

104TH CONGRESS
1ST SESSION

S. 851

To amend the Federal Water Pollution Control Act to reform the wetlands regulatory program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, MAY 15), 1995

Mr. JOHNSTON (for himself, Mr. FAIRCLOTH, Mr. BREAUX, Mr. PRESSLER, Mr. DORGAN, Mr. LOTT, Mr. DOLE, Mr. MURKOWSKI, and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to reform the wetlands regulatory program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Wetlands Regulatory Reform Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and declaration of policies and goals.
- Sec. 3. Permits for activities in waters of the United States.

“Sec. 404. Permits for activities in waters of the United States.

- “(a) Definitions.
- “(b) Request for determination of jurisdiction.
- “(c) Procedures for issuance of individual permits.
- “(d) Exempt activities.
- “(e) Delineation procedures.
- “(f) Wetland classification.
- “(g) Permit determinations.
- “(h) General permits.
- “(i) Alaska Native and State of Alaska lands.
- “(j) Interagency cooperation.
- “(k) Compliance.
- “(l) Violations.
- “(m) Administrative appeals.
- “(n) Mitigation banks.
- “(o) Restoration of wetlands.
- “(p) State permit programs.
- “(q) Availability of information to the public.
- “(r) Certification.
- “(s) State authority to control activities.
- “(t) Balanced implementation.”.

Sec. 4. Transition provisions.

Sec. 5. Technical and conforming amendments.

1 **SEC. 2. FINDINGS AND DECLARATION OF POLICIES AND**
 2 **GOALS.**

3 (a) FINDINGS.—Congress finds that—

4 (1) wetland serves important environmental and
 5 natural resource functions, such as providing—

6 (A) essential nesting and feeding habitat

7 for waterfowl, other wildlife, and many rare and
 8 endangered species;

9 (B) fisheries habitat;

10 (C) the enhancement of water quality; and

11 (D) natural flood control;

12 (2) because of government policies, such as the
 13 policies contained in chapter 5 of title 32 of the Re-
 14 vised Statutes (commonly known as the “Homestead

1 Acts”) (43 U.S.C. 161 et seq.) (repealed by section
2 702 of the Federal Land Policy and Management
3 Act of 1976 (Public Law 94–579; 90 Stat. 2787)),
4 much of the wetland resources of the United States
5 have sustained significant degradation, resulting in
6 the need for effective programs to limit the loss of
7 environmentally significant wetlands and to provide,
8 where and when appropriate, for long-term restora-
9 tion and enhancement of the wetland resources base;

10 (3) the rate of wetland losses has been signifi-
11 cantly reduced since the enactment of subtitle C of
12 title XII of the Food Security Act of 1985 (16
13 U.S.C. 3821 et seq.); and

14 (4) because 75 percent of the wetlands in the
15 lower 48 States is privately owned and because the
16 majority of the population of the United States lives
17 in or near wetland areas, an effective wetland con-
18 servation and management program must reflect a
19 balanced approach that conserves and enhances envi-
20 ronmentally significant wetland functions while—

21 (A) respecting private property rights;

22 (B) recognizing the need for essential pub-
23 lic infrastructure, such as highways, utilities,
24 ports, airports, sewer systems, and public water

1 supply systems, and the need to preserve strong
2 local tax bases; and

3 (C) providing the opportunity for sustained
4 economic growth.

5 (b) DECLARATION OF POLICIES AND GOALS.—Sec-
6 tion 101(a) of the Federal Water Pollution Control Act
7 (33 U.S.C. 1251(a)) is amended—

8 (1) in paragraph (6), by striking “and” at the
9 end;

10 (2) in paragraph (7), by striking the period at
11 the end and inserting a semicolon; and

12 (3) by adding at the end the following:

13 “(8) it is the national policy that the Federal
14 permitting program for wetlands and other waters of
15 the United States under section 404 shall be imple-
16 mented to protect environmentally significant wet-
17 lands while avoiding significant diminishment of the
18 use and value of private property; and

19 “(9) it is the national policy to—

20 “(A) achieve wetland conservation without
21 undue adverse economic impacts on local, re-
22 gional, and private economic interests;

23 “(B) encourage the conservation and res-
24 toration of wetland functions where appro-
25 priate; and

1 or support the production of an annual or perennial
2 crop, aquaculture product, nursery product, or wet-
3 land crop or the production of livestock.

4 “(3) ALASKA NATIVE.—The term ‘Alaska Na-
5 tive’ has the meaning provided for ‘Native’ in section
6 3 of the Alaska Native Claims Settlement Act (43
7 U.S.C. 1602).

8 “(4) ALASKA NATIVE CORPORATION.—The term
9 ‘Alaska Native Corporation’ has the meaning pro-
10 vided for ‘Native Corporation’ in section 3 of the
11 Alaska Native Claims Settlement Act (43 U.S.C.
12 1602).

13 “(5) ALASKA NATIVE VILLAGE.—The term
14 ‘Alaska Native village’ has the meaning provided for
15 ‘Native village’ in section 3 of the Alaska Native
16 Claims Settlement Act (43 U.S.C. 1602).

17 “(6) CREATION.—The term ‘creation’, with re-
18 spect to wetland, means an activity that brings wet-
19 land into existence at a site where wetland did not
20 exist immediately prior to the activity.

21 “(7) DIRECTOR.—The term ‘Director’ means
22 the Director of the United States Fish and Wildlife
23 Service.

24 “(8) ECONOMIC BASE LAND.—The term ‘eco-
25 nomic base land’ means—

1 “(A) land conveyed to, selected by, or
2 owned by an Alaska Native Corporation under
3 the Alaska Native Claims Settlement Act (43
4 U.S.C. 1601 et seq.) or the Act entitled ‘An Act
5 authorizing the Secretary of the Interior to allot
6 homesteads to the natives of Alaska’, approved
7 May 17, 1906 (34 Stat. 197, chapter 2469);
8 and

9 “(B) land conveyed to, selected by, or
10 owned by the State of Alaska under the Act en-
11 titled ‘An Act to provide for the admission of
12 the State of Alaska into the Union’, approved
13 July 7, 1958 (commonly known as the ‘Alaska
14 Statehood Act’) (Public Law 85–508; 72 Stat.
15 339).

16 “(9) ENHANCEMENT.—The term ‘enhance-
17 ment’, with respect to wetland, means an activity
18 that increases any of the wetland functions of a wet-
19 land in existence prior to the date of enhancement.

20 “(10) GROWING SEASON.—The term ‘growing
21 season’ means the period between the average date
22 of the last frost in spring and the average date of
23 the first frost in autumn, which dates shall be deter-
24 mined as the 32-degree, 50-percent probability dates
25 published by the National Climatic Data Center of

1 the National Oceanic and Atmospheric Administra-
2 tion.

3 “(11) INCIDENTALLY CREATED.—The term ‘in-
4 cidentally created’, with respect to wetland, refers to
5 wetland that is the unintended result of an alter-
6 ation of hydrology caused by human activity.

7 “(12) LINEAR UTILITY FACILITY.—The term
8 ‘linear utility facility’ means a continuous convey-
9 ance, such as a pipeline, cable, line, or wire, used for
10 the transmission, gathering, or distribution of elec-
11 tric power, natural gas, oil, or water.

12 “(13) MAINTENANCE.—The term ‘mainte-
13 nance’, with respect to wetland, means an activity
14 undertaken to ensure continuation of wetland or the
15 accomplishment of a project goal after a wetland
16 restoration, creation, or enhancement project has
17 been completed, including water level manipulation
18 and control of nonnative plant species.

19 “(14) MITIGATION BANK.—The term ‘mitiga-
20 tion bank’ means a wetland restoration, creation, en-
21 hancement, or preservation project undertaken by a
22 private or public entity for the purpose of providing
23 mitigation compensation credits to offset wetland
24 losses authorized by the terms of permits allowing
25 activities in waters of the United States.

1 “(15) NORMAL FARMING, SILVICULTURE, AQUA-
2 CULTURE, OR RANCHING ACTIVITY.—The term ‘nor-
3 mal farming, silviculture, aquaculture, or ranching
4 activity’ means a normal farming, silviculture, aqua-
5 culture, or ranching practice identified by the Sec-
6 retary of Agriculture, acting through the Chief of
7 the Natural Resources Conservation Service (in con-
8 sultation with the Cooperative State Research, Edu-
9 cation, and Extension Service for each State, the
10 land-grant university system, and the agricultural
11 colleges of the State), taking into account any exist-
12 ing practice (as of the date of identification) and
13 such other practices as may be identified in con-
14 sultation with the affected industry or community.

15 “(16) PRIOR CONVERTED CROPLAND.—The
16 term ‘prior converted cropland’ means agricultural
17 land that was, before December 23, 1985—

18 “(A) manipulated (by drainage or other
19 physical alteration to remove excess water from
20 the land); or

21 “(B) used for the production of—

22 “(i) any annual or perennial agricul-
23 tural crop (including forage or hay), aqua-
24 culture product, nursery product, or wet-
25 land crop; or

1 “(ii) livestock.

2 “(17) RESTORATION.—The term ‘restoration’,
3 with respect to wetland, means an activity under-
4 taken to return wetland or former wetland from a
5 disturbed or altered condition with lesser wetland
6 acreage or fewer wetland functions to a previous
7 condition with greater wetland acreage or wetland
8 functions.

9 “(18) SECRETARY.—The term ‘Secretary’
10 means the Secretary of the Army, acting through
11 the Chief of Engineers of the Army Corps of Engi-
12 neers.

13 “(19) STATE WITH SUBSTANTIAL CONSERVED
14 WETLANDS.—The term ‘State with substantial con-
15 served wetlands’ means a State that contains at
16 least 15 acres of wetland located in the National
17 Park System, National Wildlife Refuge System, Na-
18 tional Wilderness Preservation System, Wild and
19 Scenic River System, or another similar Federal con-
20 servation system for each acre of wetland filled,
21 drained, or otherwise converted within the State
22 (based on the wetland loss statistics reported in the
23 1990 United States Fish and Wildlife Service report
24 to Congress entitled ‘Wetlands Losses in the United
25 States: 1780’s to 1980’s’).

