

- (i) the current owner agrees to such termination; and
- (ii) the Secretary determines that such termination would be in the public interest.

(B) Notice

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

(Pub. L. 99-198, title XII, §1237E, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589; amended Pub. L. 107-171, title II, §2204, May 13, 2002, 116 Stat. 253; Pub. L. 110-234, title II, §2203(b), May 22, 2008, 122 Stat. 1037; Pub. L. 110-246, §4(a), title II, §2203(b), June 18, 2008, 122 Stat. 1664, 1765.)

CODIFICATION

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 L. 110-234 were repealed by section 4(a) of Pub.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

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246, §2203(b), substituted “during the preceding 7-year period” for “in the preceding 12 months” in introductory provisions.

2002—Subsec. (a)(2). Pub. L. 107-171 added par. (2) and struck out former par. (2) which read as follows: “the new ownership was acquired before January 1, 1990; or”.

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.

§ 3837f. Administration and funding**(a) Delegation of easement administration**

The Secretary may delegate any of the easement management, monitoring, and enforcement responsibilities of the Secretary to Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

(b) Regulations

Not later than 180 days after November 28, 1990, the Secretary shall issue such regulations as are necessary to carry out this subpart.

(c) Prairie Pothole Region survey and reallocation**(1) Survey**

The Secretary shall conduct a survey during fiscal year 2008 and each subsequent fiscal year for the purpose of determining interest and allocations for the Prairie Pothole Region to enroll eligible land described in section 3837(c)(2)(B) of this title.

(2) Annual adjustment

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

(Pub. L. 99-198, title XII, §1237F, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589; Pub. L. 110-234, title II, §2203(c), May 22, 2008, 122 Stat. 1037; Pub. L. 110-246, §4(a), title II, §2203(c), June 18, 2008, 122 Stat. 1664, 1765.)

CODIFICATION

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

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-246, §2203(c), added subsec. (c).

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.

PART II—CONSERVATION SECURITY AND FARMLAND PROTECTION

SUBPART A—CONSERVATION SECURITY PROGRAM

§ 3838. Definitions

In this subpart:

(1) Base payment

The term “base payment” means an amount that is—

(A) determined in accordance with the rate described in section 3838c(b)(1)(A) of this title; and

(B) paid to a producer under a conservation security contract in accordance with clause (i) of subparagraph (C), (D), or (E) of section 3838c(b)(1) of this title, as appropriate.

(2) Beginning farmer or rancher

The term “beginning farmer or rancher” has the meaning given the term under section 1991(a) of title 7.

(3) Conservation practice

The term “conservation practice” means a conservation farming practice described in section 3838a(d)(4) of this title that—

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

(B) promotes 1 or more of the purposes described in section 3838a(a) of this title.

(4) Conservation security contract

The term “conservation security contract” means a contract described in section 3838a(e) of this title.

(5) Conservation security plan

The term “conservation security plan” means a plan described in section 3838a(c) of this title.

(6) Conservation security program

The term “conservation security program” means the program established under section 3838a(a) of this title.

(7) Enhanced payment

The term “enhanced payment” means the amount paid to a producer under a conserva-

tion security contract that is equal to the amount described in section 3838c(b)(1)(C)(iii) of this title.

(8) Nondegradation standard

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

(9) Producer

(A) In general

The term “producer” means an owner, operator, landlord, tenant, or sharecropper that—

- (i) shares in the risk of producing any crop or livestock; and
- (ii) is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

(B) Hybrid seed growers

In determining whether a grower of hybrid seed is a producer, the Secretary shall not take into consideration the existence of a hybrid seed contract.

(10) Resource-conserving crop rotation

The term “resource-conserving crop rotation” means a crop rotation that—

- (A) includes at least 1 resource-conserving crop (as defined by the Secretary);
- (B) reduces erosion;
- (C) improves soil fertility and tilth;
- (D) interrupts pest cycles; and
- (E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).

(11) Resource management system

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

(12) Secretary

The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service.

(13) Tier I conservation security contract

The term “Tier I conservation security contract” means a contract described in section 3838a(d)(5)(A) of this title.

(14) Tier II conservation security contract

The term “Tier II conservation security contract” means a contract described in section 3838a(d)(5)(B) of this title.

(15) Tier III conservation security contract

The term “Tier III conservation security contract” means a contract described in section 3838a(d)(5)(C) of this title.

(Pub. L. 99-198, title XII, §1238, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 223.)

PRIOR PROVISIONS

A prior section 3838, Pub. L. 99-198, title XII, §1238, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, related to policy of Congress on water quality protection, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

REGULATIONS

Pub. L. 107-171, title II, §2001(b), May 13, 2002, 116 Stat. 233, provided that: “Not later than 270 days after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall promulgate regulations implementing the amendment made by subsection (a) [enacting this subpart].”

§ 3838a. Conservation security program

(a) In general

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

(b) Eligibility

(1) Eligible producers

To be eligible to participate in the conservation security program (other than to receive technical assistance under section 3838c(g) of this title for the development of conservation security contracts), a producer shall—

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

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

(2) Eligible land

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

(3) Exclusions

(A) Conservation reserve program

Land enrolled in the conservation reserve program under subpart B of part I of this subchapter shall not be eligible for enrollment in the conservation security program.

(B) Wetlands reserve program

Land enrolled in the wetlands reserve program established under subpart C of part I of this subchapter shall not be eligible for enrollment in the conservation security program.

(C) Grassland reserve program

Land enrolled in the grassland reserve program established under subpart D of this part shall not be eligible for enrollment in the conservation security program.

(D) Conversion to cropland

Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding May 13, 2002 (except for land enrolled in the conservation reserve program under subpart B of part I of this subchapter) or that has been maintained using long-term crop rotation practices, as determined by the Secretary, shall not be the basis for any payment under the conservation security program.

(4) Economic uses

The Secretary shall permit a producer to implement, with respect to all eligible land covered by a conservation security plan, economic uses that—

- (A) maintain the agricultural nature of the land; and
- (B) are consistent with the natural resource and conservation objectives of the conservation security program.

