FOOD SECURITY ACT OF 1985

[As Amended Through P.L. 112–240, Effective Jan. 2, 2013]

(P.L. 99–198, 99 Stat. 1504, Dec. 23, 1985)

TABLE OF CONTENTS [1–1]

Sec. 1. Short title.

TITLE XII—CONSERVATION

Subtitle A—Definitions

Sec. 1201. Definitions.

Subtitle B—Highly Erodible Land Conservation

Sec. 1211. Program ineligibility.
Sec. 1212. Exemptions.
Sec. 1213. Development and implementation of conservation plans and conservation systems.
Sec. 1214. Soil surveys.
Sec. 1215. Notice and investigation of possible compliance deficiencies.

Subtitle C—Wetland Conservation

Sec. 1221. Program ineligibility.
Sec. 1222. Delineation of wetlands; exemptions.
Sec. 1223. Affiliated persons.
Sec. 1224. Fairness of compliance.

Subtitle D—Agricultural Resources Conservation Program

CHAPTER 1—COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM

SUBCHAPTER A—GENERAL PROVISIONS

Sec. 1230. Comprehensive conservation enhancement program.

SUBCHAPTER B—CONSERVATION RESERVE

Sec. 1231. Conservation reserve.
Sec. 1231A. Emergency forestry conservation reserve program.
Sec. 1231B. Pilot program for enrollment of wetland and buffer acreage in conservation reserve.
Sec. 1232. Duties of owners and operators.
Sec. 1233. Duties of the Secretary.
Sec. 1234. Payments.
Sec. 1235. Contracts.
Sec. 1235A. Conversion of land subject to contract to other conserving uses.

SUBCHAPTER C—WETLANDS RESERVE PROGRAM

Sec. 1237. Wetlands reserve program.
Sec. 1237A. Easements and agreements.
Sec. 1237B. Duties of owners.
Sec. 1237C. Duties of the Secretary.
Sec. 1237D. Payments.
Sec. 1237E. Changes in ownership; agreement modification; termination.
Sec. 1237F. Administration, and funding.

CHAPTER 2—CONSERVATION SECURITY AND FARMLAND PROTECTION

SUBCHAPTER A—CONSERVATION SECURITY PROGRAM

Sec. 1238. Definitions.

Sec. 1238A. Conservation security program.
Sec. 1238B. Duties of producers.
Sec. 1238C. Duties of the Secretary.

SUBCHAPTER B—CONSERVATION STEWARDSHIP PROGRAM

Sec. 1238D. Definitions.
Sec. 1238E. Conservation stewardship program.
Sec. 1238F. Stewardship contracts.
Sec. 1238G. Duties of the Secretary.

SUBCHAPTER C—FARMLAND PROTECTION PROGRAM

Sec. 1238H. Definitions.
Sec. 1238I. Farmland protection program.
Sec. 1238J. Farm viability program.

SUBCHAPTER D—GRASSLAND RESERVE PROGRAM

Sec. 1238N. Grassland reserve program.
Sec. 1238O. Duties of owners and operators.
Sec. 1238P. Duties of Secretary.
Sec. 1238Q. Delegation of duty.

CHAPTER 3—ENVIRONMENTAL EASEMENT PROGRAM

Sec. 1239. Environmental easement program.
Sec. 1239A. Duties of owners; components of plan.
Sec. 1239B. Duties of the Secretary.
Sec. 1239C. Payments.
Sec. 1239D. Changes in ownership; modification of easement.

CHAPTER 4—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Sec. 1240. Purposes.
Sec. 1240A. Definitions.
Sec. 1240B. Establishment and administration.
Sec. 1240C. Evaluation of applications.
Sec. 1240D. Duties of producers.
Sec. 1240E. Environmental quality incentives program plan.
Sec. 1240F. Duties of the Secretary.
Sec. 1240G. Limitation on payments.
Sec. 1240H. Conservation innovation grants and payments.
Sec. 1240I. Agricultural water enhancement program.

CHAPTER 5—OTHER CONSERVATION PROGRAMS

Sec. 1240M. Conservation of private grazing land.
Sec. 1240N. Wildlife habitat incentive program.
Sec. 1240O. Grassroots source water protection program.
Sec. 1240P. Great Lakes basin program for soil erosion and sediment control.
Sec. 1240Q. Chesapeake Bay watershed.
Sec. 1240R. Voluntary public access and habitat incentive program.

Subtitle E—Funding and Administration

Sec. 1241. Commodity Credit Corporation.
Sec. 1242. Delivery of technical assistance.
Sec. 1243. Cooperative conservation partnership initiative.
Sec. 1244. Administrative requirements for conservation programs.
Sec. 1245. Environmental services markets.

[Subtitle F—Other Conservation Provisions]

Sec. 1252. Agriculture conservation experienced services program.

Subtitle G—State Technical Committees

Sec. 1261. Establishment of State technical committees.
Sec. 1262. Responsibilities.

[1–1] This table of contents is not part of the Act but is included for user convenience.

SHORT TITLE

SECTION 1. [7 U.S.C. 1281 note] This Act may be cited as the "Food Security Act of 1985".

* * * * * * *

TITLE XII—CONSERVATION [1–2]

SUBTITLE A—DEFINITIONS

DEFINITIONS

SEC. 1201.[16 U.S.C. 3801] (a) For purposes of subtitles A through E:

(1) The term "agricultural commodity" means—

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

(B) sugarcane planted and produced in a State.

(2) BEGINNING FARMER OR RANCHER.—The term "beginning farmer or rancher" has the meaning given the term in section 343(a)(8) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(8)).

(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 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Secretary, or by the Secretary.

(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.

[1–2]Section 2903(a) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1819) provided: "Except as otherwise provided by an amendment made by this title, 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 and using funds made available under such title for fiscal year 2008 for the program or activity.".

(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 1234 (b) of this Act.

(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 1212, shall be considered as part of the field in which the land was included on December 23, 1985, unless the owner and Secretary agree to modification of the boundaries of the field to carry out this title.

(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 the date of the enactment of this Act; or

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

(B) For purposes of this paragraph, the land capability class or rate of erosion for a field shall be that determined by 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, United States Code.

(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 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(15) The term "in-kind commodities" means commodities that are normally produced on land that is the subject of an agreement entered into under subtitle D.

(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 subtitle D, the terms "person" and "legal entity" have the meanings given those terms in section 1001(a) of this Act (7 U.S.C. 1308(a)).

(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 subtitle D.

(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 2501(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)(2)).

(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.

SUBTITLE B—HIGHLY ERODIBLE LAND CONSERVATION

SEC. 1211. [16 U.S.C. 3811] PROGRAM INELIGIBILITY.

(a) IN GENERAL.—Except as provided in section 1212, and notwithstanding any other provision of law, any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominate, or designates land on which highly erodible land is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, as determined by the Secretary shall be ineligible for—

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

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

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

(C) a disaster payment; or

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

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

(3) during the crop year—

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

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

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

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

(b) HIGHLY ERODIBLE LAND.—The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subtitle.

EXEMPTIONS

SEC. 1212. [16 U.S.C. 3812] (a)(1) During the period beginning on the date of the enactment of this Act and ending on the later of January 1, 1990, or the date that is 2 years after the date land on which a crop of an agricultural commodity is produced was mapped by the Soil Conservation Service for purposes of classifying such land under the land capability classification system in effect on the date of enactment of this Act, except as provided in paragraph (2), no person shall become ineligible under section 1211 for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on any land that was—

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

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

(2) If, as of January 1, 1990, or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan, such person shall have until January 1, 1995, to comply with the plan without being subject to program ineligibility. In carrying out this subsection, the Secretary, Soil Conservation Service, and local soil conservation districts shall minimize the quantity of documentation a person must submit to comply with this paragraph.

(3) Any person who owns or operates highly erodible land that was the subject of a contract entered into under subchapter B of chapter 1 of subtitle D shall only be required to apply a conservation plan established under this subtitle. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the same area. If the person's conservation plan requires structures to be constructed, the person shall have until 2 years after the expiration of such contract to comply with the conservation plan, or a longer period of time if the Secretary determines compliance is otherwise technically or economically not feasible, or such longer period is otherwise appropriate, before such person will be subject to program ineligibility with respect to such land under section 1211.

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

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

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

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

(c) No person shall become ineligible under section 1211 for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity or the designation of land to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity (hereafter in this subsection referred to as "set aside")—

(1) on highly erodible land in an area—

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

(B) 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 title; 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 1211.

(d) Section 1211 shall not apply to a loan described in section 1211 made before the date of enactment of this Act.

(e) If a tenant is determined to be ineligible for payments and other benefits under section 1211, the Secretary may limit such ineligibility only to the farm which is the basis for such ineligibility determination if—

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

(A) the tenant has made a good faith effort to meet the requirements of this section, including enlisting the assistance of the Secretary to obtain a reasonable conservation plan 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 1211 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 subtitle.

(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 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 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 1211 with respect to highly erodible cropland, and has acted in good faith and without an intent to violate section 1211; 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 1211, reduce program benefits described in section 1211 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 1211 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) 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 indi-

vidual 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) Section 1211 shall not apply to the noncommercial production of agricultural commodities on a farm if such production is limited to two acres or less and if the Secretary determines that such production is not intended to circumvent the conservation requirements otherwise applicable to lands under this subtitle.

SEC. 1213. [16 U.S.C. 3812a] DEVELOPMENT AND IMPLEMENTATION OF CONSERVATION PLANS AND CONSERVATION SYSTEMS.

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

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

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

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

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

SOIL SURVEYS

SEC. 1214. [16 U.S.C. 3813] The Secretary shall, as soon as is practicable after the date of enactment of this Act, complete soil surveys on those private lands that do not have a soil survey suitable for use in determining the land capability class for purposes of this subtitle. In carrying out this section, the Secretary shall, insofar as possible, concentrate on those localities where significant amounts of highly erodible land are being converted to the production of agricultural commodities.

SEC. 1215. [16 U.S.C. 3814] NOTICE AND INVESTIGATION OF POSSIBLE COMPLIANCE DEFICIENCIES.

(a) IN GENERAL.—An employee of the Department of Agriculture who observes a possible compliance deficiency or other potential violation of a conservation plan or this subtitle while providing on-site technical assistance shall provide to the responsible persons, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan

and this subtitle. The employee shall provide the information in lieu of reporting the observation as a compliance violation.

(b) CORRECTIVE ACTION.—The responsible persons shall attempt to correct the deficiencies as soon as practicable after receiving the information.

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

Subtitle C—Wetland Conservation

SEC. 1221. [16 U.S.C. 3821] PROGRAM INELIGIBILITY.

(a) PRODUCTION ON CONVERTED WETLAND.—Except as provided in this subtitle and notwithstanding any other provision of law, any person who in any crop year produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be—

(1) in violation of this section; and

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

(b) INELIGIBILITY FOR CERTAIN LOANS AND PAYMENTS.—If a person is determined to have committed a violation under subsection (a) during a crop year, the Secretary shall determine which of, and the amount of, the following loans and payments for which the person shall be ineligible:

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

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

(3) During the crop year:

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

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

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

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

(c) WETLAND CONVERSION.—Except as provided in section 1222 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) for that crop year and all subsequent crop years.

(d) PRIOR LOANS.—This section shall not apply to a loan described in subsection (b) made before December 23, 1985.

(e) WETLAND.—The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subtitle.

SEC. 1222. [16 U.S.C. 3822] DELINEATION OF WETLANDS; EXEMPTIONS.

(a) DELINEATION BY THE SECRETARY.—

(1) IN GENERAL.—Subject to subsection (b) and paragraph (6), the Secretary shall delineate, determine, and certify all wetlands located on subject land on a farm.

(2) WETLAND DELINEATION MAPS.—The Secretary shall delineate wetlands on wetland delineation maps. On the request of a person, the Secretary shall make a reasonable effort to make an on-site wetland determination prior to delineation.

(3) CERTIFICATION.—On providing notice to affected persons, the Secretary shall—

(A) certify whether a map is sufficient for the purpose of making a determination of ineligibility for program benefits under section 1221; and

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

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

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

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

(b) EXEMPTIONS.—No person shall become ineligible under section 1221 for program loans or payments under the following circumstances:

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

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

(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 subtitle 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), the Secretary shall identify by regulation categorical minimal effect exemptions on a regional basis to assist persons in avoiding a violation of the ineligibility provisions of section 1221. The Secretary shall ensure that employees of the Department of Agriculture who administer this subtitle receive appropriate training to properly apply the minimal effect exemptions determined by the Secretary.

(e) NONWETLANDS.—The Secretary shall exempt from the ineligibility provisions of section 1221 any action by a person upon

lands in any case in which the Secretary determines that any one of the following does not apply with respect to such lands:

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

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

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

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

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

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

(A) in accordance with a wetland conservation plan;

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

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

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

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

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

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

(i) is recorded on public land records;

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

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

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

(4) The action was authorized by a permit issued under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) and the wetland values, acreage, and functions of the converted wetland were adequately mitigated for the purposes of this subtitle.

(g) MITIGATION APPEALS.—A person [1222–1] shall be afforded the right to appeal, under section 1243, the imposition of a mitigation agreement requiring greater than one-to-one acreage mitigation to which the person [1222–1] is subject.

(h) GOOD FAITH EXEMPTION.—

(1) EXEMPTION DESCRIBED.—The Secretary may waive a person's ineligibility under section 1221 for program loans, payments, and benefits as the result of the conversion of a wetland subsequent to November 28, 1990, or the production of an agricultural commodity on a converted wetland, if the Secretary determines that the person has acted in good faith and without intent to violate this subtitle.

