



Natural Resources Conservation Service
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December 3, 2009

GENERAL MANUAL
PA 190 – ECS
Part 410, Supplement No. 1

SUBJECT: ECS – Protection of Wetlands

Purpose. To supplement GM policy for protecting wetlands when providing technical assistance.

Effective Date. This Supplement is effective when received.

Background. Wetlands are protected by NRCS national technical assistance policy and other federal, state, and local laws and regulations including the National Environmental Policy Act of 1969 (NEPA) and Executive Order 11990 (May 1977), even when not subject to the Wetland Conservation provisions of the Food Security Act. To protect wetlands while providing technical and/or financial assistance, NRCS will avoid direct or indirect support of activities that may adversely impact wetlands wherever a practicable alternative exists.

Filing instructions. This Supplement should be filed at the front of Title 190, Part 410, Subpart B, 410.26 in the General Manual.

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DIST: GM Holders



Title 190 – Ecological Sciences

**PART 410 – Compliance with NEPA
Subpart B – Related Environmental Concerns**

CONTENTS

**PART 410.26 – Protection of Wetlands
PA Supplement No. 1**

Sec.

**PA410.26-1 Background
PA410.26-2 Policy**

PA410.26-1 Background

The following policy provides procedures by which the Natural Resources Conservation Service (NRCS) in Pennsylvania will implement Executive Order 11990 covering the protection of wetlands and wetland conservation.

PA410.26-2 Policy

NRCS employees will only proceed to deliver technical assistance for planning or implementing conservation practices or activities after they have determined the participant or applicant is in compliance with Wetland Conservation provisions of the Food Security Act; and/or, they have determined the presence or absence of wetlands in order to comply with this policy and other federal, state, and local laws and regulations.

A. DETERMINING PRESENCE OR ABSENCE OF WETLANDS ON AGRICULTURAL LANDS

If an employee suspects the presence of wetlands within either the area being planned or an area that will be impacted by implementing a conservation practice or activity, the employee will verify if a wetland determination exists for the area or complete a determination as follows.

For programs covered by the Food Security Act*:

If a certified Wetland Conservation (WC) compliance determination has not been completed, the employee will require the participant to complete a new Form AD-1026 [Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification] and indicate ‘Yes’ for either A. or B. in Item 10, as appropriate.

- 1.) For existing participants the employee will notify them that depending on the results, the plan may need to be revised before the practice can be implemented.
- 2.) For applicants the employee will notify them that the determination needs to be completed before their application may be accepted as eligible.

* Listed in 510.02, b of the National Food Security Act Manual (NFSAM).
<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=20162>

For Owner/operators not participating in or applying to programs covered by the Food Security Act

Form AD-1026 is not applicable. If a wetland determination has not been previously documented on an Environmental Evaluation Worksheet, a preliminary determination of whether or not wetlands are present will be made using guidance in the NFSAM (see Section C. below) and Pennsylvania Off-Site Wetland Determination Methods (e-FOTG, Sec. II, D.). Document the results in the Special Environmental Concerns section of the Pennsylvania Environmental Evaluation Worksheet.

Proceed with assistance in accordance with NRCS national policies contained in this Part of the General Manual

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21088>

and GM-450, Part 405, Subpart A (Complying With Other Federal, State, and Local Laws and Regulations).

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=19434>

B. DETERMINING PRESENCE OR ABSENCE OF WETLANDS ON NON-AGRICULTURAL LAND AND FOREST LAND

1.) When NRCS employees are providing technical assistance on the following lands:

- not used for the production of food, fiber, or horticultural crops
- not used for haying or grazing
- not left idle in accordance with USDA program requirements
- forest land

and they identify *potential wet areas* on those lands, they will make a *preliminary determination* of the presence or absence of wetlands based on soils maps and County Hydric Soils Lists.