(c) Conservation security plans**(1) In general**

A conservation security plan shall—

- (A) identify the designated land and resources to be conserved under the conservation security plan;
- (B) describe the tier of conservation security contract, and the particular conservation practices to be implemented, maintained, or improved, in accordance with subsection (d) of this section on the land covered by the conservation security contract for the specified term; and
- (C) contain a schedule for the implementation, maintenance, or improvement of the conservation practices described in the conservation security plan during the term of the conservation security contract.

(2) Resource planning

The Secretary may assist producers that enter into conservation security contracts in developing a comprehensive, long-term strategy for improving and maintaining all natural resources of the agricultural operation of the producer.

(d) Conservation contracts and practices**(1) In general****(A) Establishment of tiers**

The Secretary shall establish, and offer to eligible producers, 3 tiers of conservation contracts under which a payment under this subpart may be received.

(B) Eligible conservation practices**(i) In general**

The Secretary shall make eligible for payment under a conservation security contract land management, vegetative, and structural practices.

(ii) Determination

In determining the eligibility of a practice described in clause (i), the Secretary shall require, to the maximum extent

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

(2) On-farm research and demonstration or pilot testing

With respect to land enrolled in the conservation security program, the Secretary may approve a conservation security plan that includes—

- (A) on-farm conservation research and demonstration activities; and
- (B) pilot testing of new technologies or innovative conservation practices.

(3) Use of handbook and guides; State and local conservation concerns**(A) Use of handbook and guides**

In determining eligible conservation practices and the criteria for implementing or maintaining the conservation practices under the conservation security program, the Secretary shall use the National Handbook of Conservation Practices of the Natural Resources Conservation Service.

(B) State and local conservation priorities

The conservation priorities of a State or locality in which an agricultural operation is situated shall be determined by the State Conservationist, in consultation with—

- (i) the State technical committee established under subchapter VI of this chapter; and
- (ii) local agricultural producers and conservation working groups.

(4) Conservation practices

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

- (A) nutrient management;
- (B) integrated pest management;
- (C) water conservation (including through irrigation) and water quality management;
- (D) grazing, pasture, and rangeland management;
- (E) soil conservation, quality, and residue management;
- (F) invasive species management;
- (G) fish and wildlife habitat conservation, restoration, and management;
- (H) air quality management;
- (I) energy conservation measures;
- (J) biological resource conservation and regeneration;
- (K) contour farming;
- (L) strip cropping;
- (M) cover cropping;
- (N) controlled rotational grazing;
- (O) resource-conserving crop rotation;
- (P) conversion of portions of cropland from a soil-depleting use to a soil-conserving use, including production of cover crops;
- (Q) partial field conservation practices;
- (R) native grassland and prairie protection and restoration; and
- (S) any other conservation practices that the Secretary determines to be appropriate and comparable to other conservation practices described in this paragraph.

(5) Tiers

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

(A) Tier I conservation security contracts

A conservation security plan for land enrolled under a Tier I conservation security contract shall—

- (i) be for a period of 5 years; and
- (ii) include conservation practices appropriate for the agricultural operation, that, at a minimum (as determined by the Secretary)—

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

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

(B) Tier II conservation security contracts

A conservation security plan for land enrolled under a Tier II conservation security contract shall—

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

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

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

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

(C) Tier III conservation security contracts

A conservation security plan for land enrolled under a Tier III conservation security contract shall—

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

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

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

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

(6) Minimum requirements

The minimum requirements for each tier of conservation contracts implemented under paragraph (5) shall be determined and approved by the Secretary.

(e) Conservation security contracts**(1) In general**

On approval of a conservation security plan of a producer, the Secretary shall enter into a

conservation security contract with the producer to enroll the land covered by the conservation security plan in the conservation security program.

(2) Modification**(A) Optional modifications**

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

(B) Other modifications**(i) In general**

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

(ii) Participation in other programs

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

(I) simultaneously participate in—

(aa) the conservation security program;

(bb) the conservation reserve program under subpart B of part I of this subchapter; and

(cc) the wetlands reserve program under subpart C of part I of this subchapter; and

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

(3) Termination**(A) Optional termination**

A producer may terminate a conservation security contract and retain payments received under the conservation security contract, if—

(i) the producer is in full compliance with the terms and conditions (including any maintenance requirements) of the conservation security contract as of the date of the termination; and

(ii) the Secretary determines that termination of the contract would not defeat the purposes of the conservation security plan of the producer.

(B) Other termination

A producer that is required to modify a conservation security contract under paragraph (2)(B)(i) may, in lieu of modifying the contract—

(i) terminate the conservation security contract; and

(ii) retain payments received under the conservation security contract, if the pro-

ducer has fully complied with the terms and conditions of the conservation security contract before termination of the contract, as determined by the Secretary.

(4) Renewal

(A) In general

Except as provided in subparagraph (B), at the option of a producer, the conservation security contract of the producer may be renewed for an additional period of not less than 5 nor more than 10 years.

(B) Tier I renewals

In the case of a Tier I conservation security contract of a producer, the producer may renew the contract only if the producer agrees—

(i) to apply additional conservation practices that meet the nondegradation standard on land already enrolled in the conservation security program; or

(ii) to adopt new conservation practices with respect to another portion of the agricultural operation that address resource concerns and meet the nondegradation standard under the terms of the Tier I conservation security contract.

(f) Noncompliance due to circumstances beyond the control of producers

The Secretary shall include in the conservation security contract a provision, and may permit modification of a conservation security contract under subsection (e)(1) of this section, to ensure that a producer shall not be considered in violation of a conservation security contract for failure to comply with the conservation security contract due to circumstances beyond the control of the producer, including a disaster or related condition, as determined by the Secretary.

(g) Prohibition on conservation security program contracts; effect on existing contracts

(1) Prohibition

A conservation security contract may not be entered into or renewed under this subpart after September 30, 2008.

