

§2403, June 18, 2008, 122 Stat. 1664, 1780, related to duties of owners and operators.

Section 3838p, Pub. L. 99-198, title XII, §1238P, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 261; amended Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1054; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1782, related to duties of Secretary.

Section 3838q, Pub. L. 99-198, title XII, §1238Q, as added Pub. L. 107-171, title II, §2401, May 13, 2002, 116 Stat. 262; amended Pub. L. 108-447, div. A, title VII, §797, Dec. 8, 2004, 118 Stat. 2852; Pub. L. 110-234, title II, §2403, May 22, 2008, 122 Stat. 1055; Pub. L. 110-246, §4(a), title II, §2403, June 18, 2008, 122 Stat. 1664, 1783, related to delegation of duty.

Statutory Notes and Related Subsidiaries

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2705, Feb. 7, 2014, 128 Stat. 768, provided that:

“(a) REPEAL.—Except as provided in subsection (b), subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838n et seq.) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS, AGREEMENTS, AND EASEMENTS.—The amendment made by this section [repealing sections 3838n to 3838q of this title] shall not affect the validity or terms of any contract, agreement, or easement entered into by the Secretary of Agriculture under subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838n et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract, agreement, or easement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 ([former] 16 U.S.C. 3838n et seq.), any funds made available from the Commodity Credit Corporation to carry out the grassland reserve program under that subchapter for fiscal years 2009 through 2013 shall be made available to carry out contracts, agreements, or easements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance), provided that no such contract, agreement, or easement is modified so as to increase the amount of the payment received.

“(B) OTHER.—The Secretary [of Agriculture] may use funds made available to carry out the agricultural conservation easement program under subtitle H of title XII of the Food Security Act of 1985 [16 U.S.C. 3865 et seq.], as added by section 2301, to continue to carry out contracts, agreements, and easements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts, agreements, and easements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

PART III—ENVIRONMENTAL EASEMENT PROGRAM

§§ 3839 to 3839d. Repealed. Pub. L. 113-79, title II, §2711, Feb. 7, 2014, 128 Stat. 771

Section 3839, Pub. L. 99-198, title XII, §1239, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597; amended Pub. L. 102-237, title II, §204(7), Dec. 13, 1991, 105 Stat. 1855, related to establishment of environmental easement program by Secretary.

Section 3839a, Pub. L. 99-198, title XII, §1239A, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3597, related to duties of owners; components of plan.

Section 3839b, Pub. L. 99-198, title XII, §1239B, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3598, related to duties of Secretary.

Section 3839c, Pub. L. 99-198, title XII, §1239C, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3599, related to payments.

Section 3839d, Pub. L. 99-198, title XII, §1239D, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3600, related to changes in ownership; modification of easement.

PART IV—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM AND CONSERVATION STEWARDSHIP PROGRAM

Editorial Notes

CODIFICATION

Pub. L. 115-334, title II, §2301(a)(1), Dec. 20, 2018, 132 Stat. 4551, substituted “Environmental Quality Incentives Program and Conservation Stewardship Program” for “Environmental Quality Incentives Program” in part heading.

Chapter 4 of subtitle D of title XII of the Food Security Act of 1985, comprising this part, was originally added to Pub. L. 99-198 by Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 996. Chapter 4 is shown herein, however, as having been added by Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 253, because of the extensive revision of the chapter’s provisions by Pub. L. 107-171. Such revision did not contain a chapter heading, which was subsequently added by Pub. L. 110-234, title II, §2501(b), May 22, 2008, 122 Stat. 1058, and Pub. L. 110-246, §4(a), title II, §2501(b), June 18, 2008, 122 Stat. 1664, 1786. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234.

SUBPART A—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

§ 3839aa. Purposes

The purposes of the environmental quality incentives program established by this subpart are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits, by—

(1) assisting producers in complying with local, State, and national regulatory requirements concerning—

- (A) soil, water, and air quality;
- (B) wildlife habitat; and
- (C) surface and ground water conservation;

(2) avoiding, to the maximum extent practicable, the need for resource and regulatory programs by assisting producers in protecting soil, water, air, and related natural resources and meeting environmental quality criteria established by Federal, State, tribal, and local agencies;

(3) providing flexible assistance to producers to install and maintain conservation practices that sustain food and fiber production while—

- (A) enhancing soil, water, and related natural resources, including grazing land, forestland, wetland, and wildlife;
- (B) developing and improving wildlife habitat; and
- (C) conserving energy; and

(4) assisting producers to make beneficial, cost-effective changes to production systems, including addressing identified, new, or ex-

pected resource concerns related to organic production, grazing management, fuels management, forest management, nutrient management associated with crops and livestock, pest management, irrigation management, adapting to, and mitigating against, increasing weather volatility, drought resiliency measures, or other practices on agricultural and forested land.

(Pub. L. 99-198, title XII, § 1240, as added Pub. L. 107-171, title II, § 2301, May 13, 2002, 116 Stat. 253; amended Pub. L. 110-234, title II, § 2501(a), May 22, 2008, 122 Stat. 1057; Pub. L. 110-246, § 4(a), title II, § 2501(a), June 18, 2008, 122 Stat. 1664, 1785; Pub. L. 113-79, title II, § 2201, Feb. 7, 2014, 128 Stat. 728; Pub. L. 115-334, title II, §§ 2301(d)(1)(D), 2302, Dec. 20, 2018, 132 Stat. 4554, 4555.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa, Pub. L. 99-198, title XII, § 1240, as added Pub. L. 104-127, title III, § 334, Apr. 4, 1996, 110 Stat. 996, related to purposes, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2018—Pub. L. 115-334, § 2301(d)(1)(D), substituted “this subpart” for “this part” in introductory provisions.

Par. (4). Pub. L. 115-334, § 2302, added par. (4) and struck out former par. (4) which read as follows: “assisting producers to make beneficial, cost effective changes to production systems (including conservation practices related to organic production), grazing management, fuels management, forest management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural and forested land.”

2014—Par. (3). Pub. L. 113-79, § 2201(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Par. (4). Pub. L. 113-79, § 2201(2), substituted a period for “; and” at end.

Par. (5). Pub. L. 113-79, § 2201(3), struck out par. (5) which read as follows: “consolidating and streamlining conservation planning and regulatory compliance processes to reduce administrative burdens on producers and the cost of achieving environmental goals.”

2008—Pub. L. 110-246, § 2501(a)(1), inserted “, forest management,” after “agricultural production” in introductory provisions.

Pars. (3), (4). Pub. L. 110-246, § 2501(a)(2), added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

“(3) providing flexible assistance to producers to install and maintain conservation practices that enhance soil, water, related natural resources (including grazing land and wetland), and wildlife while sustaining production of food and fiber;

“(4) assisting producers to make beneficial, cost effective changes to cropping systems, grazing management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural land; and”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of

Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113-79, title II, § 2208, Feb. 7, 2014, 128 Stat. 731, provided that: “The amendments made by this subtitle [subtitle C (§§ 2201–2208) of title II of Pub. L. 113-79, amending this section and sections 3839aa-1 to 3839aa-4, 3839aa-7, and 3839aa-8 of this title] shall not affect the validity or terms of any contract entered into by the Secretary of Agriculture under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract.”

