

the Secretary determines will advance the purposes of this part.

(g) Exemption from automatic sequester

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

(Pub. L. 99-198, title XII, §1239C, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3599.)

REFERENCES IN TEXT

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

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

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

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

§ 3839d. Changes in ownership; modification of easement

(a) Limitations

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

- (1) the new ownership was acquired by will or succession as a result of the death of the previous owner;
- (2) the new ownership was acquired before January 1, 1990; or
- (3) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program established by this part.

(b) Modification; termination

(1) Modification

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

- (A) the current owner of the land agrees to such modification; and
- (B) the Secretary determines that such modification is desirable—
 - (i) to carry out this part;
 - (ii) to facilitate the practical administration of this part; or
 - (iii) to achieve such other goals as the Secretary determines are appropriate and consistent with this part.

(2) Termination

(A) In general

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

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

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

(B) Notice

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

(Pub. L. 99-198, title XII, §1239D, as added Pub. L. 101-624, title XIV, §1440, Nov. 28, 1990, 104 Stat. 3600.)

PART IV—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

CODIFICATION

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.

§ 3839aa. Purposes

The purposes of the environmental quality incentives program established by this part 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; and
 - (B) conserving energy;
- (4) 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; and

(5) consolidating and streamlining conservation planning and regulatory compliance processes to reduce administrative burdens on producers and the cost of achieving environmental goals.

(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.)

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

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”.

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-1. Definitions

In this part:

(1) 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, and agricultural land used for the production of livestock) on which resource concerns related to agricultural production could be addressed through a contract under the program, as determined by the Secretary.

(2) National organic program

The term “national organic program” means the national organic program established

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

(3) Organic system plan

The term “organic system plan” means an organic plan approved under the national organic program.

(4) Payment

The term “payment” means financial assistance provided to a producer for performing practices under this part, 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.

(5) Practice

The term “practice” means 1 or more improvements and conservation activities that are consistent with the purposes of the program under this part, 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; and
 - (v) 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; and
 - (ii) other plans that the Secretary determines would further the purposes of the program under this part.

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

- (i) comprehensive nutrient management planning; and
- (ii) other plans that the Secretary determines would further the purposes of the program under this part.

(6) Program

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

(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.)

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in par. (2), 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

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”.

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 2014 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—

(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.

(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) 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.

(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 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

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.

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

(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

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.

(g) Funding for federally recognized Native American Indian Tribes and Alaska Native Corporations

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.

(h) Water conservation or irrigation efficiency practice

(1) Availability of payments

The Secretary may provide payments under this subsection to a producer for a water conservation or irrigation practice.

(2) Priority

In providing payments to a producer 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 eligible land of the producer is located, there is a reduction in water use in the operation of the producer; or

(B) 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.

(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 part.

(3) Payment limitations

Payments under this subsection to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$20,000 per year or \$80,000 during any 6-year period. In applying these limitations, 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 or-

ganic 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.).

(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.)

REFERENCES IN TEXT

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

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).

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 na-

tional, State, and local conservation priorities are effectively addressed.

(b) Prioritization of applications

In evaluating applications under this part, 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 environmental 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 purpose of the environmental quality incentives program specified in section 3839aa(1) of this title; 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.)

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

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.”

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 farm, ranch, or forest 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.)

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

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”.

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 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 part 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.)

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

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.”

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.)

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”.

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

(a) Limitation

Subject to subsection (b), a person or legal entity may not receive, directly or indirectly, cost-share or incentive payments under this part that, in the aggregate, exceed \$300,000 for all contracts entered into under this part by the person or entity during any six-year period,¹ (excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 3839aa-2(h)² of this title) regardless of the number of contracts entered into under this part by the person or entity.

(b) Waiver authority

In the case of contracts under this part for projects of special environmental significance (including projects involving methane digesters), as determined by the Secretary, the Secretary may—

(1) waive the limitation otherwise applicable under subsection (a); and

¹ So in original. The comma probably should follow “title”).

² See References in Text note below.

(2) raise the limitation to not more than \$450,000 during any six-year period.

