

116TH CONGRESS
2D SESSION

S. 4704

To require reforms to programs of the Natural Resources Conservation Service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2020

Mr. ROUNDS (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To require reforms to programs of the Natural Resources Conservation Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NRCS Wetland Com-
5 pliance and Appeals Reform Act”.

6 **SEC. 2. NATURAL RESOURCES CONSERVATION SERVICE**
7 **REFORMS.**

8 (a) **PERMISSIBILITY OF THE REMOVAL OF WOODY**
9 **VEGETATION.**—Section 1221(d) of the Food Security Act

1 of 1985 (16 U.S.C. 3821(d)) is amended by adding at the
2 end the following:

3 “(3) PERMISSIBILITY OF THE REMOVAL OF
4 WOODY VEGETATION.—The removal of woody vege-
5 tation, including stumps, shall not be considered to
6 be an activity that is for the purpose, or that has
7 the effect, of making the production of an agricul-
8 tural commodity possible under paragraph (1).”.

9 (b) PROHIBITION ON RETROACTIVE PENALTIES.—
10 Section 1221 of the Food Security Act of 1985 (16 U.S.C.
11 3821) is amended by adding at the end the following:

12 “(g) PROHIBITION ON RETROACTIVE PENALTIES.—
13 The Secretary may not determine a person to be in viola-
14 tion of this section for the production of an agricultural
15 commodity on, or the conversion of, a wetland that, at the
16 time of that production or conversion, as applicable, the
17 Secretary had not delineated, determined, and certified to
18 be a wetland in accordance with section 1222.”.

19 (c) BURDEN OF PROOF.—Section 1221 of the Food
20 Security Act of 1985 (16 U.S.C. 3821) (as amended by
21 subsection (b)) is amended by adding at the end the fol-
22 lowing:

23 “(h) BURDEN OF PROOF.—The Secretary shall bear
24 the burden of proving, by clear and convincing evidence,
25 that a person is in violation of this section, including—

1 “(1) in a case in which there is a lack of evi-
2 dence to determine such a violation; and

3 “(2) the burden of proving, by clear and con-
4 vincing evidence, that evidence offered to prove that
5 a person is not in violation of this section is unreli-
6 able.”.

7 (d) PROHIBITION ON USING NEW RATIONALE FOR
8 WETLAND DETERMINATIONS PREVIOUSLY REFUTED.—
9 Section 1222(a) of the Food Security Act of 1985 (16
10 U.S.C. 3822(a)) is amended by adding at the end the fol-
11 lowing:

12 “(7) PROHIBITION ON USING NEW RATIONALE
13 FOR WETLAND DETERMINATIONS PREVIOUSLY RE-
14 FUTED.—If a person successfully appeals a final
15 wetland determination at the National Appeals Divi-
16 sion, the Secretary may not subsequently make a de-
17 termination that the wetland exists based on a ra-
18 tionale that was not used for the determination that
19 was successfully appealed at the National Appeals
20 Division.”.

21 (e) APPEAL PROCESS FOR NONACCEPTED REVIEW
22 OF WETLAND CERTIFICATION REQUESTS.—Section
23 1222(a) of the Food Security Act of 1985 (16 U.S.C.
24 3822(a)) (as amended by subsection (d)) is amended by
25 adding at the end the following:

1 “(8) APPEAL PROCESS FOR NONACCEPTED RE-
2 VIEW OF WETLAND CERTIFICATION REQUESTS.—
3 The Secretary shall develop an appeal process for re-
4 quests for the review of wetland certifications that
5 are not accepted by a State office of the Natural Re-
6 sources Conservation Service, which shall include a
7 right for the person bringing the appeal to demand
8 that the Secretary conduct an on-site visit in accord-
9 ance with subsection (c).”.