§ 3839aa-1. Definitions

In this subpart:

(1) Conservation planning assessment

The term “conservation planning assessment” means a report, as determined by the Secretary, that—

(A) is developed by—

- (i) a State or unit of local government (including a conservation district);
- (ii) a Federal agency; or
- (iii) a third-party provider certified under section 3842(e) of this title (including a certified rangeland professional);

(B) assesses rangeland or cropland function and describes conservation activities to enhance the economic and ecological management of that land; and

(C) can be incorporated into a comprehensive planning document required by the Secretary for enrollment in a conservation program of the Department of Agriculture.

(2) Eligible land

(A) In general

The term “eligible land” means land on which agricultural commodities, livestock, or forest-related products are produced.

(B) Inclusions

The term “eligible land” includes the following:

- (i) Cropland.
- (ii) Grassland.
- (iii) Rangeland.
- (iv) Pasture land.
- (v) Nonindustrial private forest land.

(vi) Other agricultural land (including cropped woodland, marshes, environmentally sensitive areas, and agricultural land used for the production of livestock) on which identified or expected resource concerns related to agricultural production could be addressed through a contract under the program, as determined by the Secretary.

(3) Incentive practice

The term “incentive practice” means a practice or set of practices approved by the Secretary that, when implemented and maintained on eligible land, address 1 or more priority resource concerns.

(4) Organic system plan

The term “organic system plan” means an organic plan approved under the national or-

ganic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

(5) Payment

The term “payment” means financial assistance provided to a producer for performing practices under this subpart, including compensation for—

(A) incurred costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; and

(B) income forgone by the producer.

(6) Practice

The term “practice” means 1 or more improvements and conservation activities that are consistent with the purposes of the program under this subpart, as determined by the Secretary, including—

(A) improvements to eligible land of the producer, including—

(i) structural practices;

(ii) land management practices;

(iii) vegetative practices;

(iv) forest management;

(v) soil testing;

(vi) soil remediation to be carried out by the producer; and

(vii) other practices that the Secretary determines would further the purposes of the program; and

(B) conservation activities involving the development of plans appropriate for the eligible land of the producer, including—

(i) comprehensive nutrient management planning;

(ii) planning for resource-conserving crop rotations (as defined in section 3839aa-24(d)(1) of this title);

(iii) soil health planning, including increasing soil organic matter and the use of cover crops;

(iv) a conservation planning assessment;

(v) precision conservation management planning; and

(vi) other plans that the Secretary determines would further the purposes of the program under this subpart.

(7) Priority resource concern

The term “priority resource concern” means a natural resource concern or problem, as determined by the Secretary, that—

(A) is identified at the national, State, or local level as a priority for a particular area of a State; and

(B) represents a significant concern in a State or region.

(8) Program

The term “program” means the environmental quality incentives program established by this subpart.

(9) Soil remediation

The term “soil remediation” means scientifically based practices that—

(A) ensure the safety of producers from contaminants in soil;

(B) limit contaminants in soil from entering agricultural products for human or animal consumption; and

(C) regenerate and sustain the soil.

(10) Soil testing

The term “soil testing” means the evaluation of soil health, including testing for—

(A) the optimal level of constituents in the soil, such as organic matter, nutrients, and the potential presence of soil contaminants, including heavy metals, volatile organic compounds, polycyclic aromatic hydrocarbons, or other contaminants; and

(B) the biological and physical characteristics indicative of proper soil functioning.

(Pub. L. 99-198, title XII, §1240A, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 253; amended Pub. L. 110-234, title II, §2502, May 22, 2008, 122 Stat. 1058; Pub. L. 110-246, §4(a), title II, §2502, June 18, 2008, 122 Stat. 1664, 1786; Pub. L. 113-79, title II, §2202, Feb. 7, 2014, 128 Stat. 729; Pub. L. 115-334, title II, §§2301(d)(1)(E), 2303, Dec. 20, 2018, 132 Stat. 4554, 4555.)

Editorial Notes

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in par. (4), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-1, Pub. L. 99-198, title XII, §1240A, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 997, related to definitions of terms, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2018—Pub. L. 115-334, §2301(d)(1)(E), substituted “this subpart” for “this part” wherever appearing.

Par. (1). Pub. L. 115-334, §2303(2), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 115-334, §2303(1), (3), redesignated par. (1) as (2) and, in subpar. (B)(vi), inserted “environmentally sensitive areas,” after “marshes,” and “identified or expected” before “resource concerns”. Former par. (2) redesignated (4).

Par. (3). Pub. L. 115-334, §2303(4), added par. (3). Former par. (3) redesignated (5).

Pars. (4), (5). Pub. L. 115-334, §2303(1), redesignated pars. (2) and (3) as (4) and (5), respectively. Former pars. (4) and (5) redesignated (6) and (8), respectively.

Par. (6). Pub. L. 115-334, §2303(1), (5), redesignated par. (4) as (6); in subpar. (A), added cls. (v) and (vi) and redesignated former cl. (v) as (vii); and, in subpar. (B), added cls. (ii) to (v) and redesignated former cl. (ii) as (vi).

Par. (7). Pub. L. 115-334, §2303(6), added par. (7).

Par. (8). Pub. L. 115-334, §2303(1), redesignated par. (5) as (8).

Pars. (9), (10). Pub. L. 115-334, §2303(7), added pars. (9) and (10).

2014—Pars. (2) to (6). Pub. L. 113-79 redesignated pars. (3) to (6) as (2) to (5), respectively, inserted “established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)” after “national organic program” in par. (2), and struck out former par. (2). Text of former par. (2) read as follows: “The term ‘national or-

ganic program' means the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et. seq.)."

2008—Pub. L. 110-246, §2502, amended section generally. Prior to amendment, section defined "beginning farmer or rancher", "eligible land", "land management practice", "livestock", "practice", and "structural practice".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-2. Establishment and administration

(a) Establishment

During each of the 2002 through 2031 fiscal years, the Secretary shall provide payments to producers that enter into contracts with the Secretary under the program.

(b) Practices and term

(1) Practices

A contract under the program may apply to the performance of one or more practices.

(2) Term

A contract under the program shall have a term that does not exceed 10 years.

(c) Bidding down

If the Secretary determines that the environmental values of two or more applications for payments are comparable, the Secretary shall not assign a higher priority to the application only because it would present the least cost to the program.

(d) Payments

(1) Availability of payments

Payments are provided to a producer to implement one or more practices under the program.

(2) Limitation on payment amounts

A payment to a producer for performing a practice may not exceed, as determined by the Secretary—

(A) 75 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training;

(B) 100 percent of income foregone by the producer; or

(C) in the case of a practice consisting of elements covered under subparagraphs (A) and (B)—

(i) 75 percent of the costs incurred for those elements covered under subparagraph (A); and

(ii) 100 percent of income foregone for those elements covered under subparagraph (B).

(3) Special rule involving payments for foregone income

In determining the amount and rate of payments under paragraph (2)(B), the Secretary may accord great significance to a practice

that, as determined by the Secretary, promotes—

(A) soil health;

(B) water quality and quantity improvement;

(C) nutrient management;

(D) pest management;

(E) air quality improvement;

(F) wildlife habitat development, including pollinator habitat; or

(G) invasive species management.