1 “(20) TEMPORARY.—The term ‘temporary’,
2 with respect to an impact on wetland, means the dis-
3 turbance or alteration of wetland caused by an activ-
4 ity under a circumstance in which, not later than 3
5 years after the commencement of the activity, the
6 wetland—

7 “(A) is returned to the condition in exist-
8 ence prior to the commencement of the activity;
9 or

10 “(B) displays a condition sufficient to en-
11 sure that without further human action, the
12 wetland will return to the condition in existence
13 prior to the commencement of the activity.

14 “(21) WATERS OF THE UNITED STATES.—The
15 term ‘waters of the United States’ includes wetland
16 but does not include—

17 “(A) a nontidal drainage or irrigation ditch
18 located in upland;

19 “(B) an artificially irrigated area that
20 would revert to upland if the irrigation ceased;

21 “(C) an artificial lake or pond created by
22 excavating or diking upland to collect and re-
23 tain water for the primary purpose of stock wa-
24 tering, irrigation, wildlife, fire control, cran-

1 berry growing, or rice growing, or as a settling
2 pond;

3 “(D) an artificial reflecting or swimming
4 pool or other small ornamental body of water
5 created by excavating or diking upland to retain
6 water for primarily aesthetic reasons;

7 “(E) a waterfilled depression created in
8 upland incidental to construction activity or a
9 pit excavated in upland for the purpose of ob-
10 taining fill, sand, gravel, aggregates, or min-
11 erals, unless the construction or excavation op-
12 eration is abandoned and the resulting body of
13 water otherwise constitutes waters of the
14 United States;

15 “(F) an artificial stormwater detention
16 area or artificial sewage treatment area that is
17 not a modification of waters of the United
18 States;

19 “(G) prior converted cropland;

20 “(H) a confined dredged material disposal
21 area located in upland;

22 “(I) isolated waters that are less than $\frac{1}{2}$
23 acre in size; and

24 “(J) a nontidal, nonwetland river, stream,
25 creek, or other linear drainageway or portion of

1 a linear drainageway that has an average an-
2 nual flow rate of less than 5 cubic feet per sec-
3 ond, except that the Secretary shall have the
4 discretion to declare such a nontidal,
5 nonwetland river, stream, creek, or other linear
6 drainageway or portion of a linear drainageway,
7 on a case-by-case basis, to be waters of the
8 United States based on concerns for the aquatic
9 environment.

10 “(22) WETLAND.—The term ‘wetland’ means
11 waters of the United States delineated as wetland
12 under subsection (e).

13 “(23) WETLAND FUNCTION.—The term ‘wet-
14 land function’ means a role that wetland serves, in-
15 cluding flood water storage, flood water conveyance,
16 ground water discharge, erosion control, wave at-
17 tenuation, water quality protection, scenic and aes-
18 thetic use, food chain support, fisheries, wetland
19 plant habitat, aquatic habitat, and habitat for wet-
20 land-dependent wildlife.

21 “(b) REQUEST FOR DETERMINATION OF JURISDIC-
22 TION.—

23 “(1) DETERMINATION BY THE SECRETARY.—

24 “(A) IN GENERAL.—A person who holds
25 an ownership interest in property, or who has

1 written authorization from such a person, may
2 submit a request to the Secretary identifying
3 the property and requesting the Secretary to
4 make 1 or more of the following determinations
5 with respect to the property:

6 “(i) Whether the property contains
7 waters of the United States.

8 “(ii) If the property contains waters
9 of the United States, whether any portion
10 of the waters is wetland under subsection
11 (e).

12 “(iii) If any portion of the waters is
13 wetland under subsection (e), the classi-
14 fication or classifications of the wetland
15 under subsection (f).

16 “(B) PROVISION OF INFORMATION.—The
17 person shall provide such additional information
18 as may be necessary to make each determina-
19 tion requested under subparagraph (A).

20 “(C) DETERMINATION AND NOTIFICATION
21 BY THE SECRETARY.—Not later than 90 days
22 after receipt of a request under subparagraph
23 (A), the Secretary shall notify the person sub-
24 mitting the request of each determination made

1 by the Secretary and provide a written expla-
2 nation for each determination.

3 “(2) DETERMINATION BY CERTIFIED NON-FED-
4 ERAL PERSON.—

5 “(A) CERTIFICATION.—Not later than 1
6 year after the date of enactment of the Wet-
7 lands Regulatory Reform Act of 1995, the Sec-
8 retary shall establish a program under which
9 persons other than employees of the Federal
10 Government may be certified, on the basis of
11 criteria established by the Secretary, to make
12 the determinations with respect to property de-
13 scribed in paragraph (1)(A).

14 “(B) DETERMINATION.—

15 “(i) IN GENERAL.—A person who
16 holds an ownership interest in property, or
17 who has written authorization from such a
18 person, may—

19 “(I) obtain the services of a per-
20 son certified under subparagraph (A)
21 to make 1 or more of the determina-
22 tions described in paragraph (1)(A)
23 with respect to the property; and

24 “(II) submit written documenta-
25 tion of each determination and the

1 basis for each determination to the
2 Secretary.

3 “(ii) SUBMISSION TO THE SEC-
4 RETARY.—Each determination submitted
5 under clause (i) shall be binding on the
6 Secretary, effective 60 days after the date
7 of the submission, unless the Secretary—

8 “(I) notifies the person submit-
9 ting the documentation not later than
10 30 days after the date of submission
11 that the Secretary disapproves the de-
12 termination; and

13 “(II) issues a determination in
14 accordance with paragraph (1)(C) not
15 later than 60 days after the date of
16 notice under subclause (I).

17 “(c) PROCEDURES FOR ISSUANCE OF INDIVIDUAL
18 PERMITS.—

19 “(1) APPLICATIONS.—A person seeking to carry
20 out an activity in waters of the United States at a
21 site shall submit an application for a permit to the
22 Secretary in such form and containing such informa-
23 tion as the Secretary may require. Not later than 15
24 days after the Secretary receives the application, the
25 Secretary shall request from the applicant any addi-

1 tional information necessary to complete the applica-
2 tion.

3 “(2) NOTICE AND OPPORTUNITY FOR HEAR-
4 ING.—Not later than 15 days after the date on
5 which an applicant submits all information required
6 to complete an application for a permit under para-
7 graph (1), the Secretary shall provide public notice
8 that the application has been submitted. Prior to the
9 issuance of the permit, the Secretary shall provide
10 opportunity, to the extent appropriate, for public
11 comment and public hearings on the issuance of the
12 permit.

13 “(3) ACTION BY THE SECRETARY.—

14 “(A) PERMIT ISSUANCE.—

15 “(i) WETLANDS.—If the Secretary de-
16 termines that—

17 “(I) the site specified in the ap-
18 plication contains waters of the
19 United States;

20 “(II) the activity for which the
21 permit is applied is an activity in wa-
22 ters of the United States;

23 “(III) the activity is not exempt
24 from the requirement for a permit
25 under subsection (d); and

1 “(IV) any portion of the waters
2 is wetland under subsection (e);
3 the Secretary shall determine the classi-
4 fication or classifications of the wetland
5 under subsection (f) and whether to issue
6 a permit under this section in accordance
7 with subsection (g).

8 “(ii) WATERS OTHER THAN WET-
9 LANDS.—If the Secretary determines
10 that—

11 “(I) the site specified in the ap-
12 plication contains waters of the
13 United States;

14 “(II) the activity for which the
15 permit is applied is an activity in wa-
16 ters of the United States;

17 “(III) the activity is not exempt
18 from the requirement for a permit
19 under subsection (d); and

20 “(IV) no portion of the waters is
21 wetland under subsection (e);
22 the Secretary shall determine whether to
23 issue a permit under subsection (g)(2).

24 “(B) DETERMINATION THAT NO PERMIT IS
25 REQUIRED.—If the Secretary determines that—

1 “(i) the site specified in the applica-
2 tion does not contain waters of the United
3 States;

4 “(ii) the activity for which the permit
5 is applied is not an activity in waters of
6 the United States; or

7 “(iii) the activity is exempt from the
8 requirement for a permit under subsection
9 (d);

10 the Secretary shall issue a decision that a per-
11 mit under this section is not required for the
12 activity described in the application.

13 “(C) PROVISION OF INFORMATION TO AP-
14 PLICANT.—In issuing a decision with respect to
15 a permit application under subparagraph (A) or
16 (B), the Secretary shall—

17 “(i) if the Secretary determines that a
18 permit is required, provide a copy of the
19 permit to the applicant; and

20 “(ii) notify the applicant of each de-
21 termination made by the Secretary and
22 provide a written explanation for each de-
23 termination.

24 “(4) DATE OF DECISION BY SECRETARY.—Ex-
25 cept as provided in paragraph (5), the Secretary

1 shall issue a decision with respect to an application
2 for a permit submitted under paragraph (1) not
3 later than 90 days after the completed application is
4 submitted.

5 “(5) EXTENSION.—The decision of the Sec-
6 retary with respect to an application for a permit
7 under paragraph (1) may be issued after the date
8 specified in paragraph (4) only if—

9 “(A) with respect to issuance of the per-
10 mit, the Secretary is required under the Na-
11 tional Environmental Policy Act of 1969 (42
12 U.S.C. 4321 et seq.) to issue an environmental
13 impact statement, in which case the decision
14 shall be issued not later than 30 days after the
15 date on which the requirements of the Act are
16 met;

17 “(B) the permit application involves an ac-
18 tivity that may affect a species that is listed or
19 proposed for listing as endangered or threat-
20 ened or critical habitat that is designated or
21 proposed for designation under the Endangered
22 Species Act of 1973 (16 U.S.C. 1531 et seq.),
23 in which case the decision shall be issued not
24 later than 30 days after the date on which the
25 requirements of the Act are met, as determined

1 by the Secretary of the Interior or the Sec-
2 retary of Commerce, as appropriate;

3 “(C) the Administrator, the Secretary of
4 Agriculture, the Secretary of the Interior, the
5 Secretary of Commerce, the Secretary of Trans-
6 portation, or the head of any other appropriate
7 Federal agency makes a request (stating 1 or
8 more reasons that additional time is needed)
9 that the Secretary grant an extension beyond
10 the date specified in paragraph (4), and the
11 Secretary grants the request in writing, in
12 which case the decision shall be issued not later
13 than 150 days after the completed application
14 is submitted;

15 “(D) the applicant for the permit requests
16 additional time for evaluation of the application,
17 in which case the decision shall be issued not
18 later than 30 days after the date the applicant
19 submits a written request for a decision; or

20 “(E) the issuance of the decision is pre-
21 cluded as a matter of law (including procedures
22 required by law other than this section).

