contract

(A) In general

At the time of application, a producer shall have control of the eligible land to be enrolled in the program. Except as provided in subparagraph (B), a change in the interest of a producer in eligible land covered by a contract under the program shall result in the termination of the contract with regard to that land.

(B) Transfer of duties and rights

Subparagraph (A) shall not apply if—

(i) within a reasonable period of time (as determined by the Secretary) after the

date of the change in the interest in eligible land covered by a contract under the program, the transferee of the land provides written notice to the Secretary that all duties and rights under the contract have been transferred to, and assumed by, the transferee for the portion of the land transferred;

(ii) the transferee meets the eligibility requirements of the program; and

(iii) the Secretary approves the transfer of all duties and rights under the contract.

(4) Modification and termination of contracts

(A) Voluntary modification or termination

The Secretary may modify or terminate a contract with a producer if—

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

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

(B) Involuntary termination

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

(5) Repayment

If a contract is terminated, the Secretary may, consistent with the purposes of the program—

(A) allow the producer to retain payments already received under the contract; or

(B) require repayment, in whole or in part, of payments received and assess liquidated damages.

(e) Contract renewal

At the end of the initial 5-year contract period, the Secretary may allow the producer to renew the contract for 1 additional 5-year period if the producer—

(1) demonstrates compliance with the terms of the initial contract;

(2) agrees to adopt and continue to integrate conservation activities across the entire agricultural operation, as determined by the Secretary; and

(3) agrees, by the end of the contract period—

(A) to meet the stewardship threshold of at least 2 additional priority resource concerns on the agricultural operation; or

(B) to exceed the stewardship threshold of 2 existing priority resource concerns that are specified by the Secretary in the initial contract.

(Pub. L. 99-198, title XII, §1238F, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1042, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1770; Pub. L. 113-79, title II, §2101(a), Feb. 7, 2014, 128 Stat. 723.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3838f, Pub. L. 99-198, title XII, §1238F, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990,

104 Stat. 3596, related to report to Congress, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section related to stewardship contracts.

§ 3838g. Duties of the Secretary

(a) In general

To achieve the conservation goals of a contract under the conservation stewardship program, the Secretary shall—

(1) make the program available to eligible producers on a continuous enrollment basis with 1 or more ranking periods, 1 of which shall occur in the first quarter of each fiscal year;

(2) identify not less than 5 priority resource concerns in a particular watershed or other appropriate region or area within a State; and

(3) establish a science-based stewardship threshold for each priority resource concern identified under paragraph (2).

(b) Allocation to States

The Secretary shall allocate acres to States for enrollment, based—

(1) primarily on each State's proportion of eligible land to the total acreage of eligible land in all States; and

(2) also on consideration of—

(A) the extent and magnitude of the conservation needs associated with agricultural production in each State;

(B) the degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs; and

(C) other considerations to achieve equitable geographic distribution of funds, as determined by the Secretary.

(c) Acreage enrollment limitation

During the period beginning on February 7, 2014, and ending on September 30, 2022, the Secretary shall, to the maximum extent practicable—

(1) enroll in the program an additional 10,000,000 acres for each fiscal year; and

(2) manage the program to achieve a national average rate of \$18 per acre, which shall include the costs of all financial assistance, technical assistance, and any other expenses associated with enrollment or participation in the program.

(d) Conservation stewardship payments

(1) Availability of payments

The Secretary shall provide annual payments under the program to compensate the producer for—

(A) installing and adopting additional conservation activities; and

(B) improving, maintaining, and managing conservation activities in place at the agricultural operation of the producer at the time the contract offer is accepted by the Secretary.

(2) Payment amount

The amount of the annual payment shall be determined by the Secretary and based, to the

maximum extent practicable, on the following factors:

(A) Costs incurred by the producer associated with planning, design, materials, installation, labor, management, maintenance, or training.

(B) Income forgone by the producer.

(C) Expected conservation benefits.

(D) The extent to which priority resource concerns will be addressed through the installation and adoption of conservation activities on the agricultural operation.

(E) The level of stewardship in place at the time of application and maintained over the term of the contract.

(F) The degree to which the conservation activities will be integrated across the entire agricultural operation for all applicable priority resource concerns over the term of the contract.

(G) Such other factors as are determined appropriate by the Secretary.

(3) Exclusions

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

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

(B) conservation activities for which there is no cost incurred or income forgone to the producer.

(4) Delivery of payments

In making payments under this subsection, the Secretary shall, to the extent practicable—

(A) prorate conservation performance over the term of the contract so as to accommodate, to the extent practicable, producers earning equal annual payments in each fiscal year; and

(B) make such payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year.

(e) Supplemental payments for resource-conserving crop rotations

(1) Availability of payments

The Secretary shall provide additional payments to producers that, in participating in the program, agree to adopt or improve resource-conserving crop rotations to achieve beneficial crop rotations as appropriate for the eligible land of the producers.

(2) Beneficial crop rotations

The Secretary shall determine whether a resource-conserving crop rotation is a beneficial crop rotation eligible for additional payments under paragraph (1) based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits.

(3) Eligibility

To be eligible to receive a payment described in paragraph (1), a producer shall agree to adopt and maintain beneficial resource-con-

serving crop rotations for the term of the contract.

(4) Resource-conserving crop rotation

In this subsection, 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.

(f) Payment limitations

A person or legal entity may not receive, directly or indirectly, payments under the program that, in the aggregate, exceed \$200,000 under all contracts entered into during fiscal years 2014 through 2018, excluding funding arrangements with Indian tribes, regardless of the number of contracts entered into under the program by the person or legal entity.

(g) Specialty crop and organic producers

The Secretary shall ensure that outreach and technical assistance are available, and program specifications are appropriate to enable specialty crop and organic producers to participate in the program.

(h) Coordination with organic certification

The Secretary shall establish a transparent means by which producers may initiate organic certification under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) while participating in a contract under the program.

(i) Regulations

The Secretary shall promulgate regulations that—

(1) prescribe such other rules as the Secretary determines to be necessary to ensure a fair and reasonable application of the limitations established under subsection (f); and

(2) otherwise enable the Secretary to carry out the program.

(Pub. L. 99-198, title XII, §1238G, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1045, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1773; Pub. L. 113-79, title II, §2101(a), Feb. 7, 2014, 128 Stat. 726.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (h), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section related to duties of the Secretary.

SUBPART C—FARMLAND PROTECTION PROGRAM

CODIFICATION

Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768, both redesignated subpart B of this part as subpart C. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234.

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

PRIOR PROVISIONS

A prior subpart C, consisting of sections 3838n to 3838q, was redesignated subpart D of this part by Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768, and was subsequently repealed by Pub. L. 113-79, title II, §2705(a), Feb. 7, 2014, 128 Stat. 768.

§§ 3838h to 3838j. Repealed. Pub. L. 113-79, title II, §2704(a), Feb. 7, 2014, 128 Stat. 767

Section 3838h, Pub. L. 99-198, title XII, §1238H, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 267; amended Pub. L. 110-234, title II, §2401(a), May 22, 2008, 122 Stat. 1048; Pub. L. 110-246, §4(a), title II, §2401(a), June 18, 2008, 122 Stat. 1664, 1776, defined terms used in this subpart.

Section 3838i, Pub. L. 99-198, title XII, §1238I, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 268; amended Pub. L. 110-234, title II, §2401(b), May 22, 2008, 122 Stat. 1049; Pub. L. 110-246, §4(a), title II, §2401(b), June 18, 2008, 122 Stat. 1664, 1777, related to farmland protection program.

Section 3838j, Pub. L. 99-198, title XII, §1238J, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 269; amended Pub. L. 110-234, title II, §2402, May 22, 2008, 122 Stat. 1051; Pub. L. 110-246, §4(a), title II, §2402, June 18, 2008, 122 Stat. 1664, 1779, related to farm viability program.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2704, Feb. 7, 2014, 128 Stat. 767, provided that:

“(a) REPEAL.—Except as provided in subsection (b), subchapter C of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838h et seq.) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING AGREEMENTS AND EASEMENTS.—The amendment made by this section [repealing sections 3838h to 3838j of this title] shall not affect the validity or terms of any agreement or easement entered into by the Secretary of Agriculture under subchapter C of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838h et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the agreement or easement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of subchapter C of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838h et seq.), any funds made available from the Commodity Credit Corporation to carry out the farmland protection program under that subchapter for fiscal years 2009 through 2013 shall be made available to carry out agree-

ments and easements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—On exhaustion of funds made available under subparagraph (A), the Secretary [of Agriculture] may use funds made available to carry out the agricultural conservation easement program under subtitle H of title XII of the Food Security Act of 1985 [16 U.S.C. 3865 et seq.], as added by section 2301, to continue to carry out agreements and easements referred to in paragraph (1) using the provisions of law and regulation applicable to such agreements and easements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

SUBPART D—GRASSLAND RESERVE PROGRAM

CODIFICATION

Pub. L. 110-234, title II, §§2301(a)(1), 2403, May 22, 2008, 122 Stat. 1040, 1051, and Pub. L. 110-246, §4(a), title II, §§2301(a)(1), 2403, June 18, 2008, 122 Stat. 1664, 1768, 1779, both redesignated subpart C of this part as subpart D. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234.

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

§§ 3838n to 3838q. Repealed. Pub. L. 113-79, title II, §2705(a), Feb. 7, 2014, 128 Stat. 768

Section 3838n, Pub. L. 99-198, title XII, §1238N, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 258; Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1051; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1779, related to establishment of grassland reserve program by Secretary.

Section 3838o, Pub. L. 99-198, title XII, §1238O, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 259; amended Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1052; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1780, related to duties of owners and operators.

Section 3838p, Pub. L. 99-198, title XII, §1238P, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 261; amended Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1054; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1782, related to duties of Secretary.

Section 3838q, Pub. L. 99-198, title XII, §1238Q, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 262; amended Pub. L. 108-447, div. A, title VII, §797, Dec. 8, 2004, 118 Stat. 2852; Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1055; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1783, related to delegation of duty.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2705, Feb. 7, 2014, 128 Stat. 768, provided that:

“(a) REPEAL.—Except as provided in subsection (b), subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838n et seq.) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS, AGREEMENTS, AND EASEMENTS.—The amendment made by this section [repealing sections 3838n to 3838q of this title] shall not affect the validity or terms of any contract, agreement, or easement entered into by the Secretary of Agriculture under subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838n et seq.) before the

date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract, agreement, or easement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838n et seq.), any funds made available from the Commodity Credit Corporation to carry out the grassland reserve program under that subchapter for fiscal years 2009 through 2013 shall be made available to carry out contracts, agreements, or easements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance), provided that no such contract, agreement, or easement is modified so as to increase the amount of the payment received.

“(B) OTHER.—The Secretary [of Agriculture] may use funds made available to carry out the agricultural conservation easement program under subtitle H of title XII of the Food Security Act of 1985 [16 U.S.C. 3865 et seq.], as added by section 2301, to continue to carry out contracts, agreements, and easements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts, agreements, and easements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

PART III—ENVIRONMENTAL EASEMENT PROGRAM

§§ 3839 to 3839d. Repealed. Pub. L. 113–79, title II, § 2711, Feb. 7, 2014, 128 Stat. 771

Section 3839, Pub. L. 99–198, title XII, §1239, as added Pub. L. 101–624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597; amended Pub. L. 102–237, title II, §204(7), Dec. 13, 1991, 105 Stat. 1855, related to establishment of environmental easement program by Secretary.

Section 3839a, Pub. L. 99–198, title XII, §1239A, as added Pub. L. 101–624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597, related to duties of owners; components of plan.

Section 3839b, Pub. L. 99–198, title XII, §1239B, as added Pub. L. 101–624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3598, related to duties of Secretary.

Section 3839c, Pub. L. 99–198, title XII, §1239C, as added Pub. L. 101–624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3599, related to payments.

Section 3839d, Pub. L. 99–198, title XII, §1239D, as added Pub. L. 101–624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3600, related to changes in ownership; modification of easement.

PART IV—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

CODIFICATION

Chapter 4 of subtitle D of title XII of the Food Security Act of 1985, comprising this part, was originally added to Pub. L. 99–198 by Pub. L. 104–127, title III, §334, Apr. 4, 1996, 110 Stat. 996. Chapter 4 is shown herein, however, as having been added by Pub. L. 107–171, title II, §2301, May 13, 2002, 116 Stat. 253, because of the extensive revision of the chapter’s provisions by Pub. L. 107–171. Such revision did not contain a chapter heading, which was subsequently added by Pub. L. 110–234, title II, §2501(b), May 22, 2008, 122 Stat. 1058, and Pub. L. 110–246, §4(a), title II, §2501(b), June 18, 2008, 122 Stat. 1664, 1786. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234.

§ 3839aa. Purposes

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

promote agricultural production, forest management, 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 sustain food and fiber production while—

(A) enhancing soil, water, and related natural resources, including grazing land, forestland, wetland, and wildlife;

(B) developing and improving wildlife habitat; and

(C) conserving energy; and

(4) assisting producers to make beneficial, cost effective changes to production systems (including conservation practices related to organic production), grazing management, fuels management, forest management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural and forested land.

(Pub. L. 99–198, title XII, §1240, as added Pub. L. 107–171, title II, §2301, May 13, 2002, 116 Stat. 253; amended Pub. L. 110–234, title II, §2501(a), May 22, 2008, 122 Stat. 1057; Pub. L. 110–246, §4(a), title II, §2501(a), June 18, 2008, 122 Stat. 1664, 1785; Pub. L. 113–79, title II, §2201, Feb. 7, 2014, 128 Stat. 728.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Par. (3). Pub. L. 113–79, §2201(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Par. (4). Pub. L. 113–79, §2201(2), substituted a period for “; and” at end.

Par. (5). Pub. L. 113–79, §2201(3), struck out par. (5) which read as follows: “consolidating and streamlining conservation planning and regulatory compliance processes to reduce administrative burdens on producers and the cost of achieving environmental goals.”

2008—Pub. L. 110–246, §2501(a)(1), inserted “, forest management,” after “agricultural production” in introductory provisions.

Pars. (3), (4). Pub. L. 110–246, §2501(a)(2), added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

“(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”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113-79, title II, §2208, Feb. 7, 2014, 128 Stat. 731, provided that: “The amendments made by this subtitle [subtitle C (§§2201-2208) of title II of Pub. L. 113-79, amending this section and sections 3839aa-1 to 3839aa-4, 3839aa-7, and 3839aa-8 of this title] shall not affect the validity or terms of any contract entered into by the Secretary of Agriculture under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract.”

§ 3839aa-1. Definitions

In this part:

(1) Eligible land

(A) In general

The term “eligible land” means land on which agricultural commodities, livestock, or forest-related products are produced.

(B) Inclusions

The term “eligible land” includes the following:

- (i) Cropland.
- (ii) Grassland.
- (iii) Rangeland.
- (iv) Pasture land.
- (v) Nonindustrial private forest land.
- (vi) Other agricultural land (including cropped woodland, marshes, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed through a contract under the program, as determined by the Secretary.

(2) Organic system plan

The term “organic system plan” means an organic plan approved under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

(3) Payment

The term “payment” means financial assistance provided to a producer for performing practices under this part, including compensation for—

- (A) incurred costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; and
- (B) income forgone by the producer.

(4) Practice

The term “practice” means 1 or more improvements and conservation activities that

are consistent with the purposes of the program under this part, as determined by the Secretary, including—

(A) improvements to eligible land of the producer, including—

- (i) structural practices;
- (ii) land management practices;
- (iii) vegetative practices;
- (iv) forest management; and

(v) other practices that the Secretary determines would further the purposes of the program; and

(B) conservation activities involving the development of plans appropriate for the eligible land of the producer, including—

- (i) comprehensive nutrient management planning; and
- (ii) other plans that the Secretary determines would further the purposes of the program under this part.

(5) Program

The term “program” means the environmental quality incentives program established by this part.

(Pub. L. 99-198, title XII, §1240A, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 253; amended Pub. L. 110-234, title II, §2502, May 22, 2008, 122 Stat. 1058; Pub. L. 110-246, §4(a), title II, §2502, June 18, 2008, 122 Stat. 1664, 1786; Pub. L. 113-79, title II, §2202, Feb. 7, 2014, 128 Stat. 729.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in par. (2), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Pars. (2) to (6). Pub. L. 113-79 redesignated pars. (3) to (6) as (2) to (5), respectively, inserted “established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)” after “national organic program” in par. (2), and struck out former par. (2). Text of former par. (2) read as follows: “The term ‘national organic program’ means the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)”.

2008—Pub. L. 110-246, §2502, amended section generally. Prior to amendment, section defined “beginning farmer or rancher”, “eligible land”, “land management practice”, “livestock”, “practice”, and “structural practice”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of

Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-2. Establishment and administration

(a) Establishment

During each of the 2002 through 2018 fiscal years, the Secretary shall provide payments to producers that enter into contracts with the Secretary under the program.

(b) Practices and term

(1) Practices

A contract under the program may apply to the performance of one or more practices.

(2) Term

A contract under the program shall have a term that does not exceed 10 years.

(c) Bidding down

If the Secretary determines that the environmental values of two or more applications for 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.

(d) Payments

(1) Availability of payments

Payments are provided to a producer to implement one or more practices under the program.

(2) Limitation on payment amounts

A payment to a producer for performing a practice may not exceed, as determined by the Secretary—

(A) 75 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training;

(B) 100 percent of income foregone by the producer; or

(C) in the case of a practice consisting of elements covered under subparagraphs (A) and (B)—

(i) 75 percent of the costs incurred for those elements covered under subparagraph (A); and

(ii) 100 percent of income foregone for those elements covered under subparagraph (B).

