

(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.)

Editorial Notes

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 pri-

vate 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 program, the Secretary shall not assign a higher priority to any of those applications solely on the basis of lesser cost to the program.

(4) Agreements with eligible entities

(A) 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 this section.

(B) Length of agreements

An agreement shall be for a term that is—

(i) in the case of an eligible entity certified under the process described in paragraph (5), a minimum of five years; and

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

(C) Minimum terms and conditions

An eligible entity shall be authorized to use its own terms and conditions for agricultural land easements so long as the Secretary determines such terms and conditions—

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

(ii) permit effective enforcement of the conservation purposes of such easements;

(iii) include a right of enforcement for the Secretary that—

(I) may be used only if the terms and conditions of the easement are not enforced by the eligible entity; and

(II) does not extend to a right of inspection unless—

(aa)(AA) the holder of the easement fails to provide monitoring reports in a timely manner; or

(BB) the Secretary has a reasonable and articulable belief that the terms and conditions of the easement have been violated; and

(bb) prior to the inspection, the Secretary notifies the eligible entity and the landowner of the inspection and provides a reasonable opportunity for the eligible entity and the landowner to participate in the inspection;

(iv) include a conservation plan only for any portion of the land subject to the agricultural land easement that is highly erodible cropland; and

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

(D) Additional permitted terms and conditions

An eligible entity may include terms and conditions for an agricultural land easement that—

(i) are intended to keep the land subject to the agricultural land easement under the ownership of a farmer or rancher, as determined by the Secretary;

(ii) allow subsurface mineral development on the land subject to the agricultural land easement and in accordance with applicable State law if, as determined by the Secretary—

(I) the subsurface mineral development—

(aa) has a limited and localized impact;

(bb) does not harm the agricultural use and conservation values of the land subject to the easement;

(cc) does not materially alter or affect the existing topography;

(dd) shall comply with a subsurface mineral development plan that—

(AA) includes a plan for the remediation of impacts to the agricultural use and conservation values of the land subject to the easement; and

(BB) is approved by the Secretary prior to the initiation of mineral development activity;

(ee) is not accomplished by any surface mining method;

(ff) is within the impervious surface limits of the easement under subparagraph (C)(v); and

(gg) uses practices and technologies that minimize the duration and intensity of impacts to the agricultural use

and conservation values of the land subject to the easement; and

(II) each area impacted by the subsurface mineral development shall be reclaimed and restored by the holder of the mineral rights at cessation of operation; and

(iii) include other relevant activities relating to the agricultural land easement, as determined by the Secretary.

(E) 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.

(F) Effect of violation

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

(i) the Secretary may terminate the agreement; and

(ii) 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.

(5) Certification of eligible entities

(A) Certification process

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

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

(ii) enter into long-term agreements with certified eligible entities;

(iii) accept proposals for cost-share assistance for the purchase of agricultural land easements throughout the duration of such agreements; and

(iv) allow a certified eligible entity to use its own terms and conditions, notwithstanding paragraph (4)(C), as long as the terms and conditions are consistent with the purposes of the program.

(B) Certification criteria

In order to be certified, an eligible entity shall demonstrate to the Secretary that the eligible entity—

(i) will maintain, at a minimum, for the duration of the agreement—

(I) a plan for administering easements that is consistent with the purpose of the program;

(II) the capacity and resources to monitor and enforce agricultural land easements; and

(III) policies and procedures to ensure—

(aa) the long-term integrity of agricultural land easements on eligible land;

(bb) timely completion of acquisitions of such easements; and

(cc) timely and complete evaluation and reporting to the Secretary on the use of funds provided under the program;

(ii) has—

(I) been accredited by the Land Trust Accreditation Commission, or by an

equivalent accrediting body, as determined by the Secretary;

(II) acquired not fewer than 10 agricultural land easements under the program or any predecessor program; and

(III) successfully met the responsibilities of the eligible entity under the applicable agreements with the Secretary, as determined by the Secretary, relating to agricultural land easements that the eligible entity has acquired under the program or any predecessor program; or

(iii) is a State department of agriculture or other State agency with statutory authority for farm and ranchland protection that has—

(I) acquired not fewer than 10 agricultural land easements under the program or any predecessor program; and

(II) successfully met the responsibilities of the eligible entity under the applicable agreements with the Secretary, as determined by the Secretary, relating to agricultural land easements that the eligible entity has acquired under the program or any predecessor program.

(C) Review and revision

(i) Review

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

(ii) Revocation

If the Secretary finds that a certified eligible entity no longer meets the criteria established under subparagraph (B), the Secretary may—

(I) allow the certified eligible 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 eligible entity, if, after the specified period of time, the certified eligible entity does not meet such criteria.

(c) Method of enrollment

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

(1) permanent easements; or

(2) easements for the maximum duration allowed under applicable State laws.

(d) Technical assistance

The Secretary may provide technical assistance, if requested, to assist in compliance with the terms and conditions of easements.

(Pub. L. 99-198, title XII, §1265B, as added Pub. L. 113-79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 734; amended Pub. L. 115-334, title II, §2603, Dec. 20, 2018, 132 Stat. 4586.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115-334, §2603(a)(2), substituted “technical assistance to implement the pro-

gram, including technical assistance for the development of a conservation plan under subsection (b)(4)(C)(iv); and” for “technical assistance to provide for the conservation of natural resources pursuant to an agricultural land easement plan.”

Subsec. (a)(3). Pub. L. 115-334, §2603(a)(1), (3), added par. (3).

Subsec. (b)(2)(B)(ii), (iii). Pub. L. 115-334, §2603(b)(1)(A), added cls. (ii) and (iii) and struck out former cl. (ii). Prior to amendment, text of cl. (ii) read as follows: “An eligible entity may include as part of its share under clause (i) a charitable donation or qualified conservation contribution (as defined by section 170(h) of title 26) from the private landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the amount contributed by the Secretary.”

Subsec. (b)(2)(C). Pub. L. 115-334, §2603(b)(1)(B), struck out subpar. (C) which related to exception to Federal and non-Federal share requirements in the case of grassland of special environmental significance and for projects of special significance.

Subsec. (b)(3)(C) to (E). Pub. L. 115-334, §2603(b)(2), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (b)(4)(C)(iii), (iv). Pub. L. 115-334, §2603(b)(3)(A), added cls. (iii) and (iv) and struck out former cls. (iii) and (iv) which read as follows:

“(iii) include a right of enforcement for the Secretary, that may be used only if the terms of the easement are not enforced by the holder of the easement;

“(iv) subject the land in which an interest is purchased to an agricultural land easement plan that—

“(I) describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired;

“(II) requires the management of grasslands according to a grasslands management plan; and

“(III) includes a conservation plan, where appropriate, and requires, at the option of the Secretary, the conversion of highly erodible cropland to less intensive uses; and”.

Subsec. (b)(4)(D) to (F). Pub. L. 115-334, §2603(b)(3)(B), (C), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(5)(A)(iv). Pub. L. 115-334, §2603(b)(4)(A), added cl. (iv).

Subsec. (b)(5)(B). Pub. L. 115-334, §2603(b)(4)(B), substituted “eligible entity—” for “entity”, inserted cl. (i) designation before “will maintain”, redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i) and subcls. (I) to (III) of former cl. (iii) as items (aa) to (cc), respectively, of subcl. (III), realigned margins, and added cl. (ii).

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 mi-