23 “(6) FAILURE BY THE SECRETARY TO ISSUE A
24 DECISION.—If the Secretary fails to issue a decision
25 with respect to an application for a permit by the

1 applicable date required under paragraph (4) or (5),
2 the permit shall be deemed granted.

3 “(7) IMPLEMENTING REGULATIONS.—

4 “(A) IN GENERAL.—Not later than 1 year
5 after the date of enactment of the Wetlands
6 Regulatory Reform Act of 1995, the Secretary
7 shall issue regulations to carry out this sub-
8 section.

9 “(B) STANDARDS TO BE INCLUDED.—

10 “(i) WETLANDS.—Subject to subpara-
11 graph (C), the regulations issued under
12 subparagraph (A) shall include standards
13 for the issuance of permits for activities in
14 waters of the United States that are wet-
15 land under subsection (g)(1). The stand-
16 ards shall include standards for compen-
17 satory mitigation that allow for—

18 “(I) enhancement or restoration
19 of degraded wetland;

20 “(II) creation of wetland if condi-
21 tions are imposed to ensure the suc-
22 cess of the creation of the wetland;

23 “(III) preservation or donation of
24 high quality wetland if the preserva-

1 tion or donation results in demon-
2 strable benefit to the watershed;

3 “(IV) compensation through con-
4 tribution to a mitigation banking pro-
5 gram established under subsection
6 (n);

7 “(V) offsite compensatory mitiga-
8 tion if the mitigation contributes to
9 the restoration, enhancement, or cre-
10 ation of significant wetland functions
11 on a watershed basis and is balanced
12 with the effects that the proposed ac-
13 tivity will have on the specified site,
14 except that any offsite compensatory
15 mitigation shall, to the maximum ex-
16 tent practicable, be within the water-
17 shed within which the proposed activ-
18 ity is to occur, unless it would be con-
19 sistent with a State wetland manage-
20 ment plan to conduct mitigation out-
21 side the watershed;

22 “(VI) contribution of in-kind in-
23 trinsic environmental value acceptable
24 to the Secretary and otherwise au-
25 thorized by law;

1 “(VII) in areas subject to coastal
2 wetland loss, construction of coastal
3 protection and enhancement projects;

4 “(VIII) contribution of resources
5 of more than 1 permittee toward a
6 single mitigation project; and

7 “(IX) other mitigation measures
8 determined by the Secretary to be ap-
9 propriate in the public interest and
10 consistent with this Act.

11 “(ii) WATERS OTHER THAN WET-
12 LANDS.—Subject to subparagraph (C), the
13 regulations issued under subparagraph (A)
14 shall include standards for the issuance of
15 permits for activities in waters of the
16 United States that are not wetland under
17 subsection (g)(2).

18 “(C) DETERMINATION OF APPROPRIATE
19 MITIGATION.—The Secretary shall have the dis-
20 cretion to determine what mitigation is appro-
21 priate for each permitted activity in waters of
22 the United States.

23 “(8) CONSULTATION WITH THE ADMINIS-
24 TRATOR.—In determining whether to issue a permit
25 under this subsection, the Secretary shall consult

1 with the Administrator regarding whether an activ-
2 ity in waters of the United States at a specified site
3 would have an unacceptable adverse impact on water
4 quality, municipal water supplies, shellfish beds or
5 fishery areas (including spawning and breeding
6 areas), or wetland-dependent wildlife.

7 “(d) EXEMPT ACTIVITIES.—

8 “(1) IN GENERAL.—An activity in waters of the
9 United States shall be exempt from the requirement
10 for a permit under this section or section 301(a) or
11 402 (except to the extent that the sections relate to
12 compliance with effluent standards or prohibitions
13 under section 307), if the activity—

14 “(A) results from a normal farming,
15 silviculture, aquaculture, or ranching activity,
16 such as haying, grazing, plowing, seeding, cul-
17 tivating, minor drainage, burning of vegetation
18 in connection with the activity, harvesting for
19 production of a food, fiber, or forest product, or
20 an upland soil and water conservation practice;

21 “(B) is for the purpose of maintenance, in-
22 cluding emergency reconstruction of a recently
23 damaged, serviceable structure, such as a dike,
24 dam, levee, groin, riprap, breakwater, flood con-
25 trol channel or other engineered flood control

1 facility, water conveyance, linear utility facility,
2 causeway, bridge abutment or approach, or
3 transportation structure;

4 “(C) is for the purpose of—

5 “(i) construction or maintenance of a
6 farm, stock, or aquaculture pond or an ir-
7 rigation canal or ditch; or

8 “(ii) maintenance of a drainage ditch
9 or spreading area for ground water re-
10 charge;

11 “(D) is for the purpose of construction of
12 a temporary sedimentation basin on a construc-
13 tion site if the facility being constructed on the
14 site itself does not involve an activity in waters
15 of the United States;

16 “(E) is for the purpose of construction or
17 maintenance of a farm road or forest road, tem-
18 porary road for moving mining equipment, ac-
19 cess road for a linear utility facility, railroad
20 line of up to 10 miles in length, or access road
21 to, or within, a drinking water treatment plant,
22 if the road or railroad line is constructed and
23 maintained, in accordance with best manage-
24 ment practices, to ensure that—

1 “(i) flow and circulation patterns and
2 chemical and biological characteristics of
3 the waters of the United States are not im-
4 paired;

5 “(ii) the reach of the waters of the
6 United States is not reduced; and

7 “(iii) any adverse impact on the
8 aquatic environment is minimized;

9 “(F) results from an activity with respect
10 to which a State has a program approved by
11 the Administrator under section 208(b)(4) that
12 meets the requirements of subparagraphs (B)
13 and (C) of section 208(b)(4);

14 “(G) is undertaken in connection with a
15 marsh management and conservation program
16 in a coastal county, parish, or borough, if the
17 program has been approved by the Governor of
18 the State or the designee of the Governor;

19 “(H) is for the placement of a structural
20 member for a pile-supported structure, such as
21 a pier or dock, or for a linear project such as
22 a bridge, transmission or distribution line foot-
23 ing, powerline structure, or elevated or other
24 walkway;

1 “(I) is for the placement of a piling in wa-
2 ters of the United States in a circumstance that
3 involves—

4 “(i) a linear project described in sub-
5 paragraph (H); or

6 “(ii) a structure such as a pier, boat-
7 house, wharf, marina, lighthouse, or indi-
8 vidual house built on stilts solely to reduce
9 the potential of flooding;

10 “(J) is for the clearing of vegetation—

11 “(i) within a right-of-way associated
12 with the development and maintenance of
13 a linear utility facility; or

14 “(ii) from a reservoir used primarily
15 for storage of drinking water if the con-
16 struction of the reservoir was permitted
17 under this section, or if the construction of
18 the reservoir predates the requirement for
19 the permit;

20 “(K) is undertaken on land or involves ac-
21 tivities solely within a coastal zone of a State
22 that are excluded from regulation under the
23 State coastal zone management program ap-
24 proved under the Coastal Zone Management
25 Act of 1972 (16 U.S.C. 1451 et seq.);

1 “(L) is undertaken in incidentally created
2 wetland that has exhibited wetland functions
3 for less than 5 years;

4 “(M) results from an aggregate or clay
5 mining activity in wetland that is conducted
6 under a Federal or State permit that requires—

7 “(i) that reclamation of the affected
8 wetland be completed within 5 years after
9 the commencement of the activity; and

10 “(ii) that the wetland be reclaimed to
11 a condition capable of supporting wetland
12 functions that are substantially equivalent
13 to the wetland functions supported by the
14 wetland at the time of commencement of
15 the activity;

16 “(N) is for the purpose of preserving or
17 enhancing aviation safety or is undertaken in
18 order to prevent an airport hazard, if the activ-
19 ity does not include a significant expansion of
20 an airport facility;

21 “(O) is for the construction or mainte-
22 nance of a log transfer facility associated with
23 a log transportation activity;

24 “(P) is for the construction of a mine
25 tailings impoundment utilized for a treatment

1 facility, if the construction does not involve the
2 disturbance of Class A wetland classified under
3 subsection (f)(2)(A);

4 “(Q) is for the construction of an ice pad
5 or ice road or for the purpose of snow storage
6 or removal; or

7 “(R) is part of a single and complete
8 project disturbing less than 1/2 acre of Class B
9 wetland classified under subsection (f)(2)(B).

10 “(2) AUTHORIZED FEDERAL PROJECTS.—An
11 activity in waters of the United States as part of the
12 construction of a Federal project specifically author-
13 ized by Congress shall not be prohibited by or other-
14 wise subject to the requirement for a permit under
15 this section, a State permit program approved under
16 this section, or section 301(a) or 402 (except to the
17 extent that the sections relate to compliance with ef-
18 fluent standards or prohibitions under section 307),
19 if—

20 “(A) information on the effects of the ac-
21 tivity, including consideration of the regulations
22 issued under subsection (c)(7), is included in an
23 environmental impact statement for the project
24 under the National Environmental Policy Act of
25 1969 (42 U.S.C. 4321 et seq.); and

1 “(B) the environmental impact statement
2 has been submitted to Congress before the ac-
3 tivity is carried out in connection with the con-
4 struction of the project and prior to authoriza-
5 tion of the project or an appropriation of funds
6 for the construction.

7 “(e) DELINEATION PROCEDURES.—

8 “(1) REVISIONS TO DELINEATION PROCEDURES
9 FOR WETLANDS.—

10 “(A) REGULATIONS.—Not later than 1
11 year after the date of enactment of the Wet-
12 lands Regulatory Reform Act of 1995, the Sec-
13 retary, after notice and opportunity for public
14 comment, shall issue regulations for the delin-
15 eation of wetlands. In developing the regula-
16 tions, the Secretary shall consider the study of
17 wetlands conducted by the National Academy of
18 Sciences under the Departments of Veterans
19 Affairs and Housing and Urban Development,
20 and Independent Agencies Appropriations Act,
21 1993 (Public Law 102–389).