(3) Special rule involving payments for foregone income

In determining the amount and rate of payments under paragraph (2)(B), the Secretary may accord great significance to a practice that, as determined by the Secretary, promotes—

(A) soil health;

(B) water quality and quantity improvement;

(C) nutrient management;

(D) pest management;

(E) air quality improvement;

(F) wildlife habitat development, including pollinator habitat; or

(G) invasive species management.

(4) Increased payments for certain producers

(A) In general

Notwithstanding paragraph (2), in the case of a producer that is a limited resource, so-

cially disadvantaged farmer or rancher, a veteran farmer or rancher (as defined in section 2279(e) of title 7), or a beginning farmer or rancher, the Secretary shall increase the amount that would otherwise be provided to a producer under this subsection—

(i) to not more than 90 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; and

(ii) to not less than 25 percent above the otherwise applicable rate.

(B) Advance payments

(i) In general

Not more than 50 percent of the amount determined under subparagraph (A) may be provided in advance for the purpose of purchasing materials or contracting.

(ii) Return of funds

If funds provided in advance are not expended during the 90-day period beginning on the date of receipt of the funds, the funds shall be returned within a reasonable timeframe, as determined by the Secretary.

(5) Financial assistance from other sources

Except as provided in paragraph (6), any payments received by a producer from a State or private organization or person for the implementation of one or more practices on eligible land of the producer shall be in addition to the payments provided to the producer under this subsection.

(6) Other payments

A producer shall not be eligible for payments for practices on eligible land under the program if the producer receives payments or other benefits for the same practice on the same land under another program under this subchapter.

(e) Modification or termination of contracts

(1) Voluntary modification or termination

The Secretary may modify or terminate a contract entered into with a producer under the program 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 the program if the Secretary determines that the producer violated the contract.

(f) Allocation of funding

(1) Livestock

For each of fiscal years 2014 through 2018, at least 60 percent of the funds made available for payments under the program shall be targeted at practices relating to livestock production.

(2) Wildlife habitat

For each of fiscal years 2014 through 2018, at least 5 percent of the funds made available for

payments under the program shall be targeted at practices benefitting wildlife habitat under subsection (g).

(g) Wildlife habitat incentive program

(1) In general

The Secretary shall provide payments under the environmental quality incentives program for conservation practices that support the restoration, development, protection, and improvement of wildlife habitat on eligible land, including—

- (A) upland wildlife habitat;
- (B) wetland wildlife habitat;
- (C) habitat for threatened and endangered species;
- (D) fish habitat;
- (E) habitat on pivot corners and other irregular areas of a field; and
- (F) other types of wildlife habitat, as determined by the Secretary.

(2) State technical committee

In determining the practices eligible for payment under paragraph (1) and targeted for funding under subsection (f), the Secretary shall consult with the relevant State technical committee not less often than once each year.

(h) Water conservation or irrigation efficiency practice

(1) Availability of payments

The Secretary may provide payments under this subsection to a producer for a water conservation or irrigation practice.

(2) Priority

In providing payments to a producer for a water conservation or irrigation practice, the Secretary shall give priority to applications in which—

- (A) consistent with the law of the State in which the eligible land of the producer is located, there is a reduction in water use in the operation of the producer; or
- (B) the producer agrees not to use any associated water savings to bring new land, other than incidental land needed for efficient operations, under irrigated production, unless the producer is participating in a watershed-wide project that will effectively conserve water, as determined by the Secretary.

(i) Payments for conservation practices related to organic production

(1) Payments authorized

The Secretary shall provide payments under this subsection for conservation practices, on some or all of the operations of a producer, related—

- (A) to organic production; and
- (B) to the transition to organic production.

(2) Eligibility requirements

As a condition for receiving payments under this subsection, a producer shall agree—

- (A) to develop and carry out an organic system plan; or
- (B) to develop and implement conservation practices for certified organic production

that are consistent with an organic system plan and the purposes of this part.

(3) Payment limitations

Payments under this subsection to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$20,000 per year or \$80,000 during any 6-year period. In applying these limitations, the Secretary shall not take into account payments received for technical assistance.

(4) Exclusion of certain organic certification costs

Payments may not be made under this subsection to cover the costs associated with organic certification that are eligible for cost-share payments under section 6523 of title 7.

(5) Termination of contracts

The Secretary may cancel or otherwise nullify a contract to provide payments under this subsection if the Secretary determines that the producer—

- (A) is not pursuing organic certification; or
- (B) is not in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

(Pub. L. 99-198, title XII, §1240B, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 254; amended Pub. L. 108-447, div. A, title VII, §794(a), Dec. 8, 2004, 118 Stat. 2852; Pub. L. 109-171, title I, §1203(a), Feb. 8, 2006, 120 Stat. 6; Pub. L. 110-234, title II, §2503, May 22, 2008, 122 Stat. 1059; Pub. L. 110-246, §4(a), title II, §2503, June 18, 2008, 122 Stat. 1664, 1787; Pub. L. 112-55, div. A, title VII, §716(c), Nov. 18, 2011, 125 Stat. 582; Pub. L. 113-76, div. A, title VII, §750(a), Jan. 17, 2014, 128 Stat. 42; Pub. L. 113-79, title II, §2203, Feb. 7, 2014, 128 Stat. 729.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (i)(5)(B), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-2, Pub. L. 99-198, title XII, §1240B, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 998, related to establishment and administration of environmental quality incentives program, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79, §2203(1), which directed substitution of “2018” for “2014”, was executed by making the substitution for “2015” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 113-76. See below.

Pub. L. 113-76 substituted “2015” for “2014”.

Subsec. (b)(2). Pub. L. 113-79, §2203(2), added par. (2) and struck out former par. (2). Prior to amendment,

text read as follows: “A contract under the program 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 one year after the date on which all practices under the contract have been implemented; but

“(B) not to exceed 10 years.”

Subsec. (d)(3)(A) to (G). Pub. L. 113-79, §2203(3)(A), added subpars. (A) to (G) and struck out former subpars. (A) to (G) which read as follows:

“(A) residue management;

“(B) nutrient management;

“(C) air quality management;

“(D) invasive species management;

“(E) pollinator habitat;

“(F) animal carcass management technology; or

“(G) pest management.”

Subsec. (d)(4)(A). Pub. L. 113-79, §2203(3)(B)(i), in introductory provisions, inserted “, a veteran farmer or rancher (as defined in section 2279(e) of title 7),” before “or a beginning farmer or rancher”.

Subsec. (d)(4)(B). Pub. L. 113-79, §2203(3)(B)(ii), added subpar. (B) and struck out former subpar. (B). Prior to amendment, text read as follows: “Not more than 30 percent of the amount determined under subparagraph (A) may be provided in advance for the purpose of purchasing materials or contracting.”

Subsec. (f). Pub. L. 113-79, §2203(4), added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: “For each of fiscal years 2002 through 2012, 60 percent of the funds made available for payments under the program shall be targeted at practices relating to livestock production.”

Subsec. (g). Pub. L. 113-79, §2203(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “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 will not be exceeded by any Tribal or Native Corporation member.”

2011—Subsec. (a). Pub. L. 112-55 substituted “2014” for “2012”.

2008—Pub. L. 110-246, §2503, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (h) relating to provision of cost-share payments and incentive payments, application and term of a contract, bidding down, payment amounts, incentive payments, modification or termination of contracts, allocation of funding for fiscal years 2002 through 2007, and funding for federally recognized Native American Indian Tribes and Alaska Native Corporations.

2006—Subsec. (a)(1). Pub. L. 109-171 substituted “2010” for “2007”.

2004—Subsec. (h). Pub. L. 108-447 added subsec. (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-3. Evaluation of applications

(a) Evaluation criteria

The Secretary shall develop criteria for evaluating applications that will ensure that national, State, and local conservation priorities are effectively addressed.

(b) Prioritization of applications

In evaluating applications under this part, the Secretary shall prioritize applications—

(1) based on their overall level of cost-effectiveness to ensure that the conservation prac-

tices and approaches proposed are the most efficient means of achieving the anticipated conservation benefits of the project;

(2) based on how effectively and comprehensively the project addresses the designated resource concern or resource concerns;

(3) that best fulfill the purposes of the program; and

(4) that improve conservation practices or systems in place on the operation at the time the contract offer is accepted or that will complete a conservation system.

(c) Grouping of applications

To the greatest extent practicable, the Secretary shall group applications of similar crop or livestock operations for evaluation purposes or otherwise evaluate applications relative to other applications for similar farming operations.

(Pub. L. 99-198, title XII, §1240C, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2504, May 22, 2008, 122 Stat. 1062; Pub. L. 110-246, §4(a), title II, §2504, June 18, 2008, 122 Stat. 1664, 1790; Pub. L. 113-79, title II, §2204, Feb. 7, 2014, 128 Stat. 730.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Subsec. (b)(1). Pub. L. 113-79, §2204(1), substituted “conservation” for “environmental” before “benefits”.

Subsec. (b)(3). Pub. L. 113-79, §2204(2), substituted “purposes of the program” for “purpose of the environmental quality incentives program specified in section 3839aa(1) of this title” before semicolon.

2008—Pub. L. 110-246, §2504, amended section generally. Prior to amendment, text read as follows: “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.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-4. Duties of producers

To receive 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 enrolled land that would tend to defeat the purposes of the program;

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

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

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

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

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

(4) on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees with the Secretary to assume all obligations of the contract, to refund all payments received under the program, as determined by the Secretary;

(5) to supply information as required by the Secretary to determine compliance with the program plan and requirements of the program; and

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

(Pub. L. 99-198, title XII, §1240D, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2505, May 22, 2008, 122 Stat. 1062; Pub. L. 110-246, §4(a), title II, §2505, June 18, 2008, 122 Stat. 1664, 1790; Pub. L. 113-79, title II, §2205, Feb. 7, 2014, 128 Stat. 730.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Par. (2). Pub. L. 113-79 substituted “enrolled” for “farm, ranch, or forest”.

2008—Pub. L. 110-246, §2505(1), struck out “technical assistance, cost-share payments, or incentive” before “payments” in introductory provisions.

Par. (2). Pub. L. 110-246, §2505(2), substituted “farm, ranch, or forest land” for “farm or ranch”.

Par. (4). Pub. L. 110-246, §2505(3), struck out “cost-share payments and incentive” before “payments”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of

Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-5. Environmental quality incentives program plan

(a) Plan of operations

To be eligible to receive 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;

(3) in the case of a confined livestock feeding operation, provides for development and implementation of a comprehensive nutrient management plan, if applicable; and

(4) in the case of forest land, is consistent with the provisions of a forest management plan that is approved by the Secretary, which may include—

(A) a forest stewardship plan described in section 2103a of this title;

(B) another practice plan approved by the State forester; or

(C) another plan determined appropriate by the Secretary.

(b) Avoidance of duplication

The Secretary shall—

(1) consider a plan developed in order to acquire a permit under a water or air quality regulatory program as the equivalent of a plan of operations under subsection (a), if the plan contains elements equivalent to those elements required by a plan of operations; and

(2) to the maximum extent practicable, eliminate duplication of planning activities under the program under this part and comparable conservation programs.

(Pub. L. 99-198, title XII, §1240E, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2506, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2506, June 18, 2008, 122 Stat. 1664, 1791.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246, §2506(a)(1), (2), substituted “Plan of operations” for “In general” in heading and struck out “cost-share payments or incentive” before “payments” in introductory provisions.

Subsec. (a)(4). Pub. L. 110-246, §2506(a)(3)-(5), added par. (4).

Subsec. (b). Pub. L. 110-246, §2506(b), amended subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary shall, to the maximum extent prac-

licable, eliminate duplication of planning activities under the program under this part and comparable conservation programs.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

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

(Pub. L. 99-198, title XII, §1240F, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2507, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2507, June 18, 2008, 122 Stat. 1664, 1791.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2008—Par. (1). Pub. L. 110-246, §2507, struck out “cost-share payments or incentive” before “payments”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-7. Limitation on payments

A person or legal entity may not receive, directly or indirectly, cost-share or incentive payments under this part that, in aggregate, exceed \$450,000 for all contracts entered into under this part by the person or legal entity during the period of fiscal years 2014 through 2018, regardless of the number of contracts entered into under this part by the person or legal entity.

(Pub. L. 99-198, title XII, §1240G, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 108-447, div. A, title VII, §794(b), Dec. 8, 2004, 118 Stat. 2852; Pub. L. 109-171, title I, §1203(b), Feb. 8, 2006, 120 Stat. 6; Pub. L. 110-234, title II, §2508, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2508, June 18, 2008, 122 Stat. 1664, 1791; Pub. L. 113-79, title II, §2206, Feb. 7, 2014, 128 Stat. 730.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub.

L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section related to limitation on payments and included waiver authority in the case of contracts for projects of special environmental significance as determined by the Secretary.

2008—Pub. L. 110-246, §2508, designated existing provisions as subsec. (a), inserted heading, substituted “Subject to subsection (b), a person or legal entity” for “An individual or entity” and “\$300,000” for “\$450,000”, substituted “the person” for “the individual” in two places, and added subsec. (b).

2006—Pub. L. 109-171 substituted “any six-year period” for “the period of fiscal years 2002 through 2007”.

2004—Pub. L. 108-447 inserted “(excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 3839aa-2(h) of this title)” after “2007.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-8. Conservation innovation grants and payments

(a) Competitive grants for innovative conservation approaches

(1) Grants

Out of the funds made available to carry out this part, the Secretary may pay the cost of competitive grants that are intended to stimulate innovative approaches to leveraging the Federal investment in environmental enhancement and protection, in conjunction with agricultural production or forest resource management, through the program.

(2) Use

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

(A) involve producers who are eligible for payments or technical assistance under the program;

(B) leverage Federal funds made available to carry out the program under this part with matching funds provided by State and local governments and private organizations to promote environmental enhancement and protection in conjunction with agricultural production;

(C) ensure efficient and effective transfer of innovative technologies and approaches demonstrated through projects that receive funding under this section, such as market systems for pollution reduction and practices for the storage of carbon in soil;

(D) provide environmental and resource conservation benefits through increased participation by producers of specialty crops;

(E) facilitate on-farm conservation research and demonstration activities; and

(F) facilitate pilot testing of new technologies or innovative conservation practices.

(b) Air quality concerns from agricultural operations

(1) Implementation assistance

The Secretary shall provide payments under this subsection to producers to implement practices to address air quality concerns from agricultural operations and to meet Federal, State, and local regulatory requirements. The funds shall be made available on the basis of air quality concerns in a State and shall be used to provide payments to producers that are cost effective and reflect innovative technologies.

(2) Funding

Of the funds made available to carry out this part, the Secretary shall carry out this subsection using \$25,000,000 for each of fiscal years 2009 through 2018.

(c) Reporting

Not later than December 31, 2014, and every two years thereafter, the Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of projects funded under this section, including—

(1) funding awarded;

(2) project results; and

(3) incorporation of project findings, such as new technology and innovative approaches, into the conservation efforts implemented by the Secretary.

(Pub. L. 99-198, title XII, §1240H, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2509, May 22, 2008, 122 Stat. 1064; Pub. L. 110-246, §4(a), title II, §2509, June 18, 2008, 122 Stat. 1664, 1792; Pub. L. 113-79, title II, §2207, Feb. 7, 2014, 128 Stat. 731.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

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

AMENDMENTS

2014—Subsec. (a)(2)(E), (F). Pub. L. 113-79, §2207(1), added subpars. (E) and (F).

Subsec. (b)(2). Pub. L. 113-79, §2207(2), substituted “\$25,000,000” for “\$37,500,000” and “2018” for “2012”.

Subsec. (c). Pub. L. 113-79, §2207(3), added subsec. (c). 2008—Pub. L. 110-246, §2509, amended section generally. Prior to amendment, section related to conservation innovation grants.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the

date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-9. Repealed. Pub. L. 113-79, title II, §2706(a), Feb. 7, 2014, 128 Stat. 769

Section, Pub. L. 99-198, title XII, §1240I, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2510, May 22, 2008, 122 Stat. 1064; Pub. L. 110-246, §4(a), title II, §2510, June 18, 2008, 122 Stat. 1664, 1792, related to agricultural water enhancement program.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2706, Feb. 7, 2014, 128 Stat. 769, provided that:

“(a) REPEAL.—Except as provided in subsection (b), section 1240I of the Food Security Act of 1985 (16 U.S.C. 3839aa-9) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS AND AGREEMENTS.—The amendment made by this section [repealing section 3839aa-9 of this title] shall not affect the validity or terms of any contract or agreement entered into by the Secretary of Agriculture under section 1240I of the Food Security Act of 1985 ([former] 16 U.S.C. 3839aa-9) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract or agreement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of section 1240I of the Food Security Act of 1985 ([former] 16 U.S.C. 3839aa-9), any funds made available from the Commodity Credit Corporation to carry out the agricultural water enhancement program under that section for fiscal years 2009 through 2013 shall be made available to carry out contracts and agreements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—On exhaustion of funds made available under subparagraph (A), the Secretary [of Agriculture] may use funds made available to carry out the regional conservation partnership program under subtitle I of title XII of the Food Security Act of 1985 [16 U.S.C. 3871 et seq.], as added by section 2401, to continue to carry out contracts and agreements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts and agreements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

PART V—OTHER CONSERVATION PROGRAMS

§ 3839bb. Conservation of private grazing land

(a) Purpose

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

(1) establishing a coordinated and cooperative Federal, State, and local grazing conservation program for management of private grazing land;

(2) strengthening technical, educational, and related assistance programs that provide assistance to owners and managers of private grazing land;

(3) conserving and improving wildlife habitat on private grazing land;

(4) conserving and improving fish habitat and aquatic systems through grazing land conservation treatment;

- (5) protecting and improving water quality;
- (6) improving the dependability and consistency of water supplies;
- (7) identifying and managing weed, noxious weed, and brush encroachment problems on private grazing land; and
- (8) integrating conservation planning and management decisions by owners and managers of private grazing land, on a voluntary basis.