(4) Increased payments for certain producers

(A) In general

Notwithstanding paragraph (2), in the case of a producer that is a limited resource, socially disadvantaged farmer or rancher, a veteran farmer or rancher (as defined in section 2279(e)¹ of title 7), or a beginning farmer or rancher, the Secretary shall increase the amount that would otherwise be provided to a producer under this subsection—

(i) to not more than 90 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; and

(ii) to not less than 25 percent above the otherwise applicable rate.

(B) Advance payments

(i) In general

On an election by a producer described in subparagraph (A), the Secretary shall provide at least 50 percent of the amount determined under subparagraph (A) in advance for all costs related to purchasing materials or contracting.

(ii) Return of funds

If funds provided in advance are not expended during the 90-day period beginning on the date of receipt of the funds, the funds shall be returned within a reasonable timeframe, as determined by the Secretary.

(iii) Notification and documentation

The Secretary shall—

(I) notify each producer described in subparagraph (A), at the time of enrollment in the program, of the option to receive advance payments under clause (i); and

(II) document the election of each producer described in subparagraph (A) to receive advance payments under clause (i) with respect to each practice that has costs described in that clause.

(5) Financial assistance from other sources

Except as provided in paragraph (6), any payments received by a producer from a State or private organization or person for the implementation of one or more practices on eligible land of the producer shall be in addition to the payments provided to the producer under this subsection.

(6) Other payments

A producer shall not be eligible for payments for practices on eligible land under the

¹ See References in Text note below.

program if the producer receives payments or other benefits for the same practice on the same land under another program under this subchapter.

(7) Increased payments for high-priority practices

(A) State determination

Each State, in consultation with the State technical committee established under section 3861(a) of this title for the State, may designate not more than 10 practices to be eligible for increased payments under subparagraph (B), on the condition that the practice, as determined by the Secretary—

(i) addresses specific causes of impairment relating to excessive nutrients in groundwater or surface water;

(ii) addresses the conservation of water to advance drought mitigation and declining aquifers;

(iii) meets other environmental priorities and other priority resource concerns identified in habitat or other area restoration plans; or

(iv) is geographically targeted to address a natural resource concern in a specific watershed.

(B) Increased payments

Notwithstanding paragraph (2), in the case of a practice designated under subparagraph (A), the Secretary may increase the amount that would otherwise be provided for a practice under this subsection to not more than 90 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training.

(e) Modification or termination of contracts

(1) Voluntary modification or termination

The Secretary may modify or terminate a contract entered into with a producer under the program if—

(A) the producer agrees to the modification or termination; and

(B) the Secretary determines that the modification or termination is in the public interest.

(2) Involuntary termination

The Secretary may terminate a contract under the program if the Secretary determines that the producer violated the contract.

(f) Allocation of funding

(1) Livestock

For each of fiscal years 2019 through 2023, at least 50 percent of the funds made available for payments under the program shall be targeted at practices relating to livestock production, including grazing management practices.

(2) Wildlife habitat

(A) Fiscal years 2014 through 2018

For each of fiscal years 2014 through 2018, at least 5 percent of the funds made available for payments under the program shall be targeted at practices benefitting wildlife habitat under subsection (g).

(B) Fiscal years 2019 through 2031

For each of fiscal years 2019 through 2031, at least 10 percent of the funds made available for payments under the program shall be targeted at practices benefitting wildlife habitat under subsection (g).

(g) Wildlife habitat incentive program

(1) In general

The Secretary shall provide payments under the environmental quality incentives program for conservation practices that support the restoration, development, protection, and improvement of wildlife habitat on eligible land, including—

(A) upland wildlife habitat;

(B) wetland wildlife habitat;

(C) habitat for threatened and endangered species;

(D) fish habitat;

(E) habitat on pivot corners and other irregular areas of a field; and

(F) other types of wildlife habitat, as determined by the Secretary.

(2) State technical committee

In determining the practices eligible for payment under paragraph (1) and targeted for funding under subsection (f), the Secretary shall consult with the relevant State technical committee not less often than once each year.

(3) Maximum term

In the case of a contract under the program entered into solely for the establishment of 1 or more annual management practices for the benefit of wildlife as described in paragraph (1), notwithstanding any maximum contract term established by the Secretary, the contract shall have a term that does not exceed 10 years.

(4) Included practices

For the purpose of providing seasonal wetland habitat for waterfowl and migratory birds, a practice that is eligible for payment under paragraph (1) and targeted for funding under subsection (f) may include—

(A) a practice to carry out postharvest flooding; or

(B) a practice to maintain the hydrology of temporary and seasonal wetlands of not more than 2 acres to maintain waterfowl and migratory bird habitat on working cropland.

(h) Water conservation or irrigation efficiency practice

(1) Availability of payments

The Secretary may provide water conservation and system efficiency payments under this subsection to an entity described in paragraph (2) or a producer for—

(A) water conservation scheduling, water distribution efficiency, soil moisture monitoring, or an appropriate combination thereof;

(B) irrigation-related structural or other measures that conserve surface water or groundwater, including managed aquifer recovery practices; or

(C) a transition to water-conserving crops, water-conserving crop rotations, or deficit irrigation.

(2) Eligibility of certain entities**(A) In general**

Notwithstanding section 1308(f)(6) of title 7, the Secretary may enter into a contract under this subsection with a State, irrigation district, groundwater management district, acequia, land-grant mercedes, or similar entity under a streamlined contracting process to implement water conservation or irrigation practices under a watershed-wide project that will effectively conserve water, provide fish and wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Secretary.

(B) Implementation

Water conservation or irrigation practices that are the subject of a contract entered into under subparagraph (A) shall be implemented on—

- (i) eligible land of a producer; or
- (ii) land that is—

(I) under the control of an irrigation district, groundwater management district, acequia, land-grant mercedes, or similar entity; and

(II) adjacent to eligible land described in clause (i), as determined by the Secretary.

(C) Waiver authority

The Secretary may waive the applicability of the limitations in section 1308-3a(b) of title 7 or section 3839aa-7 of this title for a payment made under a contract entered into under this paragraph if the Secretary determines that the waiver is necessary to fulfill the objectives of the project.

(D) Contract limitations

If the Secretary grants a waiver under subparagraph (C), the Secretary may impose a separate payment limitation for the contract with respect to which the waiver applies.

(3) Priority

In providing payments under this subsection for a water conservation or irrigation practice, the Secretary shall give priority to applications in which—

(A) consistent with the law of the State in which the land on which the practices will be implemented is located, there is a reduction in water use in the operation on that land; or

(B) except in the case of an application under paragraph (2), the producer agrees not to use any associated water savings to bring new land, other than incidental land needed for efficient operations, under irrigated production, unless the producer is participating in a watershed-wide project that will effectively conserve water, as determined by the Secretary.

(4) Effect

Nothing in this subsection authorizes the Secretary to modify the process for determining the annual allocation of funding to States under the program.