22 “(B) CRITERIA FOR DELINEATION OF
23 WETLANDS.—The regulations issued under sub-
24 paragraph (A) shall provide that waters of the

1 United States shall be delineated as wetland
2 if—

3 “(i) the Secretary finds clear evidence
4 that the waters have wetland hydrology,
5 hydrophytic vegetation, and hydric soil
6 during the period in which the delineation
7 (to be conducted during the growing sea-
8 son unless otherwise requested by the ap-
9 plicant) is made;

10 “(ii) in the case of—

11 “(I) nontidal wetland, water is on
12 or above the surface of the ground for
13 at least 21 consecutive days during
14 the growing season in a year of nor-
15 mal rainfall; or

16 “(II) tidal wetland, the waters
17 are subject to predictable tidal influ-
18 ence; and

19 “(iii) the wetland was not temporarily
20 or incidentally created as a result of adja-
21 cent development activity.

22 “(C) HYDROPHYTIC VEGETATION.—For
23 the purpose of subparagraph (B)(i), waters of
24 the United States—

1 “(i) shall be considered to exhibit
2 clear evidence of hydrophytic vegetation if
3 obligate wetland vegetation is found to be
4 present during the period of delineation
5 (except that if the vegetation is removed
6 for the purpose of evading the applicability
7 of a requirement of this section, this clause
8 shall not apply); and

9 “(ii) shall not be considered to exhibit
10 clear evidence of hydrophytic vegetation
11 based solely on vegetation that is equally
12 adapted to dry or wet soil conditions, or is
13 more typically adapted to dry soil condi-
14 tions than to wet soil conditions.

15 “(2) CONTINUED USE OF 1987 MANUAL.—Until
16 regulations are issued under paragraph (1)(A), the
17 Secretary shall use the Corps of Engineers Wetlands
18 Delineation Manual issued in January 1987 (Tech-
19 nical Report Y-87-1) and implementing guidelines
20 to identify and delineate wetland areas, except that
21 the Secretary shall modify the guidelines to make
22 the guidelines consistent with paragraph (1).

23 “(3) AGRICULTURAL LAND.—

24 “(A) IN GENERAL.—For the purpose of
25 this section, wetland located on agricultural

1 land and associated nonagricultural land shall
2 be delineated solely by the Secretary of Agri-
3 culture in accordance with section 1222(j) of
4 the Food Security Act of 1985 (16 U.S.C.
5 3822(j)).

6 “(B) CONSISTENCY.—Any area of agricul-
7 tural land or any activity that is related to agri-
8 cultural land determined to be exempt from the
9 requirements of subtitle C of title XII of the
10 Food Security Act of 1985 (16 U.S.C. 3821 et
11 seq.) shall be exempt from this section for such
12 period of time as the land is used as agricul-
13 tural land.

14 “(f) WETLAND CLASSIFICATION.—

15 “(1) CRITERIA.—Not later than 1 year after
16 the date of enactment of the Wetlands Regulatory
17 Reform Act of 1995, the Secretary shall issue regu-
18 lations to classify wetlands as Class A, Class B, or
19 Class C wetlands, depending on the relative environ-
20 mental significance of the wetlands, and taking into
21 account regional variations in hydrology, soils, and
22 vegetation.

23 “(2) CLASSIFICATION.—Under the criteria, the
24 Secretary, in connection with consideration of a per-
25 mit application under subsection (c)(1) or at the re-

1 quest of a person under subsection (b), shall clas-
2 sify—

3 “(A) as Class A wetland, wetland that is of
4 critical significance to the long-term conserva-
5 tion of the aquatic system of which the wetland
6 is a part if—

7 “(i) the wetland serves critical wet-
8 land functions, including the provision of
9 critical habitat for a concentration of wet-
10 land-dependent wildlife;

11 “(ii) (I) the wetland—

12 “(aa) consists of (or is a portion
13 of) 10 or more contiguous acres of
14 wetland of any classification; and

15 “(bb) has a defined surface outlet
16 for relief of water flow; or

17 “(II) the wetland—

18 “(aa) contains a prairie pothole
19 feature, playa lake, or vernal pool;
20 and

21 “(bb) consists of or is a portion
22 of 1 or more contiguous acres of wet-
23 land of any classification; and

24 “(iii) there exists a scarcity of func-
25 tioning wetland within the watershed or

1 aquatic system such that an activity in wa-
2 ters of the United States carried out in the
3 wetland would seriously jeopardize the
4 availability of critical wetland functions
5 identified under clause (i);

6 “(B) as Class B wetland, wetland that pro-
7 vides habitat for a significant population of wet-
8 land-dependent wildlife, or provides other sig-
9 nificant wetland functions, including significant
10 enhancement or protection of water quality, or
11 significant natural flood control; and

12 “(C) as Class C wetland, wetland that is
13 not classified as Class A or Class B wetland,
14 such as wetland that—

15 “(i) serves marginal wetland functions
16 but exists in such abundance that regula-
17 tion of activity in the wetland is not nec-
18 essary to conserve important wetland func-
19 tions;

20 “(ii) is within an industrial, commer-
21 cial, or residential complex or other in-
22 tensely developed area, so that the wetland
23 does not serve significant wetland func-
24 tions; or

1 “(iii) is located behind a legally con-
2 structed manmade structure or natural
3 formation, such as a levee constructed and
4 maintained to permit the utilization of the
5 land for commercial, industrial, agricul-
6 tural, or residential purposes consistent
7 with local land use planning requirements.

8 “(g) PERMIT DETERMINATIONS.—

9 “(1) WETLANDS.—

10 “(A) CLASS A WETLAND.—

11 “(i) IN GENERAL.—The Secretary
12 shall determine whether to issue a permit
13 for an activity in waters of the United
14 States classified under subsection (f) as
15 Class A wetland based on whether the ac-
16 tivity is in the public interest and on a se-
17 quential analysis that seeks, to the maxi-
18 mum extent practicable, to—

19 “(I) avoid adverse impact on the
20 wetland;

21 “(II) minimize such adverse im-
22 pact as cannot be avoided; and

23 “(III) replace on a 1-to-1 basis
24 any loss of wetland functions that
25 cannot be avoided or minimized.

1 “(ii) WATER-DEPENDENT ACTIVI-
2 TIES.—

3 “(I) IN GENERAL.—In carrying
4 out clause (i)(I) with respect to a
5 water-dependent activity described in
6 subclause (II), the Secretary may not
7 presume that an alternative site in an
8 area that is not waters of the United
9 States is available.

10 “(II) WATER-DEPENDENT ACTIV-
11 ITY.—A water-dependent activity re-
12 ferred to in subclause (I) is an activ-
13 ity that requires access or proximity
14 to, or siting within, waters of the
15 United States to fulfill the basic pur-
16 pose of the activity.

17 “(iii) MITIGATION.—

18 “(I) IN GENERAL.—Subject to
19 subclause (II), a permit issued under
20 clause (i) shall contain such terms
21 and conditions concerning mitigation
22 as the Secretary considers to be ap-
23 propriate to meet the requirement of
24 clause (i)(III) and prevent any unac-

1 ceptable loss or degradation of Class
2 A wetland.

3 “(II) MINING RECLAMATION AC-
4 TIVITIES.—The mitigation require-
5 ments of this section shall be deemed
6 met with respect to an activity in
7 Class A wetland if the activity is car-
8 ried out in accordance with a State-
9 approved reclamation plan or permit
10 that requires recontouring and
11 revegetation following mining, and the
12 recontouring and revegetation results
13 in overall environmental benefits.

14 “(B) CLASS B WETLAND.—

15 “(i) IN GENERAL.—The Secretary
16 shall determine whether to issue a permit
17 to authorize an activity in waters of the
18 United States classified under subsection
19 (f) as Class B wetland after conducting a
20 public interest review that balances the
21 reasonably foreseeable benefits and det-
22 riments resulting from the issuance of the
23 permit (including proposed mitigation), in-
24 cluding such factors as—

25 “(I) economic growth;

- 1 “(II) the need for habitat for
2 wetland-dependent wildlife;
3 “(III) water supply and conserva-
4 tion;
5 “(IV) water quality;
6 “(V) infrastructure needs;
7 “(VI) energy needs;
8 “(VII) mineral needs;
9 “(VIII) food production;
10 “(IX) recreation; and
11 “(X) considerations of private
12 property ownership.

13 “(ii) CONDITIONS ON PERMIT.—The
14 Secretary shall impose conditions on a per-
15 mit issued under clause (i) as necessary to
16 ensure that the watershed or aquatic sys-
17 tem of which the wetland is a part does
18 not suffer significant loss or degradation of
19 wetland functions, except that the Sec-
20 retary may not require replacement of wet-
21 land functions on a greater than 1-to-1
22 basis.

23 “(C) CLASS C WETLAND.—No permit from
24 the Secretary shall be required with respect to

1 an activity in waters of the United States clas-
2 sified under subsection (f) as Class C wetland.

3 “(D) STATES WITH SUBSTANTIAL CON-
4 SERVED WETLANDS.—Notwithstanding sub-
5 paragraphs (A) and (B), in issuing a permit to
6 authorize an activity in Class A or Class B wet-
7 land located in a State with substantial con-
8 served wetlands, the Secretary—

9 “(i) may require the avoidance of ad-
10 verse impact on the wetland, except that
11 the permit applicant may not be required
12 to establish that no upland alternative site
13 exists; and

14 “(ii) shall not require the replacement
15 of wetland functions that cannot be avoid-
16 ed or minimized.

17 “(2) WATERS OTHER THAN WETLANDS.—The
18 Secretary may issue a permit authorizing an activity
19 in waters of the United States that are not wetland
20 if the Secretary determines that issuance of the per-
21 mit is in the public interest after balancing the rea-
22 sonably foreseeable benefits and detriments resulting
23 from the issuance of the permit. The Secretary may
24 impose conditions on the permit as necessary to
25 carry out the policies of this Act. In determining

1 whether to issue the permit and whether conditions
2 are necessary, the Secretary shall consider the fac-
3 tors specified in clauses (i) and (ii) of paragraph
4 (1)(B) with respect to the waters.