(2) Exception

This subpart, and the terms and conditions of the conservation security program, shall continue to apply to—

(A) conservation security contracts entered into on or before September 30, 2008; and

(B) any conservation security contract entered into after that date, but for which the application for the contract was received during the 2008 sign-up period.

(3) Effect on payments

The Secretary shall make payments under this subpart with respect to conservation security contracts described in paragraph (2) during the remaining term of the contracts.

(4) Regulations

A contract described in paragraph (2) may not be administered under the regulations issued to carry out the conservation stewardship program.

(Pub. L. 99-198, title XII, §1238A, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116

Stat. 225; amended Pub. L. 109-171, title I, §1202(a), Feb. 8, 2006, 120 Stat. 5; Pub. L. 110-234, title II, §2301(b), (c), May 22, 2008, 122 Stat. 1047, 1048; Pub. L. 110-246, §4(a), title II, §2301(b), (c), June 18, 2008, 122 Stat. 1664, 1775, 1776.)

CODIFICATION

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

PRIOR PROVISIONS

A prior section 3838a, Pub. L. 99-198, title XII, §1238A, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3590, defined terms for purposes of this part, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110-246, §2301(c), substituted “subpart D” for “subpart C”.

Subsec. (g). Pub. L. 110-246, §2301(b), added subsec. (g). 2006—Subsec. (a). Pub. L. 109-171 substituted “2011” for “2007”.

EFFECTIVE DATE OF 2008 AMENDMENT

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

§ 3838b. Duties of producers

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

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

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

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

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

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

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

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

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

(Pub. L. 99-198, title XII, §1238B, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 230.)

PRIOR PROVISIONS

A prior section 3838b, Pub. L. 99-198, title XII, §1238B, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990,

104 Stat. 3590, directed Secretary to formulate and carry out agricultural water quality protection program, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

§ 3838c. Duties of the Secretary

(a) Timing of payments

The Secretary shall make payments under a conservation security contract as soon as practicable after October 1 of each fiscal year.

(b) Annual payments

(1) Criteria for determining amount of payments

(A) Base payment

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

- (i) the average national per-acre rental rate for a specific land use during the 2001 crop year; or
- (ii) another appropriate rate for the 2001 crop year that ensures regional equity.

(B) Payments

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

(C) Tier I conservation security contracts

The payment for a Tier I conservation security contract shall consist of the total of the following amounts:

- (i) An amount equal to 5 percent of the applicable base payment for land covered by the contract.
- (ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county costs of practices for the 2001 crop year that are included in the conservation security contract, as determined by the Secretary, including the costs of—
 - (I) the adoption of new management, vegetative, and land-based structural practices;
 - (II) the maintenance of existing land management and vegetative practices; and
 - (III) the maintenance of existing land-based structural practices that are approved by the Secretary but not already covered by a Federal or State maintenance requirement.

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

- (I) implements or maintains multiple conservation practices that exceed minimum requirements for the applicable tier of participation (including practices that involve a change in land use, such as resource-conserving crop rotation, managed rotational grazing, or conservation buffer practices);
- (II) addresses local conservation priorities in addition to resources of concern for the agricultural operation;
- (III) participates in an on-farm conservation research, demonstration, or pilot project;

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

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

(D) Tier II conservation security contracts

The payment for a Tier II conservation security contract shall consist of the total of the following amounts:

- (i) An amount equal to 10 percent of the applicable base payment for land covered by the conservation security contract.
- (ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county cost of adopting or maintaining practices for the 2001 crop year that are included in the conservation security contract, as described in subparagraph (C)(ii).
- (iii) An enhanced payment that is determined in accordance with subparagraph (C)(iii).

(E) Tier III conservation security contracts

The payment for a Tier III conservation security contract shall consist of the total of the following amounts:

- (i) An amount equal to 15 percent of the base payment for land covered by the conservation security contract.
- (ii) An amount that does not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average county cost of adopting or maintaining practices for the 2001 crop year that are included in the conservation security contract, as described in subparagraph (C)(ii).
- (iii) An enhanced payment that is determined in accordance with subparagraph (C)(iii).

(2) Limitation on payments

(A) In general

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

- (i) in the case of a Tier I conservation security contract, \$20,000;
- (ii) in the case of a Tier II conservation security contract, \$35,000; or
- (iii) in the case of a Tier III conservation security contract, \$45,000.

(B) Limitation on base payments

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

- (i) in the case of Tier I contracts, 25 percent of the applicable payment limitation; or
- (ii) in the case of Tier II contracts and Tier III contracts, 30 percent of the applicable payment limitation.

(C) Other USDA payments

A producer shall not receive payments under the conservation security program and any other conservation program administered by the Secretary for the same practices on the same land.

(D) Commensurate share

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

(3) Equipment or facilities

A payment to a producer under this subpart shall not be provided for—

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

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

(c) Minimum practice requirement

In determining a payment under subsection (b) of this section for a producer that receives a payment under another program administered by the Secretary that is contingent on complying with requirements under subchapter II or III of this chapter (relating to the use of highly erodible land or wetland), a payment under this subpart on land subject to those requirements shall be for practices only to the extent that the practices exceed minimum requirements for the producer under those subchapters, as determined by the Secretary.

(d) Regulations

The Secretary shall promulgate regulations that—

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

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

(e) Transfer or change of interest in land subject to conservation security contract**(1) In general**

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

(2) Transfer of duties and rights

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

(f) Enrollment procedure

In entering into conservation security contracts with producers under this subpart, the Secretary shall not use competitive bidding or any similar procedure.

(g) Technical assistance

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

(Pub. L. 99-198, title XII, §1238C, as added Pub. L. 107-171, title II, §2001(a), May 13, 2002, 116 Stat. 230.)

PRIOR PROVISIONS

A prior section 3838c, Pub. L. 99-198, title XII, §1238C, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3594, related to lands eligible for enrollment in water quality protection program, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

SUBPART B—CONSERVATION STEWARDSHIP PROGRAM

PRIOR PROVISIONS

A prior subpart B, consisting of sections 3838h to 3838j, was redesignated subpart C of this part by Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768.