(i) Payments for conservation practices related to organic production**(1) Payments authorized**

The Secretary shall provide payments under this subsection for conservation practices, on some or all of the operations of a producer, related—

- (A) to organic production; and
- (B) to the transition to organic production.

(2) Eligibility requirements

As a condition for receiving payments under this subsection, a producer shall agree—

- (A) to develop and carry out an organic system plan; or
- (B) to develop and implement conservation practices for certified organic production that are consistent with an organic system plan and the purposes of this subpart.

(3) Payment limitations**(A) In general**

Payments under this subsection to a person or legal entity, directly or indirectly, may not exceed, in the aggregate—

- (i) through fiscal year 2018—
 - (I) \$20,000 per year; or
 - (II) \$80,000 during any 6-year period; and
- (ii) during the period of fiscal years 2019 through 2023, \$140,000.

(B) Technical assistance

In applying the limitations under subparagraph (A), the Secretary shall not take into account payments received for technical assistance.

(4) Exclusion of certain organic certification costs

Payments may not be made under this subsection to cover the costs associated with organic certification that are eligible for cost-share payments under section 6523 of title 7.

(5) Termination of contracts

The Secretary may cancel or otherwise nullify a contract to provide payments under this subsection if the Secretary determines that the producer—

- (A) is not pursuing organic certification; or
- (B) is not in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq).

(j) Conservation incentive contracts**(1) Identification of eligible priority resource concerns for States****(A) In general**

The Secretary, in consultation with the applicable State technical committee established under section 3861(a) of this title, shall identify watersheds (or other appropriate regions or areas within a State) and the corresponding priority resource concerns for those watersheds or other regions or areas that are eligible to be the subject of an incentive contract under this subsection.

(B) Limitation

For each of the relevant land uses within the watersheds, regions, or other areas iden-

tified under subparagraph (A), the Secretary shall identify not more than 3 eligible priority resource concerns.

(2) Contracts

(A) Authority

(i) In general

The Secretary shall enter into contracts with producers under this subsection that require the implementation, adoption, management, and maintenance of incentive practices that effectively address at least 1 eligible priority resource concern identified under paragraph (1) for the term of the contract.

(ii) Inclusions

Through a contract entered into under clause (i), the Secretary may provide—

(I) funding, through annual payments, for certain incentive practices to attain increased levels of conservation on eligible land; or

(II) assistance, through a practice payment, to implement an incentive practice.

(B) Term

A contract under this subsection shall have a term of not less than 5, and not more than 10, years.

(C) Prioritization

Notwithstanding section 3839aa-3 of this title, the Secretary shall develop criteria for evaluating incentive practice applications that—

(i) give priority to applications that address eligible priority resource concerns identified under paragraph (1); and

(ii) evaluate applications relative to other applications for similar agriculture and forest operations.

(3) Incentive practice payments

(A) In general

The Secretary shall provide payments to producers through contracts entered into under paragraph (2) for—

(i) adopting and installing incentive practices; and

(ii) managing, maintaining, and improving the incentive practices for the duration of the contract, as determined appropriate by the Secretary.

(B) Payment amounts

In determining the amount of payments under subparagraph (A), the Secretary shall consider, to the extent practicable—

(i) the level and extent of the incentive practice to be installed, adopted, completed, maintained, managed, or improved;

(ii) the cost of the installation, adoption, completion, management, maintenance, or improvement of the incentive practice;

(iii) income foregone by the producer, including payments, as appropriate, to address—

(I) increased economic risk;

(II) loss in revenue due to anticipated reductions in yield; and

(III) economic losses during transition to a resource-conserving cropping system or resource-conserving land use; and

(iv) the extent to which compensation would ensure long-term continued maintenance, management, and improvement of the incentive practice.

(C) Delivery of payments

In making payments under subparagraph (A), the Secretary shall, to the extent practicable—

(i) in the case of annual payments under paragraph (2)(A)(ii)(I), make those payments as soon as practicable after October 1 of each fiscal year for which increased levels of conservation are maintained during the term of the contract; and

(ii) in the case of practice payments under paragraph (2)(A)(ii)(II), make those payments as soon as practicable on the implementation of an incentive practice.

(Pub. L. 99-198, title XII, §1240B, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 254; amended Pub. L. 108-447, div. A, title VII, §794(a), Dec. 8, 2004, 118 Stat. 2852; Pub. L. 109-171, title I, §1203(a), Feb. 8, 2006, 120 Stat. 6; Pub. L. 110-234, title II, §2503, May 22, 2008, 122 Stat. 1059; Pub. L. 110-246, §4(a), title II, §2503, June 18, 2008, 122 Stat. 1664, 1787; Pub. L. 112-55, div. A, title VII, §716(c), Nov. 18, 2011, 125 Stat. 582; Pub. L. 113-76, div. A, title VII, §750(a), Jan. 17, 2014, 128 Stat. 42; Pub. L. 113-79, title II, §2203, Feb. 7, 2014, 128 Stat. 729; Pub. L. 115-123, div. F, §60102(a), Feb. 9, 2018, 132 Stat. 312; Pub. L. 115-334, title II, §§2301(d)(1)(F), 2304, Dec. 20, 2018, 132 Stat. 4554, 4556; Pub. L. 117-169, title II, §21001(c)(1), Aug. 16, 2022, 136 Stat. 2017.)

Editorial Notes

REFERENCES IN TEXT

Section 2279(e) of title 7, referred to in subsec. (d)(4)(A), was redesignated section 2279(a) of title 7 by Pub. L. 115-334, title XII, §12301(b)(3), Dec. 20, 2018, 132 Stat. 4951.

The Organic Foods Production Act of 1990, referred to in subsec. (i)(5)(B), is title XXI of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-2, Pub. L. 99-198, title XII, §1240B, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 998, related to establishment and administration of environmental quality incentives program, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117-169, §21001(c)(1)(A), substituted “2031” for “2023”.

Subsec. (f)(2)(B). Pub. L. 117-169, §21001(c)(1)(B), substituted “2031” for “2023” in heading and text.

2018—Subsec. (a). Pub. L. 115-334, §2304(a), substituted “2023” for “2019”.

Pub. L. 115-123 added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “During each of the 2002 through 2018 fiscal years, the Secretary shall provide payments to producers that enter into contracts with the Secretary under the program.”

Subsec. (d)(4)(B)(i). Pub. L. 115-334, §2304(b)(1)(A), substituted “On an election by a producer described in subparagraph (A), the Secretary shall provide at least 50 percent of the amount determined under subparagraph (A) in advance for all costs related to purchasing materials or contracting” for “Not more than 50 percent of the amount determined under subparagraph (A) may be provided in advance for the purpose of purchasing materials or contracting”.

Subsec. (d)(4)(B)(iii). Pub. L. 115-334, §2304(b)(1)(B), added cl. (iii).

Subsec. (d)(7). Pub. L. 115-334, §2304(b)(2), added par. (7).

Subsec. (f)(1). Pub. L. 115-334, §2304(c)(1), substituted “2019 through 2023” for “2014 through 2018”, “50 percent” for “60 percent”, and “production, including grazing management practices” for “production”.