5 “(h) GENERAL PERMITS.—

6 “(1) ISSUANCE.—

7 “(A) IN GENERAL.—In carrying out the
8 functions of the Secretary relating to activities
9 in waters of the United States under this sec-
10 tion, the Secretary may issue a general permit
11 on a State, regional, or nationwide basis for any
12 activities in waters of the United States for
13 which a permit would otherwise be required
14 under subsection (c), if the Secretary deter-
15 mines that the activities will cause only minimal
16 or temporary adverse environmental impacts
17 when performed separately, and will cause only
18 minimal cumulative adverse environmental im-
19 pacts.

20 “(B) REQUIREMENTS AND CONTENTS.—A
21 general permit issued under subparagraph (A)
22 shall—

23 “(i) be based on the regulations issued
24 under subsection (c)(7); and

1 “(ii) specify the requirements and
2 standards that shall apply to an activity
3 authorized by the general permit.

4 “(2) TERMINATION OF GENERAL PERMITS.—

5 “(A) PERIOD OF VALIDITY.—A general
6 permit issued under paragraph (1) shall be
7 valid for a period of not more than 5 years
8 after the date of issuance of the permit.

9 “(B) REVOCATION AND MODIFICATION.—A
10 general permit may be revoked or modified by
11 the Secretary if the Secretary determines that
12 the activities authorized by the general permit
13 have an adverse impact on the environment or
14 that the activities are more appropriately au-
15 thorized by the issuance of individual permits
16 under subsection (c).

17 “(3) STATE PROGRAMS.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), on the request of a State that has
20 in effect a wetland regulatory program, the Sec-
21 retary shall issue a general permit for the pro-
22 gram with respect to activities in waters of the
23 United States regulated under the program if
24 the program—

1 “(i) has jurisdiction over the activities
2 and waters within the scope of the re-
3 quested general permit;

4 “(ii) provides adequate safeguards to
5 ensure that the program will provide a
6 substantially similar level of protection of
7 waters of the United States as the protec-
8 tion provided by this section;

9 “(iii) provides adequate safeguards to
10 ensure that the program will provide a
11 substantially similar level of protection of
12 private property as the protection provided
13 by this section;

14 “(iv) provides at least the same oppor-
15 tunity for public review, comment, and
16 hearings as the opportunity provided by
17 this section; and

18 “(v) provides an opportunity for the
19 Secretary, in cooperation with the Admin-
20 istrator, to conduct periodic reviews of per-
21 mit decisions issued under the program in
22 order to ensure that the requirements of
23 this subsection are met.

24 “(B) LINEAR UTILITY FACILITIES.—A
25 general permit issued under this paragraph

1 shall not authorize a non-Federal wetland regu-
2 latory program to issue a general permit cover-
3 ing linear utility facilities.

4 “(4) CONSISTENCY WITH SWAMPBUSTER.—A
5 general permit may be issued for activities in waters
6 of the United States associated with an activity that
7 is determined by the Secretary of Agriculture to be
8 exempt from the ineligibility provisions of section
9 1221 of the Food Security Act of 1985 (16 U.S.C.
10 3821) under subsection (f) or (h) of section 1222 of
11 the Act (16 U.S.C. 3822), if the general permit—

12 “(A) provides adequate safeguards to en-
13 sure that the exempted activity will have no
14 more than minimal individual and cumulative
15 adverse impacts on the environment; and

16 “(B) provides an opportunity for the Sec-
17 retary to conduct periodic reviews of decisions
18 made by the Secretary of Agriculture to ensure
19 that the terms and conditions of the general
20 permit and the requirements of this subsection
21 are met.

22 “(5) STATES WITH SUBSTANTIAL CONSERVED
23 WETLANDS.—Notwithstanding paragraphs (1) and
24 (2), at the request of a State with substantial con-
25 served wetlands, the Secretary shall issue a general

1 permit for the State. The general permit shall con-
2 tain requirements for activities in waters of the
3 United States in the State that provide no greater
4 level of protection of waters of the United States
5 than the requirements that would otherwise be appli-
6 cable under subsection (c).

7 “(i) ALASKA NATIVE AND STATE OF ALASKA
8 LANDS.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 with respect to a State with substantial conserved
11 wetlands, the Secretary shall issue individual and
12 general permits in accordance with subsections (c)
13 and (h).

14 “(2) PERMIT CONSIDERATIONS.—In the case of
15 a permit issued under this section for an activity in
16 waters of the United States on economic base land,
17 in addition to the requirements of subsections (c)
18 and (h), the Secretary shall—

19 “(A) balance the standards and policies of
20 this Act with the obligations of the United
21 States to allow economic base land to be bene-
22 ficially used to create and sustain economic ac-
23 tivity;

24 “(B) with respect to Alaska Native land
25 described in subsection (a)(8)(A), give substan-

1 tial weight to the social and economic needs of
2 Alaska Natives; and

3 “(C) account for regional differences in the
4 abundance and value of wetland.

5 “(3) GENERAL PERMITS.—The Secretary shall
6 issue a general permit for an activity in waters of
7 the United States on land owned by Alaska Native
8 villages for critical infrastructure (including a water
9 or sewer system, airport, road, communication site,
10 fuel storage site, landfill, housing facility, hospital,
11 medical clinic, school, or other community infra-
12 structure in a rural Alaska Native village) without
13 making the determinations otherwise required under
14 subsection (h)(1)(A).

15 “(4) CONSULTATION AND ASSISTANCE.—The
16 Secretary shall consult with and provide assistance
17 to Alaska Natives (including Alaska Native Corpora-
18 tions) and the State of Alaska regarding the issu-
19 ance and administration of policies and regulations
20 under this section.

21 “(j) INTERAGENCY COOPERATION.—The Secretary
22 shall enter into agreements with the Administrator, the
23 Secretary of Agriculture, the Secretary of Commerce, the
24 Secretary of the Interior, the Secretary of Transportation,
25 and the heads of other appropriate Federal agencies to

1 minimize, to the maximum extent practicable, duplication,
2 needless paperwork, and delays in the issuance of permits
3 under this section.

4 “(k) COMPLIANCE.—

5 “(1) EFFECT OF COMPLIANCE WITH A PER-
6 MIT.—Compliance with a permit issued under this
7 section, including carrying out an activity carried
8 out under a general permit issued under subsection
9 (h), shall be deemed, for the purposes of sections
10 309 and 505, to constitute compliance with sections
11 301, 307, and 403.

12 “(2) CRANBERRY PRODUCTION.—An activity
13 associated with the expansion, enhancement, or
14 modification of a cranberry production operation
15 shall be deemed, for the purposes of sections 309
16 and 505, to constitute compliance with section 301,
17 if—

18 “(A) the activity does not result in the
19 modification of more than 10 acres of wetland
20 per operator per year, and the modified wetland
21 (other than where a dike or other necessary fa-
22 cility is placed) remains as waters of the United
23 States; or

24 “(B) the activity is required by a Federal
25 or State water quality program.

1 “(3) EFFECT OF COMPLIANCE WITH SEC-
2 TION.—Any activity in waters of the United States
3 that is—

4 “(A) authorized by a permit under this
5 section;

6 “(B) exempted from the requirement for a
7 permit under this section; or

8 “(C) carried out in an area not determined
9 to be waters of the United States under this
10 section;

11 shall not be considered to be a violation of this sec-
12 tion.

13 “(l) VIOLATIONS.—

14 “(1) UNAUTHORIZED ACTIVITIES.—The Sec-
15 retary shall have exclusive enforcement authority
16 with respect to an activity in waters of the United
17 States that violates section 301.

18 “(2) ENFORCEMENT BY SECRETARY.—If the
19 Secretary determines, on the basis of reliable and
20 substantial information and after reasonable inquiry,
21 that a person has or may have carried out an activ-
22 ity in waters of the United States in violation of sec-
23 tion 301(a), or is or may be in violation of this sec-
24 tion or a condition or limitation specified in a permit
25 issued by the Secretary under subsection (c), the

1 Secretary shall issue an order requiring the person
2 to comply with section 301(a), this section, or with
3 the condition or limitation in the permit.

4 “(3) ORDERS ISSUED BY SECRETARY.—

5 “(A) COPY OF ORDER SENT TO STATES.—

6 A copy of each order issued under paragraph
7 (2) shall be sent immediately by the Secretary
8 to the Governor of the State in which the viola-
9 tion occurred and the Governor of any other af-
10 fected State.

11 “(B) SERVICE.—Except as provided in
12 subparagraph (C), an order issued under para-
13 graph (2) shall—

14 “(i) be issued by personal service on
15 the appropriate person or corporate officer;

16 “(ii) state with reasonable specificity
17 why the activity is a violation and the na-
18 ture, the amount of acreage, and the loca-
19 tion of the asserted violation; and

20 “(iii) specify a period for compliance,
21 not to exceed 30 days, that the Secretary
22 determines is reasonable (taking into ac-
23 count the seriousness of the asserted viola-
24 tion and any good faith efforts that have

1 been made to comply with applicable re-
2 quirements).

3 “(C) TIME LIMIT ON ORDER.—

4 “(i) IN GENERAL.—Not later than
5 150 days after the date of service under
6 subparagraph (B), the Secretary shall—

7 “(I) take such action as is nec-
8 essary for the prosecution of a civil,
9 criminal, or administrative penalty ac-
10 tion, as appropriate; or

11 “(II) rescind the order issued
12 under paragraph (2).

13 “(ii) DISPUTED ORDERS.—If a person
14 receiving service under subparagraph (B)
15 disputes the determination described in
16 paragraph (2) and notifies the Secretary in
17 writing not later than 90 days after the
18 date of service, the Secretary shall, not
19 later than 60 days after receiving the noti-
20 fication of the dispute—

21 “(I) take such action as is nec-
22 essary for the prosecution of a civil,
23 criminal, or administrative penalty ac-
24 tion, as appropriate; or

1 “(II) rescind the order issued
2 under paragraph (2).

3 “(D) ESTOPPEL.—If the Secretary re-
4 scinds an order under clause (i)(II) or (ii)(II)
5 of subparagraph (C), the Secretary shall be es-
6 topped from any further enforcement proceed-
7 ing for the violation asserted in the order.

