

SUBCHAPTER III—WETLAND
CONSERVATION

§ 3821. Program ineligibility

(a) Production on converted wetland

Except as provided in this subchapter and notwithstanding any other provision of law, any person who in any crop year produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be—

(1) in violation of this section; and

(2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation.

(b) Ineligibility for certain loans and payments

If a person is determined to have committed a violation under subsection (a) during a crop year, the Secretary shall determine which of, and the amount of, the following loans and payments for which the person shall be ineligible:

(1) Contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.], the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

(2) A loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Consolidated Farm Service Agency,¹ if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to conversion of a wetland (other than as provided in this subchapter) to produce an agricultural commodity.

(3) During the crop year:

(A) A payment made pursuant to a contract entered into under the environmental quality incentives program under subpart A of part IV of subchapter IV.

(B) A payment under any other provision of subchapter IV.

(C) A payment under section 2201 or 2202 of this title.

(D) A payment, loan, or other assistance under section 1003 or 1006a of this title.

(c) Ineligibility for crop insurance premium assistance

(1) Requirements

(A) In general

If a person is determined to have committed a violation under subsection (a) or (d) during a crop year, the person shall be ineligible to receive any payment of any portion of premium paid by the Federal Crop Insurance Corporation for a plan or policy of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) pursuant to this subsection.

(B) Applicability

Ineligibility under this subsection shall—

(i) only apply to reinsurance years subsequent to the date of a final determination of a violation, including all administrative appeals; and

(ii) not apply to the existing reinsurance year or any reinsurance year prior to the date of the final determination.

(2) Conversions

(A) In general

Notwithstanding paragraph (1), ineligibility for crop insurance premium assistance shall apply in accordance with this paragraph.

(B) New conversions

In the case of a wetland that the Secretary determines was converted after February 7, 2014—

(i) the person shall be ineligible to receive crop insurance premium subsidies in subsequent reinsurance years unless the Secretary determines that an exemption pursuant to section 3822 of this title applies; or

(ii) for any violation that the Secretary determines impacts less than 5 acres of an entire farm, the person may pay a contribution in an amount equal to 150 percent of the cost of mitigation, as determined by the Secretary, to the fund described in section 3841(f) of this title for wetland restoration in lieu of ineligibility to receive crop insurance premium assistance.

(C) Prior conversions

In the case of a wetland that the Secretary determines was converted prior to February 7, 2014, ineligibility under this subsection shall not apply.

(D) Conversions and new policies or plans of insurance

In the case of an agricultural commodity for which an individual policy or plan of insurance is available for the first time to the person after February 7, 2014—

(i) ineligibility shall apply only to conversions that take place after the date on which the policy or plan of insurance first becomes available to the person; and

(ii) the person shall take such steps as the Secretary determines appropriate to mitigate any prior conversion in a timely manner but not to exceed 2 reinsurance years.

(3) Limitations

(A) Mitigation required

Except as otherwise provided in this paragraph, a person subject to a final determination, including all administrative appeals, of a violation described in subsection (d) shall have 1 reinsurance year to initiate a mitigation plan to remedy the violation, as determined by the Secretary, before becoming ineligible under this subsection in the following reinsurance year to receive any payment of any portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(B) Persons covered for the first time

Notwithstanding the requirements of paragraph (1), in the case of a person that is sub-

¹ See Change of Name note below.

ject to this subsection for the first time solely due to the amendment made by section 2611(b) of the Agricultural Act of 2014, the person shall have 2 reinsurance years after the reinsurance year in which a final determination is made, including all administrative appeals, of a violation described in this subsection to take such steps as the Secretary determines appropriate to remedy or mitigate the violation in accordance with this subsection.

(C) Good faith

If the Secretary determines that a person subject to a final determination, including all administrative appeals, of a violation described in this subsection acted in good faith and without intent to commit a violation described in this subsection as described in section 3822(h) of this title, the person shall have 2 reinsurance years to take such steps as the Secretary determines appropriate to remedy or mitigate the violation in accordance with this subsection.

