

Subsec. (d). Pub. L. 115-334, §2603(b)(5), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “The Secretary may provide technical assistance, if requested, to assist in—

- “(1) compliance with the terms and conditions of easements; and
- “(2) implementation of an agricultural land easement plan.”

§ 3865c. Wetland reserve easements

(a) Availability of assistance

The Secretary shall provide assistance to owners of eligible land to restore, protect, and enhance wetlands through—

- (1) wetland reserve easements and related wetland reserve easement plans; and
- (2) technical assistance.

(b) Easements

(1) Method of enrollment

The Secretary shall enroll eligible land under this section through the use of—

- (A) 30-year easements;
- (B) permanent easements;
- (C) easements for the maximum duration allowed under applicable State laws; or
- (D) as an option for Indian tribes only, 30-year contracts.

(2) Limitations

(A) Ineligible land

The Secretary may not acquire easements on—

- (i) land established to trees under the conservation reserve program, except in cases where the Secretary determines it would further the purposes of this section; and
- (ii) farmed wetlands or converted wetlands where the conversion was not commenced prior to December 23, 1985.

(B) Changes in ownership

No wetland reserve easement shall be created on land that has changed ownership during the preceding 24-month period unless—

- (i) the new ownership was acquired by will or succession as a result of the death of the previous owner;
- (ii)(I) the ownership change occurred because of foreclosure on the land; and
- (II) immediately before the foreclosure, the owner of the land exercises a right of redemption from the mortgage holder in accordance with State law; or
- (iii) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program.

(3) Evaluation and ranking of offers

(A) Criteria

The Secretary shall establish evaluation and ranking criteria for offers from landowners under this section to maximize the benefit of Federal investment under the program.

(B) Considerations

When evaluating offers from landowners, the Secretary may consider—

(i) the conservation benefits of obtaining a wetland reserve easement, including the potential environmental benefits if the land was removed from agricultural production;

(ii) the cost effectiveness of each wetland reserve easement, so as to maximize the environmental benefits per dollar expended;

(iii) whether the landowner or another person is offering to contribute financially to the cost of the wetland reserve easement to leverage Federal funds; and

(iv) such other factors as the Secretary determines are necessary to carry out the purposes of the program.

(C) Priority

The Secretary shall give priority to acquiring wetland reserve easements based on the value of the wetland reserve easement for protecting and enhancing habitat for migratory birds and other wildlife or improving water quality.

(4) Agreement

To be eligible to place eligible land into the program through a wetland reserve easement, the owner of such land shall enter into an agreement with the Secretary to—

- (A) grant an easement on such land to the Secretary;
- (B) authorize the implementation of a wetland reserve easement plan developed for the eligible land under subsection (f);
- (C) create and record an appropriate deed restriction in accordance with applicable State law to reflect the easement agreed to;
- (D) provide a written statement of consent to such easement signed by those holding a security interest in the land;
- (E) comply with the terms and conditions of the easement and any related agreements; and
- (F) permanently retire any existing base history for the land on which the easement has been obtained.

(5) Terms and conditions of easement

(A) In general

A wetland reserve easement shall include terms and conditions that—

- (i) permit—
 - (I) repairs, improvements, and inspections on the land that are necessary to maintain existing public drainage systems; and
 - (II) owners to control public access on the easement areas while identifying access routes to be used for restoration activities and management and easement monitoring;
- (ii) prohibit—
 - (I) the alteration of wildlife habitat and other natural features of such land, unless specifically authorized by the Secretary;
 - (II) the spraying of such land with chemicals or the mowing of such land, except where such spraying or mowing is authorized by the Secretary or is necessary—

(aa) to comply with Federal or State noxious weed control laws;

(bb) to comply with a Federal or State emergency pest treatment program; or

(cc) to meet habitat needs of specific wildlife species;

(III) any activities to be carried out on the owner's or successor's land that is immediately adjacent to, and functionally related to, the land that is subject to the easement if such activities will alter, degrade, or otherwise diminish the functional value of the eligible land; and

(IV) the adoption of any other practice that would tend to defeat the purposes of the program, as determined by the Secretary;

(iii) provide for the efficient and effective establishment of wetland functions and values; and

(iv) include such additional provisions as the Secretary determines are desirable to carry out the program or facilitate the practical administration thereof.

(B) Violation

On the violation of a term or condition of a wetland reserve easement, the wetland reserve 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 the program, with interest on the payments as determined appropriate by the Secretary.

(C) Compatible uses

(i) In general

Land subject to a wetland reserve easement may be used for compatible economic uses, including such activities as hunting and fishing, managed timber harvest, water management, or periodic haying or grazing, if such use is specifically permitted by the wetland reserve easement plan developed for the land under subsection (f) and is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established.

