



9173 W. Barnes Drive  
Suite C  
Boise, ID 83709-1574

---

January 29, 2001

**NATIONAL FOOD SECURITY ACT MANUAL, Third Edition, 1996**  
**180-V NFSAM**  
**Idaho Notice No. 5**

**Purpose:** Distribution of National Food Security Act Manual Amendment 5

Attached is the Amendment 5 for the Third Edition of the National Food Security Act Manual.

**Filing Instructions:** Please file the attachment as instructed on the amendment.

A handwritten signature in black ink that reads "Lee E. Sims, for". The signature is written in a cursive, flowing style.

RICHARD W. SIMS  
State Conservationist

Attachment



September 25, 2000

**NATIONAL FOOD SECURITY ACT MANUAL (NFSAM), Third Edition, 1996  
180-V-NFSAM**

**Amendment 5**

**SUBJECT:** CPA-NATIONAL FOOD SECURITY ACT MANUAL (NFSAM)

**Purpose:** To transmit the 180-V-NFSAM, Third Edition, Amendment 5, July 2000

**Effective Date:** This amendment is effective upon receipt.

**Explanation of changes:** Clarifies policy and makes corrections in the National Food Security Act Manual. Incorporates changes necessitated by the issuance of new Nationwide Permits (NWP) under Section 404 of the Clean Water Act (CWA). Changes will avoid duplication of effort between the Corps of Engineers (COE) and the NRCS in regards to wetland issues.

The additions clarify the 1996 Farm Bill amendments in allowing NRCS to accept COE permit decisions and wetland mitigation requirements permitted under Section 404 of the CWA. The additions introduce a new exemption – Corps Permit Decision (CPD) reflecting the statute and Wetland Conservation interim final regulations.

The use of the “Not Inventoried” (NI) wetland determination is explained. The 2-4-5 Rule is also added to the HGM exhibits.

Sections listed below have been incorporated.

<b>Section</b>	<b>Change</b>
510.30 c	Clarifies NRCS actions in relation to NRCS acceptance of COE permit decisions
510.46	Clarifies COE responsibilities. Adds policy on NRCS reliance on COE actions. Explains “Lead Agency” responsibility
513.11	Clarifies off-site and on-site wetland determination/delineation procedures
513.12 d	Clarifies agency coordination
513.22 a	Clarifies “urbanizing” areas
513.22 b	Clarifies agency responsibility for OW determinations, and agency responsible for reviewing NRCS certified wetland determination that are five years or older
513.30	Clarifies mapping conventions
513.31	Clarifies what are wetland inventories
514.11 a	Revised narrative explaining certified wetland determinations and coordination with COE

514.11 d	Clarifies the use of the Not Inventoried (NI) label
514.11 e	Clarifies duration of NRCS wetland determinations
514.12	Clarifies Wetland Determination Procedures
514.26	Clarifies the COE is responsible for conducting other water determinations
514.27	Section added to clarify NI
514.31 d	Clarifies use of PC
514.41	Revised Section on providing wetland information to other agencies
514.51 e	Clarifies certifying wetland determinations
515.21 a	Revises wetland labels. Adds COE Permit Decision (CPD) exemption label and Not Inventoried (NI) label
516.0	Removes Flowchart
516.10	Revises Section to add NRCS acceptance of COE permits actions
517.0	Revises Section to add NRCS acceptance of COE permit actions Clarifies mitigation types
517.14 b	Clarifies easement site used for mitigation
517.17 b	Clarifies labeling mitigation sites
517.32 a	Explains NRCS action in monitoring mitigation plans
522.21 c	Clarifies the AD-1026 process
522.22 c	Clarifies the AD-1026 process
522.23 c	Clarifies the AD-1026 process
522.24	Clarifies how to process the AD-1026
523.21	Adds CPD to the table
526.48	Revises the NRCD-CPA-38
526.63 a	Adds 2-4-5 Rules to HGM process
526.80	Adds example letter for use when NRCS defers to COE permit actions
526.80 a	Letter of transmittal of a completed Form NRCS-CPA-026
527.4	Clarifies Wetland Criteria/Indicators/Procedures and updates table

Filing Instructions: Remove and insert pages as indicated below.

<b>Remove Pages</b>	<b>Insert Pages</b>
510-21, -22	510-21, 510-22, 510 -22a, 510-22b
510-37, -(38 – 42)	510-37, 510-37a, 510-37b, 510-(38-42)
513-5, -8	513-5, 513-6, 513-7, 513-8
513-11, -14	513-11, 513-12, 513-13, 513-14
513-17, -22	513-17,513-18, 513-19, 513-20, 513-21,513-22
514-3, -8	514-3, 514-4, 514-5, 514-6, 514-7, 514-8
514-29, -30	514-29, 514-30, 514-30a, 514-30b
514-33, -34	514-33, 514-34
514-57, -58	514-57, 514-58

514-63, -64	514-63, 514-64
515-15, -18	515-15, 515-16, 515-17, 515-18
516-1, -4	516-1, 516-2, 516-3, 516-3a, 516-4
517-1, -2	517-1, 517-1a, 517-1b, 517-2
517-7, -8	517-7, 517-8
517-13, -14	517-13, 517-14
517-25, -26	517-25, 517-26
522-7, -12	522-7, 522-8, 522-9, 522-10, 522-11, 522-12
523-9, -10	523-9, 523-10
526-41, -42	526-41, 526-42
526-47, -48	526-47, 526-47a, 526-47b, 527-48
526-73, -74	526-73, 526-73a, 526-73b, 526-74
527-179, -180	527-179, 527-180
527-185, -188	527-185, 527-186, 527-187, 527-188

Contact: If there are questions about this amendment, please contact Victor Cole at (202) 690-3501.



THOMAS A. WEBER  
Deputy Chief for Programs



## 510.30

b

**Specific HELC  
Responsibilities**

NRCS responsibilities that specifically apply to HELC are listed in this table.

