

## **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 3837 of this title, the grassland reserve program established under section 3838n of this title, and the farmland protection program established under section 3838i 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; and

(4) protect grazing uses and related conservation values by restoring and 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.)

### **§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 subject to an agricultural land easement plan, as approved by the Secretary.

#### **(2) 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.

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

(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, as determined by the Secretary in consultation with the Secretary of the Interior at the local level;

(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.

#### **(4) Program**

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

#### **(5) 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.)

### **§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; and

(2) technical assistance to provide for the conservation of natural resources pursuant to an agricultural land easement plan.

#### **(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) Source of contribution**

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.

**(C) Exception**

**(i) Grasslands**

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.

**(ii) Cash contribution**

For purposes of subparagraph (B)(ii), the Secretary may waive any portion of the eligible entity cash contribution requirement for projects of special significance, subject to an increase in the private landowner donation that is equal to the amount of the waiver, if the donation is voluntary and the property is in active agricultural production.

**(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) 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 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

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

**(D) 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.

**(E) 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; and

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

**(B) Certification criteria**

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

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

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

(III) timely and complete evaluation and reporting to the Secretary on the use of funds provided under the 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—

(1) compliance with the terms and conditions of easements; and

(2) implementation of an agricultural land easement plan.

(Pub. L. 99–198, title XII, §1265B, as added Pub. L. 113–79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 734.)

**§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.

### **(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**

Land subject to a wetland reserve easement 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 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.

#### **(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); 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**

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.

**(2) 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.

**(3) 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.)

**§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, proposed 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) In general**

The Secretary may subordinate, exchange, modify, or terminate 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—

- (A) it is in the Federal Government's interest to subordinate, exchange, modify, or terminate the interest in land;
- (B) the subordination, exchange, modification, or termination action—
  - (i) will address a compelling public need for which there is no practicable alternative;
  - or
  - (ii) such action will further the practical administration of the program; and

(C) the subordination, exchange, modification, or termination action will result in comparable conservation value and equivalent or greater economic value to the United States.

**(2) Consultation**

The Secretary shall work with the owner, and eligible entity if applicable, to address any subordination, exchange, modification, or termination of the interest, or portion of such interest, in land.

**(3) Notice**

At least 90 days before taking any termination action described in paragraph (1), 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.

**(d) Land enrolled in other programs**

**(1) Conservation reserve program**

The Secretary may terminate or modify a contract entered into under section 3831(a) of this title if eligible land that is subject to such contract is transferred into the program.

**(2) Other**

In accordance with the provisions of subtitle H of title II of the Agricultural Act of 2014, land enrolled in the wetlands reserve program, grassland reserve program, or farmland protection program on the day before February 7, 2014, shall be considered enrolled in the program.

**(e) Compliance with certain requirements**

The Secretary may not provide assistance under this subchapter to an eligible entity or owner of eligible land unless the eligible entity or owner agrees, during the crop year for which the assistance is provided—

- (1) to comply with applicable conservation requirements under subchapter II; and
- (2) to comply with applicable wetland protection requirements under subchapter III.

(Pub. L. 99–198, title XII, §1265D, as added Pub. L. 113–79, title II, §2301(a), Feb. 7, 2014, 128 Stat. 742.)

**REFERENCES IN TEXT**

The Agricultural Act of 2014, referred to in subsec. (d)(2), is Pub. L. 113–79, Feb. 7, 2014, 128 Stat. 649. Subtitle H of title II of the Act, is subtitle H (§§2701–2713) of title II of Pub. L. 113–79. For complete classification of subtitle H to the Code, see Tables.