

planting of hardwood trees, windbreaks, shelterbelts, or wildlife corridors, if the original term of the contract was less than 15 years, the owner or operator may extend the contract to a term of not to exceed 15 years.

(B) Cost share assistance

The Secretary shall pay 50 percent of the cost of establishing conservation measures and practices authorized under this subsection for which the Secretary determines the cost sharing is appropriate and in the public interest.

(b) Conversion to wetland

The Secretary shall permit an owner or operator that has entered into a contract under this subpart that is in effect on November 28, 1990, to restore areas of highly erodible cropland that are devoted to vegetative cover under the contract to wetland if—

- (1) the areas are prior converted wetland;
- (2) the owner or operator of the areas enters into an agreement to provide the Secretary with a long-term or permanent easement under subpart C covering the areas;
- (3) there is a high probability that the prior converted area can be successfully restored to wetland status; and
- (4) the restoration of the areas otherwise meets the requirements of subpart C.

(c) Limitation

The Secretary shall not incur, through a conversion under this section, any additional expense on the acres, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs under this section in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

(d) Condition of contract

An owner or operator shall as a condition of entering into a contract under subsection (a) of this section participate in the Forest Stewardship Program established under section 2103a of this title.

(Pub. L. 99-198, title XII, §1235A, as added Pub. L. 107-171, title II, §2101(a), May 13, 2002, 116 Stat. 251.)

PRIOR PROVISIONS

Prior sections 3835a and 3836 were omitted in the general amendment of this subpart by Pub. L. 107-171.

Section 3835a, Pub. L. 99-198, title XII, §1235A, as added Pub. L. 101-624, title XIV, §1435, Nov. 28, 1990, 104 Stat. 3582; amended Pub. L. 102-324, §1(b), July 22, 1992, 106 Stat. 447, related to conversion of land subject to contract to other conserving uses.

Section 3836, Pub. L. 99-198, title XII, §1236, Dec. 23, 1985, 99 Stat. 1514; Pub. L. 101-624, title XIV, §§1436, 1447(a), Nov. 28, 1990, 104 Stat. 3583, 3605; Pub. L. 107-76, title VII, §759(b)(1), Nov. 28, 2001, 115 Stat. 741, related to cropland base and allotment history.

A prior section 3836a, Pub. L. 104-127, title III, §387, Apr. 4, 1996, 110 Stat. 1020, related to Wildlife Habitat Incentive Program, prior to repeal by Pub. L. 107-171, title II, §2502(b), May 13, 2002, 116 Stat. 267. See section 3839bb-1 of this title.

SUBPART C—WETLANDS RESERVE PROGRAM

§ 3837. Wetlands reserve program

(a) Establishment

The Secretary shall establish a wetlands reserve program to assist owners of eligible lands in restoring and protecting wetlands.

(b) Enrollment conditions

(1) Maximum enrollment

The total number of acres enrolled in the wetlands reserve program shall not exceed 2,275,000 acres, of which, to the maximum extent practicable, the Secretary shall enroll 250,000 acres in each calendar year.

(2) Methods of enrollment

The Secretary shall enroll acreage into the wetlands reserve program through the use of permanent easements, 30-year easements, restoration cost share agreements, or any combination of those options.

(c) Eligibility

For purposes of enrolling land in the wetland reserve established under this subpart during the 1991 through 2007 calendar years, land shall be eligible to be placed into such reserve if the Secretary, in consultation with the Secretary of the Interior at the local level, determines that—

- (1) such land maximizes wildlife benefits and wetland values and functions;
- (2) such land is farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on such wetlands, except that converted wetlands where the conversion was not commenced prior to December 23, 1985, shall not be eligible to be enrolled in the program under this section; and
- (3) the likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program taking into consideration the cost of such restoration.

(d) Other eligible land

The Secretary may include in the wetland reserve established under this subpart, together with land that is eligible under subsection (c) of this section, land that maximizes wildlife benefits and that is—

- (1) farmed wetland and adjoining lands, enrolled in the conservation reserve, with the highest wetland functions and values, and that are likely to return to production after they leave the conservation reserve;
- (2) other wetland of an owner that would not otherwise be eligible if the Secretary determines that the inclusion of such wetland in such easement would significantly add to the functional value of the easement; or
- (3) riparian areas that link wetlands that are protected by easements or some other device or circumstance that achieves the same purpose as an easement.

(e) Ineligible land

The Secretary may not acquire easements on—

- (1) land that contains timber stands established under the conservation reserve under subpart B; or

(2) pasture land established to trees under the conservation reserve under subpart B.

(f) Termination of existing contract

The Secretary may terminate or modify an 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 subpart.