§ 3838d. Definitions

In this subpart:

(1) Conservation activities**(A) In general**

The term “conservation activities” means conservation systems, practices, or management measures that are designed to address a resource concern.

(B) Inclusions

The term “conservation activities” includes—

(i) structural measures, vegetative measures, and land management measures, including agriculture drainage management systems, as determined by the Secretary; and

(ii) planning needed to address a resource concern.

(2) Conservation measurement tools

The term “conservation measurement tools” means procedures to estimate the level of environmental benefit to be achieved by a producer in implementing conservation activities, including indices or other measures developed by the Secretary.

(3) Conservation stewardship plan

The term “conservation stewardship plan” means a plan that—

(A) identifies and inventories resource concerns;

(B) establishes benchmark data and conservation objectives;

(C) describes conservation activities to be implemented, managed, or improved; and

(D) includes a schedule and evaluation plan for the planning, installation, and management of the new and existing conservation activities.

(4) Priority resource concern

The term “priority resource concern” means a resource concern that is identified at the State level, in consultation with the State Technical Committee, as a priority for a particular watershed or area of the State.

(5) Program

The term “program” means the conservation stewardship program established by this subpart.

(6) Resource concern

The term “resource concern” means a specific natural resource impairment or problem, as determined by the Secretary, that—

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

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

(7) Stewardship threshold

The term “stewardship threshold” means the level of natural resource conservation and environmental management required, as determined by the Secretary using conservation measurement tools, to improve and conserve the quality and condition of a resource concern.

(Pub. L. 99-198, title XII, §1238D, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1768.)

CODIFICATION

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

PRIOR PROVISIONS

A prior section 3838d, Pub. L. 99-198, title XII, §1238D, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3595, related to technical assistance for water quality protection, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

EFFECTIVE DATE

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

§ 3838e. Conservation stewardship program

(a) Establishment and purpose

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

(1) by undertaking additional conservation activities; and

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

(b) Eligible land

(1) In general

Except as provided in subsection (c), the following land is eligible for enrollment in the program:

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

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

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

(D) Other private agricultural land (including cropped woodland, marshes, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed by enrolling the land in the program, as determined by the Secretary.

(2) Special rule for nonindustrial private forest land

Nonindustrial private forest land is eligible for enrollment in the program, except that not more than 10 percent of the annual acres enrolled nationally in any fiscal year may be nonindustrial private forest land.

(3) Agricultural operation

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

(c) Exclusions

(1) Land enrolled in other conservation programs

Subject to paragraph (2), the following land is not be¹ eligible for enrollment in the program:

(A) Land enrolled in the conservation reserve program.

(B) Land enrolled in the wetlands reserve program.

(C) Land enrolled in the grassland reserve program.

(2) Conversion to cropland

Land used for crop production after the date of enactment of the Food, Conservation, and Energy Act of 2008 that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date shall not be the basis for any payment under the program, unless the land does not meet the requirement because—

(A) the land had previously been enrolled in the conservation reserve program;

(B) the land has been maintained using long-term crop rotation practices, as determined by the Secretary; or

(C) the land is incidental land needed for efficient operation of the farm or ranch, as determined by the Secretary.

¹ So in original. The word “be” probably should not appear.

(Pub. L. 99-198, title XII, §1238E, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1041, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1769; amended Pub. L. 112-55, div. A, title VII, §716(b), Nov. 18, 2011, 125 Stat. 582.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

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

PRIOR PROVISIONS

A prior section 3838e, Pub. L. 99-198, title XII, §1238E, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596, related to demonstration and pilot programs, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-55 substituted “2014” for “2012”.

§ 3838f. Stewardship contracts

(a) Submission of contract offers

To be eligible to participate in the conservation stewardship program, a producer shall submit to the Secretary for approval a contract offer that—

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

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

(A) installing and adopting additional conservation activities; and

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

(b) Evaluation of contract offers

(1) Ranking of applications

In evaluating contract offers made by producers to enter into contracts under the program, the Secretary shall rank applications based on—

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

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

(C) the number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract;

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

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

(2) Prohibition

The Secretary may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(3) Additional criteria

The Secretary may develop and use such additional criteria for evaluating applications to enroll in the program that the Secretary determines are necessary to ensure that national, State, and local conservation priorities are effectively addressed.

(c) Entering into contracts

After a determination that a producer is eligible for the program under subsection (a), and a determination that the contract offer ranks sufficiently high under the evaluation criteria under subsection (b), the Secretary shall enter into a conservation stewardship contract with the producer to enroll the land to be covered by the contract.

(d) Contract provisions

(1) Term

A conservation stewardship contract shall be for a term of 5 years.

(2) Provisions

The conservation stewardship contract of a producer shall—

(A) state the amount of the payment the Secretary agrees to make to the producer for each year of the conservation stewardship contract under section 3838g(e) of this title;

(B) require the producer—

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

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

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

(C) permit all economic uses of the land that—

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

(ii) are consistent with the conservation purposes of the conservation stewardship contract;

(D) include a provision to ensure that a producer shall not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the producer, including a disaster or related condition, as determined by the Secretary; and

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

(e) Contract renewal

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

- (1) demonstrates compliance with the terms of the existing contract; and
- (2) agrees to adopt new conservation activities, as determined by the Secretary.

(f) Modification

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

(g) Contract termination

(1) Voluntary termination

A producer may terminate a conservation stewardship contract if the Secretary determines that termination would not defeat the purposes of the program.

(2) Involuntary termination

The Secretary may terminate a contract under this subpart if the Secretary determines that the producer violated the contract.

(3) Repayment

If a contract is terminated, the Secretary may, consistent with the purposes of the program—

- (A) allow the producer to retain payments already received under the contract; or
- (B) require repayment, in whole or in part, of payments already received and assess liquidated damages.