The results will be documented and certified on Form NRCS-CPA-026E (Highly Erodible Land Conservation and Wetland Conservation Determination) only for participants in programs covered by the Food Security Act. When the owner/operator is not a participant, the *preliminary determination* results will be documented in the Special Environmental Concerns section of the Pennsylvania Environmental Evaluation Worksheet.

2.) If the *preliminary wetland determination* on non-agricultural or forest land indicates a wetland may be present and NRCS determines at any time that there may be an adverse impact, NRCS will recommend avoidance of the impact. If avoidance of an adverse impact is not practicable, NRCS will take no further action until the owner/operator obtains a *jurisdictional wetland determination* to satisfy Section 404 of the federal Clean Water Act and/or state Chapter 105 regulations.

C. COMPLYING WITH WETLAND CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT

- 1.) Complete certified WC compliance determinations following guidance in the NFSAM** and Pennsylvania Off-Site Wetland Determination Methods. Document results on Form NRCS-CPA-026E. If the certified WC compliance determination indicates there are no wetlands, or only wetland areas that will not be impacted (positively or adversely), no further action is needed. If there is no certified WC compliance determination and the owner/operator elects not to request one, NRCS will terminate assistance.

** Subpart A - Wetland Determination and Delineation

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21546>

Subpart B - Labels: Natural and Artificial Wetlands

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21547>

Subpart C - Labels: Non-Wetlands

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21548>

Subpart D - Labels: Wetlands Converted to Agricultural Use Before December 23, 1985

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21549>

Subpart E - Labels: Wetlands Converted to Agricultural Use After December 23, 1985

<http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21550>

- 2.) If wetlands are present that will be impacted, NRCS will proceed in accordance with the NFSAM, NRCS national policies contained in this Part of the General Manual, <http://policy.nrcs.usda.gov/viewerFS.aspx?hid=21088> and GM-450, Part 405, Subpart A (Complying With Other Federal, State, and Local Laws and Regulations). <http://policy.nrcs.usda.gov/viewerFS.aspx?hid=19434>
- 3.) When a certified WC compliance determination indicates an area is Prior Converted cropland (PC), treat the area as non-wetland – but only for purposes of programs covered by the Food Security Act. Other federal, state, and local laws and regulation may apply if the PC was abandoned (no annual crops planted in the most recent five consecutive years). NRCS will inform the owner/operator of this situation, following the guidance in Section D. below.
- 4.) In accordance with the interagency guidance in a national Memorandum To The Field issued jointly to NRCS and U.S. Army Corps of Engineers offices on February 25, 2005, NRCS will only complete wetland determinations on land for participants, or persons intending to become participants, in USDA programs when the proposed activity involves manipulating the land for the purpose of, or to have the effect of making possible the production of an agricultural commodity. This does not include other activities undertaken for a purpose that does not make production of an agricultural commodity possible. http://www.nrcs.usda.gov/Programs/compliance/pdf_files/COE_NRCS_wetland.pdf

D. COMPLIANCE WITH OTHER FEDERAL, STATE, AND LOCAL LAWS
AND REGULATIONS

Employees will inform the owner/operator that wetland determinations performed by NRCS for the purpose of either Food Security Act or this policy may not be valid for the federal Clean Water Act (CWA) and/or state Chapter 105 regulations. NRCS will include the following language in the documentation of all wetland determinations provided to landowners or operators: **“This wetland determination/delineation may not be valid for identifying the extent of the federal Clean Water Act or state Chapter 105 jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material, or other encroachment into a wetland, you should request a jurisdictional determination from the local office of the U.S. Corps of Engineers and/or Pennsylvania Department of Environmental Protection prior to starting the work.”**

Whenever a jurisdictional wetland determination is required, it is the owner/operator’s responsibility to contact the United States Army Corps of Engineers (U.S. COE) and/or the Pennsylvania Department of Environmental Protection (PA DEP) to obtain one. After the jurisdictional wetland determination is completed, NRCS will coordinate with these agencies and the landowner and any operator to determine if a practicable alternative exists.