10 (f) REQUIREMENT RELATING TO PRELIMINARY WET-
11 LAND DETERMINATIONS.—Section 1222(c) of the Food
12 Security Act of 1985 (16 U.S.C. 3822(c)) is amended by
13 adding at the end the following:

14 “(3) REQUIREMENT RELATING TO PRELIMI-
15 NARY WETLAND DETERMINATIONS.—The Secretary
16 may not rely solely on 1 on-site visit described in
17 paragraph (1) to determine that the hydrologic cri-
18 teria for the determination that a wetland exists are
19 satisfied.”.

20 (g) CUSTOMER SATISFACTION SURVEY.—Subtitle C
21 of title XII of the Food Security Act of 1985 (16 U.S.C.
22 3821 et seq.) is amended by adding at the end the fol-
23 lowing:

24 **“SEC. 1225. CUSTOMER SATISFACTION SURVEY.**

25 “(a) PURPOSES.—The purposes of this section are—

1 “(1) to improve customer service at the Natural
2 Resources Conservation Service relating to the ad-
3 ministration of this subtitle;

4 “(2) to identify areas of satisfaction of cus-
5 tomers in interacting with the Natural Resources
6 Conservation Service in the administration of this
7 subtitle;

8 “(3) to identify areas of customer service at the
9 Natural Resources Conservation Service in need of
10 improvement due to dissatisfaction of customers in
11 interacting with the Natural Resources Conservation
12 Service in the administration of this subtitle; and

13 “(4) to address corrective measures and initiate
14 positive change in customer service at the Natural
15 Resources Conservation Service relating to the ad-
16 ministration of this subtitle.

17 “(b) OPTION TO PARTICIPATE IN SURVEY.—The
18 Secretary shall offer to each individual who interacts with
19 the Natural Resources Conservation Service in the admin-
20 istration of this subtitle the option to participate in a sur-
21 vey described in subsection (c).

22 “(c) SURVEYS.—The Secretary shall enter into an
23 agreement with an independent survey company, under
24 which the independent survey company shall provide the
25 following services:

1 “(1) Send, by email or mail, a customer satis-
2 faction survey to each individual who interacts with
3 the Natural Resources Conservation Service in the
4 administration of this subtitle and indicates to the
5 Secretary a desire to participate in the survey on
6 being offered the option to participate under sub-
7 section (b) after any of the following occurs:

8 “(A) The Secretary completes a final wet-
9 land determination, including a final technical
10 determination, relating to land of the indi-
11 vidual.

12 “(B) Appeals to the Farm Service Agency
13 with respect to a wetland determination are ex-
14 hausted.

15 “(C) An appeal is made with respect to a
16 wetland determination to a National Appeals
17 Division officer.

18 “(D) An appeal is made with respect to a
19 wetland determination to the Director of the
20 National Appeals Division.

21 “(E) The Secretary completes a review of
22 a prior certification of a wetland determination.

23 “(F) The individual has any other inter-
24 action with the Natural Resources Conservation

1 Service, as the Secretary determines to be ap-
2 propriate.

3 “(2) Receive responses to the surveys from the
4 individuals to which the surveys are sent under
5 paragraph (1).

6 “(3) Each month—

7 “(A) compile the responses to the surveys
8 received under paragraph (2); and

9 “(B) submit a report describing the com-
10 piled responses to—

11 “(i) the applicable State Conserva-
12 tionist;

13 “(ii) the congressional delegation of
14 each applicable State;

15 “(iii) the Committee on Agriculture,
16 Nutrition, and Forestry of the Senate;

17 “(iv) the Committee on Agriculture of
18 the House of Representatives;

19 “(v) the applicable State department
20 of agriculture; and

21 “(vi) the Secretary.”.

22 (h) STATE OVERSIGHT COMMITTEES.—Subtitle C of
23 title XII of the Food Security Act of 1985 (16 U.S.C.
24 3821 et seq.) (as amended by subsection (g)) is amended
25 by adding at the end the following:

1 **“SEC. 1226. STATE OVERSIGHT COMMITTEES.**

2 “(a) IN GENERAL.—The Secretary shall establish an
3 oversight committee for each State in which appeals of
4 wetland determinations under this subtitle are made.