(2) 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 subtitle 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 1221 for any crop year shall not be ineligible for such program benefits under such section for any subsequent crop year if, prior to the beginning of such subsequent crop year, the person has fully restored the characteristics of the converted wetland to its prior wetland state or has otherwise mitigated for the loss of wetland values, as determined by the Secretary, through the restoration, enhancement, or creation of wetland values in the same general area of the local watershed as the converted wetland.

(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 National [1222–2] Resources Conservation Service.

(k) MITIGATION BANKING PROGRAM.—Using authorities available to the Secretary, the Secretary may operate a pilot program for mitigation banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland func-

[1222–1] Sec. 322(e) of the Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104–127; 110 Stat. 987; April 4, 1996) amended this subsection by striking "producer" and inserting "person". The amendment was executed to both places where "producer" appeared as the probable intent of Congress.

[1222–2] So in original. Probably should be "Natural".

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

SEC. 1223. [16 U.S.C. 3823] AFFILIATED PERSONS.

If a person is affected by a reduction in benefits under section 1221 and the affected person is affiliated with other persons for the purpose of receiving the benefits, the benefits of each affiliated person shall be reduced under section 1221 in proportion to the interest held by the affiliated person.

SEC. 1224. [16 U.S.C. 3824] FAIRNESS OF COMPLIANCE.

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

Subtitle D—Agricultural Resources Conservation Program

CHAPTER 1—COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM

Subchapter A—General Provisions

SEC. 1230. [16 U.S.C. 3830] COMPREHENSIVE CONSERVATION ENHANCEMENT PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—During the 1996 through 2002 [1230–1] calendar years, the Secretary shall establish a comprehensive conservation enhancement program (referred to in this section as "CCEP") to be implemented through contracts and the acquisition of easements to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat.

(2) MEANS.—The Secretary shall carry out the CCEP by—

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

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

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

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

(3) PROGRAMS.—The CCEP shall consist of—

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

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

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

(b) ADMINISTRATION.—

[1230–1] So in original. Probably should be "2002 through 2007".

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

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

[SEC. 1230A. [16 U.S.C. 3830a] GOOD FAITH RELIANCE. [1230A–1]**]**

Subchapter B—Conservation Reserve

SEC. 1231. [16 U.S.C. 3831] CONSERVATION RESERVE.

(a) IN GENERAL.—Through the 2012 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) 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 subchapter—

(1) highly erodible cropland that—

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

(ii) cannot be farmed in accordance with a plan that complies with the requirements of subtitle B; and

(B) the Secretary determines had a cropping history or was considered to be planted for 4 of the 6 years preceding the date of enactment of the Food, Conservation, and Energy Act of 2008 (except for land enrolled in the conservation reserve program as of that date);

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

(3) marginal pasture land to be devoted to appropriate vegetation, including trees, in or near riparian areas, or devoted to similar water quality purposes (including marginal pastureland converted to wetland or established as wildlife habitat);

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

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

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

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

(B) the land is a—

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

[1230A–1] Sec. 2006(c) of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171; 116 Stat. 237; May 13, 2002) repealed former sec. 1230A (related to good faith reliance).

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

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

(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 more than 50 percent of the land in the field is enrolled as a buffer, if—

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

(B) the remainder of the field is—

(i) infeasible to farm; and

(ii) enrolled at regular rental rates.

(c) PLANTING STATUS OF CERTAIN LAND.—For purposes of determining the eligibility of land to be placed in the conservation reserve established under this subchapter, land shall be considered to be planted to an agricultural commodity during a crop year if—

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

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

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

(d) MAXIMUM ENROLLMENT.—The Secretary may maintain up to 39,200,000 acres in the conservation reserve at any 1 time during the 2002 through 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.

(e) DURATION OF CONTRACT.—

(1) IN GENERAL.—For the purpose of carrying out this subchapter, the Secretary shall enter into contracts of not less than 10, nor more than 15, years.

(2) CERTAIN LAND.—

(A) IN GENERAL.—In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under a contract entered into under this subchapter after October 1, 1990, and land devoted to such uses under contracts modified under section 1235A, the owner or operator of the land may, within the limitations prescribed under this section, specify the duration of the contract.

(B) HARDWOOD TREES.—In the case of land that is devoted to hardwood trees under a contract entered into under this subchapter prior to October 1, 1990, the Secretary may extend the contract for a term of not to exceed

5 years, as agreed to by the owner or operator of such land and the Secretary.

(3) 1-YEAR EXTENSION.—In the case of a contract described in paragraph (1) the term of which expires during calendar year 2002, an owner or operator of land enrolled under the contract may extend the contract for 1 additional year.

(f) CONSERVATION PRIORITY AREAS.—

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

(2) ELIGIBLE WATERSHEDS.—Watersheds eligible for designation under this subsection shall include areas with actual and significant adverse water quality or habitat impacts related to agricultural production activities.

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

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

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

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

(g) MULTI-YEAR GRASSES AND LEGUMES.—

(1) IN GENERAL.—For purposes of this subchapter, alfalfa and other multi-year grasses and legumes in a rotation practice, approved by the Secretary, shall be considered agricultural commodities.

(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 subchapter, the land subject to the contract shall be eligible to be considered for reenrollment in the conservation reserve.

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

SEC. 1231A. [16 U.S.C. 3831a] EMERGENCY FORESTRY CONSERVATION RESERVE PROGRAM. [1231A–1]

(a) DEFINITIONS.—In this section:

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

(2) PRIVATE NONINDUSTRIAL FOREST LAND.—The term "private nonindustrial forest land" includes State school trust land.

(b) PROGRAM.—The Secretary shall carry out an emergency pilot program in States that the Secretary determines have suffered damage to merchantable timber in counties affected by hurricanes during the 2005 calendar year.

(c) ELIGIBLE ACREAGE.—

(1) IN GENERAL.—Subject to paragraph (2) and the availability of funds under paragraph (7), an owner or operator may enroll private nonindustrial forest land in the conservation reserve under this section.

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

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

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

(B) the maximum enrollment described in section 1231(d).

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

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

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

(5) DUTIES OF THE SECRETARY.—

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

[1231A–1] Sec. 2106(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1760) redesignated the previous subsection (k) of section 1231 as a new section 1231A and redesignated the paragraphs in that subsection as subsections, the subparagraphs as paragraphs, the clauses as subparagraphs, and the subclauses as clauses. However, there were no instructions to indent the new levels appropriately. Section 1231A should probably be amended to indent each level appropriately.

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

(ii) annual rental payments.

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

(C) CALCULATION OF ANNUAL RENTAL PAYMENTS.—The annual rental payment described in subparagraph (A)(ii) shall be equal to the average rental rate for conservation reserve contracts in the county in which the land is located.

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

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

(6) BALANCE OF NATURAL RESOURCES.—In determining the acceptability of contract offers under this section, the Secretary shall consider an equitable balance among the purposes of soil erosion prevention, water quality improvement, wildlife habitat restoration, and mitigation of economic loss.

(7) FUNDING.—The Secretary shall use $504,100,000, to remain available until expended, of funds of the Commodity Credit Corporation to carry out this section.

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

(9) REGULATIONS.—

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

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

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

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

(iii) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

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

SEC. 1231B. [16 U.S.C. 3831b] PILOT PROGRAM FOR ENROLLMENT OF WETLAND AND BUFFER ACREAGE IN CONSERVATION RESERVE.

(a) PROGRAM REQUIRED.—

(1) IN GENERAL.—During the 2008 through 2012 fiscal years, the Secretary shall carry out a 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 1222(b)(1)(A)) 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 flow from a row crop agriculture drainage system 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 land [1231B–1]

(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.—

[1231B–1] So as in original. Should probably add a semicolon to the end.

(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 1,000,000 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—

(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 1232.

(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 1233 and 1234.

(2) CONTRACT OFFERS AND PAYMENTS.—The Secretary shall use the method of determination described in section 1234(c)(2)(B) 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 1234.

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

(a) IN GENERAL.—Under the terms of a contract entered into under this subchapter, during the term of the contract, an owner or operator of a farm or ranch shall agree—

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

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

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

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

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

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

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

(ii) the land subject to the contract that could 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 subchapter;

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

(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 that the Secretary

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

(A) managed harvesting (including the managed harvesting of biomass), except that in permitting managed harvesting, the Secretary, in coordination with the State technical committee—

(i) shall develop appropriate vegetation management requirements; and

(ii) shall identify periods during which managed harvesting may be conducted;

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

(C) routine grazing or prescribed grazing for the control of invasive species, except that in permitting such routine grazing or prescribed 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 establish the frequency during which routine grazing may be conducted, 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

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

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

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

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

(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 subchapter; and

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

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

(1) shall set forth—

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

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

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

(c) FORECLOSURE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, an owner or operator who is a party to a contract entered into under this subchapter may not be required to make repayments to the Secretary of amounts received under the contract if the land that is subject to the contract has been foreclosed on and the Secretary determines that forgiving the repayments is appropriate in order to provide fair and equitable treatment.

(2) RESUMPTION OF CONTROL.—

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

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

(d) RENTAL PAYMENT REDUCTION FOR CERTAIN AUTHORIZED USES OF ENROLLED LAND.—In the case of an authorized activity under subsection (a)(8) on land that is subject to a contract under this subchapter, the Secretary shall reduce the rental payment otherwise payable under the contract by an amount commensurate with the economic value of the authorized activity.

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

In return for a contract entered into by an owner or operator under section 1232, the Secretary shall—

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

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

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

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

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

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

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

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

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

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

(b) FEDERAL PERCENTAGE OF COST SHARING PAYMENTS.—

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

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

(3) TREES, WINDBREAKS, SHELTERBELTS, AND WILDLIFE CORRIDORS.—

(A) APPLICABILITY.—This paragraph applies to—

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

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

(iii) land on which an owner or operator agrees to conduct thinning authorized by section 1232(a)(9), if the thinning is necessary to improve the condition of resources on the land.

(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) or thinning.

(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—

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

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

(4) HARDWOOD TREE PLANTING.—The Secretary may permit owners or operators that contract to devote at least 10 acres of land to the production of hardwood trees under this subchapter to extend the planting of the trees over a 3-year period if at least ⅓ of the trees are planted in each of the first 2 years.

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

(c) ANNUAL RENTAL PAYMENTS.—

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

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

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

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

(3) ACCEPTANCE OF CONTRACT OFFERS.—

(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 sub-

chapter 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.—[1234–1]

(A) ANNUAL ESTIMATES.—The Secretary (acting through the National Agricultural Statistics Service) shall conduct an annual 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 annual survey conducted under subparagraph (A) shall be maintained on a website of the Department of Agriculture for use by the general public.

(d) CASH OR IN-KIND PAYMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this section, payments under this subchapter—

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

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

(2) METHOD OF PROVIDING IN-KIND PAYMENTS.—If the payment to an owner or operator is made with in-kind commodities, the payment shall be made by the Commodity Credit Corporation—

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

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

(C) by such other method, including the sale of the commodity in commercial markets, as is determined by the Secretary to be appropriate to enable the owner or operator to receive efficient and expeditious possession of the commodity.

(3) CASH PAYMENTS.—

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

(B) SPECIAL CONSERVATION RESERVE ENHANCEMENT PROGRAM.—Payments to an owner or operator under a special conservation reserve enhancement program described in subsection (f)(4) shall be in the form of cash only.

(e) PAYMENTS ON DEATH, DISABILITY, OR SUCCESSION.—If an owner or operator that is entitled to a payment under a contract

[1234–1] Sec. 2110(b)(2) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1763) provided that "The first survey required by paragraph (5) of section 1234(c) of the Food Security Act of 1985 (16 U.S.C. 3834(c)), as added by subsection (a), shall be conducted not later than 1 year after the date of enactment of this Act.".

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

(f) PAYMENT LIMITATION FOR RENTAL PAYMENTS.—

(1) IN GENERAL.—The total amount of rental payments, including rental payments made in the form of in-kind commodities, received by a person or legal entity, directly or indirectly, under this subchapter for any fiscal year may not exceed $50,000.

(3)[1234–2] OTHER PAYMENTS.—Rental payments received by an owner or operator shall be in addition to, and not affect, the total amount of payments that the owner or operator is otherwise eligible to receive under the Farm Security and Rural Investment Act of 2002.

(4)[1234–2] 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 subchapter.

(g) OTHER STATE OR LOCAL ASSISTANCE.—In addition to any payment under this subchapter, an owner or operator may receive cost share assistance, rental payments, or tax benefits from a State or subdivision thereof for enrolling land in the conservation reserve program.

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

(a) OWNERSHIP OR OPERATION REQUIREMENTS.—

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

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

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

[1234–2] Sec. 2110(c)(2) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1763) struck paragraph (2) but did not redesignate subsequent paragraphs. Paragraphs (3) and (4) probably should be redesignated as paragraphs (2) and (3), respectively.

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

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

(2) EXCEPTIONS.—Paragraph (1) shall not—

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

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

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

(ii) controls the land for the contract period.

(b) SALES OR TRANSFERS.—If, during the term of a contract entered into under this subchapter, an owner or operator of land subject to the contract sells or otherwise transfers the ownership or right of occupancy of the land, the new owner or operator of the land may—

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

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

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

(c) MODIFICATIONS.—

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

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

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

(i) to carry out this subchapter;

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

(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 subchapter.

(2) PRODUCTION OF AGRICULTURAL COMMODITIES.—The Secretary may modify or waive a term or condition of a contract entered into under this subchapter in order to permit all or part of the land subject to such contract to be devoted to the production of an agricultural commodity during a crop year,

subject to such conditions as the Secretary determines are appropriate.