8 “(4) CIVIL ACTIONS.—The Secretary may com-
9 mence a civil action for appropriate relief, including
10 a permanent or temporary injunction, for any viola-
11 tion for which the Secretary may issue an order
12 under paragraph (2). An action commenced under
13 this paragraph may be brought in the district court
14 of the United States for the district in which the de-
15 fendant is located or resides or is doing business,
16 and the court shall have jurisdiction to restrain the
17 violation and to require compliance. Notice of the
18 commencement of the action shall be given imme-
19 diately to the Governor of the State in which the vio-
20 lation occurred and the Governor of any other af-
21 fected State.

22 “(5) CIVIL PENALTIES.—

23 “(A) IN GENERAL.—A person who violates
24 section 301(a) with respect to an activity in wa-
25 ters of the United States, this section, or a con-

1 dition or limitation in a permit issued by the
2 Secretary under subsection (c), or who violates
3 an order issued by the Secretary under para-
4 graph (2), may be subject to a civil penalty not
5 to exceed \$1,000 for each day of violation if the
6 person is an individual or \$25,000 for each day
7 of violation if the person is not an individual,
8 commencing on the day following expiration of
9 the period allowed for compliance.

10 “(B) DETERMINATION OF AMOUNT.—The
11 amount of the penalty imposed for each day
12 shall be in proportion to the scale or scope of,
13 or the destruction or degradation caused by, the
14 violation. In determining the amount of a civil
15 penalty under this paragraph, the Secretary or
16 the court, as appropriate, shall consider the se-
17 riousness of the violation, the economic benefit
18 (if any) resulting from the violation, any history
19 of a previous violation, any good-faith effort to
20 comply with applicable requirements, the eco-
21 nomic impact of the penalty on the violator, and
22 any other matter that justice may require.

23 “(6) CRIMINAL PENALTIES.—

24 “(A) IN GENERAL.—If—

1 “(i) a person has been notified of an
2 order issued by the Secretary under para-
3 graph (2) concerning a violation;

4 “(ii) the violation consists of the
5 knowing and intentional violation by the
6 person of this section or a condition or lim-
7 itation in a permit issued by the Secretary
8 under subsection (c); and

9 “(iii) the violation has resulted in ac-
10 tual and substantial environmental harm;
11 the person shall (except as provided in subpara-
12 graph (B)) be fined not less than \$5,000 nor
13 more than \$50,000 for each day of violation or
14 imprisoned not more than 3 years, or both.

15 “(B) SUBSEQUENT CONVICTIONS.—If a
16 conviction of a person under subparagraph (A)
17 is for a violation committed after a previous
18 conviction of the person under subparagraph
19 (A), the person shall be fined not more than
20 \$100,000 for each day of violation or impris-
21 oned not more than 6 years, or both.

22 “(C) BRINGING OF ACTION.—An action for
23 imposition of a criminal penalty under this
24 paragraph may be brought only by the Attorney
25 General.

1 “(7) ADMINISTRATIVE PENALTIES.—The Sec-
2 retary may assess administrative penalties for an ac-
3 tivity in waters of the United States in violation of
4 section 301(a) to the extent and in the manner de-
5 scribed in section 309(g).

6 “(8) EMERGENCY POWERS.—The Secretary
7 may exercise the emergency powers described in sec-
8 tion 504 with respect to activities in waters of the
9 United States.

10 “(m) ADMINISTRATIVE APPEALS.—

11 “(1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of the Wetlands Regulatory
13 Reform Act of 1995, the Secretary, after providing
14 notice and opportunity for public comment, shall
15 issue regulations establishing procedures under
16 which—

17 “(A) a landowner may appeal a determina-
18 tion that a permit is required under this section
19 with respect to a parcel of land;

20 “(B) any person may appeal a determina-
21 tion that a proposed activity is not exempt
22 under subsection (d);

23 “(C) a landowner may appeal a determina-
24 tion that an activity is not eligible for a general
25 permit issued under subsection (h);

1 “(D) an applicant for a permit under this
2 section may appeal a determination made under
3 this section to deny issuance of the permit or
4 to impose a requirement or standard under the
5 permit; and

6 “(E) a landowner or any other person re-
7 quired to restore or otherwise alter a parcel of
8 land under an order under this section may ap-
9 peal the order.

10 “(2) FILING DEADLINE.—An appeal brought
11 under this subsection shall be filed not later than
12 120 days after the date on which written notice of
13 the decision or action that is the subject of the ap-
14 peal is received, or is deemed received, by the person
15 filing the appeal.

16 “(3) DECISION DEADLINE.—An appeal brought
17 under this subsection shall be decided not later than
18 90 days after the date on which the appeal is filed.

19 “(4) THIRD-PARTY COMMENTS ON APPEAL.—
20 Any person who participated in the public comment
21 process concerning a decision or action that is the
22 subject of an appeal brought under this subsection
23 may file written comments with respect to the ap-
24 peal.

1 “(5) OFFICIAL DECIDING APPEAL.—An appeal
2 brought under this subsection shall be heard and de-
3 cided by an appropriate and impartial official of the
4 Federal Government, other than the official who
5 made the determination or carried out the action
6 that is the subject of the appeal.

7 “(6) PAYMENT OR MITIGATION AFTER AP-
8 PEAL.—A person who has filed an appeal under this
9 subsection shall not be required to pay a penalty or
10 perform mitigation or restoration required under
11 this section or section 309 until after the appeal has
12 been decided.

13 “(n) MITIGATION BANKS.—

14 “(1) ESTABLISHMENT.—Not later than 1 year
15 after the date of enactment of the Wetlands Regu-
16 latory Reform Act of 1995, after providing notice
17 and opportunity for public review and comment, the
18 Secretary shall issue regulations for the establish-
19 ment, use, maintenance, and oversight of mitigation
20 banks. The regulations shall be developed in con-
21 sultation with the Administrator and the Director.

22 “(2) PROVISIONS AND REQUIREMENTS.—The
23 regulations issued under paragraph (1) shall ensure
24 that each mitigation bank—

1 “(A) complies with the regulations issued
2 under subsection (c)(7);

3 “(B) to the extent practicable and environ-
4 mentally desirable, provides in-kind replacement
5 of lost wetland functions, and is located in, or
6 in proximity to, the same watershed as the af-
7 fected wetland;

8 “(C) is operated by an entity that has the
9 financial ability to meet the requirements of
10 this section;

11 “(D) requires the deposit by the entity of
12 a performance bond or other appropriate dem-
13 onstration of financial responsibility to support
14 the long-term maintenance of the bank;

15 “(E) specifies responsibilities for long-term
16 monitoring, maintenance, and protection of wet-
17 land;

18 “(F) requires the entity to provide for the
19 long-term security of ownership interests of
20 wetland and upland on which projects are con-
21 ducted to protect the wetland functions associ-
22 ated with the mitigation banks;

23 “(G) employs consistent and scientifically
24 sound methods to—

1 “(i) determine debits by evaluating
2 the wetland functions, adverse project im-
3 pacts, and the duration of each impact at
4 each site of a proposed permit for an activ-
5 ity in waters of the United States under
6 this section; and

7 “(ii) determine credits based on wet-
8 land functions at the sites of mitigation
9 banks;

10 “(H) provides—

11 “(i) for the transfer of credits for
12 mitigation that has been performed and for
13 mitigation that will be performed within a
14 designated time in the future; and

15 “(ii) for posting of financial bonds in
16 sufficient amount to ensure that the future
17 mitigation will be performed in the case of
18 default; and

19 “(I) provides opportunity for public notice
20 of, and comment on, proposals for mitigation
21 banks and applications for a permit under this
22 section.

23 “(o) RESTORATION OF WETLANDS.—

24 “(1) RESTORATION PROJECTS.—The Secretary
25 shall provide appropriate regulatory relief with re-

1 spect to regulations issued under this section for
2 each activity in waters of the United States that has
3 as the primary purpose to restore degraded wetland,
4 including providing a general permit or other form
5 of expedited permit processing for the activity.

6 “(2) RESTORATION AND CREATION IN AREAS
7 NOT CURRENTLY WATERS OF THE UNITED
8 STATES.—

9 “(A) IN GENERAL.—The Secretary shall
10 establish a registry of wetland that has been
11 created or restored voluntarily in an area that,
12 prior to the creation or restoration, did not con-
13 tain waters of the United States and therefore
14 was not subject to regulation under this section.
15 Wetland listed in the registry shall not be con-
16 sidered to be waters of the United States and
17 shall not be subject to regulation under this
18 section unless the wetland is subsequently ac-
19 cepted as mitigation for an activity in waters of
20 the United States authorized under this section.

21 “(B) ELIGIBILITY OF WETLAND.—The
22 Secretary may establish requirements for deter-
23 mining the eligibility of degraded wetland for
24 listing in the registry prior to any restoration

1 activity. Prior converted cropland shall be eligi-
2 ble for listing in the registry.

3 “(3) REPORT.—Not later than 180 days after
4 the date of enactment of the Wetlands Regulatory
5 Reform Act of 1995, the Administrator shall report
6 to Congress on other appropriate incentives, using
7 both regulatory and nonregulatory means, to encour-
8 age the restoration of wetland. In preparing the re-
9 port, the Secretary shall consult with the Adminis-
10 trator, other Federal officials, and members of the
11 public, including persons whose activities are subject
12 to regulation under this section.

13 “(p) STATE PERMIT PROGRAMS.—

14 “(1) SUBMISSION OF PROGRAM.—

15 “(A) IN GENERAL.—The Governor of a
16 State desiring to administer an individual and
17 general permit program for an activity in wa-
18 ters of the United States (other than the ex-
19 cepted waters described in subparagraph (B))
20 within the jurisdiction of the State shall submit
21 to the Secretary—

22 “(i) a complete description of the pro-
23 gram that the Governor proposes to estab-
24 lish and administer under State law; and

1 “(ii) a statement from the attorney
2 general or the chief legal officer of the
3 State (or the attorney of the agency in the
4 case of a State agency that has independ-
5 ent legal counsel) that the law of the State
6 provides adequate authority to carry out
7 the proposed program.