Subsec. (f)(2). Pub. L. 115-334, §2304(c)(2), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (g)(3), (4). Pub. L. 115-334, §2304(d), added pars. (3) and (4).

Subsec. (h)(1). Pub. L. 115-334, §2304(e)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The Secretary may provide payments under this subsection to a producer for a water conservation or irrigation practice.”

Subsec. (h)(2). Pub. L. 115-334, §2304(e)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 115-334, §2304(e)(2), (4)(A), redesignated par. (2) as (3) and substituted “payments under this subsection” for “payments to a producer” in introductory provisions.

Subsec. (h)(3)(A). Pub. L. 115-334, §2304(e)(4)(B), substituted “State in which the land on which the practices will be implemented is located, there is a reduction in water use in the operation on that land” for “State in which the eligible land of the producer is located, there is a reduction in water use in the operation of the producer”.

Subsec. (h)(3)(B). Pub. L. 115-334, §2304(e)(4)(C), inserted “except in the case of an application under paragraph (2),” before “the producer agrees”.

Subsec. (h)(4). Pub. L. 115-334, §2304(e)(5), added par. (4).

Subsec. (i)(2)(B). Pub. L. 115-334, §2301(d)(1)(F), substituted “this subpart” for “this part”.

Subsec. (i)(3). Pub. L. 115-334, §2304(f), designated first and second sentences as subpars. (A) and (B), respectively, and inserted headings; in subpar. (A), substituted “aggregate—” for “aggregate, \$20,000 per year or \$80,000 during any 6-year period.” and added cls. (i) and (ii); and, in subpar. (B), substituted “In applying the limitations under subparagraph (A)” for “In applying these limitations”.

Subsec. (j). Pub. L. 115-334, §2304(g), added subsec. (j).

2014—Subsec. (a). Pub. L. 113-79, §2203(1), which directed substitution of “2018” for “2014”, was executed by making the substitution for “2015” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 113-76. See below.

Pub. L. 113-76 substituted “2015” for “2014”.

Subsec. (b)(2). Pub. L. 113-79, §2203(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “A contract under the program shall have a term that—

“(A) at a minimum, is equal to the period beginning on the date on which the contract is entered into and ending on the date that is one year after the date on which all practices under the contract have been implemented; but

“(B) not to exceed 10 years.”

Subsec. (d)(3)(A) to (G). Pub. L. 113-79, §2203(3)(A), added subpars. (A) to (G) and struck out former subpars. (A) to (G) which read as follows:

“(A) residue management;
“(B) nutrient management;
“(C) air quality management;
“(D) invasive species management;
“(E) pollinator habitat;
“(F) animal carcass management technology; or
“(G) pest management.”

Subsec. (d)(4)(A). Pub. L. 113-79, §2203(3)(B)(i), in introductory provisions, inserted “, a veteran farmer or rancher (as defined in section 2279(e) of title 7),” before “or a beginning farmer or rancher”.

Subsec. (d)(4)(B). Pub. L. 113-79, §2203(3)(B)(ii), added subpar. (B) and struck out former subpar. (B). Prior to amendment, text read as follows: “Not more than 30 percent of the amount determined under subparagraph (A) may be provided in advance for the purpose of purchasing materials or contracting.”

Subsec. (f). Pub. L. 113-79, §2203(4), added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: “For each of fiscal years 2002 through 2012, 60 percent of the funds made available for payments under the program shall be targeted at practices relating to livestock production.”

Subsec. (g). Pub. L. 113-79, §2203(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: “The Secretary may enter into alternative funding arrangements with federally recognized Native American Indian Tribes and Alaska Native Corporations (including their affiliated membership organizations) if the Secretary determines that the goals and objectives of the program will be met by such arrangements, and that statutory limitations regarding contracts with individual producers will not be exceeded by any Tribal or Native Corporation member.”

2011—Subsec. (a). Pub. L. 112-55 substituted “2014” for “2012”.

2008—Pub. L. 110-246, §2503, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (h) relating to provision of cost-share payments and incentive payments, application and term of a contract, bidding down, payment amounts, incentive payments, modification or termination of contracts, allocation of funding for fiscal years 2002 through 2007, and funding for federally recognized Native American Indian Tribes and Alaska Native Corporations.

2006—Subsec. (a)(1). Pub. L. 109-171 substituted “2010” for “2007”.

2004—Subsec. (h). Pub. L. 108-447 added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-3. Evaluation of applications

(a) Evaluation criteria

The Secretary shall develop criteria for evaluating applications that will ensure that national, State, and local conservation priorities are effectively addressed.

(b) Prioritization of applications

In evaluating applications under this subpart, the Secretary shall prioritize applications—

(1) based on their overall level of cost-effectiveness to ensure that the conservation practices and approaches proposed are the most efficient means of achieving the anticipated conservation benefits of the project;

(2) based on how effectively and comprehensively the project addresses the designated resource concern or resource concerns;

(3) that best fulfill the purposes of the program; and

(4) that improve conservation practices or systems in place on the operation at the time the contract offer is accepted or that will complete a conservation system.

(c) Grouping of applications

To the greatest extent practicable, the Secretary shall group applications of similar crop or livestock operations for evaluation purposes or otherwise evaluate applications relative to other applications for similar farming operations.

(Pub. L. 99-198, title XII, §1240C, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2504, May 22, 2008, 122 Stat. 1062; Pub. L. 110-246, §4(a), title II, §2504, June 18, 2008, 122 Stat. 1664, 1790; Pub. L. 113-79, title II, §2204, Feb. 7, 2014, 128 Stat. 730; Pub. L. 115-334, title II, §2301(d)(1)(G), Dec. 20, 2018, 132 Stat. 4554.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-3, Pub. L. 99-198, title XII, §1240C, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000, related to evaluation of offers and payments, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-334 substituted “this subpart” for “this part” in introductory provisions.

2014—Subsec. (b)(1). Pub. L. 113-79, §2204(1), substituted “conservation” for “environmental” before “benefits”.

Subsec. (b)(3). Pub. L. 113-79, §2204(2), substituted “purposes of the program” for “purpose of the environmental quality incentives program specified in section 3839aa(1) of this title” before semicolon.

2008—Pub. L. 110-246, §2504, amended section generally. Prior to amendment, text read as follows: “In evaluating applications for cost-share payments and incentive payments, the Secretary shall accord a higher priority to assistance and payments that—

“(1) encourage the use by producers of cost-effective conservation practices; and

“(2) address national conservation priorities.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-4. Duties of producers

To receive payments under the program, a producer shall agree—

(1) to implement an environmental quality incentives program plan (including a comprehensive nutrient management plan, if applicable) that describes conservation and environmental purposes to be achieved through 1

or more practices that are approved by the Secretary;

(2) not to conduct any practices on the enrolled land that would tend to defeat the purposes of the program;

(3) on the violation of a term or condition of the contract at anytime the producer has control of the land—

(A) if the Secretary determines that the violation warrants termination of the contract—

(i) to forfeit all rights to receive payments under the contract; and

(ii) to refund to the Secretary all or a portion of the payments received by the owner or operator under the contract, including any interest on the payments, as determined by the Secretary; or

(B) if the Secretary determines that the violation does not warrant termination of the contract, to refund to the Secretary, or accept adjustments to, the payments provided to the owner or operator, as the Secretary determines to be appropriate;

(4) on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees with the Secretary to assume all obligations of the contract, to refund all payments received under the program, as determined by the Secretary;

(5) to supply information as required by the Secretary to determine compliance with the program plan and requirements of the program; and

(6) to comply with such additional provisions as the Secretary determines are necessary to carry out the program plan.