(4) Change of interest in land subject to a contract

(A) In general

Except as provided in paragraph (B), a change in the interest of a producer in land covered by a contract under this part shall result in the termination of the contract with regard to that land.

(B) Transfer of duties and rights

Subparagraph (A) shall not apply if—

(i) within a reasonable period of time (as determined by the Secretary) after the date of the change in the interest in land covered by a contract under the program, the transferee of the land provides written notice to the Secretary that all duties and rights under the contract have been transferred to, and assumed by, the transferee; and

(ii) the transferee meets the eligibility requirements of the program.

(h) Coordination with organic certification

The Secretary shall establish a transparent means by which producers may initiate organic

certification under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et. seq.) while participating in a contract under this subpart.

(i) On-farm research and demonstration or pilot testing

The Secretary may approve a contract offer under this subpart that includes—

- (1) on-farm conservation research and demonstration activities; and
- (2) pilot testing of new technologies or innovative conservation practices.

(Pub. L. 99-198, title XII, §1238F, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1042, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1770.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (h), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

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

PRIOR PROVISIONS

A prior section 3838f, Pub. L. 99-198, title XII, §1238F, as added Pub. L. 101-624, title XIV, §1439, Nov. 28, 1990, 104 Stat. 3596, related to report to Congress, prior to repeal by Pub. L. 104-127, title III, §336(h), Apr. 4, 1996, 110 Stat. 1007.

§ 3838g. Duties of the Secretary

(a) In general

To achieve the conservation goals of a contract under the conservation stewardship program, the Secretary shall—

- (1) make the program available to eligible producers on a continuous enrollment basis with 1 or more ranking periods, one of which shall occur in the first quarter of each fiscal year;
- (2) identify not less than 3 nor more than 5 priority resource concerns in a particular watershed or other appropriate region or area within a State; and
- (3) develop reliable conservation measurement tools for purposes of carrying out the program.

(b) Allocation to States

The Secretary shall allocate acres to States for enrollment, based—

- (1) primarily on each State's proportion of eligible acres under section 3838e(b)(1) of this title to the total number of eligible acres in all States; and
- (2) also on consideration of—
 - (A) the extent and magnitude of the conservation needs associated with agricultural production in each State;
 - (B) the degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs; and
 - (C) other considerations to achieve equitable geographic distribution of funds, as determined by the Secretary.

(c) Specialty crop and organic producers

The Secretary shall ensure that outreach and technical assistance are available, and program specifications are appropriate to enable specialty crop and organic producers to participate in the program.

(d) Acreage enrollment limitation

During the period beginning on October 1, 2008, and ending on September 30, 2017, the Secretary shall, to the maximum extent practicable—

- (1) enroll in the program an additional 12,769,000 acres for each fiscal year; and
- (2) manage the program to achieve a national average rate of \$18 per acre, which shall include the costs of all financial assistance, technical assistance, and any other expenses associated with enrollment or participation in the program.

(e) Conservation stewardship payments**(1) Availability of payments**

The Secretary shall provide a payment under the program to compensate the producer for—

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

(2) Payment amount

The amount of the conservation stewardship payment shall be determined by the Secretary and based, to the maximum extent practicable, on the following factors:

- (A) Costs incurred by the producer associated with planning, design, materials, installation, labor, management, maintenance, or training.
- (B) Income forgone by the producer.
- (C) Expected environmental benefits as determined by conservation measurement tools.

(3) Exclusions

A payment to a producer under this subsection shall not be provided for—

- (A) the design, construction, or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or
- (B) conservation activities for which there is no cost incurred or income forgone to the producer.

(4) Timing of payments**(A) In general**

The Secretary shall make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year.

(B) Additional activities

The Secretary shall make payments to compensate producers for installation of additional practices at the time at which the practices are installed and adopted.

(f) Supplemental payments for resource-conserving crop rotations**(1) Availability of payments**

The Secretary shall provide additional payments to producers that, in participating in the program, agree to adopt resource-conserving crop rotations to achieve beneficial crop rotations as appropriate for the land of the producers.

(2) Beneficial crop rotations

The Secretary shall determine whether a resource-conserving crop rotation is a beneficial crop rotation eligible for additional payments under paragraph (1), based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits.

(3) Eligibility

To be eligible to receive a payment described in paragraph (1), a producer shall agree to adopt and maintain beneficial resource-conserving crop rotations for the term of the contract.

(4) Resource-conserving crop rotation

In this subsection, the term “resource-conserving crop rotation” means a crop rotation that—

- (A) includes at least 1 resource conserving crop (as defined by the Secretary);
- (B) reduces erosion;
- (C) improves soil fertility and tilth;
- (D) interrupts pest cycles; and
- (E) in applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

(g) Payment limitations

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

(h) Regulations

The Secretary shall promulgate regulations that—

- (1) prescribe such other rules as the Secretary determines to be necessary to ensure a fair and reasonable application of the limitations established under subsection (g); and
- (2) otherwise enable the Secretary to carry out the program.

(i) Data

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

- (1) the installation and adoption of additional conservation activities and improvements to conservation activities in place on the operation of a producer at the time the conservation stewardship offer is accepted by the Secretary;
- (2) participation in research, demonstration, and pilot projects; and

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

(Pub. L. 99-198, title XII, §1238G, as added Pub. L. 110-234, title II, §2301(a)(2), May 22, 2008, 122 Stat. 1045, and Pub. L. 110-246, §4(a), title II, §2301(a)(2), June 18, 2008, 122 Stat. 1664, 1773.)

CODIFICATION

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

SUBPART C—FARMLAND PROTECTION PROGRAM

CODIFICATION

Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768, both redesignated subpart B of this part as subpart C. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234.

Section 2503(a) of Pub. L. 107-171, which directed that subchapter B (this subpart) be added at the end of chapter 2 of the Food Security Act of 1985, was executed by adding subchapter B after subchapter A of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (subpart A of this part) to reflect the probable intent of Congress and a prior amendment by section 2401 of Pub. L. 107-171, which had added subchapter C (subpart C of this part) at the end of chapter 2 of subtitle D of title XII of the Food Security Act of 1985.