8 “(B) EXCEPTED WATERS.—The excepted
9 waters referred to in subparagraph (A)—

10 “(i) are waters that are used, or are
11 susceptible to use in the natural condition
12 of the waters or after reasonable improve-
13 ment to the waters, as a means to trans-
14 port interstate or foreign commerce shore-
15 ward to the ordinary high water mark of
16 the waters, including waters that are sub-
17 ject to the ebb and flow of the tide shore-
18 ward to the mean high water mark of the
19 waters, or the mean higher high water
20 mark on the west coast; and

21 “(ii) include wetland adjacent to the
22 waters described in clause (i).

23 “(2) REVIEW BY OTHER AGENCIES.—

24 “(A) SUBMISSION.—Not later than 10
25 days after the date of receipt of a program de-

1 description and statement submitted by a State
2 under paragraph (1), the Secretary shall pro-
3 vide copies of the description and statement to
4 the Secretary and the Director.

5 “(B) COMMENTS.—Not later than 90 days
6 after the date of receipt by the Secretary of the
7 program description and statement submitted
8 by a State under paragraph (1), the Adminis-
9 trator and the Director shall submit any com-
10 ments with respect to the program description
11 and statement to the Secretary in writing.

12 “(3) DETERMINATION BY THE SECRETARY.—
13 Not later than 120 days after the date of receipt by
14 the Secretary of a program description and state-
15 ment submitted by a State under paragraph (1), the
16 Secretary shall determine, after considering any
17 comments submitted by the Administrator and the
18 Director under paragraph (2)(B), whether the State
19 has the authority to—

20 “(A) issue permits that—

21 “(i) apply, and ensure compliance
22 with, each applicable requirement of this
23 section (including the regulations issued
24 under subsection (c)(7)) and sections 307
25 and 403; and

1 “(ii) can be terminated or modified
2 for cause, including—

3 “(I) a violation of a condition of
4 the permit;

5 “(II) the obtaining of a permit by
6 misrepresentation, or a failure to dis-
7 close fully all relevant facts; or

8 “(III) a change in a condition
9 that requires a temporary or perma-
10 nent reduction or elimination of the
11 permitted activity;

12 “(B)(i) issue permits that apply, and en-
13 sure compliance with, all applicable require-
14 ments of section 308; or

15 “(ii) inspect, monitor, enter, and require
16 reports to at least the same extent as is re-
17 quired under section 308;

18 “(C)(i) ensure that the public, and any
19 other State the waters of which may be af-
20 fected, receive notice of each application for a
21 permit under the State permit program; and

22 “(ii) provide opportunity for public hear-
23 ings before a decision on the application;

1 “(D) ensure that the Secretary receives no-
2 tice and a copy of each application for a permit
3 under the State permit program;

4 “(E) ensure that—

5 “(i) each State (other than the per-
6 mitting State) in which waters may be af-
7 fected by the issuance of a permit under
8 the State permit program may submit a
9 written recommendation to the permitting
10 State and the Secretary with respect to
11 any permit application; and

12 “(ii) if any part of a written rec-
13 ommendation is not accepted by the per-
14 mitting State, the permitting State will no-
15 tify the affected State and the Secretary in
16 writing of the decision not to accept the
17 recommendation and the reason for the de-
18 cision;

19 “(F) ensure that no permit will be issued
20 if, in the judgment of the Secretary, after con-
21 sultation with the Secretary of the department
22 in which the Coast Guard is operating, the an-
23 chorage and navigation of any waters of the
24 United States would be substantially impaired

1 by the activity proposed to be authorized by the
2 permit;

3 “(G) abate a violation of the permit or the
4 permit program through a civil or criminal pen-
5 alty or other means of enforcement; and

6 “(H) ensure continued coordination with
7 Federal and Federal-and-State water-related
8 planning and review processes.

9 “(4) APPROVAL OR MODIFICATION OF PRO-
10 GRAM.—

11 “(A) APPROVAL OF PROGRAM.—

12 “(i) IN GENERAL.—If, with respect to
13 a State permit program for which a de-
14 scription and statement are submitted
15 under paragraph (1), the Secretary deter-
16 mines that the State has the authority de-
17 scribed in paragraph (3), the Secretary
18 shall approve the program and notify the
19 State and the Administrator. After subse-
20 quent notification from the State that the
21 State is administering the program, the
22 Secretary shall suspend the issuance of
23 permits under subsections (c) and (h) for
24 each activity with respect to which a per-

1 mit may be issued under the State permit
2 program.

3 “(ii) CONSIDERATION OF CIR-
4 CUMSTANCES.—The Secretary shall ap-
5 prove a State permit program submitted
6 under paragraph (1) that is developed to
7 meet the particular needs and cir-
8 cumstances of the State, if the level of pro-
9 tection of wetland and private property
10 provided by the State permit program is
11 substantially similar to the level of protec-
12 tion provided by this section.

13 “(B) MODIFICATION OF PROGRAM.—If,
14 with respect to a State permit program for
15 which a description and statement are submit-
16 ted under paragraph (1), the Secretary deter-
17 mines that the State does not have the author-
18 ity described in paragraph (3), the Secretary
19 shall notify the State and provide a description
20 of any revision or modification necessary so
21 that the State may resubmit the program for
22 another determination by the Secretary under
23 this subsection.

24 “(5) FAILURE OF THE SECRETARY TO ISSUE A
25 DETERMINATION.—If, with respect to a State permit

1 program for which a description and statement are
2 submitted under paragraph (1), the Secretary fails
3 to issue a determination within 120 days after the
4 date of receipt of the description and statement, the
5 program shall be deemed to be approved under para-
6 graph (4)(A) and the Secretary shall notify the
7 State and the Administrator of the approval. After
8 subsequent notification from the State that the
9 State is administering the program, the Secretary
10 shall suspend the issuance of permits under sub-
11 sections (c) and (h) for each activity with respect to
12 which a permit may be issued under the State per-
13 mit program.

14 “(6) TRANSFER OF APPLICATIONS.—After a
15 State permit program under this subsection has
16 been approved, the Secretary shall, at the option of
17 the State, transfer to the State for appropriate ac-
18 tion any application for a permit pending before the
19 Secretary for an activity with respect to which a per-
20 mit may be issued under the State permit program.

21 “(7) SUSPENSION OF ENFORCEMENT.—If the
22 Secretary is notified that a State with a permit pro-
23 gram approved under this subsection intends to ad-
24 minister and enforce the terms and conditions of a
25 general permit issued by the Secretary under sub-

1 section (h), the Secretary shall, with respect to each
2 activity in the State to which the general permit ap-
3 plies, suspend the administration and enforcement of
4 the general permit.

5 “(8) CORRECTIVE ACTION.—If the Secretary
6 determines after a public hearing that a State ad-
7 ministering a program approved under this sub-
8 section is not administering the program in accord-
9 ance with this section (including regulations issued
10 under subsection (c)(7)), the Secretary shall notify
11 the State. If appropriate corrective action is not
12 taken within a reasonable time, not to exceed 90
13 days after the date of receipt of the notification, the
14 Secretary shall—

15 “(A) withdraw approval of the program
16 until the Secretary determines that appropriate
17 corrective action has been taken;

18 “(B) resume the program for the issuance
19 of permits under subsections (c) and (h) for all
20 activities with respect to which the State was is-
21 suing permits, until such time as the Secretary
22 makes the determination described in subpara-
23 graph (A) and reapproves the State permit pro-
24 gram; and

1 “(C) assume responsibility for any applica-
2 tion for a permit pending before the State
3 under the State permit program.

4 “(9) PERIODIC REVIEW.—Not later than 5
5 years after the date of approval of a State permit
6 program, and every 5 years thereafter, in order to
7 ensure that the requirements of this section are met,
8 the Secretary, in cooperation with the Administrator
9 and the Director, shall conduct a review of permit
10 decisions issued by the State under the State permit
11 program.

12 “(10) PROVISION OF INFORMATION BY
13 STATES.—

14 “(A) IN GENERAL.—Each State that is ad-
15 ministering a State permit program approved
16 under this subsection shall—

17 “(i) submit to the Secretary a copy of
18 each permit application received by the
19 State and provide notice to the Secretary
20 of each action related to the consideration
21 of the permit application, including each
22 permit proposed to be issued by the State;
23 and

1 “(ii) submit to the Secretary a copy of
2 each proposed general permit that the
3 State intends to issue.

4 “(B) PROVISION OF STATE INFORMATION
5 TO SECRETARY AND DIRECTOR.—Not later than
6 10 days after the date of receipt of a permit ap-
7 plication or proposed general permit under sub-
8 paragraph (A), the Secretary shall provide cop-
9 ies of the permit application or the proposed
10 general permit to the Administrator and the Di-
11 rector. The Administrator and the Director may
12 provide written comments on the permit appli-
13 cation or the proposed general permit to the
14 Secretary.

15 “(C) COMMENTS FROM THE SECRETARY
16 TO STATE.—

17 “(i) SUBMISSION.—If the Secretary
18 intends to submit written comments to the
19 State with respect to a permit application
20 or proposed general permit received under
21 subparagraph (A), the Secretary shall—

22 “(I) notify the State not later
23 than 30 days after the date of receipt
24 of a copy of the application or pro-
25 posed general permit; and

1 “(II) submit the written com-
2 ments to the State (after consider-
3 ation of any comments made with re-
4 spect to the application or the pro-
5 posed general permit under subpara-
6 graph (B)) not later than 90 days
7 after the date of receipt.

8 “(ii) DELAY OF PERMIT ISSUANCE.—
9 If the State is notified by the Secretary
10 under clause (i), the State may not issue
11 the proposed permit until the earlier of—

12 “(I) the date on which comments
13 are received from the Secretary; or

14 “(II) 90 days after the date of
15 receipt by the Secretary of a copy of
16 the application or proposed general
17 permit.

18 “(11) WAIVER OF INFORMATION PROVISION RE-
19 QUIREMENT.—

20 “(A) BY STATE.—In accordance with the
21 guidelines issued under section 304(i)(2), the
22 Secretary may waive paragraph (10) at the
23 time of the approval of a State permit program
24 under paragraph (4)(A) for any category (in-
25 cluding any class, type, or size within the cat-

1 egory) of activity in waters of the United States
2 within the State.

3 “(B) BY CATEGORIES OF ACTIVITIES.—
4 The Secretary shall issue regulations establish-
5 ing categories of activities in waters of the
6 United States that the Secretary determines
7 shall not be subject to paragraph (10) in any
8 State with a program approved under para-
9 graph (4)(A) or (5). The Secretary may distin-
10 guish among classes, types, and sizes within
11 any category of the activities.

