

(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 L. 110-234 were repealed by section 4(a) of Pub.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)<sup>1</sup> 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

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).

<sup>1</sup> See References in Text note below.

**(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