(ii) Compatible use authorization

In evaluating and authorizing a compatible economic use under clause (i), the Secretary shall—

(I) request and consider the advice of the applicable State technical committee established under section 3861(a) of this title about the 1 or more types of uses that may be authorized to be conducted on land subject to a wetland reserve easement, including the frequency, timing, and intensity of those uses;

(II) consider the ability of an authorized use to facilitate the practical administration and management of that land; and

(III) ensure that an authorized use furthers the functions and values for which the wetland reserve easement was established.

(D) Reservation of grazing rights

The Secretary may include in the terms and conditions of a wetland reserve easement a provision under which the owner reserves grazing rights if—

(i) the Secretary determines that the reservation and use of the grazing rights—

(I) is compatible with the land subject to the easement;

(II) is consistent with the historical natural uses of the land and the long-term protection and enhancement goals for which the easement was established; and

(III) complies with the wetland reserve easement plan developed for the land under subsection (f) or a grazing management plan that is consistent with the wetland reserve easement plan and has been reviewed, and modified as necessary, at least every 5 years; and

(ii) the agreement provides for a commensurate reduction in the easement payment to account for the grazing value, as determined by the Secretary.

(6) Compensation

(A) Determination

(i) Permanent easements

The Secretary shall pay as compensation for a permanent wetland reserve easement acquired under the program an amount necessary to encourage enrollment in the program, based on the lowest of—

(I) the fair market value of the land, as determined by the Secretary, using the Uniform Standards of Professional Appraisal Practice or an areawide 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.

(ii) Other

Compensation for a 30-year contract or 30-year wetland reserve easement shall be not less than 50 percent, but not more than 75 percent, of the compensation that would be paid for a permanent wetland reserve easement.

(B) Form of payment

Compensation for a wetland reserve easement shall be provided by the Secretary in the form of a cash payment, in an amount determined under subparagraph (A).

(C) Payment schedule

(i) Easements valued at \$500,000 or less

For wetland reserve easements valued at \$500,000 or less, the Secretary may provide payments in not more than 10 annual payments.

(ii) Easements valued at more than \$500,000

For wetland reserve easements valued at more than \$500,000, the Secretary may provide payments in at least 5, but not more than 10 annual payments, except that, if

the Secretary determines it would further the purposes of the program, the Secretary may make a lump-sum payment for such an easement.

(c) Easement restoration

(1) In general

The Secretary shall provide financial assistance to owners of eligible land to carry out the establishment of conservation measures and practices and protect wetland functions and values, including necessary maintenance activities, as set forth in a wetland reserve easement plan developed for the eligible land under subsection (f).

(2) Payments

The Secretary shall—

(A) in the case of a permanent wetland reserve easement, pay an amount that is not less than 75 percent, but not more than 100 percent, of the eligible costs, as determined by the Secretary; and

(B) in the case of a 30-year contract or 30-year wetland reserve easement, pay an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs, as determined by the Secretary.

(d) Technical assistance

(1) In general

The Secretary shall assist owners in complying with the terms and conditions of a wetland reserve easement.

(2) Contracts or agreements

The Secretary may enter into 1 or more contracts with private entities or agreements with a State, nongovernmental organization, or Indian tribe to carry out necessary restoration, enhancement, or maintenance of a wetland reserve easement if the Secretary determines that the contract or agreement will advance the purposes of the program.

(e) Wetland reserve enhancement option

The Secretary may enter into 1 or more agreements with a State (including a political subdivision or agency of a State), nongovernmental organization, or Indian tribe to carry out a special wetland reserve enhancement option that the Secretary determines would advance the purposes of program.

(f) Administration

(1) Wetland reserve easement plan

(A) In general

The Secretary shall develop a wetland reserve easement plan—

(i) for any eligible land subject to a wetland reserve easement; and

(ii) that restores, protects, enhances, manages, maintains, and monitors the eligible land subject to the wetland reserve easements acquired under this section.

(B) Practices and activities

A wetland reserve easement plan under subparagraph (A) shall include practices and activities, including repair or replacement, that are necessary to restore and maintain the enrolled land and the functions and val-

ues of the wetland subject to a wetland reserve easement.

(2) Alternative plant communities

The Secretary, in coordination with State technical committees established under section 3861(a) of this title and pursuant to State-specific criteria and guidelines, may authorize the establishment or restoration of a hydrologically appropriate native community or alternative naturalized vegetative community as part of a wetland reserve easement plan on land subject to a wetland reserve easement if that hydrologically appropriate native or alternative naturalized vegetative community shall—

(A) substantially support or benefit migratory waterfowl or other wetland wildlife; or

(B) meet local resource concerns or needs (including as an element of a regional, State, or local wildlife initiative or plan).

