

99-198, which enacted this chapter and former section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

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 L. 110-234 were repealed by section 4(a) of Pub.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, §2711, which directed the general amendment of section 1262 of the “Farm Security Act of 1985”, was executed by making the amendment to this section, which is section 1262 of the Food Security Act of 1985, to reflect the probable intent of Congress. Prior to amendment, section consisted of subsecs. (a) to (e) which related to general responsibilities of committees established under section 3861 of this title, wetland and wildlife habitat protection guidelines, provision of assistance and recommendations with respect to enumerated technical aspects, authority of committees, and FACA requirements.

1996—Subsec. (a). Pub. L. 104-127, §342(b)(1), inserted at end “Each State technical committee shall provide public notice of, and permit public attendance at meetings considering, issues of concern related to carrying out this chapter.”

Subsec. (b)(1). Pub. L. 104-127, §342(b)(2), inserted at end “Each State technical committee shall establish criteria and guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides.”

Subsec. (c)(7) to (9). Pub. L. 104-127, §342(b)(3), struck out “and” at end of par. (7), added par. (8), and redesignated former par. (8) as (9).

1994—Subsec. (e). Pub. L. 103-354 added subsec. (e).

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.

PUBLIC NOTICE AND COMMENT FOR REVISIONS TO CERTAIN STATE TECHNICAL GUIDES

Pub. L. 104-127, title III, §343, Apr. 4, 1996, 110 Stat. 1009, provided that: “After the date of enactment of this Act [Apr. 4, 1996], the Secretary of Agriculture shall provide for public notice and comment under section 553 of title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service State technical guides that are used to carry out subtitles A, B, and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq. [3811 et seq., 3821 et seq.].)”

SUBCHAPTER VII—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

§ 3865. Establishment and purposes

(a) Establishment

The Secretary shall establish an agricultural conservation easement program for the conservation of eligible land and natural resources through easements or other interests in land.

(b) Purposes

The purposes of the program are to—

(1) combine the purposes and coordinate the functions of the wetlands reserve program established under section 3837¹ of this title, the grassland reserve program established under section 3838n¹ of this title, and the farmland protection program established under section 3838i¹ of this title, as such sections were in effect on the day before February 7, 2014;

(2) restore, protect, and enhance wetlands on eligible land;

(3) protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and

(4) protect grazing uses and related conservation values by restoring or conserving eligible land.

(Pub. L. 99-198, title XII, §1265, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 731; amended Pub. L. 115-334, title II, §2601, Dec. 20, 2018, 132 Stat. 4585.)

REFERENCES IN TEXT

Sections 3837, 3838n, and 3838i of this title, referred to in subsec. (b)(1), were repealed by Pub. L. 113-79, title II, §§2703(a), 2704(a), 2705(a), Feb. 7, 2014, 128 Stat. 767, 768.

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115-334, §2601(1), inserted “that negatively affect the agricultural uses and conservation values” after “uses of that land”.

Subsec. (b)(4). Pub. L. 115-334, §2601(2), substituted “restoring or conserving” for “restoring and conserving”.

§ 3865a. Definitions

In this subchapter:

(1) Agricultural land easement

The term “agricultural land easement” means an easement or other interest in eligible land that—

(A) is conveyed for the purpose of protecting natural resources and the agricultural nature of the land; and

(B) permits the landowner the right to continue agricultural production and related uses.

(2) Buy-protect-sell transaction

(A) In general

The term “buy-protect-sell transaction” means a legal arrangement—

(i) between an eligible entity and the Secretary relating to land that an eligible entity owns or is going to purchase prior to acquisition of an agricultural land easement;

(ii) under which the eligible entity certifies to the Secretary that the eligible entity shall—

(I)(aa) hold an agricultural land easement on that land, but transfer ownership of the land to a farmer or rancher that is not an eligible entity prior to or on acquisition of the agricultural land easement; or

(bb) hold an agricultural land easement on that land, but transfer owner-

¹ See References in Text note below.

ship of the land to a farmer or rancher that is not an eligible entity in a timely manner and, subject to subparagraph (B), not later than 3 years after the date of acquisition of the agricultural land easement; and

(II) make an initial sale of the land subject to the agricultural land easement to a farmer or rancher at not more than agricultural value, plus any reasonable holding and transaction costs incurred by the eligible entity, as determined by the Secretary; and

(iii) under which the Secretary shall be reimbursed for the entirety of the Federal share of the cost of the agricultural land easement by the eligible entity if the eligible entity fails to transfer ownership under item (aa) or (bb), as applicable, of clause (ii)(I).

(B) Time extension

Under subparagraph (A)(ii)(I)(bb), an eligible entity may transfer land later than 3 years after the date of acquisition of the agricultural land easement if the Secretary determines an extension of time is justified.

(3) Eligible entity

The term “eligible entity” means—

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

(B) an organization that is—

(i) 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) an organization described in section 501(c)(3) of title 26 that is exempt from taxation under section 501(a) of title 26; or

(iii) described in—

(I) paragraph (1) or (2) of section 509(a) of title 26; or

(II) section 509(a)(3) of title 26 and is controlled by an organization described in section 509(a)(2) of title 26.