(d) TERMINATION.—

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

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

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

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

(e) EARLY TERMINATION BY OWNER OR OPERATOR.—

(1) EARLY TERMINATION.—

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

(B) LIABILITY FOR CONTRACT VIOLATION.—The termination shall not relieve the participant of liability for a contract violation occurring before the date of the termination.

(C) NOTICE TO SECRETARY.—The participant shall provide the Secretary with reasonable notice of the desire of the participant to terminate the contract.

(2) CERTAIN LAND EXCEPTED.—The following land shall not be subject to an early termination of contract under this subsection:

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

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

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

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

(4) PRORATED RENTAL PAYMENT.—If a contract entered into under this subchapter is terminated under this subsection before the end of the fiscal year for which a rental payment is due, the Secretary shall provide a prorated rental payment covering the portion of the fiscal year during which the contract was in effect.

(5) RENEWED ENROLLMENT.—The termination of a contract entered into under this subchapter shall not affect the ability of the owner or operator that requested the termination to submit a subsequent bid to enroll the land that was subject to the contract into the conservation reserve.

(6) CONSERVATION REQUIREMENTS.—If land that was subject to a contract is returned to production of an agricultural

commodity, the conservation requirements under subtitles B and C shall apply to the use of the land to the extent that the requirements are similar to those requirements imposed on other similar land in the area, except that the requirements may not be more onerous than the requirements imposed on other land.

(f) TRANSITION OPTION FOR CERTAIN FARMERS OR RANCHERS.—

(1) DUTIES OF THE SECRETARY.—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 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; 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 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 1001A(b)(3)(B) of this Act) 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 requirement of section 1231(h)(4)(B); and

(B) is part of an approved conservation plan.

SEC. 1235A. [16 U.S.C. 3835a] CONVERSION OF LAND SUBJECT TO CONTRACT TO OTHER CONSERVING USES.

(a) CONVERSION TO TREES.—

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

(2) TERMS.—

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

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

(b) CONVERSION TO WETLAND.—The Secretary shall permit an owner or operator that has entered into a contract under this subchapter that is in effect on November 28, 1990, to restore areas of highly erodible cropland that are devoted to vegetative cover under the contract to wetland if—

(1) the areas are prior converted wetland;

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

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

(4) the restoration of the areas otherwise meets the requirements of subchapter C.

(c) LIMITATION.—The Secretary shall not incur, through a conversion under this section, any additional expense on the acres, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs under this section in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

(d) CONDITION OF CONTRACT.—An owner or operator shall as a condition of entering into a contract under subsection (a) participate in the Forest Stewardship Program established under section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a).

Subchapter C—Wetlands Reserve Program

SEC. 1237. [16 U.S.C. 3837] WETLANDS RESERVE PROGRAM.

(a) ESTABLISHMENT AND PURPOSES.—

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

(2) PURPOSES.—The purposes of the wetlands reserve program are to restore, protect, or enhance wetlands on private or tribal lands that are eligible under subsections (c) and (d).

(b) ENROLLMENT CONDITIONS.—

(1) MAXIMUM ENROLLMENT.—The total number of acres enrolled in the wetlands reserve program shall not exceed 3,041,200 acres.

(2) METHODS OF ENROLLMENT.—Subject to paragraph (3), the Secretary shall enroll acreage into the wetlands reserve

program through the use of permanent easements, 30-year easements, restoration cost share agreements, or any combination of those options.

(3) ACREAGE OWNED BY INDIAN TRIBES.—In the case of acreage owned by an Indian tribe, the Secretary shall enroll acreage into the wetlands reserve program through the use of—

(A) a 30-year contract (the value of which shall be equivalent to the value of a 30-year easement);

(B) restoration cost-share agreements; or

(C) any combination of the options described in subparagraphs (A) and (B).

(c) ELIGIBILITY.—For purposes of enrolling land in the wetland reserve established under this subchapter during the 1991 through 2012 fiscal years, private or tribal land shall be eligible to be placed into such reserve if the Secretary, in consultation with the Secretary of the Interior at the local level, determines that—

(1) such land maximizes wildlife benefits and wetland values and functions;

(2) such land is—

(A) farmed wetland or converted wetland, together with the adjacent land that is functionally dependent on the wetlands, except that converted wetland with respect to which the conversion was not commenced prior to December 23, 1985, shall not be eligible to be enrolled in the program under this section; or

(B) cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, as determined by the Secretary, together (where practicable) with the adjacent land that is functionally dependent on the cropland or grassland; and

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

(d) OTHER ELIGIBLE LAND.—The Secretary may include in the wetland reserve established under this subchapter, together with land that is eligible under subsection (c), land that maximizes wildlife benefits and that is—

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

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

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

(e) INELIGIBLE LAND.—The Secretary may not acquire easements on—

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

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

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

SEC. 1237A. [16 U.S.C. 3837a] EASEMENTS AND AGREEMENTS.

(a) IN GENERAL.—To be eligible to place land into the wetland reserve under this subchapter, the owner of such land shall enter into an agreement with the Secretary—

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

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

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

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

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

(1) permits—

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

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

(2) prohibits—

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

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

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

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

(iii) to meet habitat needs of specific wildlife species; and

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

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

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

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

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

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

(e) TYPE AND LENGTH OF EASEMENT.—A conservation easement granted under this section—

(1) shall be in a recordable form; and

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

(f) COMPENSATION.—

(1) DETERMINATION.—Effective on the date of the enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall pay as compensation for a conservation easement acquired under this subchapter the lowest of—

(A) the fair market value of the land, as determined by the Secretary, using the Uniform Standards of Professional Appraisal Practices or an area-wide market analysis or survey;

(B) the amount corresponding to a geographical cap, as determined by the Secretary in regulations; or

(C) the offer made by the landowner.

(2) FORM OF PAYMENT.—Compensation for an easement shall be provided by the Secretary in the form of a cash payment, in an amount determined under paragraph (1) and specified in the easement agreement.

(3) PAYMENT SCHEDULE FOR EASEMENTS.—

(A) EASEMENTS VALUED AT $500,000 OR LESS.—For easements valued at $500,000 or less, the Secretary may provide easement payments in not more than 30 annual payments.

(B) EASEMENTS IN EXCESS OF $500,000.—For easements valued at more than $500,000, the Secretary may provide easement payments in at least 5, but not more than 30 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.

(4) RESTORATION AGREEMENT PAYMENT LIMITATION.—Payments made to a person or legal entity, directly or indirectly, pursuant to a restoration cost-share agreement under this subchapter may not exceed, in the aggregate, $50,000 per year.

(5) ENROLLMENT PROCEDURE.—Lands may be enrolled under this subchapter through the submission of bids under a procedure established by the Secretary.

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

(h) WETLANDS RESERVE ENHANCEMENT PROGRAM.—

(1) PROGRAM AUTHORIZED.—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 wetlands reserve enhancement program that the Secretary determines would advance the purposes of this subchapter.

(2) RESERVED RIGHTS PILOT PROGRAM.—

(A) RESERVATION OF GRAZING RIGHTS.—As part of the wetlands reserve enhancement program, the Secretary shall carry out a pilot program for land in which a landowner may reserve grazing rights in the warranty easement deed restriction if 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 long-term wetland protection and enhancement goals for which the easement was established; and

(iii) complies with a conservation plan.

(B) DURATION.—The pilot program established under this paragraph shall terminate on September 30, 2012.

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

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

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

(a) IN GENERAL.—In return for the granting of an easement by an owner under this subchapter, the Secretary shall—

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

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

(b) COST-SHARE AND TECHNICAL ASSISTANCE.—

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

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

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

(2) RESTORATION COST-SHARE AGREEMENTS.—In making cost-share payments in connection with a restoration cost-share agreement entered into under section 1237A(h), the Secretary shall pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

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

(c) RANKING OF OFFERS.—

(1) CONSERVATION BENEFITS AND FUNDING CONSIDERATIONS.—When evaluating offers from landowners, the Secretary may consider—

(A) the conservation benefits of obtaining an easement or other interest in the land;

(B) the cost-effectiveness of each easement or other interest in eligible land, so as to maximize the environmental benefits per dollar expended; and

(C) whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds.

(2) ADDITIONAL CONSIDERATIONS.—In determining the acceptability of easement offers, the Secretary may take into consideration—

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

(B) the productivity of the land; and

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

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

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

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

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

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

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

(c) PAYMENT LIMITATION.—

(1) IN GENERAL.—The total amount of payments that a person or legal entity may receive, directly or indirectly, under this subchapter for any year may not exceed $50,000, except such limitation shall not apply with respect to payments for perpetual or 30-year easements or under 30-year contracts.

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

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

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

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

(a) LIMITATIONS.—No easement shall be created under this subchapter on land that has changed ownership during the preceding 7-year period unless—

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

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

(B) immediately before the foreclosure, the owner of the land exercises a right of redemption from the mortgage holder in accordance with State law; or

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

(b) MODIFICATION; TERMINATION.—

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

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

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

(i) to carry out this subchapter;

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

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

(2) TERMINATION.—

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

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

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

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

SEC. 1237F. [16 U.S.C. 3837f] ADMINISTRATION, AND FUNDING.

(a) DELEGATION OF EASEMENT ADMINISTRATION.—The Secretary may delegate any of the easement management, monitoring, and enforcement responsibilities of the Secretary to Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

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

(c) PRAIRIE POTHOLE REGION SURVEY AND REALLOCATION.—

(1) SURVEY.—The Secretary shall conduct a survey during fiscal year 2008 and each subsequent fiscal year for the purpose of determining interest and allocations for the Prairie Pothole Region to enroll eligible land described in section 1237(c)(2)(B).

(2) ANNUAL ADJUSTMENT.—The Secretary shall make an adjustment to the allocation for an interested State for a fiscal year, based on the results of the survey conducted under paragraph (1) for the State during the previous fiscal year.

CHAPTER 2—CONSERVATION SECURITY AND FARMLAND PROTECTION

Subchapter A—Conservation Security Program

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

In this subchapter:

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

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

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

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

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

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

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

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

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

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

(7) ENHANCED PAYMENT.—The term "enhanced payment" means the amount paid to a producer under a conservation security contract that is equal to the amount described in section 1238C(b)(1)(C)(iii).

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

(9) PRODUCER.—

(A) IN GENERAL.—The term "producer" means an owner, operator, landlord, tenant, or sharecropper that—

(i) shares in the risk of producing any crop or livestock; and

(ii) is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

(B) HYBRID SEED GROWERS.—In determining whether a grower of hybrid seed is a producer, the Secretary shall not take into consideration the existence of a hybrid seed contract.

(10) RESOURCE-CONSERVING CROP ROTATION.—The term "resource-conserving crop rotation" means a crop rotation that—

(A) includes at least 1 resource-conserving crop (as defined by the Secretary);

(B) reduces erosion;

(C) improves soil fertility and tilth;

(D) interrupts pest cycles; and

(E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).

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

(12) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service.

(13) TIER I CONSERVATION SECURITY CONTRACT.—The term "Tier I conservation security contract" means a contract described in section 1238A(d)(5)(A).

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

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

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

(a) IN GENERAL.—The Secretary shall establish and, for each of fiscal years 2003 through 2011, carry out a conservation security program to assist producers of agricultural operations in promoting, as is applicable with respect to land to be enrolled in the program, conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes, as determined by the Secretary.

(b) ELIGIBILITY.—

(1) ELIGIBLE PRODUCERS.—To be eligible to participate in the conservation security program (other than to receive technical assistance under section 1238C(g) for the development of conservation security contracts), a producer shall—

(A) develop and submit to the Secretary, and obtain the approval of the Secretary of, a conservation security plan that meets the requirements of subsection (c)(1); and

(B) enter into a conservation security contract with the Secretary to carry out the conservation security plan.

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

(3) EXCLUSIONS.—

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

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

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

(D) CONVERSION TO CROPLAND.—Land that is used for crop production after the date of enactment of this subchapter that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date (except for land enrolled in the conservation reserve program under subchapter B of chapter 1) or that has been maintained using long-term crop rotation practices,[1238A–1] as determined by the Secretary, shall not be the basis for any payment under the conservation security program.

(4) ECONOMIC USES.—The Secretary shall permit a producer to implement, with respect to all eligible land covered by a conservation security plan, economic uses that—

(A) maintain the agricultural nature of the land; and

(B) are consistent with the natural resource and conservation objectives of the conservation security program.

(c) CONSERVATION SECURITY PLANS.—

(1) IN GENERAL.—A conservation security plan shall—

(A) identify the designated land and resources to be conserved under the conservation security plan;

(B) describe the tier of conservation security contract, and the particular conservation practices to be implemented, maintained, or improved, in accordance with subsection (d) on the land covered by the conservation security contract for the specified term; and

(C) contain a schedule for the implementation, maintenance, or improvement of the conservation practices 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 subchapter may be received.

(B) ELIGIBLE CONSERVATION PRACTICES.—

(i) IN GENERAL.—The Secretary shall make eligible for payment under a conservation security contract land management, vegetative, and structural practices.

(ii) DETERMINATION.—In determining the eligibility of a practice described in clause (i), the Sec-

[1238A–1] So in original. Probably should strike "chapter 1) or that has been maintained using long-term crop rotation practices," and insert "chapter 1 or that has been maintained using long-term crop rotation practices),".

retary shall require, to the maximum extent practicable, that the lowest cost alternatives be used to fulfill the purposes of the conservation security plan, as determined by the Secretary.

(2) ON-FARM RESEARCH AND DEMONSTRATION OR PILOT TESTING.—With respect to land enrolled in the conservation security program, the Secretary may approve a conservation security plan that includes—

(A) on-farm conservation research and demonstration activities; and

(B) pilot testing of new technologies or innovative conservation practices.