(b) Definitions

In this section:

(1) Department

The term “Department” means the Department of Agriculture.

(2) Private grazing land

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

(3) Secretary

The term “Secretary” means the Secretary of Agriculture.

(c) Private grazing land conservation assistance

(1) Assistance to grazing landowners and others

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

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

(2) Program elements

(A) Funding

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

(B) Technical assistance and education

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

(d) Grazing technical assistance self-help

(1) Findings

Congress finds that—

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

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

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

(2) Establishment of grazing demonstration

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

(3) Procedure

(A) Proposal

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

(B) Funding

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

(C) Approval

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

- (i) is reasonable;
- (ii) will promote sound grazing practices; and

(iii) contains provisions similar to the provisions contained in the beef promotion and research order issued under section 2903 of title 7 in effect on April 4, 1996.

(D) Area included

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

(E) Authorization

The Secretary may use authority under the Agricultural Adjustment Act (7 U.S.C.

601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to operate, on a demonstration basis, a grazing management district.

(F) Activities

The activities of a grazing management district shall be scientifically sound 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 2018.

(Pub. L. 99-198, title XII, §1240M, as added Pub. L. 104-127, title III, §335, Apr. 4, 1996, 110 Stat. 1002; amended Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 264; Pub. L. 110-234, title II, §2601, May 22, 2008, 122 Stat. 1068; Pub. L. 110-246, §4(a), title II, §2601, June 18, 2008, 122 Stat. 1664, 1796; Pub. L. 113-79, title II, §2501, Feb. 7, 2014, 128 Stat. 751.)

REFERENCES IN TEXT

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

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (e). Pub. L. 113-79 substituted “2018” for “2012”.

2008—Subsec. (e). Pub. L. 110-246, §2601, substituted “2012” for “2007”.

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839bb-1. Repealed. Pub. L. 113-79, title II, § 2707(a), Feb. 7, 2014, 128 Stat. 769

Section, Pub. L. 99-198, title XII, §1240N, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 266; amended Pub. L. 110-234, title II, §2602, May 22, 2008, 122 Stat. 1068; Pub. L. 110-246, §4(a), title II, §2602, June 18, 2008, 122 Stat. 1664, 1796, related to wildlife habitat incentive program.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2707, Feb. 7, 2014, 128 Stat. 769, provided that:

“(a) REPEAL.—Except as provided in subsection (b), section 1240N of the Food Security Act of 1985 (16 U.S.C. 3839bb-1) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS AND AGREEMENTS.—The amendment made by this section [repealing section 3839bb-1 of this title] shall not affect the validity or terms of any contract or agreement entered into by the Secretary of Agriculture under section 1240N of the Food Security Act of 1985 ([former] 16 U.S.C. 3839bb-1) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract or agreement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of section 1240N of the Food Security Act of 1985 ([former] 16 U.S.C. 3839bb-1), any funds made available from the Commodity Credit Corporation to carry out the wildlife habitat incentive program under that section for fiscal years 2009 through 2013 shall be made available to carry out contracts or agreements referred to in paragraph (1) which were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—On exhaustion of funds made available under subparagraph (A), the Secretary [of Agriculture] may use funds made available to carry out the environmental quality incentives program under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) to continue to carry out contracts or agreements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts or agreements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

§ 3839bb-2. Grassroots source water protection program

(a) In general

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

(b) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2008 through 2018.

(2) Availability of funds

In addition to funds made available under paragraph (1), of the funds of the Commodity Credit Corporation, the Secretary shall use \$5,000,000, to remain available until expended.

(Pub. L. 99-198, title XII, §1240O, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 267; amended Pub. L. 110-234, title II, §2603, May 22, 2008, 122 Stat. 1068; Pub. L. 110-246, §4(a), title II, §2603, June 18, 2008, 122 Stat. 1664, 1796; Pub. L. 113-79, title II, §2502, Feb. 7, 2014, 128 Stat. 751.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-79 amended subsec. (b) generally. Prior to amendment, text read as follows: “There is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2008 through 2012.”

2008—Subsec. (b). Pub. L. 110-246, §2603, substituted “\$20,000,000 for each of fiscal years 2008 through 2012” for “\$5,000,000 for each of fiscal years 2002 through 2007”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839bb-3. Repealed. Pub. L. 113-79, title II, § 2708, Feb. 7, 2014, 128 Stat. 770

Section, Pub. L. 99-198, title XII, §1240P, as added Pub. L. 107-171, title II, §2502(a), May 13, 2002, 116 Stat. 267; amended Pub. L. 110-234, title II, §2604, May 22, 2008, 122 Stat. 1068; Pub. L. 110-246, §4(a), title II, §2604, June 18, 2008, 122 Stat. 1664, 1796, related to Great Lakes basin program for soil erosion and sediment control.

§ 3839bb-4. Repealed. Pub. L. 113-79, title II, § 2709(a), Feb. 7, 2014, 128 Stat. 770

Section, Pub. L. 99-198, title XII, §1240Q, as added Pub. L. 110-234, title II, §2605, May 22, 2008, 122 Stat. 1069, and Pub. L. 110-246, §4(a), title II, §2605, June 18, 2008, 122 Stat. 1664, 1797, related to conservation activities on agricultural lands in the Chesapeake Bay watershed.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2709, Feb. 7, 2014, 128 Stat. 770, provided that:

“(a) REPEAL.—Except as provided in subsection (b), section 1240Q of the Food Security Act of 1985 (16 U.S.C. 3839bb-4) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS, AGREEMENTS, AND EASEMENTS.—The amendment made by this section [repealing section 3839bb-4 of this title] shall not affect the validity or terms of any contract, agreement, or easement entered into by the Secretary of Agriculture under section 1240Q of the Food Security Act of 1985 ([former] 16 U.S.C. 3839bb-4) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract, agreement, or easement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of section 1240Q of the Food Security Act of 1985 ([former] 16 U.S.C. 3839bb-4), any funds made available from the Commodity Credit Corporation to carry out the Chesapeake Bay watershed program under that section for fiscal years 2009 through 2013 shall be made available to carry out contracts, agreements, and easements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—The Secretary [of Agriculture] may use funds made available to carry out the regional conservation partnership program under subtitle I of title XII of the Food Security Act of 1985 [16 U.S.C. 3871 et seq.], as added by section 2401, to continue to carry out contracts, agreements, and easements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts, agreements, and easements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

§ 3839bb-5. Voluntary public access and habitat incentive program

(a) Establishment

The Secretary shall establish a voluntary public access program under which States and trib-

al governments may apply for grants to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting or fishing under programs administered by the States and tribal governments.

(b) Applications

In submitting applications for a grant under the program, a State or tribal government shall describe—

(1) the benefits that the State or tribal government intends to achieve by encouraging public access to private farm and ranch land for—

(A) hunting and fishing; and

(B) to the maximum extent practicable, other recreational purposes; and

(2) the methods that will be used to achieve those benefits.

(c) Priority

In approving applications and awarding grants under the program, the Secretary shall give priority to States and tribal governments that propose—

(1) to maximize participation by offering a program the terms of which are likely to meet with widespread acceptance among landowners;

(2) to ensure that land enrolled under the State or tribal government program has appropriate wildlife habitat;

(3) to strengthen wildlife habitat improvement efforts on land enrolled in a special conservation reserve enhancement program described in section 3834(f)(4)¹ of this title by providing incentives to increase public hunting and other recreational access on that land;

(4) to use additional Federal, State, tribal government, or private resources in carrying out the program; and

(5) to make available to the public the location of land enrolled.

(d) Relationship to other laws

(1) No preemption

Nothing in this section preempts a State or tribal government law, including any State or tribal government liability law.

(2) Effect of inconsistent opening dates for migratory bird hunting

The Secretary shall reduce by 25 percent the amount of a grant otherwise determined for a State under the program if the opening dates for migratory bird hunting in the State are not consistent for residents and non-residents.

(e) Regulations

The Secretary shall promulgate such regulations as are necessary to carry out this section.

(f) Funding

(1) Mandatory funding

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section, to the maximum extent practicable, \$50,000,000 for the period of fiscal years

¹ See References in Text note below.

2009 through 2012 and \$40,000,000 for the period of fiscal years 2014 through 2018.

(2) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 2013.

(Pub. L. 99-198, title XII, §1240R, as added Pub. L. 110-234, title II, §2606, May 22, 2008, 122 Stat. 1070, and Pub. L. 110-246, §4(a), title II, §2606, June 18, 2008, 122 Stat. 1664, 1798; amended Pub. L. 112-240, title VII, §701(c)(2), Jan. 2, 2013, 126 Stat. 2363; Pub. L. 113-79, title II, §2503(a), Feb. 7, 2014, 128 Stat. 751.)

REFERENCES IN TEXT

Section 3834(f)(4) of this title, referred to in subsec. (c)(3), was redesignated as section 3834(g)(2) of this title by Pub. L. 113-79, title II, §§2005(b)(2), (e)(3), Feb. 7, 2014, 128 Stat. 718, 719.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (f)(1). Pub. L. 113-79, in heading, substituted “Mandatory funding” for “Fiscal years 2009 through 2012” and in text, inserted “and \$40,000,000 for the period of fiscal years 2014 through 2018” before period at end.

2013—Subsec. (f). Pub. L. 112-240 added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: “Of the funds of the Commodity Credit Corporation, the Secretary shall use, to the maximum extent practicable, \$50,000,000 for the period of fiscal years 2009 through 2012.”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112-240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 3839bb-6. Terminal lakes assistance

(a) Definitions

In this section:

(1) Eligible land

The term “eligible land” means privately owned agricultural land (including land in which a State has a property interest as a result of State water law)—

(A) that a landowner voluntarily agrees to sell to a State; and

(B) which—

(i)(I) is ineligible for enrollment as a wetland reserve easement established under the agricultural conservation easement program under subtitle H¹ of the Food Security Act of 1985;

(II) is flooded to—

(aa) an average depth of at least 6.5 feet; or

(bb) a level below which the State determines the management of the water level is beyond the control of the State or landowner; or

(III) is inaccessible for agricultural use due to the flooding of adjoining property (such as islands of agricultural land created by flooding);

(ii) is located within a watershed with water rights available for lease or purchase; and

(iii) has been used during at least 5 of the immediately preceding 30 years—

(I) to produce crops or hay; or

(II) as livestock pasture or grazing.

(2) Program

The term “program” means the voluntary land purchase program established under this section.

(3) Terminal lake

The term “terminal lake” means a lake and its associated riparian and watershed resources that is—

(A) considered flooded because there is no natural outlet for water accumulating in the lake or the associated riparian area such that the watershed and surrounding land is consistently flooded; or

(B) considered terminal because it has no natural outlet and is at risk due to a history of consistent Federal assistance to address critical resource conditions, including insufficient water available to meet the needs of the lake, general uses, and water rights.

(b) Assistance

The Secretary shall—

(1) provide grants under subsection (c) for the purchase of eligible land impacted by a terminal lake described in subsection (a)(3)(A); and

(2) provide funds to the Secretary of the Interior pursuant to subsection (e)(2) with assistance in accordance with subsection (d) for terminal lakes described in subsection (a)(3)(B).

(c) Land purchase grants

(1) In general

Using funds provided under subsection (e)(1), the Secretary shall make available land purchase grants to States for the purchase of eligible land in accordance with this subsection.

(2) Implementation

(A) Amount

A land purchase grant shall be in an amount not to exceed the lesser of—

(i) 50 percent of the total purchase price per acre of the eligible land; or

(ii)(I) in the case of eligible land that was used to produce crops or hay, \$400 per acre; and

(II) in the case of eligible land that was pasture or grazing land, \$200 per acre.

(B) Determination of purchase price

A State purchasing eligible land with a land purchase grant shall ensure, to the maximum extent practicable, that the pur-

¹ See References in Text note below.

chase price of such land reflects the value, if any, of other encumbrances on the eligible land to be purchased, including easements and mineral rights.

(C) Cost-share required

To be eligible to receive a land purchase grant, a State shall provide matching non-Federal funds in an amount equal to 50 percent of the amount described in subparagraph (A), including additional non-Federal funds.

(D) Conditions

To receive a land purchase grant, a State shall agree—

(i) to ensure that any eligible land purchased is—

(I) conveyed in fee simple to the State; and

(II) free from mortgages or other liens at the time title is transferred;

(ii) to maintain ownership of the eligible land in perpetuity;

(iii) to pay (from funds other than grant dollars awarded) any costs associated with the purchase of eligible land under this section, including surveys and legal fees; and

(iv) to keep eligible land in a conserving use, as defined by the Secretary.

(E) Loss of Federal benefits

Eligible land purchased with a grant under this section shall lose eligibility for any benefits under other Federal programs, including—

(i) benefits under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.);

(ii) benefits under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.); and

(iii) covered benefits described in section 1001D(b) of the Food Security Act of 1985 (7 U.S.C. 1308-3a).

(F) Prohibition

Any Federal rights or benefits associated with eligible land prior to purchase by a State may not be transferred to any other land or person in anticipation of or as a result of such purchase.

(d) Water assistance

(1) In general

The Secretary of the Interior, acting through the Commissioner of Reclamation, may use the funds described in subsection (e)(2) to administer and provide financial assistance to carry out this subsection to provide water and assistance to a terminal lake described in subsection (a)(3)(B) through willing sellers or willing participants only—

(A) to lease water;

(B) to purchase land, water appurtenant to the land, and related interests; and

(C) to carry out research, support, and conservation activities for associated fish, wildlife, plant, and habitat resources.

(2) Exclusions

The Secretary of the Interior may not use this subsection to deliver assistance to the

Great Salt Lake in Utah, lakes that are considered dry lakes, or other lakes that do not meet the purposes of this section, as determined by the Secretary of the Interior.

(3) Transitional provision

(A) In general

Notwithstanding any other provision of this section, any funds made available before February 7, 2014, under a provision of law described in subparagraph (B) shall remain available using the provisions of law (including regulations) in effect on the day before February 7, 2014.

(B) Described laws

The provisions of law described in this section are—

(i) section 2507 of the Farm Security and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171) (as in effect on the day before February 7, 2014);

(ii) section 207 of the Energy and Water Development Appropriations Act, 2003 (Public Law 108-7; 117 Stat. 146);

(iii) section 208 of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2268, 123 Stat. 2856); and

(iv) section 208 of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111-85; 123 Stat. 2858, 123 Stat. 2967, 125 Stat. 867).

(e) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out subsection (c) \$25,000,000, to remain available until expended.

(2) Commodity Credit Corporation

As soon as practicable after February 7, 2014, the Secretary shall transfer to the “Bureau of Reclamation—Water and Related Resources” account \$150,000,000 from the funds of the Commodity Credit Corporation to carry out subsection (d), to remain available until expended.

(Pub. L. 107-171, title II, §2507, May 13, 2002, 116 Stat. 275; Pub. L. 110-234, title II, §2807, May 22, 2008, 122 Stat. 1090; Pub. L. 110-246, §4(a), title II, §2807, June 18, 2008, 122 Stat. 1664, 1818; Pub. L. 111-85, title II, §207, Oct. 28, 2009, 123 Stat. 2858; Pub. L. 112-74, div. B, title II, §208(a), Dec. 23, 2011, 125 Stat. 866; Pub. L. 113-79, title II, §2507, Feb. 7, 2014, 128 Stat. 753.)

REFERENCES IN TEXT

The Food Security Act of 1985, referred to in subsecs. (a)(1)(B)(i)(I) and (c)(2)(E)(i), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Title XII of the Act is classified principally to this chapter. Subtitle H of the Food Security Act of 1985 probably means subtitle H (§1265 et seq.) of title XII of Pub. L. 99-198, which is classified generally to subchapter VII of this chapter. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(E)(ii), is subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, which is classified generally to subchapter I (§1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 2507 of the Farm Security and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171) (as in effect on the day before February 7, 2014), referred to in subsec. (d)(3)(B)(i), is section 2507 of Pub. L. 107-171, title II, May 13, 2002, 116 Stat. 275, which was classified as a note under section 2211 of Title 43, Public Lands, prior to being amended generally by Pub. L. 113-79 and editorially reclassified as this section.

Section 207 of the Energy and Water Development Appropriations Act, 2003, referred to in subsec. (d)(3)(B)(ii), is section 207 of Pub. L. 108-7, div. D, title II, Feb. 20, 2003, 117 Stat. 146, which is not classified to the Code.

Section 208 of the Energy and Water Development Appropriations Act, 2006, referred to in subsec. (d)(3)(B)(iii), is section 208 of Pub. L. 109-103, title II, Nov. 19, 2005, 119 Stat. 2268, which is not classified to the Code.

Section 208 of the Energy and Water Development and Related Agencies Appropriations Act, 2010, referred to in subsec. (d)(3)(B)(iv), is section 208 of Pub. L. 111-85, title II, Oct. 28, 2009, 123 Stat. 2858, which is not classified to the Code.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Farm Security and Rural Investment Act of 2002, and not as part of title XII of Pub. L. 99-198 which comprises this chapter.