(Pub. L. 99-198, title XII, §1237, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3584; amended Pub. L. 102-237, title II, §204(6), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 103-66, title I, §1402(c), Aug. 10, 1993, 107 Stat. 333; Pub. L. 104-127, title III, §333(a)-(c), Apr. 4, 1996, 110 Stat. 995; Pub. L. 105-277, div. A, §101(a) [title VII, §752], Oct. 21, 1998, 112 Stat. 2681, 2681-32; Pub. L. 107-171, title II, §§2201, 2202, May 13, 2002, 116 Stat. 252.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-171, §2202(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows:

“(1) MAXIMUM ENROLLMENT.—The total number of acres enrolled in the wetlands reserve program shall not exceed 975,000 acres.

“(2) METHODS OF ENROLLMENT.—

“(A) IN GENERAL.—Subject to subparagraph (B), effective beginning October 1, 1996, to the maximum extent practicable, the Secretary shall enroll into the wetlands reserve program—

“(i) ⅓ of the acres through the use of permanent easements;

“(ii) ⅓ of the acres through the use of 30-year easements; and

“(iii) ⅓ of the acres through the use of restoration cost-share agreements.

“(B) TEMPORARY EASEMENTS.—Effective beginning October 1, 1996, the Secretary shall not enroll acres in the wetlands reserve program through the use of new permanent easements until the Secretary has enrolled at least 75,000 acres in the program through the use of temporary easements.

“(C) For purposes of subparagraph (A), to the maximum extent practicable should be interpreted to mean that acceptance of wetlands reserve program bids may be in proportion to landowner interest expressed in program options.”

Subsec. (c). Pub. L. 107-171, §2201, substituted “2007” for “2002” in introductory provisions.

Subsec. (g). Pub. L. 107-171, §2202(2), struck out heading and text of subsec. (g). Text read as follows: “The Secretary shall enroll lands in the wetland reserve through the purchase of easements as provided for in section 3837a of this title.”

1998—Subsec. (b)(2)(C). Pub. L. 105-277 added subpar. (C).

1996—Subsec. (b). Pub. L. 104-127, §333(a), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Secretary shall enroll into the wetlands reserve program—

“(1) a total of not less than 330,000 acres by the end of the 1995 calendar year; and

“(2) a total of not less than 975,000 acres during the 1991 through 2000 calendar years.”

Subsec. (c). Pub. L. 104-127, §333(b), substituted “2002” for “2000” in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (d). Pub. L. 104-127, §333(c), in introductory provisions, inserted “, land that maximizes wildlife benefits and that is” after “subsection (c) of this section” and, in par. (2), substituted “or” for “and” at end.

1993—Subsec. (b). Pub. L. 103-66, §1402(c)(1), added subsec. (b) and struck out former subsec. (b) “NUMBER

OF ACRES” which read as follows: “To the extent practicable, the Secretary shall attempt to enroll into the wetlands reserve program, 1,000,000 acres of land during the 1991 through 1995 calendar years; except that the Secretary may not enroll more than 200,000 acres in 1991, 400,000 acres in the 1991 to 1992 period, 600,000 acres in the 1991 to 1993 period, 800,000 acres in the 1991 to 1994 period, and 1,000,000 acres in the 1991 to 1995 period.”

Subsec. (c). Pub. L. 103-66, §1402(c)(2), substituted “2000” for “1995”.

1991—Subsec. (d). Pub. L. 102-237 substituted “subsection (c)” for “subsection (d)” in introductory provisions.

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Section 333(f) of Pub. L. 104-127 provided that: “The amendments made by this section [amending this section and sections 3837a and 3837c of this title] shall not affect the validity or terms of any agreements entered into by the Secretary of Agriculture under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837 et seq.) before the date of enactment of this Act [Apr. 4, 1996] or any payments required to be made in connection with the agreements.”

§ 3837a. Easements and agreements

(a) In general

To be eligible to place land into the wetland reserve under this subpart, the owner of such land shall enter into an agreement with the Secretary—

(1) to grant an easement on such land to the Secretary;

(2) to implement a wetland easement conservation plan as provided for in this section;

(3) to create and record an appropriate deed restriction in accordance with applicable State law to reflect the easement agreed to under this subpart with respect to such lands; and

(4) to provide a written statement of consent to such easement signed by those holding a security interest in the land.