(3) USE OF HANDBOOK AND GUIDES; STATE AND LOCAL CONSERVATION CONCERNS.—

(A) USE OF HANDBOOK AND GUIDES.—In determining eligible conservation practices and the criteria for implementing or maintaining the conservation practices under the conservation security program, the Secretary shall use the National Handbook of Conservation Practices of the Natural Resources Conservation Service.

(B) STATE AND LOCAL CONSERVATION PRIORITIES.—The conservation priorities of a State or locality in which an agricultural operation is situated shall be determined by the State Conservationist, in consultation with—

(i) the State technical committee established under subtitle G; and

(ii) local agricultural producers and conservation working groups.

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

(A) nutrient management;

(B) integrated pest management;

(C) water conservation (including through irrigation) and water quality management;

(D) grazing, pasture, and rangeland management;

(E) soil conservation, quality, and residue management;

(F) invasive species management;

(G) fish and wildlife habitat conservation, restoration, and management;

(H) air quality management;

(I) energy conservation measures;

(J) biological resource conservation and regeneration;

(K) contour farming;

(L) strip cropping;

(M) cover cropping;

(N) controlled rotational grazing;

(O) resource-conserving crop rotation;

(P) conversion of portions of cropland from a soil-depleting use to a soil-conserving use, including production of cover crops;

(Q) partial field conservation practices;

(R) native grassland and prairie protection and restoration; and

(S) any other conservation practices that the Secretary determines to be appropriate and comparable to other conservation practices described in this paragraph.

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

(A) TIER I CONSERVATION SECURITY CONTRACTS.—A conservation security plan for land enrolled under a Tier I conservation security contract shall—

(i) be for a period of 5 years; and

(ii) include conservation practices appropriate for the agricultural operation, that, at a minimum (as determined by the Secretary)—

(I) address at least 1 significant resource of concern for the enrolled portion of the agricultural operation at a level that meets the appropriate nondegradation standard; and

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

(B) TIER II CONSERVATION SECURITY CONTRACTS.—A conservation security plan for land enrolled under a Tier II conservation security contract shall—

(i) be for a period of not less than 5 nor more than 10 years, as determined by the producer;

(ii) include conservation practices appropriate for the agricultural operation, that, at a minimum—

(I) address at least 1 significant resource of concern for the entire agricultural operation, as determined by the Secretary, at a level that meets the appropriate nondegradation standard; and

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

(C) TIER III CONSERVATION SECURITY CONTRACTS.—A conservation security plan for land enrolled under a Tier III conservation security contract shall—

(i) be for a period of not less than 5 nor more than 10 years, as determined by the producer; and

(ii) include conservation practices appropriate for the agricultural operation that, at a minimum—

(I) apply a resource management system that meets the appropriate nondegradation standard for all resources of concern of the entire agricultural operation, as determined by the Secretary; and

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

(6) MINIMUM REQUIREMENTS.—The minimum requirements for each tier of conservation contracts implemented under

paragraph (5) shall be determined and approved by the Secretary.

(e) CONSERVATION SECURITY CONTRACTS.—

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

(2) MODIFICATION.—

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

(B) OTHER MODIFICATIONS.—

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

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

(I) simultaneously participate in—

(aa) the conservation security program;

(bb) the conservation reserve program under subchapter B of chapter 1; and

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

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

(3) TERMINATION.—

(A) OPTIONAL TERMINATION.—A producer may terminate a conservation security contract and retain payments received under the conservation security contract, if—

(i) the producer is in full compliance with the terms and conditions (including any maintenance 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), 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 subchapter after September 30, 2008.

(2) EXCEPTION.—This subchapter, 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 subchapter 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 issued to carry out the conservation stewardship program.

SEC. 1238B. [16 U.S.C. 3838b] DUTIES OF PRODUCERS.

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

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

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

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

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

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

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

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

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

SEC. 1238C. [16 U.S.C. 3838c] DUTIES OF THE SECRETARY.

(a) TIMING OF PAYMENTS.—The Secretary shall make payments under a conservation security contract as soon as practicable after October 1 of each fiscal year.

(b) ANNUAL PAYMENTS.—

(1) CRITERIA FOR DETERMINING AMOUNT OF PAYMENTS.—

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

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

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

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

(C) TIER I CONSERVATION SECURITY CONTRACTS.—The payment for a Tier I conservation security contract shall consist of the total of the following amounts:

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

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

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

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

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

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

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

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

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

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

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

(D) TIER II CONSERVATION SECURITY CONTRACTS.—The payment for a Tier II conservation security contract shall consist of the total of the following amounts:

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

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

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

(E) TIER III CONSERVATION SECURITY CONTRACTS.—The payment for a Tier III conservation security contract shall consist of the total of the following amounts:

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

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

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

(2) LIMITATION ON PAYMENTS.—

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

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

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

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

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

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

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

(C) OTHER USDA PAYMENTS.—A producer shall not receive payments under the conservation security program and any other conservation program administered by the Secretary for the same practices on the same land.

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

(3) EQUIPMENT OR FACILITIES.—A payment to a producer under this subchapter shall not be provided for—

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

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

(c) MINIMUM PRACTICE REQUIREMENT.—In determining a payment under subsection (b) for a producer that receives a payment under another program administered by the Secretary that is contingent on complying with requirements under subtitle B or C (relating to the use of highly erodible land or wetland), a payment under this subchapter on land subject to those requirements shall be for practices only to the extent that the practices exceed minimum requirements for the producer under those subtitles, as determined by the Secretary.

(d) REGULATIONS.—The Secretary shall promulgate regulations that—

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

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

(e) TRANSFER OR CHANGE OF INTEREST IN LAND SUBJECT TO CONSERVATION SECURITY CONTRACT.—

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

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

(f) ENROLLMENT PROCEDURE.—In entering into conservation security contracts with producers under this subchapter, the Secretary shall not use competitive bidding or any similar procedure.

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

Subchapter B—Conservation Stewardship Program

SEC. 1238D. [16 U.S.C. 3838d] DEFINITIONS.

In this subchapter:

(1) CONSERVATION ACTIVITIES.—

(A) IN GENERAL.—The term "conservation activities" means conservation systems, practices, or management measures that are designed to address a resource concern.

(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 resource concern.

(2) CONSERVATION MEASUREMENT TOOLS.—The term "conservation measurement tools" means procedures to estimate the level of environmental benefit to be achieved by a producer in implementing conservation activities, including indices or other measures developed by the Secretary.

(3) CONSERVATION STEWARDSHIP PLAN.—The term "conservation stewardship plan" means a plan that—

(A) identifies and inventories 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) PRIORITY RESOURCE CONCERN.—The term "priority resource concern" means a resource concern that is identified at the State level, in consultation with the State Technical Committee, as a priority for a particular watershed or area of the State.

(5) PROGRAM.—The term "program" means the conservation stewardship program established by this subchapter.

(6) RESOURCE CONCERN.—The term "resource concern" means a specific natural resource impairment or problem, as determined by the Secretary, that—

(A) represents a significant concern in a State or region; and

(B) is likely to be addressed successfully through the implementation of conservation activities by producers on land eligible for enrollment in the program.

(7) STEWARDSHIP THRESHOLD.—The term "stewardship threshold" means the level of natural resource conservation and environmental management required, as determined by the Secretary using conservation measurement tools, to improve and conserve the quality and condition of a resource concern.

SEC. 1238E. [16 U.S.C. 3838e] CONSERVATION STEWARDSHIP PROGRAM.

(a) ESTABLISHMENT AND PURPOSE.—During each of fiscal years 2009 through 2014, the Secretary shall carry out a conservation stewardship program to encourage producers to address resource concerns in a comprehensive manner—

(1) by undertaking additional conservation activities; and

(2) by improving, maintaining and managing existing conservation activities.

(b) ELIGIBLE LAND.—

(1) IN GENERAL.—Except as provided in subsection (c), the following land is eligible for enrollment in the program:

(A) Private agricultural land (including cropland, grassland, prairie land, improved pastureland, rangeland, and land used for agro-forestry).

(B) Agricultural land under the jurisdiction of an Indian tribe.

(C) Forested land that is an incidental part of an agricultural operation.

(D) Other private 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 by enrolling the land in the program, as determined by the Secretary.

(2) SPECIAL RULE FOR NONINDUSTRIAL PRIVATE FOREST LAND.—Nonindustrial private forest land is eligible for enrollment in the program, except that not more than 10 percent of the annual acres enrolled nationally in any fiscal year may be nonindustrial private forest land.

(3) AGRICULTURAL OPERATION.—Eligible land shall include all acres of an agricultural operation of a producer, whether or not contiguous, that are under the effective control of the producer at the time the producer enters into a stewardship contract, and is operated by the producer with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations, as determined by the Secretary.

(c) EXCLUSIONS.—

(1) LAND ENROLLED IN OTHER CONSERVATION PROGRAMS.—Subject to paragraph (2), the following land is not be eligible for enrollment in the program:

(A) Land enrolled in the conservation reserve program.

(B) Land enrolled in the wetlands reserve program.

(C) Land enrolled in the grassland reserve program.

(2) CONVERSION TO CROPLAND.—Land used for crop production after the date of enactment of the Food, Conservation, and Energy Act of 2008 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 the 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.

SEC. 1238F. [16 U.S.C. 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 for approval a contract offer that—

(1) demonstrates to the satisfaction of the Secretary that the producer, at the time of the contract offer, is meeting the stewardship threshold for at least one resource concern; and

(2) would, at a minimum, meet or exceed the stewardship threshold for at least 1 priority resource concern by the end of the stewardship contract by—

(A) installing and adopting additional conservation activities; and

(B) improving, maintaining, and managing conservation activities in place at the operation of the producer at the time the contract offer is accepted by the Secretary.

(b) EVALUATION OF CONTRACT OFFERS.—

(1) RANKING OF APPLICATIONS.—In evaluating contract offers made by producers to enter into contracts under the program, the Secretary shall rank applications based on—

(A) the level of conservation treatment on all applicable priority resource concerns at the time of application, based to the maximum extent practicable on conservation measurement tools;

(B) the degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance, based to the maximum extent possible on conservation measurement tools;

(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 resource concerns, in addition to priority resource concerns, will be addressed to meet or exceed the stewardship threshold by the end of the contract period; and

(E) the extent to which the actual and anticipated environmental benefits from the contract are provided at the least cost relative to other similarly beneficial contract offers.

(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 for evaluating applications to enroll in the program that the Secretary determines are necessary to ensure that national, State, and local conservation priorities 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 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) 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 1238G(e);

(B) require the producer—

(i) to implement during the term of the conservation stewardship contract the conservation stewardship plan approved by the Secretary;

(ii) 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 stewardship contract; and

(iii) not to engage in any activity during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;

(C) permit all economic uses of the 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; and

(E) include such other provisions as the Secretary determines necessary to ensure the purposes of the program are achieved.

(e) CONTRACT RENEWAL.—At the end of an initial conservation stewardship contract of a producer, the Secretary may allow the producer to renew the contract for one additional five-year period if the producer—

(1) demonstrates compliance with the terms of the existing contract; and

(2) agrees to adopt new conservation activities, as determined by the Secretary.

(f) MODIFICATION.—The Secretary may allow a producer to modify a stewardship contract if the Secretary determines that the modification is consistent with achieving the purposes of the program.

(g) CONTRACT TERMINATION.—

(1) VOLUNTARY TERMINATION.—A producer may terminate a conservation stewardship contract if the Secretary determines that termination would not defeat the purposes of the program.

(2) INVOLUNTARY TERMINATION.—The Secretary may terminate a contract under this subchapter if the Secretary determines that the producer violated the contract.

(3) 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 already received and assess liquidated damages.

(4) CHANGE OF INTEREST IN LAND SUBJECT TO A CONTRACT.—

(A) IN GENERAL.—Except as provided in paragraph (B), a change in the interest of a producer in land covered by a contract under this chapter 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 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; and

(ii) the transferee meets the eligibility requirements of 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 this subchapter.

(i) ON-FARM RESEARCH AND DEMONSTRATION OR PILOT TESTING.—The Secretary may approve a contract offer under this subchapter that includes—

(1) on-farm conservation research and demonstration activities; and

(2) pilot testing of new technologies or innovative conservation practices.

SEC. 1238G. [16 U.S.C. 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, one of which shall occur in the first quarter of each fiscal year;

(2) identify not less than 3 nor more than 5 priority resource concerns in a particular watershed or other appropriate region or area within a State; and

(3) develop reliable conservation measurement tools for purposes of carrying out the program.

(b) ALLOCATION TO STATES.—The Secretary shall allocate acres to States for enrollment, based—

(1) primarily on each State's proportion of eligible acres under section 1238E(b)(1) to the total number of eligible acres 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) 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.

(d) ACREAGE ENROLLMENT LIMITATION.—During the period beginning on October 1, 2008, and ending on September 30, 2017, the Secretary shall, to the maximum extent practicable—

(1) enroll in the program an additional 12,769,000 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.

(e) CONSERVATION STEWARDSHIP PAYMENTS.—

(1) AVAILABILITY OF PAYMENTS.—The Secretary shall provide a payment 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 operation of the producer at the time the contract offer is accepted by the Secretary.

(2) PAYMENT AMOUNT.—The amount of the conservation stewardship 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 environmental benefits as determined by conservation measurement tools.

(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) TIMING OF PAYMENTS.—

(A) IN GENERAL.—The Secretary shall make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year.

(B) ADDITIONAL ACTIVITIES.—The Secretary shall make payments to compensate producers for installation of additional practices at the time at which the practices are installed and adopted.

(f) 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 resource-conserving crop rotations to achieve beneficial crop rotations as appropriate for the 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-conserving 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.