PRIOR PROVISIONS

A prior subpart C, consisting of sections 3838n to 3838q, was redesignated subpart D of this part by Pub. L. 110-234, title II, §2301(a)(1), May 22, 2008, 122 Stat. 1040, and Pub. L. 110-246, §4(a), title II, §2301(a)(1), June 18, 2008, 122 Stat. 1664, 1768.

§ 3838h. Definitions

In this subpart:

(1) Eligible entity

The term “eligible entity” means—

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

(B) any organization that—

(i) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of title 26;

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

(iii) is—

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

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

(2) Eligible land

(A) In general

The term “eligible land” means land on a farm or ranch that is subject to a pending offer for purchase from an eligible entity and—

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

(ii) contains historical or archaeological resources; or

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

(B) Inclusions

The term “eligible land” includes, on a farm or ranch—

(i) cropland;

(ii) rangeland;

(iii) grassland;

(iv) pasture land;

(v) forest land that—

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

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

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

(3) Indian tribe

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

(4) Program

The term “program” means the farmland protection program established under section 3838i(a) of this title.

(Pub. L. 99-198, title XII, §1238H, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 267; amended Pub. L. 110-234, title II, §2401(a), May 22, 2008, 122 Stat. 1048; Pub. L. 110-246, §4(a), title II, §2401(a), June 18, 2008, 122 Stat. 1664, 1776.)

CODIFICATION

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

AMENDMENTS

2008—Par. (1). Pub. L. 110-246, §2401(a)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The term ‘eligible entity’ means—

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

“(B) any organization that—

“(i) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of title 26;

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

“(iii) is described in section 509(a)(2) of that title;

or

“(iv) is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that title.”

Par. (2)(A). Pub. L. 110-246, §2401(a)(2)(A)(i), substituted “that is subject to a pending offer for purchase from an eligible entity and—” for “that—” in introductory provisions.

Par. (2)(A)(i) to (iii). Pub. L. 110-246, §2401(a)(2)(A)(ii), added cls. (i) to (iii) and struck out former cls. (i) and (ii) which read as follows:

“(i)(I) has prime, unique, or other productive soil; or
 “(II) contains historical or archaeological resources;
 and
 “(ii) is subject to a pending offer for purchase from an eligible entity.”

Par. (2)(B)(iv) to (vi). Pub. L. 110-246, §2401(a)(2)(B), added cls. (v) and (vi) and struck out former cl. (v) which read as follows: “forest land that is an incidental part of an agricultural operation, as determined by the Secretary.”

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.

§ 3838i. Farmland protection program

(a) Establishment

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

(b) Purpose

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

(c) Cost-share assistance

(1) Provision of assistance

The Secretary shall provide cost-share assistance to eligible entities for purchasing a conservation easement or other interest in eligible land.

(2) Federal share

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

(3) Non-Federal share

(A) Share provided by eligible entity

The eligible entity shall provide a share of the cost of purchasing a conservation easement or other interest in eligible land in an amount that is not less than 25 percent of the acquisition purchase price.

(B) Landowner contribution

As part of the non-Federal share of the cost of purchasing a conservation easement or other interest in eligible land, an eligible entity may include a charitable donation or qualified conservation contribution (as defined by section 170(h) of title 26) from the private landowner from which the conservation easement or other interest in land will be purchased.

(d) Determination of fair market value

Effective on the date of enactment of the Food, Conservation, and Energy Act of 2008, the fair market value of the conservation easement or other interest in eligible land shall be deter-

mined on the basis of an appraisal using an industry approved method, selected by the eligible entity and approved by the Secretary.

(e) Bidding down prohibited

If the Secretary determines that 2 or more applications for cost-share assistance are comparable in achieving the purpose of the program, the Secretary shall not assign a higher priority to any 1 of those applications solely on the basis of lesser cost to the program.

(f) Condition on assistance

(1) Conservation plan

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

(2) Contingent right of enforcement

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

(g) Agreements with eligible entities

(1) In general

The Secretary shall enter into agreements with eligible entities to stipulate the terms and conditions under which the eligible entity is permitted to use cost-share assistance provided under subsection (c).

(2) Length of agreements

An agreement under this subsection shall be for a term that is—

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

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

(3) Substitution of qualified projects

An agreement shall allow, upon mutual agreement of the parties, substitution of qualified projects that are identified at the time of the proposed substitution.

(4) Minimum requirements

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

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

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

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

(5) Effect of violation

If a violation occurs of a term or condition of an agreement entered into under this subsection—

(A) the agreement shall remain in force; and

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

(h) Certification of eligible entities

(1) Certification process

The Secretary shall establish a process under which the Secretary may—

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

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

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

(2) Certification criteria

In order to be certified, an eligible entity shall demonstrate to the Secretary that the entity will maintain, at a minimum, for the duration of the agreement—

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

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

(C) policies and procedures to ensure—

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

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

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

(3) Review and revision

(A) Review

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

(B) Revocation

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

(i) allow the certified entity a specified period of time, at a minimum 180 days, in which to take such actions as may be necessary to meet the criteria; and

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

(Pub. L. 99-198, title XII, §1238I, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 268; amended Pub. L. 110-234, title II, §2401(b), May 22, 2008, 122 Stat. 1049; Pub. L. 110-246, §4(a), title II, §2401(b), June 18, 2008, 122 Stat. 1664, 1777.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (d), is the date

of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

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

AMENDMENTS

2008—Pub. L. 110-246, §2401(b), amended section generally. Prior to amendment, section related to establishment of farmland protection program, conservation plan requirement, and cost sharing.

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.

§ 3838j. Farm viability program

(a) In general

The Secretary may provide to eligible entities identified by the Secretary grants for use in carrying out farm viability programs developed by the eligible entities and approved by the Secretary.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this section such sums as are necessary for each of fiscal years 2002 through 2012.