12 “(12) REGULATION BY AN INTERSTATE AGEN-
13 CY.—For the purpose of this subsection:

14 “(A) GOVERNOR.—The term ‘Governor’ in-
15 cludes the head of an interstate agency.

16 “(B) STATE.—The term ‘State’ includes
17 an interstate agency.

18 “(C) STATE LAW.—The term ‘State law’
19 includes an interstate compact.

20 “(q) AVAILABILITY OF INFORMATION TO THE PUB-
21 LIC.—

22 “(1) PERMIT APPLICATIONS AND PERMITS.—A
23 copy of each permit application submitted, and each
24 permit issued, under this section shall be available to
25 the public. Each permit application or portion of a

1 permit application shall be available on request for
2 the purpose of reproduction.

3 “(2) EDUCATION AND INFORMATION.—

4 “(A) PUBLICATION IN FEDERAL REG-
5 ISTER.—The Secretary shall publish in the Fed-
6 eral Register each memorandum of agreement,
7 regulatory guidance letter, or other guidance
8 document of general applicability that is rel-
9 evant to the permitting of activities under this
10 section at the same time as the memorandum,
11 letter, or other document is distributed to re-
12 gional or field offices of the Department of the
13 Army.

14 “(B) OTHER PUBLICATIONS.—The Sec-
15 retary shall prepare, update on a biennial basis,
16 and make available to the public for purchase
17 at cost—

18 “(i) an indexed publication containing
19 all Federal regulations, general permits,
20 memoranda of agreement, regulatory guid-
21 ance letters, and other guidance documents
22 of general applicability that are relevant to
23 the permitting of activities under this sec-
24 tion; and

1 “(ii) information to enable the general
2 public to understand the delineation of
3 wetland, the requirements for permitting
4 described in clause (i), wetland restoration
5 and enhancement, wetland functions, avail-
6 able nonregulatory programs to conserve
7 and restore wetland, and such other mat-
8 ters as the Secretary considers to be rel-
9 evant.

10 “(3) MAPPING AND PUBLIC NOTICE REQUIRE-
11 MENTS.—

12 “(A) PROVISION OF PUBLIC NOTICE.—Not
13 later than 90 days after the date of enactment
14 of the Wetlands Regulatory Reform Act of
15 1995, the Secretary shall provide the court of
16 each county, parish, or borough in which wet-
17 land subject to classification under subsection
18 (f) (referred to in this paragraph as ‘Federal
19 jurisdictional wetland’) may be located, a notice
20 for posting near the property records of the
21 county, parish, or borough. The notice shall—

22 “(i) state that Federal jurisdictional
23 wetland may be located in the county, par-
24 ish, or borough;

1 “(ii) provide an explanation under-
2 standable to the general public of how wet-
3 land is determined to be Federal jurisdic-
4 tional wetland;

5 “(iii) describe the requirements and
6 restrictions of the wetland regulatory pro-
7 gram under this section; and

8 “(iv) provide instructions on how to
9 obtain a delineation and classification of
10 wetland under this section.

11 “(B) PROVISION OF DELINEATION DETER-
12 MINATIONS.—On completion of a delineation
13 and classification of property that contains wet-
14 land, or a delineation of property that contains
15 waters of the United States that are not wet-
16 land, under this section, the Secretary shall—

17 “(i) file a copy of the delineation, in-
18 cluding the classification of any wetland lo-
19 cated on the property, with the records of
20 the property in the local courthouse; and

21 “(ii) serve a copy of the delineation
22 determination on every owner of the prop-
23 erty on record and any person with a re-
24 corded mortgage or lien on the property.

1 “(C) NOTICE OF ENFORCEMENT AC-
2 TIONS.—The Secretary and the Administrator
3 shall file notice of each enforcement action
4 under this section taken with respect to private
5 property with the records of the property.

6 “(D) NATIONAL WETLANDS INVENTORY.—
7 As the National Biological Service completes
8 the National Wetlands Inventory described in
9 section 401 of the Emergency Wetlands Re-
10 sources Act of 1986 (16 U.S.C. 3931), copies
11 of maps prepared as part of the inventory shall
12 be provided for posting to courts in the coun-
13 ties, parishes, and boroughs covered by the
14 maps.

15 “(r) CERTIFICATION.—

16 “(1) IN GENERAL.—Subject to paragraph (2)
17 and notwithstanding any other provision of this Act,
18 a certification under section 401 from a State or
19 interstate agency, or the Administrator, concerning
20 compliance with applicable requirements shall be re-
21 quired in connection with a permit issued under this
22 section only in the case of a permit issued under
23 subsection (c) that has an impact on more than 5
24 acres of waters of the United States. A certification

1 shall not be required in connection with a general
2 permit issued under subsection (h).

3 “(2) FAILURE TO ISSUE CERTIFICATION.—If
4 the State, interstate agency, or Administrator, as
5 the case may be, fails to act on a request for certifi-
6 cation described in paragraph (1) within 60 days
7 after the date of the notice with respect to the appli-
8 cation for the permit issued under subsection (c)(2),
9 the requirement for the certification shall be deemed
10 to be waived with respect to the application.

11 “(s) STATE AUTHORITY TO CONTROL ACTIVITIES.—
12 Nothing in this section shall affect or impair the right of
13 a State or interstate agency to control an activity in wa-
14 ters of the United States carried out in any portion of
15 the waters of the United States within the jurisdiction of
16 the State, including an activity by a Federal agency. Each
17 Federal agency shall comply with each State or interstate
18 requirement, whether substantive or procedural, to control
19 an activity in waters of the United States to the same ex-
20 tent that a person is subject to the requirement. This sec-
21 tion shall not affect or impair the authority of the Sec-
22 retary to maintain navigation.

23 “(t) BALANCED IMPLEMENTATION.—In carrying out
24 this section—

1 “(1) the Secretary shall balance the objective of
2 conserving functioning wetland with the objective of
3 ensuring continued economic growth, providing es-
4 sential infrastructure, maintaining strong State and
5 local tax bases, and protecting against the diminish-
6 ment of the use and value of private property; and

7 “(2) the Secretary, the Administrator, the
8 heads of all other Federal agencies, and other offi-
9 cials of the Federal Government shall seek in all ac-
10 tions to minimize the adverse impacts of the regu-
11 latory program under this section on the use and
12 value of private property.”.

13 **SEC. 4. TRANSITION PROVISIONS.**

14 (a) **APPLICANTS FOR PERMITS.**—A person who ap-
15 plied for a permit under section 404 of the Federal Water
16 Pollution Control Act (33 U.S.C. 1344) prior to the date
17 of enactment of this Act may reapply for the permit.

18 (b) **PERMIT HOLDERS.**—A person who received a
19 permit under section 404 of the Federal Water Pollution
20 Control Act (33 U.S.C. 1344) prior to the date of enact-
21 ment of this Act may request that the Secretary reeval-
22 ate—

23 (1) any determination made before that date
24 under the section with respect to property of the
25 person subject to the permit; or

1 (2) any condition imposed under the permit.

2 (c) PERSONS WHO OBTAINED DETERMINATIONS OF
3 JURISDICTION.—A person who obtained a determination
4 from the Secretary under section 404 of the Federal
5 Water Pollution Control Act (33 U.S.C. 1344) prior to
6 the date of enactment of this Act with respect to property
7 of the person may request that the Secretary reevaluate
8 the determination.

9 (d) ACTION BY THE SECRETARY.—Upon receipt of
10 a reapplication for a permit under subsection (a) or a re-
11 quest for reevaluation under subsection (b) or (c), the Sec-
12 retary shall make issue a decision with respect to the
13 reapplication or carry out the reevaluation, as appropriate,
14 in accordance with section 404 of the Federal Water Pol-
15 lution Control Act (as amended by section 3).

16 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.**

17 (a) Section 208(b)(4)(B)(iii) of the Act (33 U.S.C.
18 1288(b)(4)(B)(iii)) is amended by striking “the guidelines
19 established under section 404(b)(1), and” and inserting
20 “the regulations issued under section 404(c)(7), and”.

21 (b) Section 309 of the Act (33 U.S.C. 1319) is
22 amended—

23 (1) in subsection (a)—

24 (A) in the first sentence of paragraph (1),

25 by striking “or 404”; and

1 (B) in paragraph (3), by striking “or in a
2 permit issued under section 404 of this Act by
3 a State”;

4 (2) in subsection (c)—

5 (A) in paragraph (1)(A), by striking “or in
6 a permit issued under section 404 of this Act
7 by the Secretary of the Army or by a State”;

8 (B) in paragraph (2)(A), by striking “or in
9 a permit issued under section 404 of this Act
10 by the Secretary of the Army or by a State”;
11 and

12 (C) in the first sentence of paragraph
13 (3)(A), by striking “or in a permit issued under
14 section 404 of this Act by the Secretary of the
15 Army or by a State,”;

16 (3) in the first sentence of subsection (d), by
17 striking “or in a permit issued under section 404 of
18 this Act by a State,”; and

19 (4) in subsection (g)—

20 (A) by striking paragraph (1) and insert-
21 ing the following new paragraph:

22 “(1) VIOLATIONS.—If the Administrator deter-
23 mines, on the basis of any information available,
24 that a person has violated section 301, 302, 306,
25 307, 308, 318, or 405, or has violated any permit

1 condition or limitation implementing any of the sec-
 2 tions in a permit issued under section 402 by the
 3 Administrator or by a State, the Administrator may,
 4 after consultation with the State in which the viola-
 5 tion occurred, assess a class I civil penalty or a class
 6 II civil penalty under this subsection.”;

7 (B) in the third sentence of paragraph
 8 (2)(B), by striking “and the Secretary”;

9 (C) in paragraph (6)(A)(iii), by striking “,
 10 the Secretary,”;

11 (D) by striking “or Secretary, as the case
 12 may be,” and “or the Secretary, as the case
 13 may be,” each place they appear; and

14 (E) by striking “or Secretary”, “or the
 15 Secretary”, and “or Secretary’s” each place
 16 they appear.

○

S 851 IS—2

S 851 IS—3

S 851 IS—4

S 851 IS—5

S 851 IS—6

S 851 IS—7