(D) Tenant relief

(i) In general

If a tenant is determined to be ineligible for payments and other benefits under this subsection, the Secretary may limit the ineligibility only to the farm that is the basis for the ineligibility determination if the tenant has established, to the satisfaction of the Secretary that—

(I) the tenant has made a good faith effort to meet the requirements of this section, including enlisting the assistance of the Secretary to obtain a reasonable plan for restoration or mitigation for the farm;

(II) the landlord on the farm refuses to comply with the plan on the farm; and

(III) the Secretary determines that the lack of compliance is not a part of a scheme or device to avoid the compliance.

(ii) Report

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 an annual report concerning the ineligibility determinations limited during the previous 12-month period under this subparagraph.

(E) Certificate of compliance

(i) In general

Beginning with the first full reinsurance year immediately following February 7, 2014, all persons seeking eligibility for the payment of a portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) shall provide certification of compliance with this section as determined by the Secretary.

(ii) Timely evaluation

The Secretary shall evaluate the certification in a timely manner and—

(I) a person who has properly complied with certification shall be held harmless with regard to eligibility during the period of evaluation; and

(II) if the Secretary fails to evaluate the certification in a timely manner and the person is subsequently found to be in violation of this subsection, ineligibility shall not apply to the person for that violation.

(iii) Equitable contribution

(I) In general

If a person fails to notify the Secretary as required and is subsequently found to be in violation of this subsection, the Secretary shall—

(aa) determine the amount of an equitable contribution to conservation by the person for the violation; and

(bb) deposit the contribution in the fund described in section 3841(f) of this title.

(II) Limitation

The contribution shall not exceed the total of the portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance for all years the person is determined to have been in violation subsequent to the date on which certification was first required under this subparagraph.

(4) Duties of the Secretary

(A) In general

In carrying out this subsection, the Secretary shall use existing processes and procedures for certifying compliance.

(B) Responsibility

The Secretary, acting through the agencies of the Department of Agriculture, shall be solely responsible for determining whether a producer is eligible to receive crop insurance premium subsidies in accordance with this subsection.

(C) Limitation

The Secretary shall ensure that no agent, approved insurance provider, or employee or contractor of an agency or approved insurance provider, bears responsibility or liability for the eligibility of an insured producer under this subsection, other than in cases of misrepresentation, fraud, or scheme and device.

(d) Wetland conversion

(1) In general

Except as provided in section 3822 of this title and notwithstanding any other provision of law, any person who in any crop year beginning after November 28, 1990, converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland shall be ineligible for those payments, loans, or programs specified in subsection (b) for that crop year and all subsequent crop years.

(2) Duty of the Secretary

No person shall become ineligible under paragraph (1) if the Secretary determines that an exemption under section 3822(b) of this title applies to that person.

(e) Prior loans

This section shall not apply to a loan described in subsection (b) made before December 23, 1985.

(f) Wetland

The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subchapter.

(Pub. L. 99-198, title XII, §1221, Dec. 23, 1985, 99 Stat. 1507; Pub. L. 101-624, title XIV, §1421(b), Nov. 28, 1990, 104 Stat. 3572; Pub. L. 102-237, title II, §204(3), Dec. 13, 1991, 105 Stat. 1855; Pub. L. 102-552, title III, §308(a), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104-127, title III, §321, Apr. 4, 1996, 110 Stat. 986; Pub. L. 107-171, title II, §2002(b), May 13, 2002, 116 Stat. 233; Pub. L. 113-79, title II, §2611(b), Feb. 7, 2014, 128 Stat. 763; Pub. L. 115-334, title II, §§2101, 2301(d)(1)(B), Dec. 20, 2018, 132 Stat. 4530, 4553.)