(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.)

REFERENCES IN TEXT

Section 3839aa-2 of this title, referred to in subsec. (a), was amended generally by Pub. L. 110-246, title II, §2503, June 18, 2008, 122 Stat. 1787, and, as so amended, provisions relating to funding arrangements with federally recognized Native American Tribes or Alaska Native Corporations, which formerly appeared in subsec. (h), are contained in subsec. (g).

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

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,”.

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 part, 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;

(B) leverage Federal funds made available to carry out the program under this part 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; and

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

(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 part, the Secretary shall carry out this subsection using \$37,500,000 for each of fiscal years 2009 through 2012.

(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.)

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

2008—Pub. L. 110-246, §2509, amended section generally. Prior to amendment, section related to conservation innovation grants.

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. Agricultural water enhancement program

(a) Definitions

In this section:

(1) Agricultural water enhancement activity

The term “agricultural water enhancement activity” includes the following activities carried out with respect to agricultural land:

(A) Water quality or water conservation plan development, including resource condition assessment and modeling.

(B) Water conservation restoration or enhancement projects, including conversion to the production of less water-intensive agricultural commodities or dryland farming.

(C) Water quality or quantity restoration or enhancement projects.

(D) Irrigation system improvement and irrigation efficiency enhancement.

(E) Activities designed to mitigate the effects of drought.

(F) Related activities that the Secretary determines will help achieve water quality or water conservation benefits on agricultural land.

(2) Partner

The term “partner” means an entity that enters into a partnership agreement with the Secretary to carry out agricultural water enhancement activities on a regional basis, including—

(A) an agricultural or silvicultural producer association or other group of such producers;

(B) a State or unit of local government; or

(C) a federally recognized Indian tribe.

(3) Partnership agreement

The term “partnership agreement” means an agreement between the Secretary and a partner.

(4) Program

The term “program” means the agricultural water enhancement program established under subsection (b).

(b) Establishment of program

Beginning in fiscal year 2009, the Secretary shall carry out, in accordance with this section and using such procedures as the Secretary determines to be appropriate, an agricultural water enhancement program as part of the environmental quality incentives program to promote ground and surface water conservation and improve water quality on agricultural lands—

(1) by entering into contracts with, and making payments to, producers to carry out agricultural water enhancement activities; or

(2) by entering into partnership agreements with partners, in accordance with subsection (c), on a regional level to benefit working agricultural land.

(c) Partnership agreements**(1) Agreements authorized**

The Secretary may enter into partnership agreements to meet the objectives of the program described in subsection (b).

(2) Applications

An application to the Secretary to enter into a partnership agreement under paragraph (1) shall include the following:

(A) A description of the geographical area to be covered by the partnership agreement.

(B) A description of the agricultural water quality or water conservation issues to be addressed by the partnership agreement.

(C) A description of the agricultural water enhancement objectives to be achieved through the partnership.

(D) A description of the partners collaborating to achieve the project objectives and the roles, responsibilities, and capabilities of each partner.

(E) A description of the program resources, including payments the Secretary is requested to make.

(F) Such other such elements as the Secretary considers necessary to adequately evaluate and competitively select applications for partnership agreements.

(3) Duties of partners

A partner under a partnership agreement shall—

(A) identify producers participating in the project and act on their behalf in applying for the program;

(B) leverage funds provided by the Secretary with additional funds to help achieve project objectives;

(C) conduct monitoring and evaluation of project effects; and

(D) at the conclusion of the project, report to the Secretary on project results.

(d) Agricultural water enhancement activities by producers

The Secretary shall select agricultural water enhancement activities proposed by producers according to applicable requirements under the environmental quality incentives program.

(e) Agricultural water enhancement activities by partners**(1) Competitive process**

The Secretary shall conduct a competitive process to select partners. In carrying out the process, the Secretary shall make public the criteria used in evaluating applications.