<b>Category</b>	<b>HELCS Responsibility of NRCS</b>	<b>Reference</b>
Technical assistance	Provide technical assistance for: <ul style="list-style-type: none"> <li>• conservation planning when requested</li> <li>• applying conservation systems to the land</li> </ul>	Part 512, Subpart B Part 520, Subpart A
Determinations	Make the following determinations whether: <ul style="list-style-type: none"> <li>• a soil map unit is highly erodible</li> <li>• highly erodible land is predominant in a field</li> <li>• an approved conservation plan is being applied</li> <li>• a conservation system is being used</li> <li>• a person qualifies for a temporary variance from the requirements of a conservation system</li> <li>• there was NRCS error or misinformation</li> </ul>	Part 511, Subpart A Part 511, Subpart B Part 520, Subpart A Part 520, Subpart A Part 520, Subpart B Part 511, Part 512
Report of HELC status	Complete status reviews on form NRCS-CPA-018 for either a regularly scheduled review or in response to a FSA-569.	Part 522, Subpart F, Part 518
Tenant exemptions	Provide FSA information on AD-1026B for making tenant exemption determinations and provide conservation planning assistance to the tenant.	Part 522, Subpart C Part 520.23
Good Faith Exemptions	Provide FSA information on AD-1068.	Part 522, Subparts D
Reinstatement	Provide conservation system revision assistance and complete SCS-CPA-027.	Parts 512 and 520

## 510.30 Responsibilities Assigned to NRCS (Continued)

c NRCS Responsibilities that specifically apply to WC are listed in this table.  
**Specific WC Responsibilities**

Category	Wetland Conservation Responsibility of NRCS	Reference
Determinations	Determine whether: <ul style="list-style-type: none"> <li>• land meets wetland criteria, and identify the wetland by a specific label</li> <li>• production of an agricultural commodity on a wetland is possible under natural conditions without manipulation of wetland characteristics</li> <li>• production of an agricultural commodity on certain converted wetlands would have a minimal effect on the hydrological and biological aspects of the wetland</li> <li>• conversion of a wetland was for the purpose of or has the effect of making the production of an agricultural commodity possible</li> <li>• a farmed wetland (FW) and farmed wetland pasture (FWP) is abandoned</li> <li>• maintenance of existing drainage exceeds scope and effect of the original drainage</li> <li>• a plan and schedule for mitigation of a converted wetland is adequate for Food Security Act purposes</li> </ul>	Part 514, Subparts A and B  Part 515, Subpart B  Part 516  Part 514.20  Part 514.11  Part 515, Subpart A  Part 517

*Continued on next page*

## 510.30 Responsibilities Assigned to NRCS, (Continued)

**c**  
**Specific WC**  
**Responsibilities**  
 (continued)

Category	Wetland Conservation Responsibility of NRCS	Reference
Determinations (continued)	Determine whether: <ul style="list-style-type: none"> <li>• restoration of a converted wetland (CW) is accomplished according to schedule</li> <li>• the USDA COE Permit Exemption applies (also see 7 CFR Part 12.5(b)(1)(vi)(A) and (B))</li> <li>• the categorical minimal effects, minimal effects, and mitigation exemptions apply when the COE does not conduct a permit review</li> <li>• the categorical minimal effects, minimal effects, and mitigation exemptions apply when the COE is using their discretionary authority and is not pursuing enforcement when violation is present, then NRCS should follow the appropriate procedure</li> <li>• the restoration/mitigation apply and determine the appropriate USDA exemption (i.e., Good Faith Exemption) even in cases where the COE will pursue enforcement action or after-the-fact permit but the resolution of the COE' action will extend beyond the USDA time frame requirements for resolution (i.e., NRCS must conduct its own review and not rely upon the COE permit decision)</li> </ul>	Part 517  Part 516  Part 516 and 517  Part 517  Part 514 and 517

**510.30 RESERVED**

## 510.46 U.S. Army Corps of Engineers (COE) Responsibilities

---

**a**  
**COE**  
**Responsibilities**

Conducts and coordinates jurisdictional determinations for the administration of the Clean Water Act, Section 404, and the Rivers and Harbors Act of 1899, Section 10.

Conducts other waters determinations.

Provides appropriate coordination on certified wetland determinations/delineations conducted by NRCS.

Provides assistance in the development and application of joint wetland determination guidelines (local procedures).

Determines, on an as needed basis, whether NRCS certified wetland determinations/delineations that are over five years old continue to be acceptable for CWA purposes.

Serves on the State Technical Committee

NOTE: If a USDA wetland conservation exemption is required and a COE permit is necessary that requires any notification to the COE (does not include portions of New Jersey and Michigan since these States have assumed the Section 404 program), NRCS will provide the USDA program participant with a certified wetland determinations/delineation (NRCS-CPA-026E), and the appropriate COE contact (See sample letter in Part 526.80). NRCS will notify the participant that NRCS defers further action until receipt of the CWA permit and will then issue a revised NRCS-CPA-026E with the appropriate labels. NRCS will not pursue wetland exemptions (i.e., minimal effects, mitigation, COE permit exemption, etc.) until the USDA program participant obtains a COE permit decision. It is the responsibility of the USDA program participant to notify NRCS when a permit decision is received from the COE. It is also the responsibility of the USDA program participant to obtain CWA Section 401 state water quality certification.

---

*Continued on next page*

**510.46 U.S. Army Corps of Engineers (COE) Responsibilities, (Continued)**

**b  
Reliance on  
COE Permit  
Decisions**

COE permit decisions regarding Section 404 will be relied upon to satisfy the wetland conservation provisions of the 1985 Act, as amended. Those COE permit decisions include activities authorized by a general permit (nationwide, programmatic, or state) or individual permit, but only in situations where pre-construction notification for a general permit or submittal of a Department of the Army application is required by the COE.

NRCS will accept general permits (including nationwide, regional, or state general permits), or individual permits, for use in granting a COE Permit Decision (CPD) exemption to the 1985 Act, as amended. Wetland mitigation plans approved by the COE in accordance with the Section 404 permitting program will also be accepted to satisfy wetland conservation provisions of the 1985 Act, as amended.

In cases where the COE does not conduct a permit review (i.e., general permits that provide automatic Section 404 authorization, or the activity qualifies for a Section 404(f)(1) CWA exemption), NRCS will conduct the appropriate review in accordance with the NFSAM.

**c  
Agency Lead  
Responsibility  
Summary**

Type of activity	Lead agency
USDA program participant proposes the conversion of wetlands for production, or to make production possible, of a commodity crop that is <u>less than</u> ½ acre and not within a federally designated 100-year floodplain, and the COE does not require a pre-construction notification, headwater determination, or individual permit.	<ul style="list-style-type: none"> <li>• NRCS will conduct the wetland determination</li> <li>• NRCS will conduct the evaluation to determine whether a wetland conservation (Swampbuster) exemption is applicable (COE will accept the USDA wetland conservation exemption under nationwide permit 40 unless the nationwide permit has been revoked by the local COE office)</li> </ul>
USDA program participant proposes the conversion of wetlands for production of a commodity crop that is <u>½ acre or greater</u> , or is within a federally designated 100-year floodplain, or the COE requires a pre-construction notification, headwater determination, other waters determinations, or individual permit.	<ul style="list-style-type: none"> <li>• NRCS will conduct the wetland determination and a copy of the COE permit is provided, issue a revised NRCS-CPA-026E indicating CPD exemption</li> <li>• COE will conduct the permit evaluation (NRCS will accept under the CPD exemption upon receipt of the permit, furnished by the USDA program participant)</li> </ul>

*Continued on next page*

## 510.46 U.S. Army Corps of Engineers (COE) Responsibilities, (Continued)

### Agency Lead Responsibility Summary (continued)

Type of activity	Lead agency
USDA program participant proposes the conversion of wetlands that qualify for converted wetland non-agriculture (CWNA) exemption or third party (TP) exemption	<ul style="list-style-type: none"> <li>• NRCS will conduct the wetland determination and prepare CWNA plan</li> <li>• COE will conduct permit evaluation</li> </ul>
USDA program participant proposes the conversion of wetlands that do not require a CWA Section 404 permit or is exempt from Section 404 but allows for the production of a commodity crop	<ul style="list-style-type: none"> <li>• NRCS will conduct the wetland determination and determine if a WC exemption applies in accordance with NFSAM</li> </ul>
USDA program participant conducted the conversion of wetlands for production, or to make production possible, of commodity crops without receiving a USDA exemption, or the USDA program participant is found in violation of a USDA wetland minimal effect or mitigation exemption	<ul style="list-style-type: none"> <li>• NRCS will coordinate with the COE or EPA to ascertain whether they will resolve the violation/noncompliance within the timeframes allowed by USDA requirements.</li> <li>• If the COE authorizes the activity through an after-the-fact permit or resolves the noncompliance issue, NRCS will accept the decision for wetland conservation purposes, upon receipt of the permit or resolution of noncompliance, furnished by the USDA program participant and issue a revised NRCS-CPA-026E.</li> <li>• In the event that the COE or EPA will not resolve within a timeframe sufficient to address wetland conservation provisions (i.e., in cases where the Farm Service Agency has granted a good faith exemption and the USDA program participant has one year to restore the site, or where the COE or EPA uses its discretionary authority to not pursue resolution of the violation). NRCS will follow appropriate NFSAM procedure to resolve the violation.</li> </ul>
<p><b>NOTE:</b> In cases where CWA Section 404 authorization is required, the USDA program participant may also be required to obtain CWA Section 401 State Water Quality Certification. Check with local COE Office</p>	



## 513.11 Agricultural Wetland Definitions, Criteria, Indicators, and Procedures, (Continued)

---

**d**  
**Responsibility**  
**of**  
**NRCS**

It is the responsibility of NRCS to demonstrate that an area is wetland and that each determination and/or delineation is supported by sufficient evidence. Procedure for making wetland determinations is found in Part 514 and Appendix 527.4.

---

**e**  
**Data**  
**Collection**

Evidence is gained by collecting data using technical procedures that indicate if wetland criteria are met. Procedures are found in Appendix 527.4

---

**f**  
**Specific**  
**Designations**  
**of**  
**Wetland**

Land that exhibits the wetland criteria according to this part and wetlands that have been drained or manipulated shall be identified by specific wetland labels found in Part 514.

---

**g**  
**Wetland**  
**Indicators**

Wetland indicators are used to verify the criteria for hydric soils, hydrophytic vegetation, and hydrology.

In making wetland determinations and/or delineations, these indicators are:

- considered independent variables; but
- evaluated by the preponderance of the evidence.

See Appendix 527.4 for descriptions of indicators for soil, vegetation, and hydrology used in determining if wetland criteria are met.

---

*Continued on next page*

## 513.11 Agricultural Wetland Definitions, Criteria, Indicators, and Procedures, (Continued)

---

### **h Wetland Identification Procedures**

All wetland determinations/delineations will be conducted and/or verified on-site by qualified staff (i.e., certified by STC (for off-site procedures) and receive a passing grade for the COE Regulatory IV course (when on-site wetland determinations using the COE 1987 Manual are required), using appropriate tools including methodologies developed as part of the approved mapping conventions.

#### Off-site procedures:

- Are used to identify areas to investigate on-site for possible wetlands
- Must be based on state wetland mapping conventions approved by NRCS, COE, EPA, and FWS
- State wetland mapping conventions must be field tested prior to approval by NRCS, COE, EPA, and FWS
- State wetland mapping conventions will not be used to determine wetlands in lieu of on-site procedures or verification

#### On-site procedures:

- Must be made using all three parameters
  - See Appendix 527.4 for the procedure for making wetland determinations
-

## 513.12 Technical Changes in Wetland Criteria

---

**a**  
**Background**

Additional research or experience may support technical changes in the criteria for:

- hydric soil
  - hydrophytic vegetation
  - hydrology
- 

**b**  
**Who Makes**  
**Technical**  
**Changes**

National interagency technical committees may determine that technical changes in wetland criteria are necessary.

---

**c**  
**Types of**  
**Technical**  
**Changes**

Technical reviews may result in changes that:

- cause a soil to be reclassified as hydric or non-hydric
  - cause a change in the indicator status for a plant
  - provide new wetland hydrology criteria
- 

**d**  
**Coordination**  
**with COE,**  
**EPA, and FWS**

Revisions or amendments to portions of the NFSAM affecting wetland determinations/delineation procedures will be reviewed with COE, EPA, and FWS at the NHQ level. State supplements will be reviewed by the COE, EPA, and FWS at the State level.

---

## Effective Date of Technical Changes

a

### Effective Date of Technical Changes

Technical policy changes in wetland criteria will only apply to determinations made after the date of publication of the change.

IF the change involves...	THEN the change in policy becomes effective...
technical changes that affect: <ul style="list-style-type: none"> <li>• Hydric Soils of the United States</li> <li>• Indicator status of hydrophytic vegetation</li> </ul>	When changes are incorporated into the FOTG.
Criteria for: <ul style="list-style-type: none"> <li>• hydric soils</li> <li>• hydrophytic vegetation</li> <li>• hydrology</li> </ul>	When the affected manual or FOTG is revised.

**NOTE:** If a change is published in the Federal Register, it is effective as indicated in the Federal Register notice or rule. The STC is responsible for updating wetland information in the FOTG.

## 513.22 Coordination with Corps of Engineers (COE) and Environmental Protection Agency (EPA)

---

### a Definitions

The Memorandum of Agreement (Appendix 527.12) defines agricultural and non-agricultural land for the purpose of determining which agency has the lead for wetland determinations and/or delineations.

Agricultural lands are lands:

- that are intensively used and managed for food and fiber production.

Examples: cropland, hayland and pasture, native pasture, rangeland, orchards, vineyards, areas which support wetland crops such as cranberries, taro, watercress, and rice, and other lands used to produce or support the production of livestock, as well as small tree farms.

Non-agricultural lands include, but are not limited to:

- commercial tree farms managed for forest products.
- agricultural lands where non-agricultural uses have been established, or will be established (urbanizing areas), to the extent that agricultural production will no longer occur or is no longer feasible.
- agricultural lands that meet the abandonment criteria (See Part 514.25)

**NOTE:** The definitions above are for determining the lead agency to conduct wetland determinations in accordance with the 1994 Memorandum of Agreement. These definitions have no effect on the activities listed as non-agricultural purposes found in Part 514.32 regarding the Converted Wetland for Non-Agricultural Purposes Exemption.

---

*Continued on next page*

**b**  
**Scope of NRCS**  
**Determinations**  
**and/or Delineations**

Follow this table to determine which agency makes the determination **and/or** delineation and the procedure to be used.

DETERMINATIONS AND/OR DELINEATIONS ON AGRICULTURAL LANDS		
IF...	THEN...	MOA Reference
A wetland determination and/or delineations needs to be made on agricultural lands	NRCS will use the NFSAM or 1987 COE Manual..	IV.D
NRCS has not made a final written determination and/or delineations and the Corps or EPA is pursuing a potential CWA violation	The COE or EPA as appropriate makes the determination and/or delineation for CWA purposes. NRCS accepts this determination and/or delineation for Swampbuster purposes.	IV.K
The COE or EPA is pursuing a potential CWA violation on land subject to an ongoing NRCS appeal	The COE or EPA as appropriate makes the determination and/or delineation for both CWA and Swampbuster in consultation with NRCS and FWS to arrive at a single determination and/or delineation. NRCS will use that determination and/or delineation to complete an appeal process.	IV.K
In all other situations on agricultural land	NRCS makes the wetland determination and/or delineation. The COE or EPA accepts this determination for CWA purposes.	IV.A
Changes in a wetland determination and/or delineation on agricultural land is contemplated, as a result of an appeal.	As per 519.14h, NRCS notifies the COE/EPA of current determination and/or delineation, proposed determination, location, and reason for the change. The COE/EPA has 45 days to respond on their concurrence or non-concurrence and whether the change can be used for CWA purposes. If there is no agreement at the field office level, the NRCS representative shall refer the materials to the State Conservationist for action.	V.D & VLA 519.14h

## 513.22 Coordination with Corps of Engineers (COE) and Environmental Protection Agency (EPA), (Continued)

**b**  
**Scope of NRCS**  
**Determinations**  
**and/or Delineations**  
**(Continued)**

DETERMINATIONS AND/OR DELINEATIONS ON NON-AGRICULTURAL LANDS		
IF.....	THEN.....	MOA Reference
A wetland determination and/or delineation needs to be made on non-agricultural lands for USDA program participants	NRCS will use the COE 1987 Wetland Delineation Manual to make determinations, See 513.30 c.	IV.D
On narrow bands either immediately adjacent to or small pockets interspersed among agricultural lands for USDA program participants	NRCS makes the certified wetland determination using COE 1987 Wetland Delineation Manual.	IV.A
When a USDA participant request a determination and/or delineation on non-agricultural land	NRCS makes the certified wetland determination in coordination with the COE or EPA.	IV.A and B
A determination and/or delineation is needed for "other waters"	Only the COE and EPA have the statutory authority to conduct OW determinations.	IV.C <b>Note:</b> NRCS does not have the statutory authority to conduct OW determinations for CWA purposes.
In all other situations	COE or EPA makes the determination for CWA. NRCS will certify these determinations in accordance with the wetland conservation provisions.	IV.J
<b>Note:</b> The information in this table does not apply to special case areas as designated by COE or EPA. Refer to table in Paragraph C for information on special case areas.		

c

**Special Case Areas**

In situations where there are unresolved issues between the signatory agencies at the MOA concerning wetland determinations **and/or delineations**, EPA or the COE may designate a geographic area as a "special case," where the COE or EPA, as appropriate, will make final CWA wetland determinations **and/or delineations** rather than NRCS.

IF...	THEN...
The inter-agency oversight team (NRCS, COE, EPA, FWS) identifies problem issues regarding NRCS wetland determinations <b>and/or delineations</b> for the CWA	The team will work together informally to resolve these issues and agree on corrective actions. The team shall notify their respective regional offices of issues not resolved at the state level.
The COE or EPA proposes to designate a geographic area or a particular wetland type within a designated geographic area as a special case	<p>COE or EPA notifies NRCS</p> <p>The headquarters offices of EPA, COE, NRCS, and FWS will informally review the issues and work to reach agreement on any necessary corrective action.</p> <p>NRCS does not make CWA determinations <b>and/or delineations</b> within the proposed special case area for twenty working days from the date of notification.</p> <p>NRCS resumes making CWA determinations after the twenty day period if it has not been notified by COE or EPA of approval of the proposed special case area.</p>
The COE or EPA approves a special case	The COE or EPA makes all final CWA determinations <b>and/or delineations</b> in the special case area.

## 513.30 Subpart C – Mapping Conventions and Wetland Inventories

**a**  
**What are**  
**Mapping**  
**Conventions**

---

**Definition:** Mapping conventions are a set of accepted practices and procedures, agreed to by EPA, FWS, COE, and NRCS, used to guide the wetland delineator in using off-site tools in the preliminary stages of potential wetland identification for the purposes of making a certified wetland determination/delineation on agricultural lands.

Mapping conventions are state-specific procedures developed to interpret off-site and remotely sensed data to identify potential wetlands. They are generally applied to disturbed areas such as crop fields where they have been shown to work well.

Mapping conventions may vary by State or region in response to regional differences in wetland characteristics, agricultural activity, and the availability of off-site data.

**NOTE:** The wetland criteria, indicators and procedures are in Appendix 527.4. The Memorandum of Agreement is in Appendix 527.12.

---

*Continued on next page*

## 513.30 Subpart C – Mapping Conventions and Wetland Inventories, (Continued)

**b**  
**Coordination**  
**with EPA,**  
**COE, FWS**

---

Each NRCS State Conservationist (STC) will take the lead in convening the representatives of the COE, EPA, FWS, and NRCS to obtain written concurrence of each of the MOA signatory agencies on a set of mapping conventions for use by NRCS to identify potential wetlands. Only mapping conventions concurred upon by all signatory agencies will be used. Mapping conventions are not intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies.

If interagency consensus on mapping conventions is not reached, the State Conservationist will refer documentation of the unresolved issues to the Chief of NRCS. The Chief will immediately forward copies of the STC's documentation of unresolved issues to the COE Deputy Commander of Civil Works; the EPA Director of the Office of Wetlands, Oceans, and Watersheds; and the FWS Director. Immediately thereafter, the Chief of NRCS or any appropriate designee will lead necessary discussions to achieve interagency concurrence on resolution of outstanding issues, and will forward documentation of the resolution to the State Conservationist and the appropriate Headquarters offices of the signatory agencies.

Once interagency concurrence on mapping conventions is obtained, such mapping conventions will be used immediately in place of the earlier mapping conventions. Any future changes identified as a result of field activities will be concurred by EPA, COE, and FWS.

Agreed-upon mapping conventions developed at the State level will be documented and submitted for each State through the Chief of NRCS to the Headquarters of each signatory agency. State-level agreements will be reviewed by the Headquarters of the signatory agencies for the purpose of ensuring National consistency.

All approved mapping conventions will be filed in Section 1 of the Field Office Technical Guide.

---

*Continued on next page*

## 513.30 Subpart C – Mapping Conventions and Wetland Inventories, (Continued)

### **c** **Verifying** **Information**

---

Mapping Conventions must be based on field-tested correlation between:

- Off-site information
- On-site wetland determinations

Mapping conventions should insure that:

- If aerial slides or photographs are used, wetland signatures that are identified are closely correlated with wetland hydrology.
  - If aerial slides or photographs are used, a minimum of five years of aerial slides or photographs which indicate normal precipitation will be used, or an equal number of wetter and drier years are used when an insufficient number of normal years slides or photographs are available.
  - Years of aerial slides or photographs that display wetland signatures which are closely correlated to wetland hydrology are used to identify potential wetlands.
  - If available, aerial slides or photographs from pre-1986 are used to provide the wetland delineator (prior to making the onsite determination) information regarding possible manipulations of the potential wetland(s) that could provide information regarding the appropriate label.
  - Interpretation of wetland signatures are regionalized.
  - Climatological conditions, especially unusual precipitation events preceding the dates of photography are considered.
  - Climatological data is used to ensure that wetland signatures are reflective of long term hydrological conditions.
  - Conditions as of December 23, 1985, will be reflected in the final certified wetland determination.
-

**d**  
**Establishing**  
**Wetland Mapping**  
**Conventions**

The following should be considered in the establishment of wetland conventions.

Select the appropriate base map by considering use of the wetland data:

Example: IF...	Then...
Rectified photography is available that would: <ul style="list-style-type: none"> <li>• enable future digitization</li> <li>• provide a basis for updating, and</li> <li>• provide a clear, quality map.</li> </ul>	Select over other available base maps.

Review where available:

- National Wetland Inventory (NWI) maps
- state wetland maps
- local wetland maps
- soil survey maps
- aerial photography or FSA slides.

**NOTE:** In many parts of the country, NWI did not map farmed wetlands.

Depending on quality and location, wetland signatures that may be observed on photography or slides include:

- hydrophytic vegetation
- surface water
- saturated conditions
- flooded or drowned-out crops
- stressed crops due to wetness
- differences in vegetation due to different planting dates
- inclusion of wet areas as set-aside
- unharvested crops
- isolated areas that are not farmed with rest of field
- patches of greener vegetation
- other.

## 513.31 Use of Wetland Inventories

---

### What are inventories

Wetland inventories are maps that outline the location of potential wetlands and are usually developed using off-site remote sensing. Inventories may be used to identify areas to investigate on-site when conducting a certified wetland determination.

**NOTE:** Wetland inventories are not certified wetland determinations for the purposes of determining ineligibility under the Food Security Act.

---

**513. RESERVED**

# Subpart A - General Provisions for Making Agricultural Land Wetland Determinations

## 514.10 Overview

---

a  
Land to be  
Identified as  
Wetland

In order for land to be identified as wetland according to this part, it must meet the wetland criteria.

For purposes of the 1985 Act, as amended, the STC has final authority for all agricultural land wetland determinations within the State.

---

b  
Wetland  
Provision by  
Statute

The 1985 Act provided that any person who in any crop year plants an agricultural commodity on wetland that has been converted after December 23, 1985, shall be ineligible for applicable USDA program benefits unless one of the exemptions or exceptions to the Act applies.

The 1985 amendments provide that in addition to the planting rule, any person who in any crop year 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, shall be ineligible for USDA benefits for that crop year and all subsequent crop years until the wetland is restored, unless one of the exemptions or exceptions to the Act applies. The 1996 amendments allow for mitigation of other sites in addition to the restoration alternative.

---

c  
Other Wetland  
Provisions

The 1985 Act, as amended, provides exemptions from the wetland provisions. The specific requirements for exemptions and determinations are found in this part and in Parts 516 and 517.

---

## 514.11 Applicability and Scope of Wetland Determinations

---

**a**  
**When to make  
Certified  
Wetland  
Determinations**

NRCS responsibilities are to provide a certified wetland determination/delineation on agricultural land, and non-agricultural land if requested by a USDA program participant, when:

- an NRCS-CPA-38 is received
- a potential wetland conservation violation has been reported
- other USDA programs policies require a certified wetland delineation.

All wetland determinations completed after July 3, 1996, are considered certified.

All wetland determinations/delineations will be conducted/verified on-site, by properly trained staff, using all appropriate tools including methodologies in the approved mapping conventions.

**NOTE:** If a USDA wetland conservation exemption is required and a COE permit is necessary that requires any notification to the COE (does not include New Jersey and Michigan since these States have assumed the Section 404 program), NRCS will provide the USDA program participant with a certified wetland determination/delineation (NRCS-CPA-026E), and the name and address of the appropriate COE contact (See sample letter in Part 526.80). NRCS will notify the participant that NRCS defers further action until receipt of the CWA permit and will then issue a revised NRCS-CPA-026E with the appropriate labels. NRCS will not pursue wetland exemptions (i.e., minimal effects, mitigation, COE permit exemption, etc.) until the USDA program participant obtains a COE permit decision. It is the responsibility of the USDA program participant to notify NRCS when a permit decision is received from the COE. It is also the responsibility of the USDA program participant to obtain CWA Section 401 State Water Quality Certification.

---

**b**  
**Wetland  
Determinations  
Remain With  
the Land**

All certified wetland determinations, conditions, and exemptions remain with the land and apply to subsequent owners and operators, that are USDA program participants, and are valid under the wetland conservation provisions for as long as the site remains in agricultural use or until such time as a violation occurs. Subsequent owners do not have appeal rights unless the certified wetland determination is changed. Any owner may request a review,

---

*Continued on next page*

## 514.11 **Applicability and Scope of Wetland Determinations,** (Continued)

---

**b**  
**Wetland**  
**Determinations**  
**Remain With**  
**the Land**  
(continued)

by NRCS, of the existing certified determination if natural events cause a change in topography or hydrology or if an existing NRCS wetland determination is rescinded by NRCS.

---

**c**  
**Ineligibility**

Persons who plant an agricultural commodity on wetlands converted after December 23, 1985, are ineligible for USDA benefits for any year in which an agricultural commodity crop is planted or until the converted wetland is mitigated.

Persons who convert wetlands for the purpose of, or in such a way as to have the affect of, making the production of an agricultural commodity possible after November 28, 1990, remain ineligible for USDA benefits until the converted wetland is mitigated.

---

**d**  
**Extent of**  
**Wetland**  
**Determinations**

Areas where wetland determinations/delineations are not completed will be delineated on the USDA base map as Not Inventoried (NI). Label the area "NI" to indicate not inventoried and document in the resource inventory data field case file. Inform the person of the need for a subsequent determination before altering or manipulating any area where the NI determination is made.

The NI label is primarily used when manipulation is limited to a portion of a tract or field. The use of NI will reduce staff resources needed to make certified determinations, while providing the person the required resource information.

---

*Continued on next page*

## 514.11 Applicability and Scope of Wetland Determinations, (Continued)

---

**d**  
**Extent of**  
**Wetland**  
**Determinations**  
(continued)

For other USDA programs, certified wetland determinations may be required. The need for conducting a wetland determination for a portion or the entire tract will be based upon the USDA program, and whether it is necessary to conduct a certified wetland determination to verify USDA program compliance (i.e., potential program violation) or USDA program eligibility.

**NOTE:** The smallest portion of a tract that will be identified by NFSAM wetland labels is the portion of the field identified by the NRCS-CPA-38 request or 569 activity. The area where the manipulation is planned will be completely identified with wetland labels (i.e., PC, PC/NW, FW, NI, W, etc.). Unless the COE has provided NRCS with the appropriate OW delineations, all "other waters" areas will be shown as NI.

---

**e**  
**Duration of**  
**Wetland**  
**Determination**

NRCS certified wetland determinations will be effective as long as the site remains in agricultural use unless natural events or new information warrants a revision of the determination or until such time as a violation occurs.

**NOTE:** The COE or EPA, on as needed basis, will determine whether NRCS certified determinations that are over five years old continue to be acceptable for CWA purposes.

---

**514.11 RESERVED**

## 514.12 Wetland Determinations Procedure

---

**a**  
**Off-site**  
**Component**

A preliminary step in the wetland determination/delineation process may include identifying potential wetlands prior to making the on-site investigation. This process may entail a review of off-site inventory tools. The procedure for the identification of potential wetlands is defined in State Mapping Conventions approved by the MOA partners who include, EPA, FWS, COE, and NRCS. (See 513.30)

---

**b**  
**On-site**  
**Component**

It is policy that all wetland determinations/delineations be conducted and/or verified on-site by a qualified employee. The delineator will make wetland determinations by visiting the wetland site and comparison site, if applicable, using Appendix 527.4. Scope and effect evaluations will be conducted according to Part 515 under the following circumstances:

- To assess whether current conditions reflect those present on December 23, 1985. This likely requires a review of off-site information of pre-1986 conditions.
  - If requested by the USDA program participant, or if an USDA program participant appeals the wetland determination.
  - To verify a record of prior hydrologic manipulations.
  - To assess scope and effect of existing and/or planned hydrologic manipulations.
-

## 514.25

**f**  
**Information Needed  
for Rebuttal**

---

The person must supply the following information for rebuttal:

- **documentation** that the area was abandoned due to lack of maintenance on a related drainage facility by a drainage district, county, or similar entity, or neighbor, and
- documentation from the drainage district, county, or other entity that the person has actively pursued drainage, but has been refused:

Documentation must be in the form of court records, legal restraining orders, certified minutes of meetings, legally filed petitions, or copies of dated, formal requests to said entities. Such documentation must prove that the person or drainage district or other legal entity acting on behalf of the person has actively pursued the maintenance of the related drainage facility during the most recent 5 year period.

**NOTE:** If it cannot be demonstrated that active pursuit of the matter began before December 23, 1985, and has continued, then exemption from the abandonment provision will not be allowed.

---

**g**  
**Notifying FSA of  
Abandonment**

After a final determination is made, provide the person and FSA a revised NRCS-CPA-026E, using FOCS, and mark the base map at FSA and NRCS indicating the appropriate change in determination.

---

**h**  
**Use of Abandoned  
Wetlands**

When FW and FWP are redetermined to be W, all wetland restrictions apply according to Part 514.11. Abandoned wetlands may be cropped under natural conditions so long as hydrology is not manipulated and/or woody vegetation is not removed. Any alteration of wetland may be subject to CWA.

---

## 514.26 Other Waters (OW)

---

**a**  
**Definition of**  
**Other Waters**

Includes the applicable portions from 33 CFR 328 that do not meet the wetland definitions in this part:

- other waters such as intrastate lakes, rivers, streams, (including intermittent streams, mudflats, sand flats, or natural ponds,
- all impoundments of waters otherwise defined as waters of the United States under the definitions
- tributaries of waters identified above
- any other areas that the EPA or COE identify as waters of the United States.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11 (m) which also meets the criteria of this definition) are not waters of the United States.

---

**b**  
**Delineating and**  
**Recording OW**  
**Determinations**

Once the COE has completed an OW determination, refer to Part 523.22 for delineating and recording OW determinations on the NRCS-CPA-026E.

---

## 514.27 Not Inventoried (NI)

---

**a**  
**Definition of  
Not Inventoried** No wetland determination/delineation has been completed. Clients should request a certified determination/delineation on these areas prior to any planned manipulation.

---

**b**  
**Use of NI Label** The NI label should be used in those circumstances where either “other waters” may be present, or to indicate areas where a detailed wetland inventory has not been conducted.

---

**c**  
**Delineating and  
Recording NI  
Determinations** Refer to Part 523.22 for delineating and recording NI determinations.

---

**514.27 RESERVED**

c

**Examples of PC**

Wetlands that shall be considered PC are listed in this table.

Condition	Criteria for PC Determination
Potholes Playas Pocosins	<p>Meet all of the following criteria:</p> <ul style="list-style-type: none"> <li>• were manipulated to make the production of an agricultural commodity possible before December 23, 1985</li> <li>• were used to produce an agricultural commodity prior to December 23, 1985</li> <li>• on December 23, 1985 no longer met wetland hydrology criteria, which is flooding or ponding for 7 consecutive days or saturation for 14 consecutive days during the growing season</li> <li>• <b>remains in agricultural use.</b></li> </ul>
Flooded or ponded areas and not considered potholes, playas, or pocosins	<p>Meet all of the following criteria:</p> <ul style="list-style-type: none"> <li>• were manipulated to make the production of an agricultural commodity possible before December 23, 1985</li> <li>• were used to produce an agricultural commodity at least once prior to December 23, 1985</li> <li>• do not flood or pond for 15 consecutive days during the growing season or 10% of the growing season, whichever is less,</li> <li>• <b>remains in agricultural use.</b></li> </ul>
Areas that meet only the water table (saturation) criteria and not considered potholes, playas or pocosins	<p>Meet all of the following criteria:</p> <ul style="list-style-type: none"> <li>• were manipulated to make the production of an agricultural commodity possible before December 23, 1985</li> <li>• were used to produce an agricultural commodity prior to December 23, 1985</li> <li>• <b>remains in agricultural use.</b></li> </ul>

## 514.31 Prior Converted Cropland (PC)

---

**d**  
**Use of PC**

Certified PC's retain this label as long as they are in agricultural use. Drainage systems or other hydrologic manipulations may be maintained or improved, provided that the hydrology of any adjacent wetland (W, FW, FWP) is not adversely impacted.

---

**e**  
**Label the PC**  
**Site**

Label areas determined to be prior converted cropland as PC on the USDA base maps.

**NOTE:** For exception for FSA-Farm Credit see Part 524.

---

514.40

## Information Required from NRCS for Making Good Faith Determinations

---

**a**  
**Purpose**

This part provides the basic provisions for a GFW determination, which will be made by FSA and instructions for providing information to FSA for making the determination.

---

**b**  
**Information  
Provided by NRCS**

NRCS provides the following information to FSA on Form AD-1069 (522.51):

- any facts about the case that NRCS or the Conservationist District has that may affect the county committee determination
- whether the person was officially informed of the wetland determination made by NRCS on Form NRCS-CPA-026E
- whether there was any direct consultation with the person concerning the wetland before the violation occurred
- whether NRCS has knowledge that the person was involved in a previous wetland conversion violation.

**NOTE: NRCS should advise FSA that the person should contact the COE for CWA permit needs.**

---

## 514.41 Providing Wetland Determinations to Other Agencies

---

**a**  
**Information to**  
**Provide to**  
**USDA Agencies**

For all certified wetland determinations/delineations provide to FSA:

A copy of NRCS-CPA-026E, and mark the USDA base maps with wetland delineations and appropriate wetland labels.

Also provide copies to FSA Farm Credit as needed.

---

**b**  
**Information**  
**Made Available**  
**to Others**

All wetland determinations/delineations are available in accordance with 120 -GM-Part 408, Freedom of Information Act and Privacy Act.

**NOTE:** FSA maintains the official record of all USDA base maps marked with wetland determinations/delineations.

---

## 514.51 Certifying Wetland Determinations

### d Procedures for Certification

NRCS will provide certified wetland determinations on tracts for which a NRCS-CPA-38 has been received using the following procedures:

1. Review existing tract determinations to determine if they were made according to mapping conventions approved by interagency oversight team (See 513.30 and 519.13.)
2. Notify the person that the determination has been certified as correct.
3. Notify the person that the determination is sufficient for determining eligibility for USDA programs.
4. Provide form NRCS-CPA-026E and mark the NRCS and FSA base maps showing the location of all wetland labels on the tract.

NOTE: NRCS will assure that the NRCS and FSA base maps are correctly labeled and marked. NRCS will assure the appropriate resource inventory data fields in FOCS are populated.

5. If the initial determination was given to the person between November 28, 1990 and the date of the certification letter, and was not appealed, or if the decision (either before or after November 28, 1990) was appealed, the person does not have additional appeal rights unless the decision is changed. For all others, offer appeal rights.
6. It is policy that all wetland determinations/delineations be conducted and/or verified on-site using all appropriate tools including methodologies in the approved mapping conventions by properly trained staff.

*Continued on next page*

## 514.51 Certifying Wetland Determinations, (Continued)

---

**e**  
**Notification**

All certified wetland determinations will be based on the use of on-site procedures in 527.4 and will be completed on tract basis (See 522.24). Mapping conventions approved by the interagency oversight team may be used as a tool to identify potential wetlands prior to visiting the potential wetland site.

Wetland determinations become effective when the USDA program participant is notified on form NRCS-CPA-026E with copies of appropriate maps. NRCS will notify the USDA program participant and FSA that the determination will be certified 30 days after the determination is issued.

USDA program participants who have already appealed the decision will not have appeal rights unless the determination is changed or revised.

See example letters in Part 526.

FSA will provide mailing labels for all current owners, operators, and tenants for every tract on which the AD-1026 has been completed.

Other cooperating agencies will be notified of wetland certifications upon request.

---

**Summary of Wetland Labels and Uses**

---

**a**

**Wetland Labels and  
Uses**

The following table provides a summary of the wetland types, labels, criteria, authorized use, and authorized maintenance activities for compliance with the wetland conservation provisions of FSA.

**NOTE:** Use the paragraph reference to locate additional information on the wetlands identified in this table.

---

## 515.21 Summary of Wetland Labels

**a**  
**Wetland Labels  
 and Uses**

Name and Label	Criteria for Determination	Authorized Cropping	Authorized Maintenance	Paragraph Reference
(AW) Artificial and Irrigation Induced Wetland	Man-made wetlands on areas previously non-wetland	No restrictions	No restrictions	514.33
(CC) Commenced Conversion	Conversion began before 12/23/85 and was approved by FSA; conversion activity was completed by January 1, 1995	No restrictions provided activities were completed per conditions	As stipulated in the agreement	514.36
(CMW) Categorical Minimal Effect	Activity or practice is conducted per the approved list identified in the <i>Federal Register</i> (currently under development)	Per conditions of the approved list	Per conditions of the approved list	516
(CPD) COE Permit Decision	Activity authorized by COE permit procedures and satisfies 1985 Act, as amended	As per COE permit.	As per COE permit.	516.10 and 517.0
(CW) Converted Wetland	Converted after 12/23/85 and before 11/28/90	Production of agricultural commodities will cause ineligibility	Maintenance allowed to original scope and effect of system prior to conversion	514.24
(CW) Wetland site converted by state, county, drainage district, or similar entity	Converted after 12/23/85 and beyond a person's direct control, but not considered third party (TP)  Includes converted W, FW, and FWP	May graze but cannot harvest hay by mechanical means. Production of agricultural commodity will cause ineligibility	Non allowed by person.  May not remove woody vegetation without loss of benefits	514.35
(CW+year) Converted wetland	Converted after 11/28/90	Conversion causes ineligibility Production of Agricultural Commodity is not allowed	Not applicable	514.24
(CWNA) Converted wetland for non agricultural use	An area where wetlands are allowed to be converted to trees, fish production, shrubs, cranberries, vineyards, or building and road construction	Production of agricultural commodities will cause ineligibility	No restrictions	514.32