(Pub. L. 99-198, title XII, §1240D, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2505, May 22, 2008, 122 Stat. 1062; Pub. L. 110-246, §4(a), title II, §2505, June 18, 2008, 122 Stat. 1664, 1790; Pub. L. 113-79, title II, §2205, Feb. 7, 2014, 128 Stat. 730.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-4, Pub. L. 99-198, title XII, §1240D, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1000, related to duties of producers, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2014—Par. (2). Pub. L. 113-79 substituted “enrolled” for “farm, ranch, or forest”.

2008—Pub. L. 110-246, §2505(1), struck out “technical assistance, cost-share payments, or incentive” before “payments” in introductory provisions.

Par. (2). Pub. L. 110-246, §2505(2), substituted “farm, ranch, or forest land” for “farm or ranch”.

Par. (4). Pub. L. 110-246, §2505(3), struck out “cost-share payments and incentive” before “payments”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-5. Environmental quality incentives program plan**(a) Plan of operations**

To be eligible to receive payments under the program, a producer shall submit to the Secretary for approval a plan of operations that—

(1) specifies practices covered under the program;

(2) includes such terms and conditions as the Secretary considers necessary to carry out the program, including a description of the purposes to be met by the implementation of the plan;

(3) in the case of a confined livestock feeding operation, provides for development and progressive implementation of a comprehensive nutrient management plan, if applicable; and

(4) in the case of forest land, is consistent with the provisions of a forest management plan that is approved by the Secretary, which may include—

(A) a forest stewardship plan described in section 2103a of this title;

(B) another practice plan approved by the State forester; or

(C) another plan determined appropriate by the Secretary.

(b) Avoidance of duplication

The Secretary shall—

(1) consider a plan developed in order to acquire a permit under a water or air quality regulatory program as the equivalent of a plan of operations under subsection (a), if the plan contains elements equivalent to those elements required by a plan of operations; and

(2) to the maximum extent practicable, eliminate duplication of planning activities under the program under this subpart and comparable conservation programs.

(Pub. L. 99-198, title XII, §1240E, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 256; amended Pub. L. 110-234, title II, §2506, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2506, June 18, 2008, 122 Stat. 1664, 1791; Pub. L. 115-334, title II, §§2301(d)(1)(H), 2305, Dec. 20, 2018, 132 Stat. 4554, 4561.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-5, Pub. L. 99-198, title XII, §1240E, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to environmental quality incentives program plan, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-334, §2305, inserted “progressive” before “implementation”.

Subsec. (b)(2). Pub. L. 115-334, §2301(d)(1)(H), substituted “this subpart” for “this part”.

2008—Subsec. (a). Pub. L. 110-246, §2506(a)(1), (2), substituted “Plan of operations” for “In general” in heading and struck out “cost-share payments or incentive” before “payments” in introductory provisions.

Subsec. (a)(4). Pub. L. 110-246, §2506(a)(3)-(5), added par. (4).

Subsec. (b). Pub. L. 110-246, §2506(b), amended subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary shall, to the maximum extent practicable, eliminate duplication of planning activities under the program under this part and comparable conservation programs.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-6. Duties of the Secretary

To the extent appropriate, the Secretary shall assist a producer in achieving the conservation and environmental goals of a program plan by—

(1) providing payments for developing and implementing 1 or more practices, as appropriate; and

(2) providing the producer with information and training to aid in implementation of the plan.

(Pub. L. 99-198, title XII, §1240F, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2507, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2507, June 18, 2008, 122 Stat. 1664, 1791.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-6, Pub. L. 99-198, title XII, §1240F, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to duties of Secretary, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2008—Par. (1). Pub. L. 110-246, §2507, struck out “cost-share payments or incentive” before “payments”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-7. Limitation on payments

Not including payments made under section 3839aa-2(j) of this title, a person or legal entity may not receive, directly or indirectly, cost-share or incentive payments under this subpart that, in aggregate, exceed \$450,000 for all con-

tracts entered into under this subpart by the person or legal entity during the period of fiscal years 2014 through 2018, or the period of fiscal years 2019 through 2023, regardless of the number of contracts entered into under this subpart by the person or legal entity.

(Pub. L. 99-198, title XII, §1240G, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 108-447, div. A, title VII, §794(b), Dec. 8, 2004, 118 Stat. 2852; Pub. L. 109-171, title I, §1203(b), Feb. 8, 2006, 120 Stat. 6; Pub. L. 110-234, title II, §2508, May 22, 2008, 122 Stat. 1063; Pub. L. 110-246, §4(a), title II, §2508, June 18, 2008, 122 Stat. 1664, 1791; Pub. L. 113-79, title II, §2206, Feb. 7, 2014, 128 Stat. 730; Pub. L. 115-334, title II, §§2301(d)(1)(I), 2306, Dec. 20, 2018, 132 Stat. 4554, 4561.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-7, Pub. L. 99-198, title XII, §1240G, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1001, related to limitation on payments, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2018—Pub. L. 115-334, §2306, substituted “Not including payments made under section 3839aa-2(j) of this title, a person” for “A person” and inserted “or the period of fiscal years 2019 through 2023,” after “2018.”

Pub. L. 115-334, §2301(d)(1)(I), substituted “this subpart” for “this part” wherever appearing.

2014—Pub. L. 113-79 amended section generally. Prior to amendment, section related to limitation on payments and included waiver authority in the case of contracts for projects of special environmental significance as determined by the Secretary.

2008—Pub. L. 110-246, §2508, designated existing provisions as subsec. (a), inserted heading, substituted “Subject to subsection (b), a person or legal entity” for “An individual or entity” and “\$300,000” for “\$450,000”, substituted “the person” for “the individual” in two places, and added subsec. (b).

2006—Pub. L. 109-171 substituted “any six-year period” for “the period of fiscal years 2002 through 2007”.

2004—Pub. L. 108-447 inserted “(excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 3839aa-2(h) of this title)” after “2007.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-8. Conservation innovation grants and payments

(a) Competitive grants for innovative conservation approaches

(1) Grants

Out of the funds made available to carry out this subpart, the Secretary may pay the cost

of competitive grants that are intended to stimulate innovative approaches to leveraging the Federal investment in environmental enhancement and protection, in conjunction with agricultural production or forest resource management, through the program.