5 “(b) COMPOSITION.—Each State oversight committee
6 shall be composed of—

7 “(1) 2 private, active farmers or ranchers ap-
8 pointed by the Secretary; and

9 “(2) 1 private, active farmer or rancher ap-
10 pointed by the State department of agriculture.

11 “(c) TERMS.—A member of a State oversight com-
12 mittee—

13 “(1) shall be appointed for a term of 5 years;
14 and

15 “(2) may serve for not more than 2 terms.

16 “(d) DUTIES.—Each State oversight committee shall
17 have the following duties:

18 “(1) Review the following appeals of wetland
19 determinations under this subtitle in the applicable
20 State:

21 “(A) Appeals of preliminary wetland deter-
22 minations.

23 “(B) Appeals of final wetland determina-
24 tions.

25 “(C) Wetland determination appeals to the
26 county Farm Service Agency committee.

1 “(D) Wetland determination appeals for
2 State Conservationist review.

3 “(E) Requests for wetland determination
4 mediation.

5 “(F) Wetland determination appeals to the
6 National Appeals Division.

7 “(G) Wetland determination appeals to the
8 Director of the National Appeals Division.

9 “(2) Review all requests for a review of a prior
10 certification of a wetland determination under this
11 subtitle.

12 “(3) Submit a report describing findings of fact
13 and recommendations for change and improvement
14 with respect to each review under paragraphs (1)
15 and (2) to—

16 “(A) the State Conservationist;

17 “(B) the Chief of the Natural Resources
18 Conservation Service;

19 “(C) the Committee on Agriculture, Nutri-
20 tion, and Forestry of the Senate; and

21 “(D) the Committee on Agriculture of the
22 House of Representatives.

23 “(e) ASSISTANCE.—A State oversight committee may
24 procure assistance in carrying out the duties under sub-
25 section (d) from—

1 “(1) a consultant; and

2 “(2) a legal services provider.”.

3 (i) REFORMS TO APPEALS PROCESSES.—The Sec-
4 retary of Agriculture shall—

5 (1) require National Appeals Division judges
6 and agency heads of the Department of Agriculture
7 to receive retraining on providing a fair and bal-
8 anced hearing;

9 (2) provide to a person the entire record or
10 decisional documentation relating to an allegation of
11 the Secretary that the person is in violation of sec-
12 tion 1221 of the Food Security Act of 1985 (16
13 U.S.C. 3821) at the time the Secretary makes the
14 allegation;

15 (3) allow a person (or counsel of the person) to
16 call technical staff of the Natural Resources Con-
17 servation Service as a witness in an appeal brought
18 by the person relating to a delineation, determina-
19 tion, or certification of a wetland under section 1222
20 of that Act (16 U.S.C. 3822);

21 (4) in an appeal described in paragraph (3), ac-
22 cept evidence provided by the person bringing the
23 appeal as reliable absent substantial evidence that
24 the evidence provided by the person is not reliable;
25 and

1 (5) compensate a person for fees and expenses,
2 including legal fees, when the person successfully ap-
3 peals a delineation, determination, or certification
4 described in paragraph (3) and has incurred legal
5 costs as a result of the overturned delineation, deter-
6 mination, or certification, as applicable.

7 (j) REGULATIONS.—Section 1246(b)(2) of the Food
8 Security Act of 1985 (16 U.S.C. 3846(b)(2)) is amend-
9 ed—

10 (1) by striking “(2) shall” and inserting the fol-
11 lowing:

12 “(2)(A) except as provided in subparagraph
13 (B), shall”;

14 (2) in subparagraph (A) (as so designated), by
15 striking the period at the end and inserting “; or”;
16 and

17 (3) by adding at the end the following:

18 “(B) shall be promulgated in accordance with
19 section 553 of title 5, United States Code, in the
20 case of—

21 “(i) subtitles B and C;

22 “(ii) section 1201, to the extent that sec-
23 tion defines a term that appears in, or other-
24 wise relates to, subtitle B or C; and

1 “(iii) subtitle E, to the extent that subtitle
2 relates to subtitle B or C.”.

○