(g) PAYMENT LIMITATIONS.—A person or legal entity may not receive, directly or indirectly, payments under this subchapter that, in the aggregate, exceed $200,000 for all contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the program by the person or entity.

(h) 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 (g); and

(2) otherwise enable the Secretary to carry out the program.

(i) DATA.—The Secretary shall maintain detailed and segmented data on contracts and payments under the program to allow for quantification of the amount of payments made for—

(1) the installation and adoption of additional conservation activities and improvements to conservation activities in place on the operation of a producer at the time the conservation stewardship offer is accepted by the Secretary;

(2) participation in research, demonstration, and pilot projects; and

(3) the development and periodic assessment and evaluation of conservation plans developed under this subchapter.

Subchapter C—Farmland Protection Program [1238H–1]

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

In this subchapter:

(1) ELIGIBLE ENTITY.—The term "eligible entity" means—

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

(B) any organization that—

(i) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes

[1238H–1] Sec. 2503(a) of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171; 116 Stat. 267; May 13, 2002) added subchapter B "at the end" of chapter 2. Sec. 2401 of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171; 116 Stat. 258; May 13, 2002) earlier added subchapter C "at the end" of chapter 2. Subchapter B was inserted after subchapter A to effectuate the probable intent of Congress. Subchapter B redesignated to subchapter C by section 2301(a)(1) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1768).

specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

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

(iii) is—

(I) described in paragraph (1) or (2) of section 509(a) of that Code; or

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

(2) ELIGIBLE LAND.—

(A) IN GENERAL.—The term "eligible land" means land on a farm or ranch that is subject to a pending offer for purchase from an eligible entity and—

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

(ii) contains historical or archaeological resources; or

(iii) the protection of which will further a State or local policy consistent with the purposes of the program.

(B) INCLUSIONS.—The term "eligible land" includes, on a farm or ranch—

(i) cropland;

(ii) rangeland;

(iii) grassland;

(iv) pasture land;

(v) forest land that—

(I) contributes to the economic viability of an agricultural operation; or

(II) serves as a buffer to protect an agricultural operation from development; and

(vi) land that is incidental to land described in clauses (i) through (v), if such land is necessary for the efficient administration of a conservation easement, as determined by the Secretary.

(3) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) PROGRAM.—The term "program" means the farmland protection program established under section 1238I(a).

SEC. 1238I. [16 U.S.C. 3838i] FARMLAND PROTECTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish and carry out a farmland protection program under which the Secretary shall facilitate and provide funding for the purchase of conservation easements or other interests in eligible land.

(b) PURPOSE.—The purpose of the program is to protect the agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land.

(c) COST-SHARE ASSISTANCE.—

(1) PROVISION OF ASSISTANCE.—The Secretary shall provide cost-share assistance to eligible entities for purchasing a conservation easement or other interest in eligible land.

(2) FEDERAL SHARE.—The share of the cost provided by the Secretary for purchasing a conservation easement or other interest in eligible land shall not exceed 50 percent of the appraised fair market value of the conservation easement or other interest in eligible land.

(3) NON-FEDERAL SHARE.—

(A) SHARE PROVIDED BY ELIGIBLE ENTITY.—The eligible entity shall provide a share of the cost of purchasing a conservation easement or other interest in eligible land in an amount that is not less than 25 percent of the acquisition purchase price.

(B) LANDOWNER CONTRIBUTION.—As part of the non-Federal share of the cost of purchasing a conservation easement or other interest in eligible land, an eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the private landowner from which the conservation easement or other interest in land will be purchased.

(d) DETERMINATION OF FAIR MARKET VALUE.—Effective on the date of enactment of the Food, Conservation, and Energy Act of 2008, the fair market value of the conservation easement or other interest in eligible land shall be determined on the basis of an appraisal using an industry approved method, selected by the eligible entity and approved by the Secretary.

(e) BIDDING DOWN PROHIBITED.—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 1 of those applications solely on the basis of lesser cost to the program.

(f) CONDITION ON ASSISTANCE.—

(1) CONSERVATION PLAN.—Any highly erodible cropland for which a conservation easement or other interest is purchased using cost-share assistance provided under the program shall be subject to a conservation plan that requires, at the option of the Secretary, the conversion of the cropland to less intensive uses.

(2) CONTINGENT RIGHT OF ENFORCEMENT.—The Secretary shall require the inclusion of a contingent right of enforcement for the Secretary in the terms of a conservation easement or other interest in eligible land that is purchased using cost-share assistance provided under the program.

(g) AGREEMENTS WITH ELIGIBLE ENTITIES.—

(1) 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 subsection (c).

(2) LENGTH OF AGREEMENTS.—An agreement under this subsection shall be for a term that is—

(A) in the case of an eligible entity certified under the process described in subsection (h), a minimum of five years; and

(B) for all other eligible entities, at least three, but not more than five years.

(3) 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.

(4) MINIMUM REQUIREMENTS.—An eligible entity shall be authorized to use its own terms and conditions, as approved by the Secretary, for conservation easements and other purchases of interests in land, so long as such terms and conditions—

(A) are consistent with the purposes of the program;

(B) permit effective enforcement of the conservation purposes of such easements or other interests; and

(C) include a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted.

(5) EFFECT OF VIOLATION.—If a violation occurs of a term or condition of an agreement entered into under this subsection—

(A) the agreement shall remain in force; and

(B) 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.

(h) CERTIFICATION OF ELIGIBLE ENTITIES.—

(1) CERTIFICATION PROCESS.—The Secretary shall establish a process under which the Secretary may—

(A) directly certify eligible entities that meet established criteria;

(B) enter into long-term agreements with certified entities, as authorized by subsection (g)(2)(A); and

(C) accept proposals for cost-share assistance to certified entities for the purchase of conservation easements or other interests in eligible land throughout the duration of such agreements.

(2) 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—

(A) a plan for administering easements that is consistent with the purpose of this subchapter;

(B) the capacity and resources to monitor and enforce conservation easements or other interests in land; and

(C) policies and procedures to ensure—

(i) the long-term integrity of conservation easements or other interests in eligible land;

(ii) timely completion of acquisitions of easements or other interests in eligible land; and

(iii) timely and complete evaluation and reporting to the Secretary on the use of funds provided by the Secretary under the program.

(3) REVIEW AND REVISION.—

(A) REVIEW.—The Secretary shall conduct a review of eligible entities certified under paragraph (1) every three years to ensure that such entities are meeting the criteria established under paragraph (2).

(B) REVOCATION.—If the Secretary finds that the certified entity no longer meets the criteria established under paragraph (2), the Secretary may—

(i) allow the certified 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 entity, if after the specified period of time, the certified entity does not meet the criteria established in paragraph (2).

SEC. 1238J. [16 U.S.C. 3838j] FARM VIABILITY PROGRAM.

(a) IN GENERAL.—The Secretary may provide to eligible entities identified by the Secretary grants for use in carrying out farm viability programs developed by the eligible entities and approved by the Secretary.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section such sums as are necessary for each of fiscal years 2002 through 2012.

Subchapter D—Grassland Reserve Program [1238N–1]

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

(a) ESTABLISHMENT AND PURPOSE.—The Secretary shall establish a grassland reserve program (referred to in this subchapter as the "program") for the purpose of assisting owners and operators in protecting grazing uses and related conservation values by restoring and conserving eligible land through rental contracts, easements, and restoration agreements.

(b) ENROLLMENT OF ACREAGE.—

(1) ACREAGE ENROLLED.—The Secretary shall enroll an additional 1,220,000 acres of eligible land in the program during fiscal years 2009 through 2012.

(2) METHODS OF ENROLLMENT.—The Secretary shall enroll eligible land in the program through the use of;

(A) a 10-year, 15-year, or 20-year rental contract;

(B) a permanent easement; or

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

(3) LIMITATION.—Of the total amount of funds expended under the program to acquire rental contracts and easements described in paragraph (2), the Secretary shall use, to the extent practicable—

(A) 40 percent for rental contacts; and

(B) 60 percent for easements.

(4) ENROLLMENT OF CONSERVATION RESERVE LAND.—

(A) PRIORITY.—Upon expiration of a contract under subchapter B of chapter 1 of this subtitle, the Secretary shall give priority for enrollment in the program to land

[1238N–1] Subchapter C was added by sec. 2401 of the Farm Security and Rural Investment Act of 2002 (P.L. 107–171; 116 Stat. 258; May 13, 2002). For placement of this subchapter in chapter 2, see note 1238H–1. Subchapter C redesignated to subchapter D by section 2301(a)(1) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1768) and amended to read as follows by section 2403 of that Act.

previously enrolled in the conservation reserve program if—

(i) the land is eligible land, as defined in subsection (c); and

(ii) the Secretary determines that the land is of high ecological value and under significant threat of conversion to uses other than grazing.

(B) MAXIMUM ENROLLMENT.—The number of acres of land enrolled under the priority described in subparagraph (A) in a calendar year shall not exceed 10 percent of the total number of acres enrolled in the program in that calendar year.

(c) ELIGIBLE LAND DEFINED.—For purposes of the program, the term "eligible land" means private or tribal land that—

(1) is grassland, land that contains forbs, or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use;

(2) is located in an area that has been historically dominated by grassland, forbs, or shrubland, and the land—

(A) could provide habitat for animal or plant populations of significant ecological value if the land—

(i) is retained in its current use; or

(ii) is restored to a natural condition;

(B) contains historical or archaeological resources; or

(C) would address issues raised by State, regional, and national conservation priorities; or

(3) is incidental to land described in paragraph (1) or (2), if the incidental land is determined by the Secretary to be necessary for the efficient administration of a rental contract or easement under the program.

SEC. 1238O. [16 U.S.C. 3838o] DUTIES OF OWNERS AND OPERATORS.

(a) RENTAL CONTRACTS.—To be eligible to enroll eligible land in the program under a rental contract, the owner or operator of the land shall agree—

(1) to comply with the terms of the contract and, when applicable, a restoration agreement;

(2) to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary; and

(3) to implement a grazing management plan, as approved by the Secretary, which may be modified upon mutual agreement of the parties.

(b) EASEMENTS.—To be eligible to enroll eligible land in the program through an easement, the owner of the land shall agree—

(1) to grant an easement to the Secretary or to an eligible entity described in section 1238Q;

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

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

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

(5) to comply with the terms of the easement and, when applicable, a restoration agreement;

(6) to implement a grazing management plan, as approved by the Secretary, which may be modified upon mutual agreement of the parties; and

(7) to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

(c) RESTORATION AGREEMENTS.—

(1) WHEN APPLICABLE.—To be eligible for cost-share assistance to restore eligible land subject to a rental contract or an easement under the program, the owner or operator of the land shall agree to comply with the terms of a restoration agreement.

(2) TERMS AND CONDITIONS.—The Secretary shall prescribe the terms and conditions of a restoration agreement by which eligible land that is subject to a rental contract or easement under the program shall be restored.

(3) DUTIES.—The restoration agreement shall describe the respective duties of the owner or operator and the Secretary, including the Federal share of restoration payments and technical assistance.

(d) TERMS AND CONDITIONS APPLICABLE TO RENTAL CONTRACTS AND EASEMENTS.—

(1) PERMISSIBLE ACTIVITIES.—The terms and conditions of a rental contract or easement under the program shall permit—

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

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

(C) fire presuppression, rehabilitation, and construction of fire breaks; and

(D) grazing related activities, such as fencing and livestock watering.

(2) PROHIBITIONS.—The terms and conditions of a rental contract or easement under the program shall prohibit—

(A) the production of crops (other than hay), fruit trees, vineyards, or any other agricultural commodity that is inconsistent with maintaining grazing land; and

(B) except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing land enrolled in the program.

(3) ADDITIONAL TERMS AND CONDITIONS.—A rental contract or easement under the program shall include such additional provisions as the Secretary determines are appropriate to carry

out or facilitate the purposes and administration of the program.

(e) VIOLATIONS.—On a violation of the terms or conditions of a rental contract, easement, or restoration agreement entered into under this section—

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

(2) the Secretary may require the owner or operator to refund all or part of any payments received under the program, with interest on the payments as determined appropriate by the Secretary.

SEC. 1238P. [16 U.S.C. 3838p] DUTIES OF SECRETARY.

(a) EVALUATION AND RANKING OF APPLICATIONS.—

(1) CRITERIA.—The Secretary shall establish criteria to evaluate and rank applications for rental contracts and easements under the program . [1238P–1]

(2) CONSIDERATIONS.—In establishing the criteria, the Secretary shall emphasize support for—

(A) grazing operations;

(B) plant and animal biodiversity; and

(C) grassland, land that contains forbs, and shrubland under the greatest threat of conversion to uses other than grazing.

(b) PAYMENTS.—

(1) IN GENERAL.—In return for the execution of a rental contract or the granting of an easement by an owner or operator under the program, the Secretary shall—

(A) make rental contract or easement payments to the owner or operator in accordance with paragraphs (2) and (3); and

(B) make payments to the owner or operator under a restoration agreement for the Federal share of the cost of restoration in accordance with paragraph (4).

(2) RENTAL CONTRACT PAYMENTS.—

(A) PERCENTAGE OF GRAZING VALUE OF LAND.—In return for the execution of a rental contract by an owner or operator under the program, the Secretary shall make annual payments during the term of the contract in an amount, subject to subparagraph (B), that is not more than 75 percent of the grazing value of the land covered by the contract.

(B) PAYMENT LIMITATION.—Payments made under 1 or more rental contracts to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

(3) EASEMENT PAYMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), in return for the granting of an easement by an owner under the program, the Secretary shall make easement payments in an amount not to exceed the fair market value of the land less the grazing value of the land encumbered by the easement.

[1238P–1] So as in original. Extra space before the period should probably be struck.

