

ues, 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<sup>2</sup> Resources Conservation Service.

**(k) Mitigation banking**

**(1) Mitigation banking program**

**(A) In general**

Using authorities available to the Secretary, the Secretary shall operate a program or work with third parties to establish mitigation banks to assist persons in complying with the provisions of this section while mitigating any loss of wetland values and functions.

**(B) Funding**

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

**(2) Applicability**

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

**(3) Policy and criteria**

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

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

REFERENCES IN TEXT

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 The new section 3843, which did not relate to appeal procedures, was subsequently repealed by Pub.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

CODIFICATION

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 L. 110-234 were repealed by section 4(a) of Pub.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

AMENDMENTS

2014—Subsec. (k). Pub. L. 113-79 amended subsec. (k) generally. Prior to amendment, text read as follows: “Using authorities available to the Secretary, the Secretary may operate a pilot program for mitigation

banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland functions and values. Subsection (f)(2)(C) of this section shall not apply to this subsection.”

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

**§ 3823. Affiliated persons**

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

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

<sup>2</sup> So in original. Probably should be “Natural”.

## PRIOR PROVISIONS

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

## EFFECTIVE DATE

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

**§ 3824. Fairness of compliance**

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

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

SUBCHAPTER IV—AGRICULTURAL  
RESOURCES CONSERVATION PROGRAMPART I—COMPREHENSIVE CONSERVATION  
ENHANCEMENT PROGRAM

## SUBPART A—GENERAL PROVISIONS

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

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

## CONSERVATION ASSISTANCE

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

## FARMLAND PROTECTION PROGRAM

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

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

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

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

## SUBPART B—CONSERVATION RESERVE

## CODIFICATION

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

**§ 3831. Conservation reserve****(a) In general**

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

**(b) Eligible land**

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

(1) highly erodible cropland that—

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

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

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

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

(3) grasslands that—

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

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