(Pub. L. 99-198, title XII, §1238J, as added Pub. L. 107-171, title II, §2503(a), May 13, 2002, 116 Stat. 269; amended Pub. L. 110-234, title II, §2402, May 22, 2008, 122 Stat. 1051; Pub. L. 110-246, §4(a), title II, §2402, June 18, 2008, 122 Stat. 1664, 1779.)

CODIFICATION

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

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-246, §2402, substituted “2012” for “2007”.

EFFECTIVE DATE OF 2008 AMENDMENT

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

SUBPART D—GRASSLAND RESERVE PROGRAM

CODIFICATION

Pub. L. 110-234, title II, §§2301(a)(1), 2403, May 22, 2008, 122 Stat. 1040, 1051, and Pub. L. 110-246, §4(a), title II, §§2301(a)(1), 2403, June 18, 2008, 122 Stat. 1664, 1768, 1779, both redesignated subpart C of this part as subpart D. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234.

Section 2401 of Pub. L. 107-171, which directed that subchapter C (this subpart) be added at the end of chapter 2 of the Food Security Act of 1985, was executed by adding subchapter C at the end of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (this part) to reflect the probable intent of Congress.

§ 3838n. Grassland reserve program**(a) Establishment and purpose**

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

(b) Enrollment of acreage**(1) Acreage enrolled**

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

(2) Methods of enrollment

The Secretary shall enroll eligible land in the program through the use of:¹

- (A) a 10-year, 15-year, or 20-year rental contract;
- (B) a permanent easement; or
- (C) in a State that imposes a maximum duration for easements, an easement for the maximum duration allowed under the law of that State.

(3) Limitation

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

- (A) 40 percent for rental contracts; and
- (B) 60 percent for easements.

(4) Enrollment of conservation reserve land**(A) Priority**

Upon expiration of a contract under subpart B of part I of this subchapter, the Secretary shall give priority for enrollment in the program to land previously enrolled in the conservation reserve program if—

- (i) the land is eligible land, as defined in subsection (c); and
- (ii) the Secretary determines that the land is of high ecological value and under significant threat of conversion to uses other than grazing.

(B) Maximum enrollment

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

(c) Eligible land defined

For purposes of the program, the term “eligible land” means private or tribal land that—

- (1) is grassland, land that contains forbs, or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use;
- (2) is located in an area that has been historically dominated by grassland, forbs, or shrubland, and the land—
 - (A) could provide habitat for animal or plant populations of significant ecological value if the land—

- (i) is retained in its current use; or
- (ii) is restored to a natural condition;

(B) contains historical or archaeological resources; or

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

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

(Pub. L. 99-198, title XII, §1238N, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 258; Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1051; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1779.)

CODIFICATION

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

AMENDMENTS

2008—Pub. L. 110-246, §2403, amended section generally. Prior to amendment, section related to establishment of a grassland reserve program, enrollment of a maximum of 2,000,000 acres of restored or improved grassland, rangeland, and pastureland, methods of enrollment, limitation on use of easements and rental agreements, and determination by Secretary of eligibility of land.

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.

§ 3838o. Duties of owners and operators**(a) Rental contracts**

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

- (1) to comply with the terms of the contract and, when applicable, a restoration agreement;
- (2) to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary; and
- (3) to implement a grazing management plan, as approved by the Secretary, which may be modified upon mutual agreement of the parties.

(b) Easements

To be eligible to enroll eligible land in the program through an easement, the owner of the land shall agree—

- (1) to grant an easement to the Secretary or to an eligible entity described in section 3838q of this title;
- (2) to create and record an appropriate deed restriction in accordance with applicable State law to reflect the easement;
- (3) to provide a written statement of consent to the easement signed by persons holding a security interest or any vested interest in the land;
- (4) to provide proof of unencumbered title to the underlying fee interest in the land that is the subject of the easement;

¹ So in original. The semicolon probably should be a dash.

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

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

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

(c) Restoration agreements

(1) When applicable

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

(2) Terms and conditions

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

(3) Duties

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

(d) Terms and conditions applicable to rental contracts and easements

(1) Permissible activities

The terms and conditions of a rental contract or easement under the program shall permit—

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

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

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

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

(2) Prohibitions

The terms and conditions of a rental contract or easement under the program shall prohibit—

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

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

(3) Additional terms and conditions

A rental contract or easement under the program shall include such additional provisions

as the Secretary determines are appropriate to carry out or facilitate the purposes and administration of the program.

(e) Violations

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

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

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

(Pub. L. 99-198, title XII, §12380, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 259; amended Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1052; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1780.)

CODIFICATION

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

AMENDMENTS

2008—Pub. L. 110-246, §2403, amended section generally. Prior to amendment, section related to requirements relating to easements and agreements.

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.

§ 3838p. Duties of Secretary

(a) Evaluation and ranking of applications

(1) Criteria

The Secretary shall establish criteria to evaluate and rank applications for rental contracts and easements under the program.

(2) Considerations

In establishing the criteria, the Secretary shall emphasize support for—

(A) grazing operations;

(B) plant and animal biodiversity; and

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

(b) Payments

(1) In general

In return for the execution of a rental contract or the granting of an easement by an owner or operator under the program, the Secretary shall—

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

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

(2) Rental contract payments

(A) Percentage of grazing value of land

In return for the execution of a rental contract by an owner or operator under the pro-

gram, the Secretary shall make annual payments during the term of the contract in an amount, subject to subparagraph (B), that is not more than 75 percent of the grazing value of the land covered by the contract.

(B) Payment limitation

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

(3) Easement payments

(A) In general

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

(B) Method for determination of compensation

In making a determination under subparagraph (A), the Secretary shall pay as compensation for a¹ easement acquired under the program the lowest of—

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

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

(II) an area-wide market analysis or survey;

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

(iii) the offer made by the landowner.