(3) Delegation of easement administration

(A) In general

The Secretary may delegate any of the management, monitoring, and enforcement responsibilities of the Secretary under this section to other Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities, or to conservation organizations if the Secretary determines the organization has similar expertise and resources.

(B) Limitation

The Secretary shall not delegate any of the monitoring or enforcement responsibilities under this section to conservation organizations.

(4) Payments

(A) Timing of payments

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

(i) with respect to any easement restoration obligation under subsection (c), as soon as possible after the obligation is incurred; and

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

(B) Payments to others

If an owner who is entitled to a payment under this section dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person or entity 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.

(g) Application

The relevant provisions of this section shall also apply to a 30-year contract.

(Pub. L. 99-198, title XII, §1265C, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 737; amended Pub. L. 115-334, title II, §2604, Dec. 20, 2018, 132 Stat. 4589.)

AMENDMENTS

2018—Subsec. (b)(3)(C). Pub. L. 115-334, §2604(1)(A), inserted “or improving water quality” before period at end.

Subsec. (b)(5)(C). Pub. L. 115-334, §2604(1)(B)(i), designated existing provisions as cl. (i), inserted heading, inserted “water management,” after “managed timber harvest,” and added cl. (ii).

Subsec. (b)(5)(D)(i)(III). Pub. L. 115-334, §2604(1)(B)(ii), inserted “or a grazing management plan that is consistent with the wetland reserve easement plan and has been reviewed, and modified as necessary, at least every 5 years” after “under subsection (f)”.

Subsec. (f)(1). Pub. L. 115-334, §2604(2)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The Secretary shall develop a wetland reserve easement plan for any eligible land subject to a wetland reserve easement, which shall include practices and activities necessary to restore, protect, enhance, and maintain the enrolled land.”

Subsec. (f)(2) to (4). Pub. L. 115-334, §2604(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

§ 3865d. Administration

(a) Ineligible land

The Secretary may not use program funds for the purposes of acquiring an easement on—

- (1) lands owned by an agency of the United States, other than land held in trust for Indian tribes;
- (2) lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government;
- (3) land subject to an easement or deed restriction which, as determined by the Secretary, provides similar protection as would be provided by enrollment in the program; or
- (4) lands where the purposes of the program would be undermined due to on-site or off-site conditions, such as risk of hazardous substances, permitted or existing rights of way, infrastructure development, or adjacent land uses.

(b) Priority

In evaluating applications under the program, the Secretary may give priority to land that is currently enrolled in the conservation reserve program in a contract that is set to expire within 1 year and—

- (1) in the case of an agricultural land easement, is grassland that would benefit from protection under a long-term easement; and
- (2) in the case of a wetland reserve easement, is a wetland or related area with the highest wetland functions and value and is likely to return to production after the land leaves the conservation reserve program.

(c) Subordination, exchange, modification, and termination

(1) Subordination

The Secretary may subordinate any interest in land, or portion of such interest, administered by the Secretary (including for the purposes of utilities and energy transmission services) either directly or on behalf of the

Commodity Credit Corporation under the program if the Secretary determines that the subordination—

- (A) increases conservation values or has a limited negative effect on conservation values;
- (B) minimally affects the acreage subject to the interest in land; and
- (C) is in the public interest or furthers the practical administration of the program.

(2) Modification and exchange

(A) Authority

The Secretary may approve a modification or exchange of any interest in land, or portion of such interest, administered by the Secretary, either directly or on behalf of the Commodity Credit Corporation under the program if the Secretary determines that—

- (i) no reasonable alternative exists and the effect on the interest in land is avoided or minimized to the extent practicable; and
- (ii) the modification or exchange—
 - (I) results in equal or increased conservation values;
 - (II) results in equal or greater economic value to the United States;
 - (III) is consistent with the original intent of the easement;
 - (IV) is consistent with the purposes of the program; and
 - (V) is in the public interest or furthers the practical administration of the program.

(B) Limitation

In modifying or exchanging an interest in land, or portion of such interest, under this paragraph, the Secretary may not increase any payment to an eligible entity.

(3) Termination

The Secretary may approve a termination of any interest in land, or portion of such interest, administered by the Secretary, directly or on behalf of the Commodity Credit Corporation under the program if the Secretary determines that—

- (A) termination is in the interest of the Federal Government;
- (B) the United States will be fully compensated for—
 - (i) the fair market value of the interest in land;
 - (ii) any costs relating to the termination; and
 - (iii) any damages determined appropriate by the Secretary; and
- (C) the termination will—
 - (i) address a compelling public need for which there is no practicable alternative even with avoidance and minimization; and
 - (ii) further the practical administration of the program.

(4) Consent

The Secretary shall obtain consent from the landowner and eligible entity, if applicable, for any subordination, exchange, modification, or termination of interest in land, or portion of such interest, under this subsection.