(4) Eligible land

The term “eligible land” means private or tribal land that is—

(A) in the case of an agricultural land easement, agricultural land, including land on a farm or ranch—

(i) that is subject to—

(I) a pending offer for purchase of an agricultural land easement from an eligible entity; or

(II) a buy-protect-sell transaction;

(ii)(I) that has prime, unique, or other productive soil;

(II) that contains historical or archaeological resources;

(III) the enrollment of which would protect grazing uses and related conservation values by restoring and conserving land; or

(IV) the protection of which will further a State or local policy consistent with the purposes of the program; and

(iii) that is—

(I) cropland;

(II) rangeland;

(III) grassland or land that contains forbs, or shrubland for which grazing is the predominant use;

(IV) located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;

(V) pastureland; or

(VI) nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development;

(B) in the case of a wetland reserve easement, a wetland or related area, including—

(i) farmed or converted wetlands, together with adjacent land that is functionally dependent on that land, if the Secretary determines it—

(I) is likely to be successfully restored in a cost-effective manner; and

(II) will maximize the wildlife benefits and wetland functions and values;

(ii) cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of—

(I) a closed basin lake and adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide 50 percent share of the cost of an easement; or

(II) a pothole and adjacent land that is functionally dependent on it;

(iii) farmed wetlands and adjoining lands that—

(I) are enrolled in the conservation reserve program;

(II) have the highest wetland functions and values, as determined by the Secretary; and

(III) are likely to return to production after they leave the conservation reserve program;

(iv) riparian areas that link wetlands that are protected by easements or some other device that achieves the same purpose as an easement; or

(v) other wetlands of an owner that would not otherwise be eligible, if the Secretary determines that the inclusion of such wetlands in a wetland reserve easement would significantly add to the functional value of the easement; or

(C) in the case of either an agricultural land easement or a wetland reserve easement, other land that is incidental to land described in subparagraph (A) or (B), if the Secretary determines that it is necessary for the efficient administration of an easement under the program.

(5) Monitoring report

The term “monitoring report” means a report, the contents of which are formulated and prepared by the holder of an agricultural land

easement, that accurately documents whether the land subject to the agricultural land easement is in compliance with the terms and conditions of the agricultural land easement.

(6) Program

The term “program” means the agricultural conservation easement program established by this subchapter.

(7) Wetland reserve easement

The term “wetland reserve easement” means a reserved interest in eligible land that—

(A) is defined and delineated in a deed; and
(B) stipulates—

(i) the rights, title, and interests in land conveyed to the Secretary; and

(ii) the rights, title, and interests in land that are reserved to the landowner.

(Pub. L. 99–198, title XII, §1265A, as added Pub. L. 113–79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 732; amended Pub. L. 115–334, title II, §2602, Dec. 20, 2018, 132 Stat. 4585.)

AMENDMENTS

2018—Par. (1)(B). Pub. L. 115–334, §2602(1), struck out “subject to an agricultural land easement plan, as approved by the Secretary” after “related uses”.

Pars. (2), (3). Pub. L. 115–334, §2602(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 115–334, §2602(2), redesignated par. (3) as (4). Former par. (4) redesignated (6).

Par. (4)(A)(i). Pub. L. 115–334, §2602(4)(A), inserted dash after “to”, subcl. (I) designation before “a pending”, and “or” at end, and added subcl. (II).

Par. (4)(B)(i)(II). Pub. L. 115–334, §2602(4)(B), struck out “, as determined by the Secretary in consultation with the Secretary of the Interior at the local level” before semicolon at end.

Par. (5). Pub. L. 115–334, §2602(5), added par. (5). Former par. (5) redesignated (7).

Pars. (6), (7). Pub. L. 115–334, §2602(2), redesignated pars. (4) and (5) as (6) and (7), respectively.

§ 3865b. Agricultural land easements

(a) Availability of assistance

The Secretary shall facilitate and provide funding for—

(1) the purchase by eligible entities of agricultural land easements in eligible land;

(2) technical assistance to implement the program, including technical assistance for the development of a conservation plan under subsection (b)(4)(C)(iv); and

(3) buy-protect-sell transactions.

(b) Cost-share assistance

(1) In general

The Secretary shall protect the agricultural use, including grazing, and related conservation values of eligible land through cost-share assistance to eligible entities for purchasing agricultural land easements.

(2) Scope of assistance available

(A) Federal share

An agreement described in paragraph (4) shall provide for a Federal share determined by the Secretary of an amount not to exceed 50 percent of the fair market value of the agricultural land easement, as determined by the Secretary using—

(i) the Uniform Standards of Professional Appraisal Practice;

(ii) an areawide market analysis or survey; or

(iii) another industry-approved method.

(B) Non-federal share

(i) In general

Under the agreement, the eligible entity shall provide a share that is at least equivalent to that provided by the Secretary.

(ii) Grasslands exception

In the case of grassland of special environmental significance, as determined by the Secretary, the Secretary may provide an amount not to exceed 75 percent of the fair market value of the agricultural land easement.

(iii) Permissible forms

The non-Federal share provided by an eligible entity under this subparagraph may comprise—

(I) cash resources;

(II) a charitable donation or qualified conservation contribution (as defined in section 170(h) of title 26) from the private landowner from which the agricultural land easement will be purchased;

(III) costs associated with securing a deed to the agricultural land easement, including the cost of appraisal, survey, inspection, and title; and

(IV) other costs, as determined by the Secretary.

(3) Evaluation and ranking of applications

(A) Criteria

The Secretary shall establish evaluation and ranking criteria to maximize the benefit of Federal investment under the program.

(B) Considerations

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

(i) protecting agricultural uses and related conservation values of the land; and

(ii) maximizing the protection of areas devoted to agricultural use.

(C) Accounting for geographic differences

The Secretary may adjust the criteria established under subparagraph (A) to account for geographic differences, if the adjustments—

(i) meet the purposes of the program; and

(ii) continue to maximize the benefit of the Federal investment under the program.

(D) Priority

In evaluating applications under the program, the Secretary may give priority to an application for the purchase of an agricultural land easement that, as determined by the Secretary, maintains agricultural viability.

(E) Bidding down

If the Secretary determines that 2 or more applications for cost-share assistance are comparable in achieving the purpose of the