(B) METHOD FOR DETERMINATION OF COMPENSATION.—In making a determination under subparagraph (A), the Secretary shall pay as compensation for a easement acquired under the program the lowest of—

(i) the fair market value of the land encumbered by the easement, as determined by the Secretary, using—

(I) the Uniform Standards of Professional Appraisal Practices; or

(II) an area-wide 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.

(C) SCHEDULE.—Easement payments may be provided in up to 10 annual payments of equal or unequal amount, as agreed to by the Secretary and the owner.

(4) RESTORATION AGREEMENT PAYMENTS.—

(A) FEDERAL SHARE OF RESTORATION.—The Secretary shall make payments to an owner or operator under a restoration agreement of not more than 50 percent of the costs of carrying out measures and practices necessary to restore functions and values of that land.

(B) PAYMENT LIMITATION.—Payments made under 1 or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, $50,000 per year.

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

SEC. 1238Q. [16 U.S.C. 3838q] DELEGATION OF DUTY.

(a) AUTHORITY TO DELEGATE.—The Secretary may delegate a duty under the program—

(1) by transferring title of ownership to an easement to an eligible entity to hold and enforce; or

(2) by entering into a cooperative agreement with an eligible entity for the eligible entity to own, write, and enforce an easement.

(b) ELIGIBLE ENTITY DEFINED.—In this section, the term "eligible entity" means—

(1) an agency of State or local government or an Indian tribe; or

(2) an organization that—

(A) is organized for, and at all times since the formation of the organization has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(B) is an organization described in section 501(c)(3) of that Code that is exempt from taxation under section 501(a) of that Code; and

(C) is described in—

(i) paragraph (1) or (2) of section 509(a) of that Code; or

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

(c) TRANSFER OF TITLE OF OWNERSHIP.—

(1) TRANSFER.—The Secretary may transfer title of ownership to an easement to an eligible entity to hold and enforce, in lieu of the Secretary, subject to the right of the Secretary to conduct periodic inspections and enforce the easement, if—

(A) the Secretary determines that the transfer will promote protection of grassland, land that contains forbs, or shrubland;

(B) the owner authorizes the eligible entity to hold or enforce the easement; and

(C) the eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity.

(2) APPLICATION.—An eligible entity that seeks to hold and enforce an easement shall apply to the Secretary for approval.

(3) APPROVAL BY SECRETARY.—The Secretary may approve an application described in paragraph (2) if the eligible entity—

(A) has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland;

(B) has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and

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

(d) COOPERATIVE AGREEMENTS.—

(1) AUTHORIZED; TERMS AND CONDITIONS.—The Secretary shall establish the terms and conditions of a cooperative agreement under which an eligible entity shall use funds provided by the Secretary to own, write, and enforce an easement, in lieu of the Secretary.

(2) MINIMUM REQUIREMENTS.—At a minimum, the cooperative agreement shall—

(A) specify the qualification of the eligible entity to carry out the entity's responsibilities under the program, including acquisition, monitoring, enforcement, and implementation of management policies and procedures that ensure the long-term integrity of the easement protections;

(B) require the eligible entity to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity;

(C) specify the right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easement;

(D) subject to subparagraph (E), identify a specific project or a range of projects to be funded under the agreement;

(E) allow, upon mutual agreement of the parties, substitution of qualified projects that are identified at the time of substitution;

(F) specify the manner in which the eligible entity will evaluate and report the use of funds to the Secretary;

(G) allow the eligible entity flexibility to develop and use terms and conditions for easements, if the Secretary finds the terms and conditions consistent with the purposes of the program and adequate to enable effective enforcement of the easements;

(H) if applicable, allow an eligible entity to include a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner from which the easement will be purchased as part of the entity's share of the cost to purchase an easement; and

(I) provide for a schedule of payments to an eligible entity, as agreed to by the Secretary and the eligible entity.

(3) COST SHARING.—

(A) IN GENERAL.—As part of a cooperative agreement with an eligible entity under this subsection, the Secretary may provide a share of the purchase price of an easement under the program.

(B) MINIMUM SHARE BY ELIGIBLE ENTITY.—The eligible entity shall be required to provide a share of the purchase price at least equivalent to that provided by the Secretary.

(C) PRIORITY.—The Secretary may accord a higher priority to proposals from eligible entities that leverage a greater share of the purchase price of the easement.

(4) VIOLATION.—If an eligible entity violates the terms or conditions of a cooperative agreement entered into under this subsection—

(A) the cooperative agreement shall remain in force; and

(B) the Secretary may require the eligible entity to refund all or part of any payments received by the eligible entity under the program, with interest on the payments as determined appropriate by the Secretary.

(e) PROTECTION OF FEDERAL INVESTMENT.—When delegating a duty under this section, the Secretary shall ensure that the terms of an easement include a contingent right of enforcement for the Department.

CHAPTER 3—ENVIRONMENTAL EASEMENT PROGRAM

SEC. 1239. [16 U.S.C. 3839] ENVIRONMENTAL EASEMENT PROGRAM.

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

(b) ELIGIBILITY; TERMINATION.—

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

(A) contains riparian corridors;

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

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

(2) INELIGIBLE LAND.—The Secretary may not acquire easements on—

(A) land that contains timber stands established under the conservation reserve under subtitle D; or

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

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

SEC. 1239A. [16 U.S.C. 3839a] DUTIES OF OWNERS; COMPONENTS OF PLAN.

(a) DUTIES OF OWNERS.—

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

(2) AGREEMENT.—In return for the creation of an easement on any lands under this chapter, the owner of the farm or ranch wherein such lands are located must agree to the following:

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

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

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

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

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

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

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

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

(b) COMPONENTS OF PLAN.—The natural resource conservation management plan referred to in subsection (a)(1) (hereafter referred to as the "plan")—

(1) shall set forth—

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

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

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

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

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

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

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

(A) $250,000; or

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

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

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

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

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

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

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

(b) COST SHARING PAYMENTS.—In making cost sharing payments to owners under this chapter, the Secretary may pay up to 100 percent of the cost of establishing conservation measures and practices pursuant to this chapter.

(c) EASEMENT PAYMENTS; ACCEPTABILITY OF OFFERS.—

(1) DETERMINATION OF AMOUNT.—The Secretary shall determine the amount payable to owners in the form of easement payments under this chapter, and in making such determination may consider, among other things, the amount necessary to encourage owners to participate in the easement program.

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

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

(B) the productivity of the land; and

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

(d) FORM OF PAYMENT.—Except as otherwise provided in this section, payments under this chapter—

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

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

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

(f) PAYMENT LIMITATION.—

(1) IN GENERAL.—The total amount of easement payments made to a person under this chapter for any year may not exceed $50,000.

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

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

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

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

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

(a) LIMITATIONS.—No easement shall be created under this chapter on land that has changed ownership in the preceding 12 months unless—

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

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

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

(b) MODIFICATION; TERMINATION.—

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

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

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

(i) to carry out this chapter;

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

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

(2) TERMINATION.—

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

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

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

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

CHAPTER 4—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

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

The purposes of the environmental quality incentives program established by this chapter are to promote agricultural production, 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; and

(B) conserving energy;

(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; and

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

SEC. 1240A. [16 U.S.C. 3839aa–1] DEFINITIONS.

In this chapter:

(1) 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) NATIONAL ORGANIC PROGRAM.—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.).

(3) ORGANIC SYSTEM PLAN.—The term "organic system plan" means an organic plan approved under the national organic program.

(4) PAYMENT.—The term "payment" means financial assistance provided to a producer for performing practices under this chapter, 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.

(5) PRACTICE.—The term "practice" means 1 or more improvements and conservation activities that are consistent with the purposes of the program under this chapter, 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 chapter.

(6) PROGRAM.—The term "program" means the environmental quality incentives program established by this chapter.

SEC. 1240B. [16 U.S.C. 3839aa–2] ESTABLISHMENT AND ADMINISTRATION

(a) ESTABLISHMENT.—During each of the 2002 through 2014 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—

(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.

(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) 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.

(4) INCREASED PAYMENTS FOR CERTAIN PRODUCERS.—

(A) IN GENERAL.—Notwithstanding paragraph (2), in the case of a producer that is a limited resource, socially

disadvantaged farmer or rancher 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.—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.

(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 subtitle.

(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.—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.

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

(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 chapter.

(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 10606 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523).

(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).

SEC. 1240C. [16 U.S.C. 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 chapter, the Secretary shall prioritize applications—

(1) based on their overall level of cost-effectiveness to ensure that the conservation practices and approaches proposed

are the most efficient means of achieving the anticipated environmental 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 purpose of the environmental quality incentives program specified in section 1240(1); 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.

SEC. 1240D. [16 U.S.C. 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 farm, ranch, or forest 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.

SEC. 1240E. [16 U.S.C. 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 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a);

(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 chapter and comparable conservation programs.

SEC. 1240F. [16 U.S.C. 3839aa–6] DUTIES OF THE SECRETARY.

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

(1) providing payments for developing and implementing 1 or more practices, as appropriate; and

(2) providing the producer with information and training to aid in implementation of the plan.

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

(a) LIMITATION.—Subject to subsection (b), a person or legal entity may not receive, directly or indirectly, cost-share or incentive payments under this chapter that, in the aggregate, exceed $300,000 for all contracts entered into under this chapter by the person or entity during any six-year period, (excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 1240B(h)) regardless of the number of contracts entered into under this chapter by the person or entity.

(b) WAIVER AUTHORITY.—In the case of contracts under this chapter for projects of special environmental significance (including

projects involving methane digesters), as determined by the Secretary, the Secretary may—

(1) waive the limitation otherwise applicable under subsection (a); and

(2) raise the limitation to not more than $450,000 during any six-year period.

SEC. 1240H. [16 U.S.C. 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 chapter, 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 chapter with matching funds provided by State and local governments and private organizations to promote environmental enhancement and protection in conjunction with agricultural production;

(C) 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; and

(D) provide environmental and resource conservation benefits through increased participation by producers of specialty crops.

(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 chapter, the Secretary shall carry out this subsection using $37,500,000 for each of fiscal years 2009 through 2012.

SEC. 1240I. [16 U.S.C. 3839aa–9] AGRICULTURAL WATER ENHANCEMENT PROGRAM. [1240I–1]

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL WATER ENHANCEMENT ACTIVITY.—The term "agricultural water enhancement activity" includes the following activities carried out with respect to agricultural land:

(A) Water quality or water conservation plan development, including resource condition assessment and modeling.

(B) Water conservation restoration or enhancement projects, including conversion to the production of less water-intensive agricultural commodities or dryland farming.

(C) Water quality or quantity restoration or enhancement projects.

(D) Irrigation system improvement and irrigation efficiency enhancement.

(E) Activities designed to mitigate the effects of drought.

(F) Related activities that the Secretary determines will help achieve water quality or water conservation benefits on agricultural land.

(2) PARTNER.—The term "partner" means an entity that enters into a partnership agreement with the Secretary to carry out agricultural water enhancement activities on a regional basis, including—

(A) an agricultural or silvicultural producer association or other group of such producers;

(B) a State or unit of local government; or

(C) a federally recognized Indian tribe.

(3) PARTNERSHIP AGREEMENT.—The term "partnership agreement" means an agreement between the Secretary and a partner.

(4) PROGRAM.—The term "program" means the agricultural water enhancement program established under subsection (b).

(b) ESTABLISHMENT OF PROGRAM.—Beginning in fiscal year 2009, the Secretary shall carry out, in accordance with this section and using such procedures as the Secretary determines to be appropriate, an agricultural water enhancement program as part of the environmental quality incentives program to promote ground and surface water conservation and improve water quality on agricultural lands—

(1) by entering into contracts with, and making payments to, producers to carry out agricultural water enhancement activities; or

[1240I–1]Section 2903(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1819) provided: "During the period beginning on the date of the enactment of this Act and ending on September 30, 2008, the Secretary of Agriculture shall continue to carry out the ground and surface water conservation program under section 1240I of the Food Security Act of 1985 (16 U.S.C. 3839aa–9), as in effect before the amendment made by section 2510, using the terms, conditions, and funds available to the Secretary to carry out such program on the day before the date of the enactment of this Act.".

(2) by entering into partnership agreements with partners, in accordance with subsection (c), on a regional level to benefit working agricultural land.

(c) PARTNERSHIP AGREEMENTS.—

(1) AGREEMENTS AUTHORIZED.—The Secretary may enter into partnership agreements to meet the objectives of the program described in subsection (b).

(2) APPLICATIONS.—An application to the Secretary to enter into a partnership agreement under paragraph (1) shall include the following:

(A) A description of the geographical area to be covered by the partnership agreement.

(B) A description of the agricultural water quality or water conservation issues to be addressed by the partnership agreement.

(C) A description of the agricultural water enhancement objectives to be achieved through the partnership.

(D) A description of the partners collaborating to achieve the project objectives and the roles, responsibilities, and capabilities of each partner.

(E) A description of the program resources, including payments the Secretary is requested to make.

(F) Such other such elements as the Secretary considers necessary to adequately evaluate and competitively select applications for partnership agreements.

(3) DUTIES OF PARTNERS.—A partner under a partnership agreement shall—

(A) identify producers participating in the project and act on their behalf in applying for the program;

(B) leverage funds provided by the Secretary with additional funds to help achieve project objectives;

(C) conduct monitoring and evaluation of project effects; and

(D) at the conclusion of the project, report to the Secretary on project results.

(d) AGRICULTURAL WATER ENHANCEMENT ACTIVITIES BY PRODUCERS.—The Secretary shall select agricultural water enhancement activities proposed by producers according to applicable requirements under the environmental quality incentives program.