(2) Use

The Secretary may provide grants under this subsection to governmental and non-governmental organizations and persons, on a competitive basis, to carry out projects that—

(A) involve producers who are eligible for payments or technical assistance under the program or community colleges (as defined in section 3319e(a) of title 7) carrying out demonstration projects on land of the community college;

(B) leverage Federal funds made available to carry out the program under this subpart with matching funds provided by State and local governments and private organizations to promote environmental enhancement and protection in conjunction with agricultural production;

(C) ensure efficient and effective transfer of innovative technologies and approaches demonstrated through projects that receive funding under this section, such as market systems for pollution reduction and practices for the storage of carbon in soil;

(D) provide environmental and resource conservation benefits through increased participation by producers of specialty crops;

(E) partner with farmers to develop innovative practices for urban, indoor, or other emerging agricultural operations;

(F) utilize edge-of-field and other monitoring practices on farms—

(i) to quantify the impacts of practices implemented under the program; and

(ii) to assist producers in making the best conservation investments for the operations of the producers;

(G) facilitate on-farm conservation research and demonstration activities; and

(H) facilitate pilot testing of new technologies or innovative conservation practices.

(b) Air quality concerns from agricultural operations

(1) Implementation assistance

The Secretary shall provide payments under this subsection to producers to implement practices to address air quality concerns from agricultural operations and to meet Federal, State, and local regulatory requirements. The funds shall be made available on the basis of air quality concerns in a State and shall be used to provide payments to producers that are cost effective and reflect innovative technologies.

(2) Funding

Of the funds made available to carry out this subpart, the Secretary shall carry out this subsection using \$37,500,000 for each of fiscal years 2019 through 2031.

(c) On-farm conservation innovation trials

(1) Definitions

In this subsection:

(A) Eligible entity

The term “eligible entity” means, as determined by the Secretary—

- (i) a third-party private entity the primary business of which is related to agriculture;
- (ii) a nongovernmental organization with experience working with agricultural producers; or
- (iii) a governmental organization.

(B) New or innovative conservation approach

The term “new or innovative conservation approach” means—

- (i) new or innovative—
 - (I) precision agriculture technologies;
 - (II) enhanced nutrient management plans, nutrient recovery systems, and fertilization systems;
 - (III) soil health management systems, including systems to increase soil carbon levels;
 - (IV) water management systems;
 - (V) resource-conserving crop rotations (as defined in section 3839aa-24(d)(1) of this title);
 - (VI) cover crops; and
 - (VII) irrigation systems; and
- (ii) any other conservation approach approved by the Secretary as new or innovative.

(2) Testing new or innovative conservation approaches

Using \$25,000,000 of the funds made available to carry out this subpart for each of fiscal years 2019 through 2031, the Secretary shall carry out on-farm conservation innovation trials, on eligible land of producers, to test new or innovative conservation approaches—

- (A) directly with producers; or
- (B) through eligible entities.

(3) Incentive payments**(A) Agreements**

In carrying out paragraph (2), the Secretary shall enter into agreements with producers (either directly or through eligible entities) on whose land an on-farm conservation innovation trial is being carried out to provide payments (including payments to compensate for foregone income, as appropriate to address the increased economic risk potentially associated with new or innovative conservation approaches) to the producers to assist with adopting and evaluating new or innovative conservation approaches to achieve conservation benefits.

(B) Adjusted gross income requirements**(i) In general**

Adjusted gross income requirements under section 1308-3a(b)(1) of title 7 shall—

- (I) apply to producers receiving payments under this subsection; and
- (II) be enforced by the Secretary.

(ii) Reporting

An eligible entity participating in an on-farm conservation innovation trial under this subsection shall report annually to

the Secretary on the amount of payments made to individual farm operations under this subsection.

(C) Limitation on administrative expenses

None of the funds made available to carry out this subsection may be used to pay for the administrative expenses of an eligible entity.

(D) Length of agreements

An agreement entered into under subparagraph (A) shall be for a period determined by the Secretary that is—

- (i) not less than 3 years; and
- (ii) if appropriate, more than 3 years, including if such a period is appropriate to support—

- (I) adaptive management over multiple crop years; and
- (II) adequate data collection and analysis by a producer or eligible entity to report the natural resource and agricultural production benefits of the new or innovative conservation approaches to the Secretary.

(4) Flexible adoption

The scale of adoption of a new or innovative conservation approach under an on-farm conservation innovation trial under an agreement under paragraph (2) may include multiple scales on an operation, including whole farm, field-level, or sub-field scales.

(5) Technical assistance

The Secretary shall provide technical assistance—

- (A) to each producer or eligible entity participating in an on-farm conservation innovation trial under paragraph (2) with respect to the design, installation, and management of the new or innovative conservation approaches; and
- (B) to each eligible entity participating in an on-farm conservation innovation trial under paragraph (2) with respect to data analyses of the on-farm conservation innovation trial.

(6) Geographic scope

The Secretary shall identify a diversity of geographic regions of the United States in which to establish on-farm conservation innovation trials under paragraph (2), taking into account factors such as soil type, cropping history, and water availability.

(7) Soil health demonstration trial

Using funds made available to carry out this subsection, the Secretary shall carry out a soil health demonstration trial under which the Secretary coordinates with eligible entities—

- (A) to provide incentives to producers to implement conservation practices that—
 - (i) improve soil health;
 - (ii) increase carbon levels in the soil; or
 - (iii) meet the goals described in clauses (i) and (ii);

(B) to establish protocols for measuring carbon levels in the soil and testing carbon levels on land where conservation practices described in subparagraph (A) were applied

to evaluate gains in soil health as a result of the practices implemented by the producers in the soil health demonstration trial; and

(C)(i) not later than September 30, 2020, to initiate a study regarding changes in soil health and, if feasible, economic outcomes, generated as a result of the conservation practices described in subparagraph (A) that were applied by producers through the soil health demonstration trial; and

(ii) to submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate annual reports on the progress and results of the study under clause (i).

(d) Reporting and database

(1) Report required

Not later than September 30, 2019, and every 2 years thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the status of activities funded under this section, including—

(A) funding awarded;

(B) results of the activities, including, if feasible, economic outcomes;

(C) incorporation of findings from the activities, such as new technology and innovative approaches, into the conservation efforts implemented by the Secretary; and

(D) on completion of the study required under subsection (c)(7)(C), the findings of the study.

(2) Conservation practice database

(A) In general

The Secretary shall use the data reported under paragraph (1) to establish and maintain a publicly available conservation practice database that provides—

(i) a compilation and analysis of effective conservation practices for soil health, nutrient management, and source water protection in varying soil compositions, cropping systems, slopes, and landscapes; and

(ii) a list of recommended new and effective conservation practices.

(B) Privacy

Information provided under subparagraph (A) shall be transformed into a statistical or aggregate form so as to not include any identifiable or personal information of individual producers.

(Pub. L. 99-198, title XII, §1240H, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2509, May 22, 2008, 122 Stat. 1064; Pub. L. 110-246, §4(a), title II, §2509, June 18, 2008, 122 Stat. 1664, 1792; Pub. L. 113-79, title II, §2207, Feb. 7, 2014, 128 Stat. 731; Pub. L. 115-334, title II, §§2301(d)(1)(J), 2307, Dec. 20, 2018, 132 Stat. 4554, 4561; Pub. L. 117-169, title II, §21001(c)(2), Aug. 16, 2022, 136 Stat. 2017.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub.

L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 3839aa-8, Pub. L. 99-198, title XII, §1240H, as added Pub. L. 104-127, title III, §334, Apr. 4, 1996, 110 Stat. 1002, related to temporary administration of environmental quality incentives program, prior to the general amendment of this part by Pub. L. 107-171.

AMENDMENTS

2022—Subsecs. (b)(2), (c)(2). Pub. L. 117-169 substituted “2031” for “2023”.

2018—Subsec. (a)(1). Pub. L. 115-334, §2301(d)(1)(J), substituted “this subpart” for “this part”.

Subsec. (a)(2)(A). Pub. L. 115-334, §2307(a)(1), substituted “program or community colleges (as defined in section 3319e(a) of title 7) carrying out demonstration projects on land of the community college;” for “program;”.

Subsec. (a)(2)(B). Pub. L. 115-334, §2301(d)(1)(J), substituted “this subpart” for “this part”.

Subsec. (a)(2)(E) to (H). Pub. L. 115-334, §2307(a)(2), (3), added subpars. (E) and (F) and redesignated former subpars. (E) and (F) as (G) and (H), respectively.

Subsec. (b)(2). Pub. L. 115-334, §2307(b), substituted “\$37,500,000 for each of fiscal years 2019 through 2023” for “\$25,000,000 for each of fiscal years 2009 through 2018”.

Pub. L. 115-334, §2301(d)(1)(J), substituted “this subpart” for “this part”.

Subsecs. (c), (d). Pub. L. 115-334, §2307(c), added subsecs. (c) and (d) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: “Not later than December 31, 2014, and every two years thereafter, the Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of projects funded under this section, including—

“(1) funding awarded;

“(2) project results; and

“(3) incorporation of project findings, such as new technology and innovative approaches, into the conservation efforts implemented by the Secretary.”

2014—Subsec. (a)(2)(E), (F). Pub. L. 113-79, §2207(1), added subpars. (E) and (F).

Subsec. (b)(2). Pub. L. 113-79, §2207(2), substituted “\$25,000,000” for “\$37,500,000” and “2018” for “2012”.

Subsec. (c). Pub. L. 113-79, §2207(3), added subsec. (c).
2008—Pub. L. 110-246, §2509, amended section generally. Prior to amendment, section related to conservation innovation grants.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 3839aa-9. Repealed. Pub. L. 113-79, title II, § 2706(a), Feb. 7, 2014, 128 Stat. 769

Section, Pub. L. 99-198, title XII, §1240I, as added Pub. L. 107-171, title II, §2301, May 13, 2002, 116 Stat. 257; amended Pub. L. 110-234, title II, §2510, May 22, 2008, 122 Stat. 1064; Pub. L. 110-246, §4(a), title II, §2510, June 18, 2008, 122 Stat. 1664, 1792, related to agricultural water enhancement program.

Statutory Notes and Related Subsidiaries

REPEAL; TRANSITIONAL PROVISIONS

Pub. L. 113-79, title II, §2706, Feb. 7, 2014, 128 Stat. 769, provided that:

“(a) REPEAL.—Except as provided in subsection (b), section 1240I of the Food Security Act of 1985 (16 U.S.C. 3839aa-9) is repealed.

“(b) TRANSITIONAL PROVISIONS.—

“(1) EFFECT ON EXISTING CONTRACTS AND AGREEMENTS.—The amendment made by this section [repealing section 3839aa-9 of this title] shall not affect the validity or terms of any contract or agreement entered into by the Secretary of Agriculture under section 1240I of the Food Security Act of 1985 ([former] 16 U.S.C. 3839aa-9) before the date of enactment of the Agricultural Act of 2014 [Feb. 7, 2014], or any payments required to be made in connection with the contract or agreement.

“(2) FUNDING.—

“(A) USE OF PRIOR YEAR FUNDS.—Notwithstanding the repeal of section 1240I of the Food Security Act of 1985 ([former] 16 U.S.C. 3839aa-9), any funds made available from the Commodity Credit Corporation to carry out the agricultural water enhancement program under that section for fiscal years 2009 through 2013 shall be made available to carry out contracts and agreements referred to in paragraph (1) that were entered into prior to the date of enactment of the Agricultural Act of 2014 (including the provision of technical assistance).

“(B) OTHER.—On exhaustion of funds made available under subparagraph (A), the Secretary [of Agriculture] may use funds made available to carry out the regional conservation partnership program under subtitle I of title XII of the Food Security Act of 1985 [16 U.S.C. 3871 et seq.], as added by section 2401, to continue to carry out contracts and agreements referred to in paragraph (1) using the provisions of law and regulation applicable to such contracts and agreements as in existence on the day before the date of enactment of the Agricultural Act of 2014.”

SUBPART B—CONSERVATION STEWARDSHIP PROGRAM

§ 3839aa-21. Definitions

In this subpart:

(1) Agricultural operation

The term “agricultural operation” means all eligible land, whether or not contiguous, that is—

- (A) under the effective control of a producer at the time the producer enters into a contract under the program; and
- (B) operated with equipment, labor, management, and production or cultivation practices that are substantially separate from other agricultural operations, as determined by the Secretary.

(2) Conservation activities

(A) In general

The term “conservation activities” means conservation systems, practices, or management measures.

(B) Inclusions

The term “conservation activities” includes—

- (i) structural measures, vegetative measures, and land management measures, including agriculture drainage management systems, as determined by the Secretary;
- (ii) planning needed to address a priority resource concern;
- (iii) development of a comprehensive conservation plan, as defined in section 3839aa-24(e)(1) of this title;

- (iv) soil health planning, including planning to increase soil organic matter; and
- (v) activities that will assist a producer to adapt to, or mitigate against, increasing weather volatility.

(3) Conservation stewardship plan

The term “conservation stewardship plan” means a plan that—

- (A) identifies and inventories priority resource concerns;
- (B) establishes benchmark data and conservation objectives;
- (C) describes conservation activities to be implemented, managed, or improved; and
- (D) includes a schedule and evaluation plan for the planning, installation, and management of the new and existing conservation activities.

(4) Eligible land

(A) In general

The term “eligible land” means—

- (i) private or tribal land on which agricultural commodities, livestock, or forest-related products are produced; and
- (ii) lands associated with the land described in clause (i) on which priority resource concerns could be addressed through a contract under the program.

(B) Inclusions

The term “eligible land” includes—

- (i) cropland;
- (ii) grassland;
- (iii) rangeland;
- (iv) pasture land;
- (v) nonindustrial private forest land; and
- (vi) other land in agricultural areas (including cropped woodland, marshes, and agricultural land used or capable of being used for the production of livestock), as determined by the Secretary.

(5) Priority resource concern

The term “priority resource concern” means a natural resource concern or problem, as determined by the Secretary, that—

- (A) is identified at the national, State, or local level as a priority for a particular area of a State;
- (B) represents a significant concern in a State or region; and
- (C) is likely to be addressed successfully through the implementation of conservation activities under this program.

(6) Program

The term “program” means the conservation stewardship program established by this subpart.

(7) Stewardship threshold

The term “stewardship threshold” means the level of management required, as determined by the Secretary, to conserve and improve the quality and condition of a natural resource through the use of—

- (A) quality criteria under a resource management system;
- (B) predictive analytics tools or models developed or approved by the Natural Resources Conservation Service;