Section was formerly set out as a note under section 2211 of Title 43, Public Lands.

AMENDMENTS

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section directed Secretary of Agriculture, subject to certain other provisions, to transfer \$175,000,000 of the funds of the Commodity Credit Corporation to the Bureau of Reclamation Water and Related Resources Account to provide water to at-risk natural desert terminal lakes.

2011—Subsec. (b). Pub. L. 112-74, §208(a)(1), substituted “For the benefit of at-risk natural desert terminal lakes and associated riparian and watershed resources, in any case in which there are willing sellers or willing participants” for “In any case in which there are willing sellers” in introductory provisions.

Subsec. (b)(2). Pub. L. 112-74, §208(a)(2), struck out “in the Walker River Basin in accordance with section 208(a)(1)(A) of the Energy and Water Development Appropriations Act, 2006 (Public Law 109-103; 119 Stat. 2268)” before “; and”.

Subsec. (b)(3). Pub. L. 112-74, §208(a)(3), struck out “in the Walker River Basin” before period at end.

2009—Subsec. (b)(3). Pub. L. 111-85 added par. (3).

2008—Subsec. (a). Pub. L. 110-246, §2807(1), substituted “Transfer” for “In general” in heading and “Subject to subsection (b) and paragraph (1) of section 207(a) of Public Law 108-7 (117 Stat. 146), notwithstanding paragraph (3) of that section, on the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary of Agriculture shall transfer \$175,000,000” for “Subject to subsection (b), as soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall transfer \$200,000,000” in text and deleted quotation marks before “(1)” and “(2)”.

Subsec. (b). Pub. L. 110-246, §2807(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “The funds described in subsection (a) shall not be used to purchase or lease water rights.”

TRANSFER OF FUNDS

Pub. L. 107-206, title I, §103, Aug. 2, 2002, 116 Stat. 823, provided that not later than 14 days after Aug. 2, 2002, the Secretary of Agriculture was to carry out a transfer of funds under former section 2507(a) of Pub. L. 107-171.

SUBCHAPTER V—FUNDING AND ADMINISTRATION

CODIFICATION

Subtitle E of title XII of the Food Security Act, comprising this subchapter, was originally enacted by Pub. L. 99-198, title XII, Dec. 23, 1985, 99 Stat. 1514, and amended by Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 102-237, Dec. 13, 1991, 105 Stat. 1818; Pub. L. 102-552, Oct. 28, 1992, 106 Stat. 4102; and Pub. L. 104-66, Dec. 21, 1995, 109 Stat. 707. Subtitle E was shown herein, however, as having been added by Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1007, without reference to the intervening amendments because of the extensive revision of the subtitle's provisions by Pub. L. 104-127. Subsequently, subtitle E was amended by Pub. L. 107-171 to add new sections 3841, 3842, and 3844 and to repeal former sections 3841 and 3842.

§ 3841. Commodity Credit Corporation

(a) Annual funding

For each of fiscal years 2014 through 2018, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under this chapter (including the provision of technical assistance):

(1) The conservation reserve program under subpart B of part I of subchapter IV, including, to the maximum extent practicable—

(A) \$10,000,000 for the period of fiscal years 2014 through 2018 to provide payments under section 3834(c) of this title; and

(B) \$33,000,000 for the period of fiscal years 2014 through 2018 to carry out section 3835(f) of this title to facilitate the transfer of land subject to contracts from retired or retiring owners and operators to beginning farmers or ranchers and socially disadvantaged farmers or ranchers.

(2) The agricultural conservation easement program under subchapter VII using to the maximum extent practicable—

(A) \$400,000,000 for fiscal year 2014;

(B) \$425,000,000 for fiscal year 2015;

(C) \$450,000,000 for fiscal year 2016;

(D) \$500,000,000 for fiscal year 2017; and

(E) \$250,000,000 for fiscal year 2018.

(3) The conservation security program under subpart A of part II of subchapter IV, using such sums as are necessary to administer contracts entered into before September 30, 2008.

(4) The conservation stewardship program under subpart B of part II of subchapter IV.

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

(A) \$1,350,000,000 for fiscal year 2014;

(B) \$1,600,000,000 for fiscal year 2015;

(C) \$1,650,000,000 for fiscal year 2016;

(D) \$1,650,000,000 for fiscal year 2017; and

(E) \$1,750,000,000 for fiscal year 2018.

(b) Availability of funds

Amounts made available by subsection (a) for fiscal years 2014 through 2018 shall be used by the Secretary to carry out the programs specified in such subsection and shall remain available until expended.

(c) Technical assistance**(1) Availability**

Commodity Credit Corporation funds made available for a fiscal year for each of the programs specified in subsection (a)—

(A) shall be available for the provision of technical assistance for the programs for which funds are made available as necessary to implement the programs effectively;

(B) except for technical assistance for the conservation reserve program under subpart B of part I of subchapter IV, shall be apportioned for the provision of technical assistance in the amount determined by the Secretary, at the sole discretion of the Secretary; and

(C) 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.

(2) Priority**(A) In general**

In the delivery of technical assistance under the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a et seq.), the Secretary shall give priority to producers who request technical assistance from the Secretary in order to comply for the first time with the requirements of subchapter II and subchapter III of this chapter as a result of the amendments made by section 2611 of the Agricultural Act of 2014.

(B) Report

Not later than 270 days after February 7, 2014, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report regarding the extent to which the conservation compliance requirements contained in the amendments made by section 2611 of the Agricultural Act of 2014 apply to and impact specialty crop growers, including national analysis and surveys to determine the extent of specialty crop acreage that includes highly erodible land and wetlands.

(3) Report

Not later than December 31, 2014, the Secretary shall submit (and update as necessary in subsequent years) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report—

(A) detailing the amount of technical assistance funds requested and apportioned in each program specified in subsection (a) during the preceding fiscal year; and

(B) any other data relating to this provision that would be helpful to such Committees.

(4) Compliance report

Not later than November 1 of each year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition,

and Forestry of the Senate a report that includes—

(A) a description of the extent to which the requests for highly erodible land conservation and wetland compliance determinations are being addressed in a timely manner;

(B) the total number of requests completed in the previous fiscal year;

(C) the incomplete determinations on record; and

(D) the number of requests that are still outstanding more than 1 year since the date on which the requests were received from the producer.

(d) Relationship to other law

The use of Commodity Credit Corporation funds under subsection (c) of this section 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 714i of title 15.

(e) Regional equity**(1) Equitable distribution**

When determining funding allocations each fiscal year, the Secretary shall, after considering available funding and program demand in each State, provide a distribution of funds for conservation programs under subchapter IV (excluding the conservation reserve program under subpart B of part I), subchapter VII, and subchapter VIII to ensure equitable program participation proportional to historical funding allocations and usage by all States.

(2) Minimum percentage

In determining the specific funding allocations under paragraph (1), the Secretary shall—

(A) ensure that during the first quarter of each fiscal year each State has the opportunity to establish that the State can use an aggregate allocation amount of at least 0.6 percent of the funds made available for those conservation programs; and

(B) for each State that can so establish, provide an aggregate amount of at least 0.6 percent of the funds made available for those conservation programs.

(f) Acceptance and use of contributions**(1) Authority to establish contribution accounts**

Subject to paragraph (2), the Secretary may establish a sub-account for each conservation program administered by the Secretary under subchapter IV to accept contributions of non-Federal funds to support the purposes of the program.

(2) Deposit and use of contributions

Contributions of non-Federal funds received for a conservation program administered by the Secretary under subchapter IV shall be deposited into the sub-account established under this subsection for the program and shall be available to the Secretary, without further appropriation and until expended, to carry out the program.

(g) Allocations review and update**(1) Review**

Not later than January 1, 2012, the Secretary shall conduct a review of conservation programs and authorities under this chapter that utilize allocation formulas to determine the sufficiency of the formulas in accounting for State-level economic factors, level of agricultural infrastructure, or related factors that affect conservation program costs.

(2) Update

The Secretary shall improve conservation program allocation formulas as necessary to ensure that the formulas adequately reflect the costs of carrying out the conservation programs.

(h) Assistance to certain farmers or ranchers for conservation access**(1) Assistance**

Of the funds made available for each of fiscal years 2009 through 2018 to carry out the environmental quality incentives program and the acres made available for each of such fiscal years to carry out the conservation stewardship program, the Secretary shall use, to the maximum extent practicable—

(A) 5 percent to assist beginning farmers or ranchers; and

(B) 5 percent to assist socially disadvantaged farmers or ranchers.

(2) Repooling of funds

In any fiscal year, amounts not obligated under paragraph (1) by a date determined by the Secretary shall be available for payments and technical assistance to all persons eligible for payments or technical assistance in that fiscal year under the environmental quality incentives program.

(3) Repooling of acres

In any fiscal year, acres not obligated under paragraph (1) by a date determined by the Secretary shall be available for use in that fiscal year under the conservation stewardship program.

(4) Preference

In providing assistance under paragraph (1), the Secretary shall give preference to a veteran farmer or rancher (as defined in section 2279(e) of title 7) that qualifies under subparagraph (A) or (B) of paragraph (1).

(i) Report on program enrollments and assistance

Beginning in calendar year 2009, and each year thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a semi-annual report containing statistics by State related to enrollments in conservation programs under this subchapter, as follows:

(1) Payments made under the agricultural conservation easement program for easements valued at \$250,000 or greater.

(2) Payments made under the environmental quality incentives program for land determined to have special environmental signifi-

cance pursuant to section 3839aa-7(b)¹ of this title.

(3) Payments made under the regional conservation partnership program subject to the waiver of adjusted gross income limitations pursuant to section 3871c(c)(3) of this title.

(4) Waivers granted by the Secretary under section 1308-3a(b)(2)¹ of title 7 in order to protect environmentally sensitive land of special significance.

(5) Payments made under the conservation stewardship program.

(6) Exceptions provided by the Secretary under section 3865b(b)(2)(C) of this title.

(Pub. L. 99-198, title XII, § 1241, as added Pub. L. 107-171, title II, § 2701, May 13, 2002, 116 Stat. 278; amended Pub. L. 108-7, div. N, title II, §§ 213, 216(c), Feb. 20, 2003, 117 Stat. 545, 546; Pub. L. 108-11, title II, § 2106(a), Apr. 16, 2003, 117 Stat. 590; Pub. L. 108-199, div. H, § 101, Jan. 23, 2004, 118 Stat. 434; Pub. L. 108-324, div. B, § 101(e), Oct. 13, 2004, 118 Stat. 1235; Pub. L. 108-498, § 1(a), Dec. 23, 2004, 118 Stat. 4020; Pub. L. 109-171, title I, §§ 1202(b), 1203(c), Feb. 8, 2006, 120 Stat. 5, 6; Pub. L. 110-234, title II, §§ 2701-2705, May 22, 2008, 122 Stat. 1071-1074; Pub. L. 110-246, § 4(a), title II, §§ 2701-2705, June 18, 2008, 122 Stat. 1664, 1799-1802; Pub. L. 112-55, div. A, title VII, § 716(d)-(f), Nov. 18, 2011, 125 Stat. 582; Pub. L. 113-76, div. A, title VII, § 750(b), Jan. 17, 2014, 128 Stat. 42; Pub. L. 113-79, title II, §§ 2601-2605, Feb. 7, 2014, 128 Stat. 756-759.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c)(2)(A), and (g)(1), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

Section 2611 of the Agricultural Act of 2014, referred to in subsec. (c)(2), is section 2611 of Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 762, which amended sections 3811, 3812, 3812a, and 3821 of this title.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (c)(2)(A), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, which is classified generally to chapter 3B (§ 590a et seq.) of this title. For complete classification of this Act to the Code, see section 590q of this title and Tables.

Section 3839aa-7 of this title, referred to in subsec. (i)(2), was generally amended by Pub. L. 113-79, title II, § 2206, Feb. 7, 2014, 128 Stat. 730. As so amended, section 3839aa-7 no longer contains a subsec. (b).

Section 1308-3a of title 7, referred to in subsec. (i)(4), was amended by Pub. L. 113-79, title I, § 1605(a)-(e), Feb. 7, 2014, 128 Stat. 707, 708, and, as so amended, provisions which formerly appeared in subsec. (b)(2) of section 1308-3a were struck out.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

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

¹ See References in Text note below.

PRIOR PROVISIONS

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

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

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79, §2601(a), added subsec. (a) and struck out former subsec. (a) which authorized the Secretary to use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out programs under subchapter IV for fiscal years 2002 through 2012 generally, and fiscal years 2014 and 2015 in the case of certain programs.

Pub. L. 113-76, §750(b)(1), substituted “and (7) and each of fiscal years 2014 and 2015 in the case of the program specified in paragraph (6),” for “(6), and (7),” in introductory provisions.

Subsec. (a)(6)(F). Pub. L. 113-76, §750(b)(2), added subpar. (F).

Subsec. (b). Pub. L. 113-79, §2601(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 113-79, §2602, added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “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) of this section—

“(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) of this section other than the program for which the funds were made available.”

Pub. L. 113-79, §2601(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 113-79, §2601(b)(3), substituted “subsection (c)” for “subsection (b)”.

Pub. L. 113-79, §2601(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 113-79, §2603, added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows:

“(1) PRIORITY FUNDING TO PROMOTE EQUITY.—Before April 1 of each fiscal year, the Secretary shall give priority for funding under the conservation programs under subchapter IV (excluding the conservation reserve program under subpart B of part I, the wetlands reserve program under subpart C of part I, and the conservation security program under subpart A of part II) to approved applications in any State that has not received, for the fiscal year, an aggregate amount of at least \$15,000,000 for those conservation programs.

“(2) SPECIFIC FUNDING ALLOCATIONS.—In determining the specific funding allocations for States under paragraph (1), the Secretary shall consider the respective demand in each State for each program covered by such paragraph.”

Pub. L. 113-79, §2601(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f) to (h). Pub. L. 113-79, §2601(b)(1), redesignated subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 113-79, §2604(1), substituted “2018” for “2012” in introductory provisions.

Subsec. (h)(4). Pub. L. 113-79, §2604(2), added par. (4).

Subsec. (i). Pub. L. 113-79, §2601(b)(1), redesignated subsec. (h) as (i).

Subsec. (i)(1). Pub. L. 113-79, §2605(1), substituted “agricultural conservation easement program” for “wetlands reserve program”.

Subsec. (i)(2). Pub. L. 113-79, §2605(2), redesignated par. (4) as (2) and struck out former par. (2) which read as follows: “Payments made under the farmland protection program for easements in which the Federal share is \$250,000 or greater.”

Subsec. (i)(3). Pub. L. 113-79, §2605(2), (3), redesignated par. (5) as (3), substituted “regional conservation partnership program” for “agricultural water enhancement program” and “3871c(c)(3)” for “3839aa-9(g)”, and struck out former par. (3) which read as follows: “Payments made under the grassland reserve program valued at \$250,000 or greater.”

Subsec. (i)(4). Pub. L. 113-79, §2605(2), redesignated par. (6) as (4).

Subsec. (i)(5), (6). Pub. L. 113-79, §2605(4), added pars. (5) and (6).

2011—Subsec. (a). Pub. L. 112-55, §716(e)(1), substituted “2012 (and fiscal year 2014 in the case of the programs specified in paragraphs (3)(B), (4), (6), and (7)),” for “2012,” in introductory provisions.

Subsec. (a)(4)(E). Pub. L. 112-55, §716(e)(2), substituted “each of fiscal years 2012 through 2014” for “fiscal year 2012”.

Subsec. (a)(6)(E). Pub. L. 112-55, §716(d), substituted “each of fiscal years 2012 through 2014” for “fiscal year 2012”.

Subsec. (a)(7)(D). Pub. L. 112-55, §716(f), substituted “2014” for “2012”.

2008—Subsec. (a). Pub. L. 110-246, §2701(a), substituted “2012” for “2007” in introductory provisions.

Subsec. (a)(1). Pub. L. 110-246, §2701(b), inserted “, including to the maximum extent practicable—” after “part I” and added subpars. (A) and (B).

Subsec. (a)(3). Pub. L. 110-246, §2701(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The conservation security program under subpart A of part II, 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.”

Subsec. (a)(4). Pub. L. 110-246, §2701(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The farmland protection program under subpart B of part II, 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.”

Subsec. (a)(5). Pub. L. 110-246, §2701(e), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The grassland reserve program under subpart C of part II, using, to the maximum extent practicable \$254,000,000 for the period of fiscal years 2003 through 2007.”

Subsec. (a)(6). Pub. L. 110-246, §2701(f), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The environmental quality incentives program under part IV, 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.”

Subsec. (a)(7)(D). Pub. L. 110-246, §2701(g), substituted “2012” for “2007”.

Subsec. (d). Pub. L. 110-246, §2703(a), designated existing provisions as par. (1), inserted heading, substituted “\$15,000,000” for “\$12,000,000”, and added par. (2).

Subsec. (e). Pub. L. 110-246, §2702, added subsec. (e).

Subsec. (f). Pub. L. 110-246, §2703(b), added subsec. (f).

Subsec. (g). Pub. L. 110-246, §2704, added subsec. (g).

Subsec. (h). Pub. L. 110-246, §2705, added subsec. (h).

2006—Subsec. (a)(3). Pub. L. 109-171, §1202(b), substituted a dash for “\$6,037,000,000 for the period of fiscal

years 2005 through 2014.” and added subpars. (A) and (B).

Subsec. (a)(6)(E), (F). Pub. L. 109–171, §1203(c), added subpars. (E) and (F) and struck out former subpar. (E) which read as follows: “\$1,300,000,000 in fiscal year 2007.”