REFERENCES IN TEXT

The Agricultural Market Transition Act, referred to in subsec. (b)(1), is title I of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 896, which is classified principally to chapter 100 (§7201 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 7201 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in subsec. (b)(1), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Consolidated Farm and Rural Development Act, referred to in subsec. (b)(2), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(1)(A), (3)(A), (E)(i), is subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, which is classified generally to subchapter I (§1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 2611(b) of the Agricultural Act of 2014, referred to in subsec. (c)(3)(B), is section 2611(b) of Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 763, which amended this section.

AMENDMENTS

2018—Subsec. (b)(3)(A). Pub. L. 115-334, §2301(d)(1)(B), inserted “subpart A of” before “part IV”.

Subsec. (d). Pub. L. 115-334, §2101, designated existing provisions as par. (1), inserted heading, and added par. (2).

2014—Subsecs. (c) to (f). Pub. L. 113-79 added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

2002—Subsec. (e). Pub. L. 107-171 added subsec. (e).

1996—Pub. L. 104-127, §321(a)(2), reenacted section catchline without change.

Subsec. (a). Pub. L. 104-127, §321(a)(2), added subsec. (a) and struck out former subsec. (a) which related to ineligibility of persons producing an agricultural commodity on converted wetland to receive certain Federal payments, loans, insurance benefits, and other benefits.

Subsec. (b). Pub. L. 104-127, §321(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-127, §321(b)(1), inserted heading and substituted “beginning after November 28, 1990,” for “subsequent to November 28, 1990,” and “subsection (b)” for “subsections (a)(1) through (3)”.

Pub. L. 104-127, §321(a)(1), redesignated subsec. (b) as (c).

Subsec. (d). Pub. L. 104-127, §321(b)(2), added subsec. (d).

1992—Subsec. (a)(1)(D). Pub. L. 102-552 made technical correction to directory language of Pub. L. 102-237. See 1991 Amendment note below.

1991—Subsec. (a)(1)(D). Pub. L. 102-237, as amended by Pub. L. 102-552, substituted “(7 U.S.C. 1421 note)” for “(16 U.S.C. 1421 note)”.

1990—Subsec. (a). Pub. L. 101-624, §1421(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(1)(D). Pub. L. 101-624, §1421(b)(2), inserted reference to section 132 of the Disaster Assistance Act of 1989 and similar provisions enacted after Aug. 14, 1989.

Subsec. (a)(3). Pub. L. 101-624, §1421(b)(3)-(5), added par. (3).

Subsec. (b). Pub. L. 101-624, §1421(b)(6), added subsec. (b).

CHANGE OF NAME

Consolidated Farm Service Agency effectively renamed Farm Service Agency by the amendments made to section 6932 of Title 7, Agriculture, by Pub. L. 115-334, title XII, §12404(a), Dec. 20, 2018, 132 Stat. 4974.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-127, title III, §326, Apr. 4, 1996, 110 Stat. 992, provided that: “This subtitle [subtitle C (§§ 321-326) of title III of Pub. L. 104-127, enacting section 3823 of this title, amending this section and section 3822 of this title, and repealing former section 3823 of this title] and the amendments made by this subtitle shall become effective 90 days after the date of enactment of this Act [Apr. 4, 1996].”

SHORT TITLE

Pub. L. 99-198, title XII, subtitle C, Dec. 23, 1985, 99 Stat. 1507, which is classified generally to this subchapter, is popularly known as the swampbuster provisions.

§ 3822. Delineation of wetlands; exemptions**(a) Delineation by Secretary****(1) In general**

Subject to subsection (b) and paragraph (6), the Secretary shall delineate, determine, and certify all wetlands located on subject land on a farm.

(2) Wetland delineation maps

The Secretary shall delineate wetlands on wetland delineation maps. On the request of a person, the Secretary shall make a reasonable effort to make an on-site wetland determination prior to delineation.

(3) Certification

On providing notice to affected persons, the Secretary shall—

(A) certify whether a map is sufficient for the purpose of making a determination of ineligibility for program benefits under section 3821 of this title; and

(B) provide an opportunity to appeal the certification prior to the certification becoming final.

(4) Duration of certification

A final certification made under paragraph (3) shall remain valid and in effect as long as