

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.

(b) Components of plan

The natural resource conservation management plan referred to in subsection (a)(1) of this section (hereafter referred to as the “plan”)—

(1) shall set forth—

(A) the conservation measures and practices to be carried out by the owner of the land subject to the easement; and

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

(2) shall provide for the permanent retirement of any existing cropland base and allotment history for such land under any program administered by the Secretary.

(Pub. L. 99-198, title XII, §1239A, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597.)

§ 3839b. Duties of Secretary

In return for the granting of an easement by an owner under this part, the Secretary shall—

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

(2) pay for a period not to exceed 10 years annual easement payments in the aggregate not to exceed the lesser of—

(A) \$250,000; or

(B) the difference in the value of the land with and without an easement;

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

(4) permit the land to be used for wildlife activities, including hunting and fishing, if such use is permitted by the owner.

(Pub. L. 99-198, title XII, §1239B, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3598.)

§ 3839c. Payments**(a) Time of payment**

The Secretary shall provide payment for obligations incurred by the Secretary under this part—

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

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

(b) Cost sharing payments

In making cost sharing payments to owners under this part, the Secretary may pay up to 100 percent of the cost of establishing conservation measures and practices pursuant to this part.

(c) Easement payments; acceptability of offers**(1) Determination of amount**

The Secretary shall determine the amount payable to owners in the form of easement payments under this part, and in making such determination may consider, among other

things, the amount necessary to encourage owners to participate in the easement program.

(2) Acceptability of offers

In determining the acceptability of easement offers, the Secretary may take into consideration—

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

(B) the productivity of the land; and

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

(d) Form of payment

Except as otherwise provided in this section, payments under this part—

(1) shall be made in cash in such amount and at such time as is agreed on and specified in the easement or related agreement; and

(2) may be made in advance of a determination of performance.

(e) Payments to others

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

(f) Payment limitation**(1) In general**

The total amount of easement payments made to a person under this part for any year may not exceed \$50,000.

(2) Regulations

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

(3) Other payments

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

(4) State environmental enhancement

The provisions of this subsection that limit payments to any person, and section 1305(d) of the Agricultural Reconciliation Act of 1987 (7 U.S.C. 1308 note), shall not be applicable to payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under an environmental easement enhancement program carried out by that entity that has been approved by the Secretary. The Secretary may enter into such agreements for payments to States, political subdivisions, or agencies thereof that