2004—Subsec. (a)(3). Pub. L. 108–324 inserted “, using not more than \$6,037,000,000 for the period of fiscal years 2005 through 2014” before period at end.

Pub. L. 108–199 struck out “, using not more than \$3,773,000,000 for the period of fiscal years 2003 through 2013” before period at end.

Subsec. (b). Pub. L. 108–498 added subsec. (b) and struck out heading and text of former subsec. (b), which related to availability of certain Commodity Credit Corporation funds under subsec. (a) for the provision of technical assistance for conservation and conservation security programs.

2003—Subsec. (a)(3). Pub. L. 108–7, §216(c), inserted “, using not more than \$3,773,000,000 for the period of fiscal years 2003 through 2013” before period at end.

Subsec. (b). Pub. L. 108–11 added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

“(1) FEBRUARY 20, 2003, THROUGH SEPTEMBER 30, 2003.—During the period beginning on February 20, 2003, and ending on September 30, 2003, Commodity Credit Corporation funds made available under paragraphs (4) through (7) of subsection (a) of this section shall be available for the provision of technical assistance (subject to section 3842 of this title) for the conservation programs specified in subsection (a) of this section.

“(2) SUBSEQUENT FISCAL YEARS.—Effective beginning on October 1, 2003, Commodity Credit Corporation funds made available under paragraphs (3) through (7) of subsection (a) of this section shall be available for the provision of technical assistance (subject to section 3842 of this title) for the conservation programs specified in subsection (a) of this section.”

Pub. L. 108–7, §213(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “Nothing in this section affects the limit on expenditures for technical assistance imposed by section 714i of title 15.”

Subsecs. (c), (d). Pub. L. 108–7, §213(2), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–498, §1(b), Dec. 23, 2004, 118 Stat. 4020, provided that: “The amendment made by subsection (a) [amending this section] takes effect on October 1, 2004.”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–11, title II, §2106(b), Apr. 16, 2003, 117 Stat. 590, provided that: “The amendment made by subsection (a) [amending this section] takes effect on February 20, 2003.”

§ 3842. Delivery of technical assistance

(a) Definition of eligible participant

In this section, the term “eligible participant” means a producer, landowner, or entity that is participating in, or seeking to participate in, programs for which the producer, landowner, or entity is otherwise eligible to participate in under this chapter or the agricultural management assistance program under section 1524 of title 7.

(b) Purpose of technical assistance

The purpose of technical assistance authorized by this section is to provide eligible participants

with consistent, science-based, site-specific practices designed to achieve conservation objectives on land active in agricultural, forestry, or related uses.

(c) Provision of technical assistance

The Secretary shall provide technical assistance under this chapter to an eligible participant—

- (1) directly;
- (2) through an agreement with a third-party provider; or
- (3) at the option of the eligible participant, through a payment, as determined by the Secretary, to the eligible participant for an approved third-party provider, if available.

(d) Non-Federal assistance

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

(e) Certification of third-party providers

(1) Purpose

The purpose of the third-party provider program is to increase the availability and range of technical expertise available to eligible participants to plan and implement conservation measures.

(2) Regulations

Not later than 180 days after the date of the enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall promulgate such regulations as are necessary to carry out this section.

(3) Expertise

In promulgating such regulations, the Secretary, to the maximum extent practicable, shall—

(A) ensure that persons with expertise in the technical aspects of conservation planning, watershed planning, and 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;

(B) provide national criteria for the certification of third party¹ providers; and

(C) approve any unique certification standards established at the State level.

(f) Administration

(1) Funding

Effective for fiscal year 2008 and each subsequent fiscal year, funds of the Commodity Credit Corporation made available to carry out technical assistance for each of the programs specified in section 3841 of this title shall be available for the provision of technical assistance from third-party providers under this section.

(2) Term of agreement

An agreement with a third-party provider under this section shall have a term that—

¹ So in original. Probably should be “third-party”.

(A) at a minimum, is equal to the period beginning on the date on which the agreement is entered into and ending on the date that is 1 year after the date on which all activities performed pursuant to the agreement have been completed;

(B) does not exceed 3 years; and

(C) can be renewed, as determined by the Secretary.

(3) Review of certification requirements

Not later than 1 year after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall—

(A) review certification requirements for third-party providers; and

(B) make any adjustments considered necessary by the Secretary to improve participation.

(4) Eligible activities

(A) Inclusion of activities

The Secretary may include as activities eligible for payments to a third party¹ provider—

(i) technical services provided directly to eligible participants, such as conservation planning, education and outreach, and assistance with design and implementation of conservation practices; and

(ii) related technical assistance services that accelerate conservation program delivery.

(B) Exclusions

The Secretary shall not designate as an activity eligible for payments to a third party¹ provider any service that is provided by a business, or equivalent, in connection with conducting business and that is customarily provided at no cost.

(5) Payment amounts

The Secretary shall establish fair and reasonable amounts of payments for technical services provided by third-party providers.

(g) Availability of technical services

(1) In general

In carrying out the programs under this chapter and the agricultural management assistance program under section 1524 of title 7, the Secretary shall make technical services available to all eligible participants who are installing an eligible practice.

(2) Technical service contracts

In any case in which financial assistance is not provided under a program referred to in paragraph (1), the Secretary may enter into a technical service contract with the eligible participant for the purposes of assisting in the planning, design, or installation of an eligible practice.

(h) Review of conservation practice standards

(1) Review required

The Secretary shall—

(A) review conservation practice standards, including engineering design specifications, in effect on the date of the enactment of the Food, Conservation, and Energy Act of 2008;

(B) ensure, to the maximum extent practicable, the completeness and relevance of the standards to local agricultural, forestry, and natural resource needs, including specialty crops, native and managed pollinators, bioenergy crop production, forestry, and such other needs as are determined by the Secretary; and

(C) ensure that the standards provide for the optimal balance between meeting site-specific conservation needs and minimizing risks of design failure and associated costs of construction and installation.

(2) Consultation

In conducting the review under paragraph (1), the Secretary shall consult with eligible participants, crop consultants, cooperative extension and land grant universities, nongovernmental organizations, and other qualified entities.

(3) Expedited revision of standards

If the Secretary determines under paragraph (1) that revisions to the conservation practice standards, including engineering design specifications, are necessary, the Secretary shall establish an administrative process for expediting the revisions.

(i) Addressing concerns of specialty crop, organic, and precision agriculture producers

(1) In general

The Secretary shall—

(A) to the maximum extent practicable, fully incorporate specialty crop production, organic crop production, and precision agriculture into the conservation practice standards; and

(B) provide for the appropriate range of conservation practices and resource mitigation measures available to producers involved with organic or specialty crop production or precision agriculture.

(2) Availability of adequate technical assistance

(A) In general

The Secretary shall ensure that adequate technical assistance is available for the implementation of conservation practices by producers involved with organic, specialty crop production, or precision agriculture through Federal conservation programs.

(B) Requirements

In carrying out subparagraph (A), the Secretary shall develop—

(i) programs that meet specific needs of producers involved with organic, specialty crop production or precision agriculture through cooperative agreements with other agencies and nongovernmental organizations; and

(ii) program specifications that allow for innovative approaches to engage local resources in providing technical assistance for planning and implementation of conservation practices.

(Pub. L. 99-198, title XII, §1242, as added Pub. L. 107-171, title II, §2701, May 13, 2002, 116 Stat. 279; amended Pub. L. 110-234, title II, §2706, May 22,

2008, 122 Stat. 1074; Pub. L. 110-246, §4(a), title II, §2706, June 18, 2008, 122 Stat. 1664, 1802; Pub. L. 113-79, title II, §2713(c), Feb. 7, 2014, 128 Stat. 772.)

REFERENCES IN TEXT

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

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subssecs. (e)(2), (f)(3), and (h)(1)(A), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

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

PRIOR PROVISIONS

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

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

AMENDMENTS

2014—Subsec. (i). Pub. L. 113-79 substituted “specialty” for “speciality” in heading.

2008—Pub. L. 110-246, §2706, amended section generally. Prior to amendment, section related to: in subsec. (a), provision of technical assistance to an eligible producer directly or through an approved third party; and, in subsec. (b), establishment of a system to certify third-party providers, transition provisions for persons that had provided assistance before May 13, 2002, and cooperative agreements or contracts with non-Federal entities.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3843. Repealed. Pub. L. 113-79, title II, §2710(a), Feb. 7, 2014, 128 Stat. 770

Section, Pub. L. 99-198, title XII, §1243, as added Pub. L. 104-127, title III, §341, Apr. 4, 1996, 110 Stat. 1008; amended Pub. L. 107-171, title II, §§2003, 2006(d), May 13, 2002, 116 Stat. 233, 237; Pub. L. 110-234, title II, §2707, May 22, 2008, 122 Stat. 1077; Pub. L. 110-246, §4(a), title II, §2707, June 18, 2008, 122 Stat. 1664, 1805, related to cooperative conservation partnership initiative.

PRIOR PROVISIONS

A prior section 3843, Pub. L. 99-198, title XII, §1243, Dec. 23, 1985, 99 Stat. 1515; Pub. L. 101-624, title XIV, §1442, Nov. 28, 1990, 104 Stat. 3602, which related to administration of this chapter, was omitted in the general amendment of this subchapter by Pub. L. 104-127.

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2710, Feb. 7, 2014, 128 Stat. 770, provided that:

“(a) REPEAL.—Except as provided in subsection (b), section 1243 of the Food Security Act of 1985 (16 U.S.C. 3843) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS AND AGREEMENTS.—The amendment made by this section [repealing section 3843 of this title] shall not affect the validity or terms of any contract or agreement entered into by the Secretary of Agriculture under section 1243 of the Food Security Act of 1985 ([former] 16 U.S.C. 3843) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract or agreement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of section 1243 of the Food Security Act of 1985 ([former] 16 U.S.C. 3843), any funds made available from the Commodity Credit Corporation to carry out the cooperative conservation partnership initiative under that section for fiscal years 2009 through 2013 shall be made available to carry out contracts and agreements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—On exhaustion of funds made available under subparagraph (A), the Secretary [of Agriculture] may use funds made available to carry out the regional conservation partnership program under subtitle I of title XII of the Food Security Act of 1985 [16 U.S.C. 3871 et seq.], as added by section 2401, to continue to carry out contracts and agreements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts and agreements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

§ 3844. Administrative requirements for conservation programs

(a) Incentives for certain farmers and ranchers and Indian tribes

(1) Incentives authorized

In carrying out any conservation program administered by the Secretary, the Secretary may provide to a person or entity specified in paragraph (2) incentives to participate in the conservation program—

(A) to foster new farming and ranching opportunities; and

(B) to enhance long-term environmental goals.

(2) Covered persons

Incentives authorized by paragraph (1) may be provided to the following:

(A) Beginning farmers or ranchers.

(B) Socially disadvantaged farmers or ranchers.

(C) Limited resource farmers or ranchers.

(D) Indian tribes.

(E) Veteran farmers or ranchers (as defined in section 2279(e) of title 7).

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

(1) Information received for technical and financial assistance

(A) In general

In accordance with section 552(b)(3) of title 5, except as provided in subparagraph (C) and

paragraph (2), information described in subparagraph (B)—

(i) shall not be considered to be public information; and

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

(B) Information

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

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

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

(C) Exception

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

(2) Exceptions

(A) Release and disclosure for enforcement

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

(B) Disclosure to cooperating persons and agencies

(i) In general

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

(ii) Use of information

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

(I) in providing the requested technical or financial assistance; or

(II) in collecting information from data gathering sites.

(C) Statistical and aggregate information

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

(i) individual owner, operator, or producer; or

(ii) specific data gathering site.

(D) Consent of owner, operator, or producer

(i) In general

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

(ii) Condition of other programs

The participation of the owner, operator, or producer in, and the receipt of any benefit by the owner, operator, or producer under, this chapter or any other program administered by the Secretary may not be conditioned on the owner, operator, or producer providing consent under this paragraph.

(3) Violations; penalties

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

(4) Data collection, disclosure, and review

Nothing in this subsection—

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

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

(c) Plans

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

(1) the conservation plans required for—

(A) highly erodible land conservation under subchapter II; and

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

(2) the agricultural conservation easement program established under subchapter VII; and

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

(d) Tenant protection

Except for a person who is a tenant on land that is subject to a conservation reserve contract that has been extended by the Secretary, the Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under the programs established under subchapters II through IV, VII, and VIII.

(e) Provision of technical assistance by other sources

In the preparation and application of a conservation compliance plan under subchapter II or similar plan required as a condition for assistance from the Department of Agriculture, the Secretary shall permit persons to secure technical assistance from approved sources, as determined by the Secretary, other than the Natural Resources Conservation Service. If the Secretary rejects a technical determination made by such a source, the basis of the Secretary's determination must be supported by documented evidence.

(f) Acreage limitations**(1) Limitations****(A) Enrollments**

The Secretary shall not enroll more than 25 percent of the cropland in any county in the conservation reserve program established under subpart B of part I of subchapter IV and wetland reserve easements under section 3865c of this title.

(B) Easements

Not more than 10 percent of the cropland in a county may be subject to a wetland reserve easement under section 3865c of this title.

(2) Exceptions

The Secretary may exceed the limitation in paragraph (1)(A), if the Secretary determines that—

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

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

(3) Waiver to exclude certain acreage

The Secretary may grant a waiver to exclude acreage enrolled under subsection (d)(2)(A)(ii) or (g)(2) of section 3834 of this title from the limitations in paragraph (1)(A) with the concurrence of the county government of the county involved.

(4) Exclusions**(A) Shelterbelts and windbreaks**

The limitations established under paragraph (1) shall not apply to cropland that is subject to an easement under subpart B of part I of subchapter IV that is used for the establishment of shelterbelts and windbreaks.

(B) Wet and saturated soils

For the purposes of enrolling land in a wetland reserve easement under section 3865c of this title, the limitations established under paragraph (1) shall not apply to cropland designated by the Secretary with subclass w in the land capability classes IV through VIII because of severe use limitations due to soil saturation or inundation.

(5) Calculation

In calculating the percentages described in paragraph (1), the Secretary shall include any acreage that was included in calculations of percentages made under such paragraph, as in effect on the day before February 7, 2014, and that remains enrolled when the calculation is made after that date under paragraph (1).

(g) Compliance and performance

For each conservation program under subchapter IV, the Secretary shall develop procedures—

(1) to monitor compliance with program requirements;

(2) to measure program performance;

(3) to demonstrate whether the long-term conservation benefits of the program are being achieved;

(4) to track participation by crop and livestock types; and

(5) to coordinate activities described in this subsection with the national conservation program authorized under section 2004 of this title.

(h) Encouragement of pollinator habitat development and protection

In carrying out any conservation program administered by the Secretary, the Secretary may, as appropriate, encourage—

(1) the development of habitat for native and managed pollinators; and

(2) the use of conservation practices that benefit native and managed pollinators, including, to the extent practicable, practices that maximize benefits for honey bees.

(i) Streamlined application process**(1) In general**

In carrying out each conservation program under this chapter, the Secretary shall ensure that the application process used by producers and landowners is streamlined to minimize complexity and eliminate redundancy.

(2) Review and streamlining**(A) Review**

The Secretary shall carry out a review of the application forms and processes for each conservation program covered by this subsection.

(B) Streamlining

On completion of the review the Secretary shall revise application forms and processes, as necessary, to ensure that—

(i) all required application information is essential for the efficient, effective, and accountable implementation of conservation programs;

(ii) conservation program applicants are not required to provide information that is readily available to the Secretary through existing information systems of the Department of Agriculture;

(iii) information provided by the applicant is managed and delivered efficiently for use in all stages of the application process, or for multiple applications; and

(iv) information technology is used effectively to minimize data and information input requirements.

(3) Implementation and notification

Not later than 1 year after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall submit to Congress a written notification of completion of the requirements of this subsection.

(j) Improved administrative efficiency and effectiveness

In administering a conservation program under this chapter, the Secretary shall, to the maximum extent practicable—

(1) seek to reduce administrative burdens and costs to producers by streamlining conservation planning and program resources; and

(2) take advantage of new technologies to enhance efficiency and effectiveness.

(k) Relation to other payments

Any payment received by an owner or operator under this chapter, including an easement payment or rental payment, shall be in addition to, and not affect, the total amount of payments that the owner or operator is otherwise eligible to receive under any of the following:

- (1) This Act.
- (2) The Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).
- (3) The Agricultural Act of 2014.
- (4) Any law that succeeds a law specified in paragraph (1), (2), or (3).

(l) Funding for Indian tribes

In carrying out the conservation stewardship program under subpart B of part II of subchapter IV and the environmental quality incentives program under part IV of subchapter IV, the Secretary may enter into alternative funding arrangements with Indian tribes if the Secretary determines that the goals and objectives of the programs will be met by such arrangements, and that statutory limitations regarding contracts with individual producers will not be exceeded by any tribal member.

(Pub. L. 99-198, title XII, § 1244, as added Pub. L. 107-171, title II, § 2004(a), May 13, 2002, 116 Stat. 235; amended Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-234, title II, §§ 2707(a), 2708, May 22, 2008, 122 Stat. 1077, 1079; Pub. L. 110-246, § 4(a), title II, §§ 2707(a), 2708, June 18, 2008, 122 Stat. 1664, 1805, 1807; Pub. L. 113-79, title II, §§ 2301(b), 2606, Feb. 7, 2014, 128 Stat. 743, 760.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(D)(ii), (i)(1), (j), and (k), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (i)(3), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

This Act, referred to in subsec. (k)(1), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Agricultural Act of 1949, referred to in subsec. (k)(2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 2014, referred to in subsec. (k)(3), is Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 649. For complete classification of this Act to the Code, see Tables.