(e) AGRICULTURAL WATER ENHANCEMENT ACTIVITIES BY PARTNERS.—

(1) COMPETITIVE PROCESS.—The Secretary shall conduct a competitive process to select partners. In carrying out the process, the Secretary shall make public the criteria used in evaluating applications.

(2) AUTHORITY TO GIVE PRIORITY TO CERTAIN PROPOSALS.—The Secretary may give a higher priority to proposals from partners that—

(A) include high percentages of agricultural land and producers in a region or other appropriate area;

(B) result in high levels of applied agricultural water quality and water conservation activities;

(C) significantly enhance agricultural activity;

(D) allow for monitoring and evaluation; and

(E) assist producers in meeting a regulatory requirement that reduces the economic scope of the producer's operation.

(3) PRIORITY TO PROPOSALS FROM STATES WITH WATER QUANTITY CONCERNS.—The Secretary shall give a higher priority to proposals from partners that—

(A) include the conversion of agricultural land from irrigated farming to dryland farming;

(B) leverage Federal funds provided under the program with funds provided by partners; and

(C) assist producers in States with water quantity concerns, as determined by the Secretary.

(4) ADMINISTRATION.—In carrying out this subsection, the Secretary shall—

(A) accept qualified applications—

(i) directly from partners applying on behalf of producers; or

(ii) from producers applying through a partner as part of a regional agricultural water enhancement project; and

(B) ensure that resources made available for regional agricultural water enhancement activities are delivered in accordance with applicable program rules.

(f) AREAS EXPERIENCING EXCEPTIONAL DROUGHT.—Notwithstanding the purposes described in section 1240, the Secretary shall consider as an eligible agricultural water enhancement activity the use of a water impoundment to capture surface water runoff on agricultural land if the agricultural water enhancement activity—

(1) is located in an area that is experiencing or has experienced exceptional drought conditions during the previous two calendar years; and

(2) will capture surface water runoff through the construction, improvement, or maintenance of irrigation ponds or small, on-farm reservoirs.

(g) WAIVER AUTHORITY.—To assist in the implementation of agricultural water enhancement activities under the program, the Secretary shall waive the applicability of the limitation in section 1001D(b)(2)(B) of this Act for participating producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.

(h) PAYMENTS UNDER PROGRAM.—

(1) IN GENERAL.—The Secretary shall provide appropriate payments to producers participating in agricultural water enhancement activities in an amount determined by the secretary [1240I–2] to be necessary to achieve the purposes of the program described in subsection (b).

(2) PAYMENTS TO PRODUCERS IN STATES WITH WATER QUANTITY CONCERNS.—The Secretary shall provide payments for a period of five years to producers participating in agricultural water enhancement activities under proposals described in

[1240I–2] So as in original. Should probably be "Secretary".

subsection (e)(3) in an amount sufficient to encourage producers to convert from irrigated farming to dryland farming.

(i) CONSISTENCY WITH STATE LAW.—Any agricultural water enhancement activity conducted under the program shall be conducted in a manner consistent with State water law.

(j) FUNDING.—

(1) AVAILABILITY OF FUNDS.—In addition to funds made available to carry out this chapter under section 1241(a), the Secretary shall carry out the program using, of the funds of the Commodity Credit Corporation—

(A) $73,000,000 for each of fiscal years 2009 and 2010;

(B) $74,000,000 for fiscal year 2011; and

(C) $60,000,000 for fiscal year 2012 and each fiscal year thereafter.

(2) LIMITATION ON ADMINISTRATIVE EXPENSES.—None of the funds made available for regional agricultural water conservation activities under the program may be used to pay for the administrative expenses of partners.

CHAPTER 5—OTHER CONSERVATION PROGRAMS

SEC. 1240M. [16 U.S.C. 3839bb] CONSERVATION OF PRIVATE GRAZING LAND.

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

(1) establishing a coordinated and cooperative Federal, State, and local grazing conservation program for management of private grazing land;

(2) strengthening technical, educational, and related assistance programs that provide assistance to owners and managers of private grazing land;

(3) conserving and improving wildlife habitat on private grazing land;

(4) conserving and improving fish habitat and aquatic systems through grazing land conservation treatment;

(5) protecting and improving water quality;

(6) improving the dependability and consistency of water supplies;

(7) identifying and managing weed, noxious weed, and brush encroachment problems on private grazing land; and

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

(b) DEFINITIONS.—In this section:

(1) DEPARTMENT.—The term "Department" means the Department of Agriculture.

(2) PRIVATE GRAZING LAND.—The term "private grazing land" means private, State-owned, tribally-owned, and any other non-federally owned rangeland, pastureland, grazed forest land, and hay land.

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(c) PRIVATE GRAZING LAND CONSERVATION ASSISTANCE.—

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

(A) maintaining and improving private grazing land and the multiple values and uses that depend on private grazing land;

(B) implementing grazing land management technologies;

(C) managing resources on private grazing land, including—

(i) planning, managing, and treating private grazing land resources;

(ii) ensuring the long-term sustainability of private grazing land resources;

(iii) harvesting, processing, and marketing private grazing land resources; and

(iv) identifying and managing weed, noxious weed, and brush encroachment problems;

(D) protecting and improving the quality and quantity of water yields from private grazing land;

(E) maintaining and improving wildlife and fish habitat on private grazing land;

(F) enhancing recreational opportunities on private grazing land;

(G) maintaining and improving the aesthetic character of private grazing land;

(H) identifying the opportunities and encouraging the diversification of private grazing land enterprises; and

(I) encouraging the use of sustainable grazing systems, such as year-round, rotational, or managed grazing.

(2) PROGRAM ELEMENTS.—

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

(B) TECHNICAL ASSISTANCE AND EDUCATION.—Personnel of the Department trained in pasture and range management shall be made available under the program to deliver and coordinate technical assistance and education to owners and managers of private grazing land, at the request of the owners and managers.

(d) GRAZING TECHNICAL ASSISTANCE SELF-HELP.—

(1) FINDINGS.—Congress finds that—

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

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

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

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

(3) PROCEDURE.—

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

(B) FUNDING.—The terms and conditions of the funding and operation of the grazing management district shall be proposed by the producers.

(C) APPROVAL.—The Secretary shall approve the proposal if the Secretary determines that the proposal—

(i) is reasonable;

(ii) will promote sound grazing practices; and

(iii) contains provisions similar to the provisions contained in the beef promotion and research order issued under section 4 of the Beef Research and Information Act (7 U.S.C. 2903) in effect on April 4, 1996.

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

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

(F) ACTIVITIES.—The activities of a grazing management district shall be scientifically sound activities, as determined by the Secretary in consultation with a technical advisory committee composed of ranchers, farmers, and technical experts.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $60,000,000 for each of fiscal years 2002 through 2012.

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

(a) IN GENERAL.—The Secretary, in consultation with the State technical committees established under section 1261, shall establish within the Natural Resources Conservation Service a program to be known as the wildlife habitat incentive program (referred to in this section as the "program") for the development of wildlife habitat on private agricultural land, nonindustrial private forest land, and tribal lands.

(b) COST-SHARE PAYMENTS.—

(1) IN GENERAL.—Under the program, the Secretary shall make cost-share payments to owners of lands referred to in subsection (a) to develop—

(A) upland wildlife habitat;

(B) wetland wildlife habitat;

(C) habitat for threatened and endangered species;

(D) fish habitat; and

(E) other types of wildlife habitat approved by the Secretary, including habitat developed on pivot corners and irregular areas.

(2) INCREASED COST SHARE FOR LONG-TERM AGREEMENTS.—

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

(B) FUNDING LIMITATION.—The Secretary may use, for a fiscal year, not more than 25 percent of funds made available under section 1241(a)(7) for the fiscal year to carry out contracts and agreements described in subparagraph (A).

(c) REGIONAL EQUITY.—In carrying out this section, the Secretary shall, to the maximum extent practicable, ensure that regional issues of concern relating to wildlife habitat are addressed in an appropriate manner.

(d) PRIORITY FOR CERTAIN CONSERVATION INITIATIVES.—In carrying out this section, the Secretary may give priority to projects that would address issues raised by State, regional, and national conservation initiatives.

(e) PAYMENT LIMITATION.—Payments made to a person or legal entity, directly or indirectly, under the program may not exceed, in the aggregate, $50,000 per year.

SEC. 1240O. [16 U.S.C. 3839bb–2] GRASSROOTS SOURCE WATER PROTECTION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a national grassroots water protection program to more effectively use onsite technical assistance capabilities of each State rural water association that, as of the date of enactment of this section, operates a wellhead or groundwater protection program in the State.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2008 through 2012.

SEC. 1240P. [16 U.S.C. 3839bb–3] GREAT LAKES BASIN PROGRAM FOR SOIL EROSION AND SEDIMENT CONTROL.

(a) PROGRAM AUTHORIZED.—The Secretary may carry out the Great Lakes basin program for soil erosion and sediment control (referred to in this section as the "program"), including providing assistance to implement the recommendations of the Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes.

(b) CONSULTATION AND COOPERATION.—The Secretary shall carry out the program in consultation with the Great Lakes Commission created by Article IV of the Great Lakes Basin Compact

(82 Stat. 415) and in cooperation with the Administrator of the Environmental Protection Agency and the Secretary of the Army.

(c) ASSISTANCE.—In carrying out the program, the Secretary may—

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

(2) establish a priority for projects and activities that—

(A) directly reduce soil erosion or improve sediment control;

(B) reduce soil loss in degraded rural watersheds; or

(C) improve water quality for downstream watersheds.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the program $5,000,000 for each of fiscal years 2008 through 2012.

SEC. 1240Q. [16 U.S.C. 3839bb–4] CHESAPEAKE BAY WATERSHED.

(a) CHESAPEAKE BAY WATERSHED DEFINED.—In this section, the term "Chesapeake Bay watershed" means all tributaries, backwaters, and side channels, including their watersheds, draining into the Chesapeake Bay.

(b) ESTABLISHMENT AND PURPOSE.—The Secretary shall assist producers in implementing conservation activities on agricultural lands in the Chesapeake Bay watershed for the purposes of—

(1) improving water quality and quantity in the Chesapeake Bay watershed; and

(2) restoring, enhancing, and preserving soil, air, and related resources in the Chesapeake Bay watershed.

(c) CONSERVATION ACTIVITIES.—The Secretary shall deliver the funds made available to carry out this section through applicable programs under this subtitle to assist producers in enhancing land and water resources—

(1) by controlling erosion and reducing sediment and nutrient levels in ground and surface water; and

(2) by planning, designing, implementing, and evaluating habitat conservation, restoration, and enhancement measures where there is significant ecological value if the lands are—

(A) retained in their current use; or

(B) restored to their natural condition.

(d) AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall—

(A) enter into agreements with producers to carry out the purposes of this section; and

(B) use the funds made available to carry out this section to cover the costs of the program involved with each agreement.

(2) SPECIAL CONSIDERATIONS.—In entering into agreements under this subsection, the Secretary shall give special consideration to, and begin evaluating, applications with producers in the following river basins:

(A) The Susquehanna River.

(B) The Shenandoah River.

(C) The Potomac River (including North and South Potomac).

(D) The Patuxent River.

(e) DUTIES OF THE SECRETARY.—In carrying out the purposes in this section, the Secretary shall—

(1) where available, use existing plans, models, and assessments to assist producers in implementing conservation activities; and

(2) proceed expeditiously with the implementation of any agreement with a producer that is consistent with State strategies for the restoration of the Chesapeake Bay watershed.

(f) CONSULTATION.—The Secretary, in consultation with appropriate Federal agencies, shall ensure conservation activities carried out under this section complement Federal and State programs, including programs that address water quality, in the Chesapeake Bay watershed.

(g) SENSE OF CONGRESS REGARDING CHESAPEAKE BAY EXECUTIVE COUNCIL.—It is the sense of Congress that the Secretary should be a member of the Chesapeake Bay Executive Council, and is authorized to do so under section 1(3) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a(3)).

(h) FUNDING.—

(1) AVAILABILITY.—Of the funds of the Commodity Credit Corporation, the Secretary shall use, to the maximum extent practicable—

(A) $23,000,000 for fiscal year 2009;

(B) $43,000,000 for fiscal year 2010;

(C) $72,000,000 for fiscal year 2011; and

(D) $50,000,000 for fiscal year 2012.

(2) DURATION OF AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SEC. 1240R. [16 U.S.C. 3839bb–5] VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a voluntary public access program under which States and tribal 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 1234(f)(4) 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) FISCAL YEARS 2009 THROUGH 2012.—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 2009 through 2012.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2013.

Subtitle E—Funding and Administration

SEC. 1241. [16 U.S.C. 3841] COMMODITY CREDIT CORPORATION.

(a)[1241–1] IN GENERAL.—For each of fiscal years 2002 through 2012 (and fiscal year 2014 in the case of the programs specified in paragraphs (3)(B), (4), (6), and (7)), the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the following programs under subtitle D (including the provision of technical assistance):

(1) The conservation reserve program under subchapter B of chapter 1, including to the maximum extent practicable—

(A) $100,000,000 for the period of fiscal years 2009 through 2012 to provide cost share payments under para-

[1241–1] The matter under the paragraph entitled "CONSERVATION OPERATIONS" under the heading "NATURAL RESOURCES CONSERVATION SERVICE" of title II of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2003 (P.L. 108–7; 117 Stat. 25; Feb. 20, 2003), provides that "None of the funds made available under the paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a))."

graph (3) of section 1234(b) in connection with thinning activities conducted on land described in subparagraph (A)(iii) of such paragraph; and

(B) $25,000,000 for the period of fiscal years 2009 through 2012 to carry out section 1235(f) 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 wetlands reserve program under subchapter C of chapter 1.