(b) Terms of easement

An owner granting an easement under subsection (a) of this section shall be required to provide for the restoration and protection of the functional values of wetland pursuant to a wetland easement conservation plan that—

(1) permits—

(A) repairs, improvements, and inspections on such land that are necessary to maintain existing public drainage systems if such land is subsequently restored to the condition required by the terms of the easement; and

(B) landowners to control public access on the easement areas while identifying access routes to be used for wetland restoration activities and management and easement monitoring;

(2) prohibits—

(A) the alteration of wildlife habitat and other natural features of such land, unless specifically permitted by the plan;

(B) the spraying of such land with chemicals or the mowing of such land, except where such spraying or mowing is permitted by the plan or is necessary—

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

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

(C) any activities to be carried out on such participating landowner'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

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

(3) provides for the efficient and effective restoration of the functional values of wetlands; and

(4) includes such additional provisions as the Secretary determines are desirable to carry out this subpart or to facilitate the practical administration thereof.

(c) Restoration plans

The development of a restoration plan, including any compatible use, under this section shall be made through the local Natural Resources Conservation Service representative, in consultation with the State technical committee.

(d) Compatible uses

Wetland reserve program lands may be used for compatible economic uses, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is specifically permitted by the plan and consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established.

(e) Type and length of easement

A conservation easement granted under this section—

(1) shall be in a recordable form; and

(2) shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws.

(f) Compensation

Compensation for easements acquired by the Secretary under this subpart shall be made in cash in such amount as is agreed to and specified in the easement agreement, but not to exceed the fair market value of the land less the fair market value of such land encumbered by the easement. Lands may be enrolled through the submission of bids under a procedure established by the Secretary. Compensation may be provided in not less than 5, nor more than 30, annual payments of equal or unequal size, as agreed to by the owner and the Secretary.

(g) Violation

On the violation of the terms or conditions of the easement or related agreement entered into under subsection (a) of 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 subpart, together with interest thereon as determined appropriate by the Secretary.

(Pub. L. 99-198, title XII, §1237A, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3585; amended Pub. L. 104-127, title III,

§333(d), Apr. 4, 1996, 110 Stat. 996; Pub. L. 107-171, title II, §2203, May 13, 2002, 116 Stat. 252.)

AMENDMENTS

2002—Subsec. (h). Pub. L. 107-171 struck out heading and text of subsec. (h). Text read as follows: "The Secretary may enroll land into the wetlands reserve program through an agreement that requires the landowner to restore wetlands on the land, if the agreement does not provide the Secretary with an easement."

1996—Pub. L. 104-127, §333(d)(1), inserted "and agreements" after "Easements" in section catchline.

Subsec. (c). Pub. L. 104-127, §333(d)(2), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows:

"(1) PLANS.—The development of restoration plans under this section shall be made through the agreement of the local representative of the Soil Conservation Service and a representative of the Fish and Wildlife Service. If agreement cannot be reached at the local level under the preceding sentence within a reasonable period of time, such plans shall be referred to the State Conservationist, who in developing such plans under this paragraph, shall consult with the Fish and Wildlife Service.

"(2) REPORT.—The State Conservationist and a representative of the Fish and Wildlife Service shall report to their respective national offices concerning all plans developed under paragraph (1) at the State level as a result of an agreement not being reached at the local level."

Subsec. (f). Pub. L. 104-127, §333(d)(3), substituted "Compensation may be provided in not less than 5, nor more than 30, annual payments of equal or unequal size, as agreed to by the owner and the Secretary." for "Compensation may be provided in not less than 5 nor more than 20 annual payments of either equal or unequal size, except in the case of a permanent easement, a single lump-sum payment may be provided, as agreed on by the owner and the Secretary."

Subsec. (h). Pub. L. 104-127, §333(d)(4), added subsec. (h).

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Amendments made by section 333 of Pub. L. 104-127 not to affect validity or terms of agreements entered into by Secretary of Agriculture under this subpart before Apr. 4, 1996, or payments required to be made in connection with such agreements, see section 333(f) of Pub. L. 104-127, set out as a note under section 3837 of this title.

§ 3837b. Duties of owners

Under the terms of an agreement entered into under this subpart, an owner and operator of the land that is subject to an easement under this subpart shall agree to comply with the terms of the easement and related agreements and shall agree to 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, §1237B, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587.)

§ 3837c. Duties of Secretary

(a) In general

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

(1) share the cost of carrying out the establishment of conservation measures and practices, and the protection of the wetland func-

tions and values, as set forth in the plan to the extent that the Secretary determines that cost sharing is appropriate and in the public interest; and

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

(b) Cost-share and technical assistance

(1) Easements

Effective beginning October 1, 1996, in making cost-share payments under subsection (a)(1) of this section, the Secretary shall—

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

(B) in the case of a 30-year easement, pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

(2) Restoration cost-share agreements

In making cost-share payments in connection with a restoration cost-share agreement entered into under section 3837a(h)¹ of this title, the Secretary shall pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs.