CODIFICATION

The text of section 3843(a), (c), and (d) of this title, which was transferred to this section and redesignated as subsecs. (c), (d), and (e), respectively, by Pub. L. 110-246, § 2707(a), was based on Pub. L. 99-198, title XII, § 1243(a), (c), (d), as added Pub. L. 104-127, title III, § 341, Apr. 4, 1996, 110 Stat. 1008, 1009.

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3844, Pub. L. 99-198, title XII, § 1244, Dec. 23, 1985, 99 Stat. 1515, related to issuance of regulations to carry out subchapters I to V of this chapter, prior to the general amendment of this subchapter by Pub. L. 104-127.

AMENDMENTS

2014—Subsec. (a)(2)(E). Pub. L. 113-79, § 2606(1), added subpar. (E).

Subsec. (c)(1). Pub. L. 113-79, § 2301(b)(1)(A), inserted “and” after semicolon in subpar. (A), struck out “and” after semicolon in subpar. (B), and struck out subpar. (C) which read as follows: “the wetlands reserve program established under subpart C of part I of subchapter IV; and”.

Subsec. (c)(2), (3). Pub. L. 113-79, § 2301(b)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 113-79, § 2606(2), inserted “, VII, and VIII” before period at end.

Subsec. (f)(1)(A). Pub. L. 113-79, § 2301(b)(2)(A)(i), substituted “conservation reserve program established under subpart B of part I of subchapter IV and wetland reserve easements under section 3865c of this title” for “programs administered under subparts B and C of part I of subchapter IV”.

Subsec. (f)(1)(B). Pub. L. 113-79, § 2606(3)(A), substituted “county” for “country”.

Pub. L. 113-79, § 2301(b)(2)(A)(ii), substituted “a wetland reserve easement under section 3865c of this title” for “an easement acquired under subpart C of part I of subchapter IV”.

Subsec. (f)(3). Pub. L. 113-79, § 2606(3)(B), substituted “subsection (d)(2)(A)(ii) or (g)(2)” for “subsection (c)(2)(B) or (f)(4)”.

Subsec. (f)(4). Pub. L. 113-79, § 2301(b)(2)(B), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “The limitations established under paragraph (1) shall not apply to cropland that is subject to an easement under subpart C of part I of subchapter IV that is used for the establishment of shelterbelts and windbreaks.”

Subsec. (f)(5). Pub. L. 113-79, § 2301(b)(2)(C), added par. (5).

Subsec. (h)(2). Pub. L. 113-79, § 2606(4), inserted “, including, to the extent practicable, practices that maximize benefits for honey bees” before period at end.

Subsecs. (j) to (l). Pub. L. 113-79, § 2606(5), added subsecs. (j) to (l).

2008—Subsec. (a). Pub. L. 110-246, § 2708(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “In carrying out any conservation program administered by the Secretary, the Secretary may provide to beginning farmers and ranchers and Indian tribes (as those terms are defined in section 3838 of this title) and limited resource agricultural producers incentives to participate in the conservation program to—

“(1) foster new farming and ranching opportunities; and

“(2) enhance environmental stewardship over the long term.”

Subsecs. (c) to (e). Pub. L. 110-246, § 2707(a), transferred subsecs. (a), (c), and (d) of section 3843 of this title and redesignated them as subsecs. (c) to (e), respectively, of this section. See Codification note above.

Subsecs. (f) to (i). Pub. L. 110-246, § 2708(2), added subsecs. (f) to (i).

2004—Subsec. (b)(4)(B). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3845. Environmental services markets**(a) Technical guidelines required**

The Secretary shall establish technical guidelines that outline science-based methods to measure the environmental services benefits from conservation and land management activities in order to facilitate the participation of farmers, ranchers, and forest landowners in emerging environmental services markets. The Secretary shall give priority to the establishment of guidelines related to farmer, rancher, and forest landowner participation in carbon markets.

(b) Establishment

The Secretary shall establish guidelines under subsection (a) for use in developing the following:

- (1) A procedure to measure environmental services benefits.
- (2) A protocol to report environmental services benefits.
- (3) A registry to collect, record and maintain the benefits measured.

(c) Verification requirements**(1) Verification of reports**

The Secretary shall establish guidelines for a process to verify that a farmer, rancher, or forest landowner who reports an environmental services benefit pursuant to the protocol required by paragraph (2) of subsection (b) for inclusion in the registry required by paragraph (3) of such subsection has implemented the conservation or land management activity covered by the report.

(2) Role of third parties

In establishing the verification guidelines required by paragraph (1), the Secretary shall consider the role of third-parties in conducting independent verification of benefits produced for environmental services markets and other functions, as determined by the Secretary.

(d) Use of existing information

In carrying out subsection (b), the Secretary shall build on activities or information in existence on the date of the enactment of the Food, Conservation, and Energy Act of 2008 regarding environmental services markets.

(e) Consultation

In carrying out this section, the Secretary shall consult with the following:

- (1) Federal and State government agencies.
- (2) Nongovernmental interests including—
 - (A) farm, ranch, and forestry producers;
 - (B) financial institutions involved in environmental services trading;
 - (C) institutions of higher education with relevant expertise or experience;
 - (D) nongovernmental organizations with relevant expertise or experience; and
 - (E) private sector representatives with relevant expertise or experience.
- (3) Other interested persons, as determined by the Secretary.

(Pub. L. 99-198, title XII, § 1245, as added Pub. L. 110-234, title II, § 2709, May 22, 2008, 122 Stat. 1081,

and Pub. L. 110-246, § 4(a), title II, § 2709, June 18, 2008, 122 Stat. 1664, 1809.)

REFERENCES IN TEXT

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec (d), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3845, Pub. L. 99-198, title XII, § 1245, Dec. 23, 1985, 99 Stat. 1516; Pub. L. 101-624, title XIV, § 1443, Nov. 28, 1990, 104 Stat. 3602; Pub. L. 102-552, title V, § 516(b)(1), Oct. 28, 1992, 106 Stat. 4137, related to authorization of appropriations, prior to the general amendment of this subchapter by Pub. L. 104-127.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 3846. Regulations**(a) In general**

The Secretary shall promulgate such regulations as are necessary to implement programs under this chapter, including such regulations as the Secretary determines to be necessary to ensure a fair and reasonable application of the limitations established under section 3844(f) of this title.

(b) Rulemaking procedure

The promulgation of regulations and administration of programs under this chapter—

- (1) shall be carried out without regard to chapter 35 of title 44 (commonly known as the Paperwork Reduction Act); and
- (2) shall be made as an interim rule effective on publication with an opportunity for notice and comment.

(c) Congressional review of agency rulemaking

In promulgating regulations under this section, the Secretary shall use the authority provided under section 808 of title 5.

(Pub. L. 99-198, title XII, § 1246, as added Pub. L. 113-79, title II, § 2608, Feb. 7, 2014, 128 Stat. 761.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

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

A prior section 3847, Pub. L. 99-198, title XII, § 1247, as added Pub. L. 101-624, title XIV, § 1445, Nov. 28, 1990, 104

Stat. 3603; amended Pub. L. 102-237, title II, §204(8), Dec. 13, 1991, 105 Stat. 1855, which related to assistance for control of spread of weeds and pests, was omitted in the general amendment of this subchapter by Pub. L. 104-127.

SUBCHAPTER V—A—OTHER CONSERVATION PROGRAMS

§ 3851. Agriculture conservation experienced services program

(a) Establishment and purpose

The Secretary shall establish a conservation experienced services program (in this section referred to as the “ACES Program”) for the purpose of utilizing the talents of individuals who are age 55 or older, but who are not employees of the Department of Agriculture or a State agriculture department, to provide technical services in support of the conservation-related programs and authorities carried out by the Secretary. Such technical services may include conservation planning assistance, technical consultation, and assistance with design and implementation of conservation practices.

(b) Program agreements

(1) Relation to older American community service employment program

Notwithstanding any other provision of law relating to Federal grants, cooperative agreements, or contracts, to carry out the ACES program during a fiscal year, the Secretary may enter into agreements with nonprofit private agencies and organizations eligible to receive grants for that fiscal year under the Community Service Senior Opportunities Act (42 U.S.C. 3056 et seq.) to secure participants for the ACES program who will provide technical services under the ACES program.

(2) Required determination

Before entering into an agreement under paragraph (1), the Secretary shall ensure that the agreement would not—

(A) result in the displacement of individuals employed by the Department, including partial displacement through reduction of non-overtime hours, wages, or employment benefits;

(B) result in the use of an individual under the ACES program for a job or function in a case in which a Federal employee is in a lay-off status from the same or a substantially-equivalent job or function with the Department; or

(C) affect existing contracts for services.

(c) Funding source

(1) In general

Except as provided in paragraph (2), the Secretary may carry out the ACES program using funds made available to carry out each program under this chapter.

(2) Exclusion

Funds made available to carry out the conservation reserve program may not be used to carry out the ACES program.

(d) Liability

An individual providing technical services under the ACES program is deemed to be an em-

ployee of the United States Government for purposes of chapter 171 of title 28 if the individual—

(1) is providing technical services pursuant to an agreement entered into under subsection (b); and

(2) is acting within the scope of the agreement.

(Pub. L. 99-198, title XII, §1252, as added Pub. L. 110-234, title II, §2710, May 22, 2008, 122 Stat. 1082, and Pub. L. 110-246, §4(a), title II, §2710, June 18, 2008, 122 Stat. 1664, 1810; amended Pub. L. 113-79, title II, §2504, Feb. 7, 2014, 128 Stat. 752.)

REFERENCES IN TEXT

The Community Service Senior Opportunities Act, referred to in subsec. (b)(1), is title V of Pub. L. 89-73, as added Pub. L. 109-365, title V, §501, Oct. 17, 2006, 120 Stat. 2563, which is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

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

CODIFICATION

Pub. L. 110-234, §2710, and Pub. L. 110-246, §2710, which directed the amendment of subtitle F of title XII of the Food Security Act of 1985 by inserting this section after section 1251, was executed by inserting this section between subtitles E and G of title XII of that Act to reflect the probable intent of Congress, because subtitle F and section 1251 (16 U.S.C. 2005a) of title XII of the Food Security Act of 1985 were repealed by Pub. L. 104-127, title III, §336(e), Apr. 4, 1996, 110 Stat. 1007.

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 1252 of Pub. L. 99-198, title XII, Dec. 23, 1985, 99 Stat. 1516, amended sections 2004, 2005, 2006, and 2009 of this title, prior to repeal by Pub. L. 104-127, title III, §336(e), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2014—Subsec. (c)(2). Pub. L. 113-79 amended par. (2) generally. Prior to amendment, text read as follows: “Funds made available to carry out the following programs may not be used to carry out the ACES program:

“(A) The conservation reserve program.

“(B) The wetlands reserve program.

“(C) The grassland reserve program.

“(D) The conservation stewardship program.”

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 3851a. Forest Service participation in ACES Program

The Secretary, acting through the Chief of the Forest Service, may use funds derived from conservation-related programs executed on National Forest System land to utilize the Agriculture Conservation Experienced Services Program established pursuant to section 3851 of this

title to provide technical services for conservation-related programs and authorities carried out by the Secretary on National Forest System land.

(Pub. L. 113-79, title VIII, §8302, Feb. 7, 2014, 128 Stat. 923.)

CODIFICATION

Section was enacted as part of the Agricultural Act of 2014, and not as part of title XII of Pub. L. 99-198 which comprises this chapter.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 9001 of Title 7, Agriculture.

SUBCHAPTER VI—STATE TECHNICAL COMMITTEES

§ 3861. Establishment of State technical committees

(a) Establishment

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

(b) Standards

The Secretary shall review and update as necessary—

- (1) standard operating procedures to standardize the operations of State technical committees; and
- (2) standards to be used by State technical committees in the development of technical guidelines under section 3862(b)¹ of this title for the implementation of the conservation provisions of this chapter.

(c) Composition

Each State technical committee shall be composed of agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences. The technical committee for a State shall include representatives from among the following:

- (1) The Natural Resources Conservation Service.
- (2) The Farm Service Agency.
- (3) The Forest Service.
- (4) The National Institute of Food and Agriculture.
- (5) The State fish and wildlife agency.
- (6) The State forester or equivalent State official.
- (7) The State water resources agency.
- (8) The State department of agriculture.
- (9) The State association of soil and water conservation districts.
- (10) Agricultural producers representing the variety of crops and livestock or poultry raised within the State.
- (11) Owners of nonindustrial private forest land.
- (12) Nonprofit organizations within the meaning of section 501(c)(3) of title 26 with demonstrable conservation expertise and experience working with agriculture producers in the State.

¹ See References in Text note below.

(13) Agribusiness.

(Pub. L. 99-198, title XII, §1261, as added Pub. L. 101-624, title XIV, §1446, Nov. 28, 1990, 104 Stat. 3604; amended Pub. L. 104-127, title III, §342(a), Apr. 4, 1996, 110 Stat. 1009; Pub. L. 110-234, title II, §2711, title VII, §7511(c)(38), May 22, 2008, 122 Stat. 1083, 1271; Pub. L. 110-246, §4(a), title II, §2711, title VII, §7511(c)(38), June 18, 2008, 122 Stat. 1664, 1811, 2032; Pub. L. 113-79, title II, §2607, Feb. 7, 2014, 128 Stat. 760.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(2), was in the original “this title”, meaning title XII of Pub. L. 99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

Section 3862 of this title, referred to in subsec. (b)(2), was amended generally by Pub. L. 110-246, title II, §2711, June 18, 2008, 122 Stat. 1812, and, as so amended, no longer contains provisions relating to development of technical guidelines.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-79, in introductory provisions, substituted “The Secretary shall review and update as necessary” for “Not later than 180 days after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall develop”.

2008—Pub. L. 110-246, §2711, which directed the general amendment of section 1261 of the “Farm Security Act of 1985”, was executed by making the amendment to this section, which is section 1261 of the Food Security Act of 1985, to reflect the probable intent of Congress. Prior to amendment, section related to the establishment in each State of a technical committee to assist the Secretary in the technical considerations relating to implementation of conservation provisions under this chapter, composition of each such committee, and development of standards to be used in the development of guidelines under former section 3862(b) of this title.

Subsec. (c)(4). Pub. L. 110-246, §7511(c)(38), which directed amendment of par. (4) by substituting “National Institute of Food and Agriculture” for “Extension Service”, could not be executed because “Extension Service” did not appear subsequent to amendment by Pub. L. 110-246, §2711. See above.

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 7511(c)(38) of Pub. L. 110-246 effective Oct. 1, 2009, see section 7511(c) of Pub. L. 110-246, set out as a note under section 1522 of Title 7, Agriculture.

§ 3862. Responsibilities

(a) In general

Each State technical committee established under section 3861 of this title shall meet regularly to provide information, analysis, and rec-

ommendations to appropriate officials of the Department of Agriculture who are charged with implementing the conservation provisions of this chapter.

(b) Public notice and attendance

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

(c) Role

(1) In general

The role of State technical committees is advisory in nature, and such committees shall have no implementation or enforcement authority. However, the Secretary shall give strong consideration to the recommendations of such committees in administering the programs under this chapter.

(2) Advisory role in establishing program priorities and criteria

Each State technical committee shall advise the Secretary in establishing priorities and criteria for the programs in this chapter, including the review of whether local working groups are addressing those priorities.

(d) FACA requirements

(1) Exemption

Each State technical committee shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(2) Local working groups

For purposes of the Federal Advisory Committee Act (5 U.S.C. App.), any local working group established under this subchapter shall be considered to be a subcommittee of the applicable State technical committee.

(Pub. L. 99-198, title XII, §1262, as added Pub. L. 101-624, title XIV, §1446, Nov. 28, 1990, 104 Stat. 3604; amended Pub. L. 103-354, title II, §246(f)(3), Oct. 13, 1994, 108 Stat. 3225; Pub. L. 104-127, title III, §342(b), Apr. 4, 1996, 110 Stat. 1009; Pub. L. 110-234, title II, §2711, May 22, 2008, 122 Stat. 1084; Pub. L. 110-246, §4(a), title II, §2711, June 18, 2008, 122 Stat. 1664, 1812.)

REFERENCES IN TEXT

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

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Pub. L. 110-246, §2711, which directed the general amendment of section 1262 of the “Farm Security Act of 1985”, was executed by making the amendment to this section, which is section 1262 of the Food Security Act of 1985, to reflect the probable intent of Congress. Prior to amendment, section consisted of subsecs. (a) to (d) which related to general responsibilities of committees established under section 3861 of this title, wetland and wildlife habitat protection guidelines, provision of assistance and recommendations with respect to enumerated technical aspects, authority of committees, and FACA requirements.

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

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

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

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

PUBLIC NOTICE AND COMMENT FOR REVISIONS TO CERTAIN STATE TECHNICAL GUIDES

Pub. L. 104-127, title III, §343, Apr. 4, 1996, 110 Stat. 1009, provided that: “After the date of enactment of this Act [Apr. 4, 1996], the Secretary of Agriculture shall provide for public notice and comment under section 553 of title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service State technical guides that are used to carry out subtitles A, B, and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq. [3811 et seq., 3821 et seq.]).”

SUBCHAPTER VII—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

§ 3865. Establishment and purposes

(a) Establishment

The Secretary shall establish an agricultural conservation easement program for the conservation of eligible land and natural resources through easements or other interests in land.

(b) Purposes

The purposes of the program are to—

(1) combine the purposes and coordinate the functions of the wetlands reserve program established under section 3837¹ of this title, the grassland reserve program established under section 3838n¹ of this title, and the farmland protection program established under section 3838i¹ of this title, as such sections were in effect on the day before February 7, 2014;

(2) restore, protect, and enhance wetlands on eligible land;

(3) protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land; and

(4) protect grazing uses and related conservation values by restoring and conserving eligible land.

¹ See References in Text note below.

(Pub. L. 99-198, title XII, § 1265, as added Pub. L. 113-79, title II, § 2301(a), Feb. 7, 2014, 128 Stat. 731.)

REFERENCES IN TEXT

Sections 3837, 3838n, and 3838i of this title, referred to in subsec. (b)(1), were repealed by Pub. L. 113-79, title II, §§ 2703(a), 2704(a), 2705(a), Feb. 7, 2014, 128 Stat. 767, 768.

§ 3865a. Definitions

In this subchapter:

(1) Agricultural land easement

The term “agricultural land easement” means an easement or other interest in eligible land that—

(A) is conveyed for the purpose of protecting natural resources and the agricultural nature of the land; and

(B) permits the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan, as approved by the Secretary.

(2) Eligible entity

The term “eligible entity” means—

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

(B) an organization that is—

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

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

(iii) described in—

(I) paragraph (1) or (2) of section 509(a) of title 26; or

(II) section 509(a)(3) of title 26 and is controlled by an organization described in section 509(a)(2) of title 26.

(3) Eligible land

The term “eligible land” means private or tribal land that is—

(A) in the case of an agricultural land easement, agricultural land, including land on a farm or ranch—

(i) that is subject to a pending offer for purchase of an agricultural land easement from an eligible entity;

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

(II) that contains historical or archaeological resources;

(III) the enrollment of which would protect grazing uses and related conservation values by restoring and conserving land; or

(IV) the protection of which will further a State or local policy consistent with the purposes of the program; and

(iii) that is—

(I) cropland;

(II) rangeland;

(III) grassland or land that contains forbs, or shrubland for which grazing is the predominant use;

(IV) located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;

(V) pastureland; or

(VI) nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development;

(B) in the case of a wetland reserve easement, a wetland or related area, including—

(i) farmed or converted wetlands, together with adjacent land that is functionally dependent on that land, if the Secretary determines it—

(I) is likely to be successfully restored in a cost-effective manner; and

(II) will maximize the wildlife benefits and wetland functions and values, as determined by the Secretary in consultation with the Secretary of the Interior at the local level;

(ii) cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of—

(I) a closed basin lake and adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide 50 percent share of the cost of an easement; or

(II) a pothole and adjacent land that is functionally dependent on it;

(iii) farmed wetlands and adjoining lands that—

(I) are enrolled in the conservation reserve program;

(II) have the highest wetland functions and values, as determined by the Secretary; and

(III) are likely to return to production after they leave the conservation reserve program;

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

(v) other wetlands of an owner that would not otherwise be eligible, if the Secretary determines that the inclusion of such wetlands in a wetland reserve easement would significantly add to the functional value of the easement; or

(C) in the case of either an agricultural land easement or a wetland reserve easement, other land that is incidental to land described in subparagraph (A) or (B), if the Secretary determines that it is necessary for the efficient administration of an easement under the program.

(4) Program

The term “program” means the agricultural conservation easement program established by this subchapter.

(5) Wetland reserve easement

The term “wetland reserve easement” means a reserved interest in eligible land that—

(A) is defined and delineated in a deed; and
 (B) stipulates—

- (i) the rights, title, and interests in land conveyed to the Secretary; and
- (ii) the rights, title, and interests in land that are reserved to the landowner.

(Pub. L. 99-198, title XII, §1265A, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 732.)

§ 3865b. Agricultural land easements

(a) Availability of assistance

The Secretary shall facilitate and provide funding for—

- (1) the purchase by eligible entities of agricultural land easements in eligible land; and
- (2) technical assistance to provide for the conservation of natural resources pursuant to an agricultural land easement plan.

(b) Cost-share assistance

(1) In general

The Secretary shall protect the agricultural use, including grazing, and related conservation values of eligible land through cost-share assistance to eligible entities for purchasing agricultural land easements.

(2) Scope of assistance available

(A) Federal share

An agreement described in paragraph (4) shall provide for a Federal share determined by the Secretary of an amount not to exceed 50 percent of the fair market value of the agricultural land easement, as determined by the Secretary using—

- (i) the Uniform Standards of Professional Appraisal Practice;
- (ii) an areawide market analysis or survey; or
- (iii) another industry-approved method.

(B) Non-federal share

(i) In general

Under the agreement, the eligible entity shall provide a share that is at least equivalent to that provided by the Secretary.

(ii) Source of contribution

An eligible entity may include as part of its share under clause (i) a charitable donation or qualified conservation contribution (as defined by section 170(h) of title 26) from the private landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the amount contributed by the Secretary.

(C) Exception

(i) Grasslands

In the case of grassland of special environmental significance, as determined by the Secretary, the Secretary may provide an amount not to exceed 75 percent of the fair market value of the agricultural land easement.

(ii) Cash contribution

For purposes of subparagraph (B)(ii), the Secretary may waive any portion of the el-

igible entity cash contribution requirement for projects of special significance, subject to an increase in the private landowner donation that is equal to the amount of the waiver, if the donation is voluntary and the property is in active agricultural production.

(3) Evaluation and ranking of applications

(A) Criteria

The Secretary shall establish evaluation and ranking criteria to maximize the benefit of Federal investment under the program.

(B) Considerations

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

- (i) protecting agricultural uses and related conservation values of the land; and
- (ii) maximizing the protection of areas devoted to agricultural use.

(C) Bidding down

If the Secretary determines that 2 or more applications for cost-share assistance are comparable in achieving the purpose of the program, the Secretary shall not assign a higher priority to any of those applications solely on the basis of lesser cost to the program.

(4) Agreements with eligible entities

(A) In general

The Secretary shall enter into agreements with eligible entities to stipulate the terms and conditions under which the eligible entity is permitted to use cost-share assistance provided under this section.

(B) Length of agreements

An agreement shall be for a term that is—

- (i) in the case of an eligible entity certified under the process described in paragraph (5), a minimum of five years; and
- (ii) for all other eligible entities, at least three, but not more than five years.

(C) Minimum terms and conditions

An eligible entity shall be authorized to use its own terms and conditions for agricultural land easements so long as the Secretary determines such terms and conditions—

- (i) are consistent with the purposes of the program;
- (ii) permit effective enforcement of the conservation purposes of such easements;
- (iii) include a right of enforcement for the Secretary, that may be used only if the terms of the easement are not enforced by the holder of the easement;
- (iv) subject the land in which an interest is purchased to an agricultural land easement plan that—

(I) describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired;

(II) requires the management of grasslands according to a grasslands management plan; and

(III) includes a conservation plan, where appropriate, and requires, at the

option of the Secretary, the conversion of highly erodible cropland to less intensive uses; and

(v) include a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted.

(D) Substitution of qualified projects

An agreement shall allow, upon mutual agreement of the parties, substitution of qualified projects that are identified at the time of the proposed substitution.

(E) Effect of violation

If a violation occurs of a term or condition of an agreement under this subsection—

(i) the Secretary may terminate the agreement; and

(ii) the Secretary may require the eligible entity to refund all or part of any payments received by the entity under the program, with interest on the payments as determined appropriate by the Secretary.

(5) Certification of eligible entities

(A) Certification process

The Secretary shall establish a process under which the Secretary may—

(i) directly certify eligible entities that meet established criteria;

(ii) enter into long-term agreements with certified eligible entities; and

(iii) accept proposals for cost-share assistance for the purchase of agricultural land easements throughout the duration of such agreements.

(B) Certification criteria

In order to be certified, an eligible entity shall demonstrate to the Secretary that the entity will maintain, at a minimum, for the duration of the agreement—

(i) a plan for administering easements that is consistent with the purpose of the program;

(ii) the capacity and resources to monitor and enforce agricultural land easements; and

(iii) policies and procedures to ensure—

(I) the long-term integrity of agricultural land easements on eligible land;

(II) timely completion of acquisitions of such easements; and

(III) timely and complete evaluation and reporting to the Secretary on the use of funds provided under the program.

(C) Review and revision

(i) Review

The Secretary shall conduct a review of eligible entities certified under subparagraph (A) every three years to ensure that such entities are meeting the criteria established under subparagraph (B).

(ii) Revocation

If the Secretary finds that a certified eligible entity no longer meets the criteria established under subparagraph (B), the Secretary may—

(I) allow the certified eligible entity a specified period of time, at a minimum

180 days, in which to take such actions as may be necessary to meet the criteria; and

(II) revoke the certification of the eligible entity, if, after the specified period of time, the certified eligible entity does not meet such criteria.

(c) Method of enrollment

The Secretary shall enroll eligible land under this section through the use of—

(1) permanent easements; or

(2) easements for the maximum duration allowed under applicable State laws.

(d) Technical assistance

The Secretary may provide technical assistance, if requested, to assist in—

(1) compliance with the terms and conditions of easements; and

(2) implementation of an agricultural land easement plan.

(Pub. L. 99-198, title XII, §1265B, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 734.)

§ 3865c. Wetland reserve easements

(a) Availability of assistance

The Secretary shall provide assistance to owners of eligible land to restore, protect, and enhance wetlands through—

(1) wetland reserve easements and related wetland reserve easement plans; and

(2) technical assistance.

(b) Easements

(1) Method of enrollment

The Secretary shall enroll eligible land under this section through the use of—

(A) 30-year easements;

(B) permanent easements;

(C) easements for the maximum duration allowed under applicable State laws; or

(D) as an option for Indian tribes only, 30-year contracts.

(2) Limitations

(A) Ineligible land

The Secretary may not acquire easements on—

(i) land established to trees under the conservation reserve program, except in cases where the Secretary determines it would further the purposes of this section; and

(ii) farmed wetlands or converted wetlands where the conversion was not commenced prior to December 23, 1985.

(B) Changes in ownership

No wetland reserve easement shall be created on land that has changed ownership during the preceding 24-month period unless—

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

(ii)(I) the ownership change occurred because of foreclosure on the land; and

(II) immediately before the foreclosure, the owner of the land exercises a right of

redemption from the mortgage holder in accordance with State law; or

(iii) 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.

(3) Evaluation and ranking of offers

(A) Criteria

The Secretary shall establish evaluation and ranking criteria for offers from landowners under this section to maximize the benefit of Federal investment under the program.

(B) Considerations

When evaluating offers from landowners, the Secretary may consider—

(i) the conservation benefits of obtaining a wetland reserve easement, including the potential environmental benefits if the land was removed from agricultural production;

(ii) the cost effectiveness of each wetland reserve easement, so as to maximize the environmental benefits per dollar expended;

(iii) whether the landowner or another person is offering to contribute financially to the cost of the wetland reserve easement to leverage Federal funds; and

(iv) such other factors as the Secretary determines are necessary to carry out the purposes of the program.

(C) Priority

The Secretary shall give priority to acquiring wetland reserve easements based on the value of the wetland reserve easement for protecting and enhancing habitat for migratory birds and other wildlife.

(4) Agreement

To be eligible to place eligible land into the program through a wetland reserve easement, the owner of such land shall enter into an agreement with the Secretary to—

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

(B) authorize the implementation of a wetland reserve easement plan developed for the eligible land under subsection (f);

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

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

(E) comply with the terms and conditions of the easement and any related agreements; and

(F) permanently retire any existing base history for the land on which the easement has been obtained.

(5) Terms and conditions of easement

(A) In general

A wetland reserve easement shall include terms and conditions that—

(i) permit—

(I) repairs, improvements, and inspections on the land that are necessary to

maintain existing public drainage systems; and

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

(ii) prohibit—

(I) the alteration of wildlife habitat and other natural features of such land, unless specifically authorized by the Secretary;

(II) the spraying of such land with chemicals or the mowing of such land, except where such spraying or mowing is authorized by the Secretary or is necessary—

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

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

(cc) to meet habitat needs of specific wildlife species;

(III) any activities to be carried out on the owner'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

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

(iii) provide for the efficient and effective establishment of wetland functions and values; and

(iv) include such additional provisions as the Secretary determines are desirable to carry out the program or facilitate the practical administration thereof.

(B) Violation

On the violation of a term or condition of a wetland reserve easement, the wetland reserve 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 the program, with interest on the payments as determined appropriate by the Secretary.

(C) Compatible uses

Land subject to a wetland reserve easement 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 wetland reserve easement plan developed for the land under subsection (f) and is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established.

(D) Reservation of grazing rights

The Secretary may include in the terms and conditions of a wetland reserve easement a provision under which the owner reserves grazing rights if—

(i) the Secretary determines that the reservation and use of the grazing rights—

(I) is compatible with the land subject to the easement;

(II) is consistent with the historical natural uses of the land and the long-term protection and enhancement goals for which the easement was established; and

(III) complies with the wetland reserve easement plan developed for the land under subsection (f); and

(ii) the agreement provides for a commensurate reduction in the easement payment to account for the grazing value, as determined by the Secretary.

(6) Compensation

(A) Determination

(i) Permanent easements

The Secretary shall pay as compensation for a permanent wetland reserve easement acquired under the program an amount necessary to encourage enrollment in the program, based on the lowest of—

(I) the fair market value of the land, as determined by the Secretary, using the Uniform Standards of Professional Appraisal Practice or an areawide market analysis or survey;

(II) the amount corresponding to a geographical cap, as determined by the Secretary in regulations; or

(III) the offer made by the landowner.

(ii) Other

Compensation for a 30-year contract or 30-year wetland reserve easement shall be not less than 50 percent, but not more than 75 percent, of the compensation that would be paid for a permanent wetland reserve easement.

(B) Form of payment

Compensation for a wetland reserve easement shall be provided by the Secretary in the form of a cash payment, in an amount determined under subparagraph (A).

(C) Payment schedule

(i) Easements valued at \$500,000 or less

For wetland reserve easements valued at \$500,000 or less, the Secretary may provide payments in not more than 10 annual payments.

(ii) Easements valued at more than \$500,000

For wetland reserve easements valued at more than \$500,000, the Secretary may provide payments in at least 5, but not more than 10 annual payments, except that, if the Secretary determines it would further the purposes of the program, the Secretary may make a lump-sum payment for such an easement.

(c) Easement restoration

(1) In general

The Secretary shall provide financial assistance to owners of eligible land to carry out

the establishment of conservation measures and practices and protect wetland functions and values, including necessary maintenance activities, as set forth in a wetland reserve easement plan developed for the eligible land under subsection (f).

(2) Payments

The Secretary shall—

(A) in the case of a permanent wetland reserve easement, pay an amount that is not less than 75 percent, but not more than 100 percent, of the eligible costs, as determined by the Secretary; and

(B) in the case of a 30-year contract or 30-year wetland reserve easement, pay an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs, as determined by the Secretary.

(d) Technical assistance

(1) In general

The Secretary shall assist owners in complying with the terms and conditions of a wetland reserve easement.

(2) Contracts or agreements

The Secretary may enter into 1 or more contracts with private entities or agreements with a State, nongovernmental organization, or Indian tribe to carry out necessary restoration, enhancement, or maintenance of a wetland reserve easement if the Secretary determines that the contract or agreement will advance the purposes of the program.

(e) Wetland reserve enhancement option

The Secretary may enter into 1 or more agreements with a State (including a political subdivision or agency of a State), nongovernmental organization, or Indian tribe to carry out a special wetland reserve enhancement option that the Secretary determines would advance the purposes of program.

(f) Administration

(1) Wetland reserve easement plan

The Secretary shall develop a wetland reserve easement plan for any eligible land subject to a wetland reserve easement, which shall include practices and activities necessary to restore, protect, enhance, and maintain the enrolled land.

(2) Delegation of easement administration

(A) In general

The Secretary may delegate any of the management, monitoring, and enforcement responsibilities of the Secretary under this section to other Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities, or to conservation organizations if the Secretary determines the organization has similar expertise and resources.

(B) Limitation

The Secretary shall not delegate any of the monitoring or enforcement responsibilities under this section to conservation organizations.

(3) Payments**(A) Timing of payments**

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

(i) with respect to any easement restoration obligation under subsection (c), as soon as possible after the obligation is incurred; and

(ii) 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 section dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person or entity 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.

(g) Application

The relevant provisions of this section shall also apply to a 30-year contract.

(Pub. L. 99-198, title XII, §1265C, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 737.)

§ 3865d. Administration**(a) Ineligible land**

The Secretary may not use program funds for the purposes of acquiring an easement on—

(1) lands owned by an agency of the United States, other than land held in trust for Indian tribes;

(2) lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government;

(3) land subject to an easement or deed restriction which, as determined by the Secretary, provides similar protection as would be provided by enrollment in the program; or

(4) lands where the purposes of the program would be undermined due to on-site or off-site conditions, such as risk of hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land uses.

(b) Priority

In evaluating applications under the program, the Secretary may give priority to land that is currently enrolled in the conservation reserve program in a contract that is set to expire within 1 year and—

(1) in the case of an agricultural land easement, is grassland that would benefit from protection under a long-term easement; and

(2) in the case of a wetland reserve easement, is a wetland or related area with the highest wetland functions and value and is likely to return to production after the land leaves the conservation reserve program.