(3)(A) CONSERVATION SECURITY PROGRAM.—The conservation security program under subchapter A of chapter 2, using such sums as are necessary to administer contracts entered into before September 30, 2008.

(B) CONSERVATION STEWARDSHIP PROGRAM.—The conservation stewardship program under subchapter B of chapter 2.

(4) The farmland protection program under subchapter C of chapter 2, using, to the maximum extent practicable—

(A) $97,000,000 in fiscal year 2008;

(B) $121,000,000 in fiscal year 2009;

(C) $150,000,000 in fiscal year 2010;

(D) $175,000,000 in fiscal year 2011; and

(E) $200,000,000 in each of fiscal years 2012 through 2014.

(5) The grassland reserve program under subchapter D of chapter 2.

(6) The environmental quality incentives program under chapter 4, using, to the maximum extent practicable—

(A) $1,200,000,000 in fiscal year 2008;

(B) $1,337,000,000 in fiscal year 2009;

(C) $1,450,000,000 in fiscal year 2010;

(D) $1,588,000,000 in fiscal year 2011; and

(E) $1,750,000,000 in each of fiscal years 2012 through 2014.

(7) The wildlife habitat incentives program under section 1240N, using, to the maximum extent practicable—

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

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

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

(D) $85,000,000 in each of fiscal years 2005 through 2014.

(b) TECHNICAL ASSISTANCE.—Effective for fiscal year 2005 and each subsequent fiscal year, Commodity Credit Corporation funds made available for each of the programs specified in paragraphs (1) through (7) of subsection (a)—

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

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

(c) RELATIONSHIP TO OTHER LAW.—The use of Commodity Credit Corporation funds under subsection (b) to provide technical assistance shall not be considered an allotment or fund transfer

from the Commodity Credit Corporation for purposes of the limit on expenditures for technical assistance imposed by section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).

(d) REGIONAL EQUITY.—

(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 subtitle D (excluding the conservation reserve program under subchapter B of chapter 1, the wetlands reserve program under subchapter C of chapter 1, and the conservation security program under subchapter A of chapter 2) to approved applications in any State that has not received, for the fiscal year, an aggregate amount of at least $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.

(e) 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 subtitle D 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 subtitle D 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.

(f) 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 title 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.

(g) ASSISTANCE TO CERTAIN FARMERS OR RANCHERS FOR CONSERVATION ACCESS.—

(1) ASSISTANCE.—Of the funds made available for each of fiscal years 2009 through 2012 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.

(h) 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 semiannual report containing statistics by State related to enrollments in conservation programs under this subtitle, as follows:

(1) Payments made under the wetlands reserve program for easements valued at $250,000 or greater.

(2) Payments made under the farmland protection program for easements in which the Federal share is $250,000 or greater.

(3) Payments made under the grassland reserve program valued at $250,000 or greater.

(4) Payments made under the environmental quality incentives program for land determined to have special environmental significance pursuant to section 1240G(b).

(5) Payments made under the agricultural water enhancement program subject to the waiver of adjusted gross income limitations pursuant to section 1240I(g).

(6) Waivers granted by the Secretary under section 1001D(b)(2) of this Act in order to protect environmentally sensitive land of special significance.

SEC. 1242. [16 U.S.C. 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 title or the agricultural management assistance program under section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524).

(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 title 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 title.

(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 party 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 1241 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—

(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 party 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 party 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 title and the agricultural management assistance program under section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524), 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 specifica-

tions, are necessary, the Secretary shall establish an administrative process for expediting the revisions.

(i) ADDRESSING CONCERNS OF SPECIALITY 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.

SEC. 1243. [16 U.S.C. 3843] COOPERATIVE CONSERVATION PARTNERSHIP INITIATIVE.

(a) ESTABLISHMENT OF INITIATIVE.—The Secretary shall establish a cooperative conservation partnership initiative (in this section referred to as the "Initiative") to work with eligible partners to provide assistance to producers enrolled in a program described in subsection (c)(1) that will enhance conservation outcomes on agricultural and nonindustrial private forest land.

(b) PURPOSES.—The purposes of a partnership entered into under the Initiative shall be—

(1) to address conservation priorities involving agriculture and nonindustrial private forest land on a local, State, multi-State, or regional level;

(2) to encourage producers to cooperate in meeting applicable Federal, State, and local regulatory requirements related to production involving agriculture and nonindustrial private forest land;

(3) to encourage producers to cooperate in the installation and maintenance of conservation practices that affect multiple agricultural or nonindustrial private forest operations; or

(4) to promote the development and demonstration of innovative conservation practices and delivery methods, including those for specialty crop and organic production and precision agriculture producers.

(c) INITIATIVE PROGRAMS.—

(1) COVERED PROGRAMS.—Except as provided in paragraph (2), the Initiative applies to all conservation programs under subtitle D.

(2) EXCLUDED PROGRAMS.—The Initiative shall not include the following programs:

(A) Conservation reserve program.

(B) Wetlands reserve program.

(C) Farmland protection program

(D) Grassland reserve program.

(d) ELIGIBLE PARTNERS.—The Secretary may enter into a partnership under the Initiative with one or more of the following:

(1) States and local governments.

(2) Indian tribes.

(3) Producer associations.

(4) Farmer cooperatives.

(5) Institutions of higher education.

(6) Nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land.

(e) IMPLEMENTATION AGREEMENTS.—The Secretary shall carry out the Initiative—

(1) by selecting, through a competitive process, eligible partners from among applications submitted under subsection (f); and

(2) by entering into multi-year agreements with eligible partners so selected for a period not to exceed 5 years.

(f) APPLICATIONS.—

(1) REQUIRED INFORMATION.—An application to enter into a partnership agreement under the Initiative shall include the following:

(A) A description of the area covered by the agreement, conservation priorities in the area, conservation objectives to be achieved, and the expected level of participation by agricultural producers and nonindustrial private forest landowners.

(B) A description of the partner, or partners, collaborating to achieve the objectives of the agreement, and the roles, responsibilities, and capabilities of the partner.

(C) A description of the resources that are requested from the Secretary, and the non-Federal resources that will be leveraged by the Federal contribution.

(D) A description of the plan for monitoring, evaluating, and reporting on progress made towards achieving the objectives of the agreement.

(E) Such other information that may be required by the Secretary.

(2) PRIORITIES.—The Secretary shall give priority to applications for agreements that—

(A) have a high percentage of producers involved and working agricultural or nonindustrial private forest land included in the area covered by the agreement;

(B) significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts;

(C) deliver high percentages of applied conservation to address water quality, water conservation, or State, regional, or national conservation initiatives;

(D) provide innovation in conservation methods and delivery, including outcome-based performance measures and methods; or

(E) meet other factors, as determined by the Secretary.

(g) RELATIONSHIP TO COVERED PROGRAMS.—

(1) COMPLIANCE WITH PROGRAM RULES.—Except as provided in paragraph (2), the Secretary shall ensure that resources made available under the Initiative are delivered in accordance with the applicable rules of programs specified in subsection (c)(1) through normal program mechanisms relating to program functions, including rules governing appeals, payment limitations, and conservation compliance.

(2) ADJUSTMENT.—The Secretary may adjust the elements of any program specified in subsection (c)(1)—

(A) to better reflect unique local circumstances and purposes if the Secretary determines such adjustments are necessary to achieve the purposes of the Initiative; and

(B) to provide preferential enrollment to producers who are eligible for the applicable program and to participate in the Initiative.

(h) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary shall provide appropriate technical and financial assistance to producers participating in the Initiative in an amount determined to be necessary to achieve the purposes of the Initiative.

(i) FUNDING.—

(1) RESERVATION.—Of the funds and acres made available for each of fiscal years 2009 through 2012 to implement the programs described in subsection (c)(1), the Secretary shall reserve 6 percent of the funds and acres to ensure an adequate source of funds and acres for the Initiative.

(2) ALLOCATION REQUIREMENTS.—Of the funds and acres reserved for the Initiative for a fiscal year, the Secretary shall allocate—

(A) 90 percent of the funds and acres to projects based on the direction of State conservationists, with the advice of State technical committees; and

(B) 10 percent of the funds and acres to projects based on a national competitive process established by the Secretary.

(3) UNUSED FUNDING.—Any funds and acres reserved for a fiscal year under paragraph (1) that are not obligated by April 1 of that fiscal year may be used to carry out other activities under the program that is the source of the funds or acres during the remainder of that fiscal year.

(4) ADMINISTRATIVE COSTS OF PARTNERS.—Overhead or administrative costs of partners may not be covered by funds provided through the Initiative.

SEC. 1244. [16 U.S.C. 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.

(b) PRIVACY OF PERSONAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION PROGRAMS.—

(1) INFORMATION RECEIVED FOR TECHNICAL AND FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—In accordance with section 552(b)(3) of title 5, United States Code, except as provided in subparagraph (C) and paragraph (2), information described in subparagraph (B)—

(i) shall not be considered to be public information; and

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

(B) INFORMATION.—The information referred to in subparagraph (A) is information—

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

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

(C) EXCEPTION.—Nothing in this section affects the availability of payment information (including payment amounts and the names and addresses of recipients of payments) under section 552 of title 5, United States Code.

(2) EXCEPTIONS.—

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

(B) DISCLOSURE TO COOPERATING PERSONS AND AGENCIES.—

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

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

(I) in providing the requested technical or financial assistance; or

(II) in collecting information from data gathering sites.

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

(i) individual owner, operator, or producer; or

(ii) specific data gathering site.

(D) CONSENT OF OWNER, OPERATOR, OR PRODUCER.—

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

(ii) CONDITION OF OTHER PROGRAMS.—The participation of the owner, operator, or producer in, and the receipt of any benefit by the owner, operator, or producer under, this title or any other program administered by the Secretary may not be conditioned on the owner, operator, or producer providing consent under this paragraph.

(3) VIOLATIONS; PENALTIES.—Section 1770(c) shall apply with respect to the release of information collected in any manner or for any purpose prohibited by this subsection.

(4) DATA COLLECTION, DISCLOSURE, AND REVIEW.—Nothing in this subsection—

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

(B) limits the authority of Congress or the General Accounting Office [1244–1] 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 subtitle B;

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

[1244–1] Sec. 8(b) of P.L. 108–271, 118 Stat. 814, July 7, 2004, provides that references to "General Accounting Office" shall be deemed to refer to the "General Accountability Office".

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

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

(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 subtitles B through D.

(e) PROVISION OF TECHNICAL ASSISTANCE BY OTHER SOURCES.—In the preparation and application of a conservation compliance plan under subtitle B or similar plan required as a condition for assistance from the Department of Agriculture, the Secretary shall 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 programs administered under subchapters B and C of chapter 1 of subtitle D.

(B) EASEMENTS.—Not more than 10 percent of the cropland in a country may be subject to an easement acquired under subchapter C of chapter 1 of subtitle D.

(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 1212.

(3) WAIVER TO EXCLUDE CERTAIN ACREAGE.—The Secretary may grant a waiver to exclude acreage enrolled under subsection (c)(2)(B) or (f)(4) of section 1234 from the limitations in paragraph (1)(A) with the concurrence of the county government of the county involved.

(4) SHELTERBELTS AND WINDBREAKS.—The limitations established under paragraph (1) shall not apply to cropland that is subject to an easement under subchapter C of chapter 1 that is used for the establishment of shelterbelts and windbreaks.

(g) COMPLIANCE AND PERFORMANCE.—For each conservation program under subtitle D, 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 5 of the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2004).

(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.

(i) STREAMLINED APPLICATION PROCESS.—

(1) IN GENERAL.—In carrying out each conservation program under this title, 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.

SEC. 1245. [16 U.S.C. 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.

Subtitle F—Other Conservation Provisions [1251–1]

SEC. 1252. [16 U.S.C. 3851] AGRICULTURE CONSERVATION EXPERIENCED SERVICES PROGRAM. [1252–1]

(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 de-

[1251–1] Subtitle F repealed by sec. 336 of P.L. 104–127, 110 Stat. 1007, April 4, 1996.

[1252–1] Sec. 2710 of P.L. 110–246, 122 Stat. 1810, June 18, 2008, amended "Subtitle F" of title XII of this Act by inserting sec. 1252 after "section 1251". Sec. 1252 is inserted at this location to effectuate the probable intent of Congress.

partment, 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 layoff 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 title.

(2) EXCLUSIONS.—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.

(d) LIABILITY.—An individual providing technical services under the ACES program is deemed to be an employee of the United States Government for purposes of chapter 171 of title 28, United States Code, 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.

Subtitle G—State Technical Committees

SEC. 1261. [16 U.S.C. 3861] ESTABLISHMENT OF STATE TECHNICAL COMMITTEES.

(a) ESTABLISHMENT.—The Secretary shall establish a technical committee in each State to assist the Secretary in the consider-

ations relating to implementation and technical aspects of the conservation programs under this title.

(b) STANDARDS.—Not later than 180 days after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall develop—

(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 1262(b) for the implementation of the conservation provisions of this title.

(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 the Internal Revenue Code of 1986 with demonstrable conservation expertise and experience working with agriculture producers in the State.

(13) Agribusiness.

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

(a) IN GENERAL.—Each State technical committee established under section 1261 shall meet regularly to provide information, analysis, and recommendations to appropriate officials of the Department of Agriculture who are charged with implementing the conservation provisions of this title.

(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 title.

(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 title.

(2) ADVISORY ROLE IN ESTABLISHING PROGRAM PRIORITIES AND CRITERIA.—Each State technical committee shall advise the Secretary in establishing priorities and criteria for the pro-

grams in this title, 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 subtitle shall be considered to be a subcommittee of the applicable State technical committee.