(3) Technical assistance

The Secretary shall provide owners with technical assistance to assist owners in complying with the terms of easements and restoration cost-share agreements.

(c) Acceptability of offers

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

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

(2) the productivity of the land; and

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

(d) Easement priority

In carrying out this subpart, to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent conservation easements before shorter term conservation easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife.

(Pub. L. 99-198, title XII, §1237C, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3587; amended Pub. L. 104-127, title III, §333(e), Apr. 4, 1996, 110 Stat. 996.)

REFERENCES IN TEXT

Section 3837a(h) of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 107-171, title II, §2203, May 13, 2002, 116 Stat. 252.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-127 added subsec. (b) and struck out heading and text of former subsec. (b). Text

¹ See References in Text note below.

read as follows: “In making cost share payments under subsection (a)(1) of this section, the Secretary shall pay the owner an amount that is not less than 50 percent but not more than 75 percent of eligible costs with respect to an easement which is not permanent, and not less than 75 percent but not more than 100 percent of eligible costs with respect to a permanent easement.”

EFFECT OF 1996 AMENDMENTS ON EXISTING AGREEMENTS

Amendments made by section 333 of Pub. L. 104-127 not to affect validity or terms of agreements entered into by Secretary of Agriculture under this subpart before Apr. 4, 1996, or payments required to be made in connection with such agreements, see section 333(f) of Pub. L. 104-127, set out as a note under section 3837 of this title.

§ 3837d. Payments

(a) Time of payment

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

(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) Payments to others

If an owner who is entitled to a payment under this subpart 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.

(c) Payment limitation

(1) In general

The total amount of easement payments made to a person under this subpart for any year may not exceed \$50,000, except such limitation shall not apply with respect to payments for perpetual or 30-year easements.

(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 wetland and 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 a special wetland and 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 the Secretary determines will advance the purposes of this subpart.

(d) Exemption from automatic sequester

Notwithstanding any other provision of law, no order issued under section 902 of title 2 shall affect any payment under this subpart.

(Pub. L. 99-198, title XII, §1237D, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3588; amended Pub. L. 105-277, div. A, §101(a) [title VII, §751], Oct. 21, 1998, 112 Stat. 2681, 2681-32.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(3), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (c)(3), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 1421 of Title 7 and Tables.

The Agricultural Act of 1949, referred to in subsec. (c)(3), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

Section 1305(d) of the Agricultural Reconciliation Act of 1987, referred to in subsec. (c)(4), is section 1305(d) of Pub. L. 100-203, which is set out as a note under section 1308 of Title 7.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105-277 inserted “or 30-year” after “perpetual”.

§ 3837e. Changes in ownership; agreement modification; termination

(a) Limitations

No easement shall be created under this subpart on land that has changed ownership in the preceding 12 months unless—

(1) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(2)(A) the ownership change occurred because of foreclosure on the land; and

(B) immediately before the foreclosure, the owner of the land exercises a right of redemption from the mortgage holder in accordance with State law; or

(3) 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 established by this subpart.

(b) Modification; termination

(1) Modification

The Secretary may modify an easement acquired from, or a related agreement with, an owner under this subpart if—

(A) the current owner agrees to such modification; and

(B) the Secretary determines that such modification is desirable—

(i) to carry out this subpart;

(ii) to facilitate the practical administration of this subpart; or

(iii) to achieve such other goals as the Secretary determines are appropriate and consistent with this subpart.

(2) Termination

(A) In general

The Secretary may terminate an easement created with an owner under this subpart if—

(i) the current owner agrees to such termination; and

(ii) the Secretary determines that such termination would be in the public interest.

(B) Notice

At least 90 days before taking any action to terminate under paragraph (A) all easements entered into under this subpart, the Secretary shall provide written notice of such action to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 99-198, title XII, §1237E, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589; amended Pub. L. 107-171, title II, §2204, May 13, 2002, 116 Stat. 253.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107-171 added par. (2) and struck out former par. (2) which read as follows: “the new ownership was acquired before January 1, 1990; or”.

§ 3837f. Administration and funding

(a) Delegation of easement administration

The Secretary may delegate any of the easement management, monitoring, and enforcement responsibilities of the Secretary to Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

(b) Regulations

Not later than 180 days after November 28, 1990, the Secretary shall issue such regulations as are necessary to carry out this subpart.

(Pub. L. 99-198, title XII, §1237F, as added Pub. L. 101-624, title XIV, §1438, Nov. 28, 1990, 104 Stat. 3589.)

PART II—CONSERVATION SECURITY AND FARMLAND PROTECTION

SUBPART A—CONSERVATION SECURITY PROGRAM

§ 3838. Definitions

In this subpart: