

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,