(2) Authority to give priority to certain proposals

The Secretary may give a higher priority to proposals from partners that—

(A) include high percentages of agricultural land and producers in a region or other appropriate area;

(B) result in high levels of applied agricultural water quality and water conservation activities;

(C) significantly enhance agricultural activity;

(D) allow for monitoring and evaluation; and

(E) assist producers in meeting a regulatory requirement that reduces the economic scope of the producer’s operation.

(3) Priority to proposals from States with water quantity concerns

The Secretary shall give a higher priority to proposals from partners that—

(A) include the conversion of agricultural land from irrigated farming to dryland farming;

(B) leverage Federal funds provided under the program with funds provided by partners; and

(C) assist producers in States with water quantity concerns, as determined by the Secretary.

(4) Administration

In carrying out this subsection, the Secretary shall—

(A) accept qualified applications—

(i) directly from partners applying on behalf of producers; or

(ii) from producers applying through a partner as part of a regional agricultural water enhancement project; and

(B) ensure that resources made available for regional agricultural water enhancement activities are delivered in accordance with applicable program rules.

(f) Areas experiencing exceptional drought

Notwithstanding the purposes described in section 3839aa of this title, the Secretary shall consider as an eligible agricultural water enhancement activity the use of a water impoundment to capture surface water runoff on agricultural land if the agricultural water enhancement activity—

(1) is located in an area that is experiencing or has experienced exceptional drought conditions during the previous two calendar years; and

(2) will capture surface water runoff through the construction, improvement, or maintenance of irrigation ponds or small, on-farm reservoirs.

(g) Waiver authority

To assist in the implementation of agricultural water enhancement activities under the program, the Secretary shall waive the applicability of the limitation in section 1308-3a(b)(2)(B) of title 7 for participating producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.

(h) Payments under program

(1) In general

The Secretary shall provide appropriate payments to producers participating in agricultural water enhancement activities in an amount determined by the secretary¹ to be necessary to achieve the purposes of the program described in subsection (b).

(2) Payments to producers in States with water quantity concerns

The Secretary shall provide payments for a period of five years to producers participating in agricultural water enhancement activities under proposals described in subsection (e)(3) in an amount sufficient to encourage producers to convert from irrigated farming to dryland farming.

(i) Consistency with State law

Any agricultural water enhancement activity conducted under the program shall be conducted in a manner consistent with State water law.

¹ So in original. Probably should be “Secretary”.

(j) Funding

(1) Availability of funds

In addition to funds made available to carry out this part under section 3841(a) of this title, the Secretary shall carry out the program using, of the funds of the Commodity Credit Corporation—

(A) \$73,000,000 for each of fiscal years 2009 and 2010;

(B) \$74,000,000 for fiscal year 2011; and

(C) \$60,000,000 for fiscal year 2012 and each fiscal year thereafter.

(2) Limitation on administrative expenses

None of the funds made available for regional agricultural water conservation activities under the program may be used to pay for the administrative expenses of partners.

(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.)

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.

AMENDMENTS

2008—Pub. L. 110-246, § 2510, amended section generally. Prior to amendment, section related to ground and surface water conservation.

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.

TRANSITION PROVISIONS

Pub. L. 110-234, title II, § 2903(b), May 22, 2008, 122 Stat. 1091, and Pub. L. 110-246, § 4(a), title II, § 2903(b), June 18, 2008, 122 Stat. 1664, 1819, provided that: “During the period beginning on the date of the enactment of this Act [June 18, 2008] and ending on September 30, 2008, the Secretary of Agriculture shall continue to carry out the ground and surface water conservation program under section 1240I of the Food Security Act of 1985 (16 U.S.C. 3839aa-9), as in effect before the amendment made by section 2510, using the terms, conditions, and funds available to the Secretary to carry out such program on the day before the date of the enactment of this Act.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

PART V—OTHER CONSERVATION PROGRAMS

§ 3839bb. Conservation of private grazing land

(a) Purpose

It is the purpose of this section to authorize the Secretary to provide a coordinated technical, educational, and related assistance program to conserve and enhance private grazing land resources and provide related benefits to all citizens of the United States by—

(1) establishing a coordinated and cooperative Federal, State, and local grazing con-