(C) Schedule

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

(4) Restoration agreement payments

(A) Federal share of restoration

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

(B) Payment limitation

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

(5) Payments to others

If an owner or operator who is entitled to a payment under the program dies, becomes incompetent, is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, the Secretary shall make the payment, in accordance with regulations promulgated by the Secretary and without regard to

any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all the circumstances.

(Pub. L. 99-198, title XII, §1238P, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 261; amended Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1054; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1782.)

CODIFICATION

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

AMENDMENTS

2008—Pub. L. 110-246, §2403, amended section generally. Prior to amendment, section related to: in subsec. (a), duty of Secretary to make payments to an owner; in subsec. (b), amount of payments; in subsec. (c), Federal share of restoration; and in subsec. (d), payments to others.

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.

§ 3838q. Delegation of duty

(a) Authority to delegate

The Secretary may delegate a duty under the program—

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

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

(b) Eligible entity defined

In this section, the term “eligible entity” means—

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

(2) an organization that—

(A) is organized for, and at all times since the formation of the organization has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of title 26;

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

(C) is described in—

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

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

(c) Transfer of title of ownership

(1) Transfer

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

¹ So in original. Probably should be “an”.

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

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

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

(2) Application

An eligible entity that seeks to hold and enforce an easement shall apply to the Secretary for approval.

(3) Approval by Secretary

The Secretary may approve an application described in paragraph (2) if the eligible entity—

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

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

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

(d) Cooperative agreements

(1) Authorized; terms and conditions

The Secretary shall establish the terms and conditions of a cooperative agreement under which an eligible entity shall use funds provided by the Secretary to own, write, and enforce an easement, in lieu of the Secretary.

(2) Minimum requirements

At a minimum, the cooperative agreement shall—

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

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

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

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

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

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

(G) allow the eligible entity flexibility to develop and use terms and conditions for easements, if the Secretary finds the terms

and conditions consistent with the purposes of the program and adequate to enable effective enforcement of the easements;

(H) if applicable, allow an eligible entity to include a charitable donation or qualified conservation contribution (as defined by section 170(h) of title 26) from the landowner from which the easement will be purchased as part of the entity's share of the cost to purchase an easement; and

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

(3) Cost sharing

(A) In general

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

(B) Minimum share by eligible entity

The eligible entity shall be required to provide a share of the purchase price at least equivalent to that provided by the Secretary.

(C) Priority

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

(4) Violation

If an eligible entity violates the terms or conditions of a cooperative agreement entered into under this subsection—

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

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

(e) Protection of Federal investment

When delegating a duty under this section, the Secretary shall ensure that the terms of an easement include a contingent right of enforcement for the Department.

(Pub. L. 99-198, title XII, §1238Q, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 262; amended Pub. L. 108-447, div. A, title VII, §797, Dec. 8, 2004, 118 Stat. 2852; Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1055; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1783.)

CODIFICATION

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

AMENDMENTS

2008—Pub. L. 110-246, §2403, amended section generally. Prior to amendment, section related to delegation to private organizations.

2004—Subsec. (a). Pub. L. 108-447, §797(1), substituted “transfer title of ownership to an easement under this subpart to” for “permit” in introductory provisions.

Subsec. (d). Pub. L. 108-447, §797(2), added subsec. (d) and struck out heading and text of former subsec. (d).

Text consisted of pars. (1) and (2) relating to reassignment of easements to new private organizations or the Secretary.

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.

PART III—ENVIRONMENTAL EASEMENT PROGRAM

§ 3839. Environmental easement program

(a) Establishment

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

(b) Eligibility; termination

(1) In general

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

- (A) contains riparian corridors;
- (B) is an area of critical habitat for wildlife, especially threatened or endangered species; or
- (C) contains other environmentally sensitive areas, as determined by the Secretary, that would prevent a producer from complying with other Federal, State, or local environmental goals if commodities were to be produced on such land.

(2) Ineligible land

The Secretary may not acquire easements on—

- (A) land that contains timber stands established under the conservation reserve under this subchapter; or
- (B) pasture land established to trees under the conservation reserve under this subchapter.

(3) Termination of existing contract

The Secretary may terminate or modify any existing contract entered into under section 3831(a) of this title if eligible land that is subject to such contract is transferred into the program established by this part.

(Pub. L. 99-198, title XII, §1239, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597; amended Pub. L. 102-237, title II, §204(7), Dec. 13, 1991, 105 Stat. 1855.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (b)(1), is Pub. L. 91-559, Dec. 19, 1970, 84 Stat. 1468, as amended,

which is classified generally to chapter 29 (§1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

1991—Subsec. (b)(1)(A). Pub. L. 102-237 substituted a semicolon for comma after “corridors”.

§ 3839a. Duties of owners; components of plan

(a) Duties of owners

(1) Plan

In conjunction with the creation of an easement on any lands under this part, the owner of the farm or ranch wherein such lands are located must agree to implement a natural resource conservation management plan under subsection (b) of this section approved by the Secretary in consultation with the Secretary of the Interior.

(2) Agreement

In return for the creation of an easement on any lands under this part, the owner of the farm or ranch wherein such lands are located must agree to the following:

(A) To the creation and recordation of an appropriate deed restriction in accordance with applicable State law to reflect the easement agreed to under this part with respect to such lands.

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

(C) To comply with such additional provisions as the Secretary determines are desirable and are included in the easement to carry out this part or to facilitate the practical administration thereof.

(D) To specify the location of any timber harvesting on land subject to the easement. Harvesting and commercial sales of Christmas trees and nuts shall be prohibited on such land, except that no such easement or related agreement shall prohibit activities consistent with customary forestry practices, such as pruning, thinning, or tree stand improvement on lands converted to forestry uses.

(E) To limit the production of any agricultural commodity on such lands only to production for the benefit of wildlife.

(F) Not to conduct any harvesting or grazing, nor otherwise make commercial use of the forage, on land that is subject to the easement unless specifically provided for in the easement or related agreement.

(G) Not to adopt any other practice that would tend to defeat the purposes of this part, as determined by the Secretary.

(3) Violation

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