(c) Subordination, exchange, modification, and termination**(1) In general**

The Secretary may subordinate, exchange, modify, or terminate any interest in land, or portion of such interest, administered by the Secretary, either directly or on behalf of the Commodity Credit Corporation under the program if the Secretary determines that—

(A) it is in the Federal Government's interest to subordinate, exchange, modify, or terminate the interest in land;

(B) the subordination, exchange, modification, or termination action—

(i) will address a compelling public need for which there is no practicable alternative; or

(ii) such action will further the practical administration of the program; and

(C) the subordination, exchange, modification, or termination action will result in comparable conservation value and equivalent or greater economic value to the United States.

(2) Consultation

The Secretary shall work with the owner, and eligible entity if applicable, to address any subordination, exchange, modification, or termination of the interest, or portion of such interest, in land.

(3) Notice

At least 90 days before taking any termination action described in paragraph (1), 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.

(d) Land enrolled in other programs**(1) Conservation reserve program**

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

(2) Other

In accordance with the provisions of subtitle H of title II of the Agricultural Act of 2014, land enrolled in the wetlands reserve program, grassland reserve program, or farmland protection program on the day before February 7, 2014, shall be considered enrolled in the program.

(e) Compliance with certain requirements

The Secretary may not provide assistance under this subchapter to an eligible entity or owner of eligible land unless the eligible entity or owner agrees, during the crop year for which the assistance is provided—

(1) to comply with applicable conservation requirements under subchapter II; and

(2) to comply with applicable wetland protection requirements under subchapter III.

(Pub. L. 99-198, title XII, §1265D, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 742.)

REFERENCES IN TEXT

The Agricultural Act of 2014, referred to in subsec. (d)(2), is Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 649. Sub-

title H (§§ 2701–2713) of title II of the Act amended sections 3801, 3811, and 3842 of this title, repealed sections 3830, 3831a, 3837 to 3837f, 3838h to 3838j, 3838n to 3838q, 3839 to 3839d, 3839aa–9, 3839bb–1, 3839bb–3, and 3839bb–4 of this title, and enacted provisions set out as notes under sections 3801, 3831a, 3837, 3838h, 3838n, 3839aa–9, 3839bb–1, 3839bb–4, and 3843 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of Title 7, Agriculture, and Tables.

SUBCHAPTER VIII—REGIONAL
CONSERVATION PARTNERSHIP PROGRAM

§ 3871. Establishment and purposes

(a) Establishment

The Secretary shall establish a regional conservation partnership program to implement eligible activities on eligible land through—

- (1) partnership agreements with eligible partners; and
- (2) contracts with producers.

(b) Purposes

The purposes of the program are as follows:

(1) To use covered programs to accomplish purposes and functions similar to those of the following programs, as in effect on the day before February 7, 2014:

(A) The agricultural water enhancement program established under section 3839aa–9¹ of this title.

(B) The Chesapeake Bay watershed program established under section 3839bb–4¹ of this title.

(C) The cooperative conservation partnership initiative established under section 3843¹ of this title.

(D) The Great Lakes basin program for soil erosion and sediment control established under section 3839bb–3¹ of this title.

(2) To further the conservation, restoration, and sustainable use of soil, water, wildlife, and related natural resources on eligible land on a regional or watershed scale.

(3) To encourage eligible partners to cooperate with producers in—

(A) meeting or avoiding the need for national, State, and local natural resource regulatory requirements related to production on eligible land; and

(B) implementing projects that will result in the installation and maintenance of eligible activities that affect multiple agricultural or nonindustrial private forest operations on a local, regional, State, or multi-state basis.

(Pub. L. 99–198, title XII, § 1271, as added Pub. L. 113–79, title II, § 2401, Feb. 7, 2014, 128 Stat. 744.)

REFERENCES IN TEXT

Sections 3839aa–9, 3839bb–3, 3839bb–4, and 3843 of this title, referred to in subsec. (b)(1), were repealed by Pub. L. 113–79, title II, §§ 2706(a), 2708, 2709(a), 2710(a), Feb. 7, 2014, 128 Stat. 768, 770.

§ 3871a. Definitions

In this subchapter:

(1) Covered program

The term “covered program” means the following:

(A) The agricultural conservation easement program.

(B) The environmental quality incentives program.

(C) The conservation stewardship program.

(D) The healthy forests reserve program established under section 6571 of this title.

(2) Eligible activity

The term “eligible activity” means a conservation activity for any of the following:

(A) Water quality restoration or enhancement projects, including nutrient management and sediment reduction.

(B) Water quantity conservation, restoration, or enhancement projects relating to surface water and groundwater resources, including—

(i) the conversion of irrigated cropland to the production of less water-intensive agricultural commodities or dryland farming; or

(ii) irrigation system improvement and irrigation efficiency enhancement.

(C) Drought mitigation.

(D) Flood prevention.

(E) Water retention.

(F) Air quality improvement.

(G) Habitat conservation, restoration, and enhancement.

(H) Erosion control and sediment reduction.

(I) Forest restoration.

(J) Other related activities that the Secretary determines will help achieve conservation benefits.

(3) Eligible land

(A) In general

The term “eligible land” means—

(i) land on which agricultural commodities, livestock, or forest-related products are produced; and

(ii) lands associated with the lands described in clause (i).

(B) Inclusions

The term “eligible land” includes—

(i) cropland;

(ii) grassland;

(iii) rangeland;

(iv) pastureland;

(v) nonindustrial private forest land; and

(vi) other land incidental to agricultural production (including wetlands and riparian buffers) on which significant natural resource issues could be addressed under the program.

(4) Eligible partner

The term “eligible partner” means any of the following:

(A) An agricultural or silvicultural producer association or other group of producers.

(B) A State or unit of local government.

(C) An Indian tribe.

(D) A farmer cooperative.

(E) A water district, irrigation district, rural water district or association, or other organization with specific water delivery authority to producers on agricultural land.

¹ See References in Text note below.

(F) A municipal water or wastewater treatment entity.

(G) An institution of higher education.

(H) An organization or entity with an established history of working cooperatively with producers on agricultural land, as determined by the Secretary, to address—

(i) local conservation priorities related to agricultural production, wildlife habitat development, or nonindustrial private forest land management; or

(ii) critical watershed-scale soil erosion, water quality, sediment reduction, or other natural resource issues.

(5) Partnership agreement

The term “partnership agreement” means an agreement entered into under section 3871b of this title between the Secretary and an eligible partner.

(6) Program

The term “program” means the regional conservation partnership program established by this subchapter.

(Pub. L. 99-198, title XII, §1271A, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 745.)

§ 3871b. Regional conservation partnerships

(a) Partnership agreements authorized

The Secretary may enter into a partnership agreement with an eligible partner to implement a project that will assist producers with installing and maintaining an eligible activity on eligible land.

(b) Length

A partnership agreement shall be for a period not to exceed 5 years, except that the Secretary may extend the agreement one time for up to 12 months when an extension is necessary to meet the objectives of the program.

(c) Duties of partners

(1) In general

Under a partnership agreement, the eligible partner shall—

(A) define the scope of a project, including—

(i) the eligible activities to be implemented;

(ii) the potential agricultural or non-industrial private forest land operations affected;

(iii) the local, State, multistate, or other geographic area covered; and

(iv) the planning, outreach, implementation, and assessment to be conducted;

(B) conduct outreach and education to producers for potential participation in the project;

(C) at the request of a producer, act on behalf of a producer participating in the project in applying for assistance under section 3871c of this title;

(D) leverage financial or technical assistance provided by the Secretary with additional funds to help achieve the project objectives;

(E) conduct an assessment of the project’s effects; and

(F) at the conclusion of the project, report to the Secretary on its results and funds leveraged.

(2) Contribution

An eligible partner shall provide a significant portion of the overall costs of the scope of the project that is the subject of the agreement entered into under subsection (a), as determined by the Secretary.

(d) Applications

(1) Competitive process

The Secretary shall conduct a competitive process to select applications for partnership agreements and may assess and rank applications with similar conservation purposes as a group.

(2) Criteria used

In carrying out the process described in paragraph (1), the Secretary shall make public the criteria used in evaluating applications.

(3) Content

An application to the Secretary shall include a description of—

(A) the scope of the project, as described in subsection (c)(1)(A);

(B) the plan for monitoring, evaluating, and reporting on progress made toward achieving the project’s objectives;

(C) the program resources requested for the project, including the covered programs to be used and estimated funding needed from the Secretary;

(D) each eligible partner collaborating to achieve project objectives, including their roles, responsibilities, capabilities, and financial contribution; and

(E) any other elements the Secretary considers necessary to adequately evaluate and competitively select applications for funding under the program.

(4) Priority to certain applications

The Secretary may give a higher priority to applications that—

(A) assist producers in meeting or avoiding the need for a natural resource regulatory requirement;

(B) have a high percentage of producers in the area to be covered by the agreement;

(C) significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or national efforts;

(D) deliver high percentages of applied conservation to address conservation priorities or regional, State, or national conservation initiatives;

(E) provide innovation in conservation methods and delivery, including outcome-based performance measures and methods; or

(F) meet other factors that are important for achieving the purposes of the program, as determined by the Secretary.

(Pub. L. 99-198, title XII, §1271B, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 746.)

§ 3871c. Assistance to producers**(a) In general**

The Secretary shall enter into contracts with producers to provide financial and technical assistance to—

- (1) producers participating in a project with an eligible partner; or
- (2) producers that fit within the scope of a project described in section 3871b of this title or a critical conservation area designated under section 3871f of this title, but who are seeking to implement an eligible activity on eligible land independent of an eligible partner.

(b) Terms and conditions**(1) Consistency with program rules****(A) In general**

Except as provided in subparagraph (B) and paragraph (2), the Secretary shall ensure that the terms and conditions of a contract under this section are consistent with the applicable rules of the covered programs to be used as part of the partnership agreement, as described in the application under section 3871b(d)(3)(C) of this title.

(B) Adjustments**(i) In general**

The Secretary may adjust the rules of a covered program, including—

- (I) operational guidance and requirements for a covered program at the discretion of the Secretary so as to provide a simplified application and evaluation process; and
- (II) nonstatutory, regulatory rules or provisions to better reflect unique local circumstances and purposes if the Secretary determines such adjustments are necessary to achieve the purposes of the covered program.

(ii) Limitation

The Secretary shall not adjust the application of statutory requirements for a covered program, including requirements governing appeals, payment limits, and conservation compliance.

(iii) Irrigation

In States where irrigation has not been used significantly for agricultural purposes, as determined by the Secretary, the Secretary shall not limit eligibility under section 3871b of this title or this section on the basis of prior irrigation history.

(2) Alternative funding arrangements**(A) In general**

For the purposes of providing assistance for land described in subsection (a) and section 3871f of this title, the Secretary may enter into alternative funding arrangements with a multistate water resource agency or authority if—

- (i) the Secretary determines that the goals and objectives of the program will be met by the alternative funding arrangements;

(ii) the agency or authority certifies that the limitations established under this section on agreements with individual producers will not be exceeded; and

(iii) all participating producers meet applicable payment eligibility provisions.

(B) Conditions

As a condition of receiving funding under subparagraph (A), the multistate water resource agency or authority shall agree—

- (i) to submit an annual independent audit to the Secretary that describes the use of funds under this paragraph;
- (ii) to provide any data necessary for the Secretary to issue a report on the use of funds under this paragraph; and
- (iii) not to use any of the funds provided pursuant to subparagraph (A) for administration or to provide for administrative costs through contracts with another entity.

(C) Limitation

The Secretary may enter into not more than 20 alternative funding arrangements under this paragraph.

(c) Payments**(1) In general**

In accordance with statutory requirements of the covered programs involved, the Secretary may make payments to a producer in an amount determined by the Secretary to be necessary to achieve the purposes of the program.

(2) Payments to certain producers

The Secretary may provide payments for a period of 5 years—

- (A) to producers participating in a project that addresses water quantity concerns and in an amount sufficient to encourage conversion from irrigated to dryland farming; and
- (B) to producers participating in a project that addresses water quality concerns and in an amount sufficient to encourage adoption of conservation practices and systems that improve nutrient management.

(3) Waiver authority

To assist in the implementation of the program, the Secretary may waive the applicability of the limitation in section 1308-3a(b)(2) of title 7 for participating producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.

(Pub. L. 99-198, title XII, §1271C, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 747.)

§ 3871d. Funding**(a) Availability of funds**

The Secretary shall use \$100,000,000 of the funds of the Commodity Credit Corporation for each of fiscal years 2014 through 2018 to carry out the program.

(b) Duration of availability

Funds made available under subsection (a) shall remain available until expended.

(c) Additional funding and acres**(1) In general**

In addition to the funds made available under subsection (a), the Secretary shall reserve 7 percent of the funds and acres made available for a covered program for each of fiscal years 2014 through 2018 in order to ensure additional resources are available to carry out this program.

(2) Unused funds and acres

Any funds or acres reserved under paragraph (1) for a fiscal year from a covered program that are not committed under this program by April 1 of that fiscal year shall be returned for use under the covered program.

(d) Allocation of funding

Of the funds and acres made available for the program under subsection (a) and reserved for the program under subsection (c), the Secretary shall allocate—

- (1) 25 percent of the funds and acres to projects based on a State competitive process administered by the State Conservationist, with the advice of the State technical committee established under subchapter VI;
- (2) 40 percent of the funds and acres to projects based on a national competitive process to be established by the Secretary; and
- (3) 35 percent of the funds and acres to projects for critical conservation areas designated under section 3871f of this title.

(e) Limitation on administrative expenses

None of the funds made available or reserved for the program may be used to pay for the administrative expenses of eligible partners.

(Pub. L. 99-198, title XII, §1271D, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 749.)

§ 3871e. Administration**(a) Disclosure**

In addition to the criteria used in evaluating applications as described in section 3871b(d)(2) of this title, the Secretary shall make publicly available information on projects selected through the competitive process described in section 3871b(d)(1) of this title.

(b) Reporting

Not later than December 31, 2014, and every two years thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the status of projects funded under the program, including—

- (1) the number and types of eligible partners and producers participating in the partnership agreements selected;
- (2) the number of producers receiving assistance;
- (3) total funding committed to projects, including from Federal and non-Federal resources; and
- (4) a description of how the funds under section 3871c(b)(2) of this title are being administered, including—

(A) any oversight mechanisms that the Secretary has implemented;

(B) the process through which the Secretary is resolving appeals by program participants; and

(C) the means by which the Secretary is tracking adherence to any applicable provisions for payment eligibility.

(Pub. L. 99-198, title XII, §1271E, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 749.)

§ 3871f. Critical conservation areas**(a) In general**

In administering funds under section 3871d(d)(3) of this title, the Secretary shall select applications for partnership agreements and producer contracts within critical conservation areas designated under this section.

(b) Critical conservation area designations**(1) Priority**

In designating critical conservation areas under this section, the Secretary shall give priority to geographical areas based on the degree to which the geographical area—

- (A) includes multiple States with significant agricultural production;
- (B) is covered by an existing regional, State, binational, or multistate agreement or plan that has established objectives, goals, and work plans and is adopted by a Federal, State, or regional authority;
- (C) would benefit from water quality improvement, including through reducing erosion, promoting sediment control, and addressing nutrient management activities affecting large bodies of water of regional, national, or international significance;
- (D) would benefit from water quantity improvement, including improvement relating to—

- (i) groundwater, surface water, aquifer, or other water sources; or
 - (ii) a need to promote water retention and flood prevention; or
- (E) contains producers that need assistance in meeting or avoiding the need for a natural resource regulatory requirement that could have a negative impact on the economic scope of the agricultural operations within the area.

(E) contains producers that need assistance in meeting or avoiding the need for a natural resource regulatory requirement that could have a negative impact on the economic scope of the agricultural operations within the area.

(2) Expiration

Critical conservation area designations under this section shall expire after 5 years, subject to redesignation, except that the Secretary may withdraw designation from an area if the Secretary finds the area no longer meets the conditions described in paragraph (1).

(3) Limitation

The Secretary may not designate more than 8 geographical areas as critical conservation areas under this section.

(c) Administration**(1) In general**

Except as provided in paragraph (2), the Secretary shall administer any partnership agreement or producer contract under this section in a manner that is consistent with the terms of the program.

(2) Relationship to existing activity

The Secretary shall, to the maximum extent practicable, ensure that eligible activities carried out in critical conservation areas designated under this section complement and are consistent with other Federal and State programs and water quality and quantity strategies.

(3) Additional authority

For a critical conservation area described in subsection (b)(1)(D), the Secretary may use authorities under the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.), other than section 14 of such Act (16 U.S.C. 1012), to carry out projects for the purposes of this section.

(Pub. L. 99-198, title XII, §1271F, as added Pub. L. 113-79, title II, §2401, Feb. 7, 2014, 128 Stat. 750.)

REFERENCES IN TEXT

The Watershed Protection and Flood Prevention Act, referred to in subsec. (c)(3), is act Aug. 4, 1954, ch. 656, 68 Stat. 666, which is classified principally to chapter 18 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CHAPTER 59—WETLANDS RESOURCES

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SUBCHAPTER I—GENERAL PROVISIONS

§ 3901. Findings and statement of purpose

(a) Findings

The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and wildlife of the Nation; including migratory

birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) the migratory bird treaty obligations of the Nation with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands that are used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent on wetlands, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over \$10,000,000,000 annually;

(B) support for a major portion of the Nation's multimillion dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related recreational activities that generate billions of dollars annually;

(5) wetlands enhance the water quality and water supply of the Nation by serving as groundwater recharge areas, nutrient traps, and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal Government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State, and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to assure their management in the public interest for this and future generations.

(b) Purpose

It is the purpose of this chapter to promote, in concert with other Federal and State statutes and programs, the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere by—

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and