*Continued on next page*

## 515.21 Summary of Wetland Labels, (Continued)

**a**  
**Wetland Labels**  
**and uses**  
 (Continued)

Name and Label	Criteria for Determination	Authorized Cropping	Authorized Maintenance	Paragraph Reference
(CWTE) Converted Wetland Technical Error	An area converted after 12/23/85 where the conversion or production of agricultural commodity was a consequence of an incorrect NRCS determination	If a substantial investment made, no restrictions on that portion of the converted wetland for which substantial investment was made.	To the extent that it existed at the time CWTE was discovered, or as agreed to by person and NRCS	514.34
		If small investment, then no agriculture production allowed if site was W. Production is allowed if site was FW	Maintenance is not allowed if site was W. Maintenance is allowed if site was FW.	
Easement Site + Label	Area that has been created, restored, or enhanced under an agreement to allow conversion and cropping of another wetland.	As specified in agreement	As specified in agreement	Part 517
(FW) Farmed Wetland	Manipulated and cropped before 12/23/85. Still meets wetland criteria  Includes potholes, playas, and pocosins that are seasonally inundated for at least 7 consecutive days or saturated for 14 days during the growing season.  If the area is not potholes, playas, or pocosins, it must be seasonally flooded or ponded for 15 consecutive days during the growing season  Not abandoned	May be farmed as it was before 12/23/85	May be maintained to the extent that existed before 12/23/85 if "as built: records exist;" or  May be maintained to 12/23/85 condition if no "as built" record exist	514.22
FWP (Farmed Wetland pasture and hayland)	Utilized for pasture or hay but not planted to an agricultural commodity prior to 12/23/85  Still meets wetland criteria  Not abandoned	May be farmed under natural conditions without the removal of woody vegetation	Maintenance allowed to extent that existed on or before 12/23/85, if "as built" records exist; or  May be maintained to 12/23/85 condition if no "as built" records exist	514.23
(MIW) Mitigation Wetland	Mitigation has occurred according to an approved plan	As stipulated in the agreement	As stipulated in the agreement	Part 517, Subpart A

*Continued on next page*

## 515.21 Summary of Wetland Labels, (Continued)

**a**  
**Wetland Labels and uses (Continued)**

Name and Label	Criteria for Determination	Authorized Cropping	Authorized Maintenance	Paragraph Reference
(MW) Minimal Effect	Activity determined to have a minimal effect on the wetland	As stipulated in the agreement	Only those activities stipulated in the minimal effects agreement	Part 516
(MWM) Minimal Effect Mitigation	Meet terms of mitigation plan	As stipulated in the agreement	Only those activities stipulated in the minimal effects agreement	Part 516
(NI) Not Inventoried	Used when not conducting a wetland determination within the entire tract	Can only determine once a certified wetland determination is completed for the area labeled NI	Can only determine once a certified wetland determination is completed for the area labeled NI	514.27
(NW) Non wetland	Does not meet wetland criteria under natural conditions.  Also includes wetlands converted prior to 12/23/85, but not cropped or used for pasture or hayland and do not meet wetland criteria. The area has not been abandoned.	No restrictions	No restrictions unless the manipulation would convert adjacent wetland labels	514.37
(OW) Other Waters of the United States	Areas in addition to identified wetlands that fall under the jurisdiction of the Clean Water Act.	As per COE permit	As per COE permit	514.26
(PC) Prior Converted Cropland	Converted and cropped before 12/23/85	No restrictions	No restrictions unless manipulation would convert adjacent wetland labels	514.31

*Continued on next page*

## **Part 516 Minimal Effect Exemption**

### **516.0 Overview**

---

#### **Introduction**

This part covers minimal effect exemptions. This exemption may be granted for conversion activities that may adversely but only minimally impact wetland functions. Before referring to the remainder of this Section be sure that a minimal effect exemption is appropriate for the proposed activity (Refer to 514.20 d and e and 514.24 d and e).

---

**516.1**

**Reserved**

## 516.10 Overview

---

### **a** **Introduction**

The use of minimal effect was authorized in the 1985 and 1990 Farm Bills and emphasized in the 1996 Farm Bill. NRCS personnel are required to grant minimal effect exemption each time requirements of this subpart are met. This subpart covers the general requirements for making minimal effect determinations.

The determination of minimal effect is derived from a wetland functional assessment. The functional assessment determines the level at which the wetland functions are operative and the impact of the conversion activities on those wetland functions (See 526.64).

If the project site meets CWA Section 404-NWP-40- Minimal Effects requirements – (up to .5 acre conversion, not located in the 100 year floodplain, below the headwaters or in the floodway or flood fringe above headwaters) and the COE will not be performing a specific minimal effects determination, NRCS will be the lead agency for documenting minimal effects. The COE will be provided a copy of the minimal effect exemption (MW) by the USDA program participant. It is also the responsibility of the USDA program participant to obtain CWA-Section 401 Water Quality certification. The Section 401 certification is necessary when Section 404 applies.

---

### **b** **Reliance on COE Permit Decision**

In cases where the COE will be conducting a review in accordance with their general, or individual permit procedures (does not include portions of New Jersey and Michigan where the States have assumed the Section 404 program), NRCS will defer further action (beyond completion of the requested (NRCS-CPA-38) certified wetland determination/delineation) pending the Corps' decision. Individuals will be provided with the name and address of the COE contact. NRCS will notify the participants that NRCS defers further action until receipt of CWA permit and will then issue a revised NRCS-CPA-026E with the appropriate labels.

---

*Continued on next page*

## 516.10 Overview, (Continued)

---

**b**  
**Reliance on**  
**COE Permit**  
**Decision**  
(continued)

In cases where the COE authorizes the activity in accordance with Section 404, the USDA program participant will provide a copy of the COE decision assessment from the permit applicant along with any public interest review. It is also the responsibility of the USDA program participant to obtain CWA-Section 401 Water Quality certification. Once a copy of the COE permit decision is received, NRCS will issue the program participant the revised NRCS-CPA-026E indicating a CPD exemption will be granted.

In cases where mitigation is required by the COE permitting process and the COE has issued a permit, no additional easements are necessary to meet wetland conservation provisions of the 1985 Act, as amended. Permit decisions will be accepted as granted with no further conditions. A CPD exemption will be granted. It is also the responsibility of the USDA program participant to obtain CWA-Section 401 Water Quality Certification.

---

**516.10 RESERVED**

516.10

b  
Overview

The following table illustrates the various minimal effect situations, steps and approval level.

ACTION	WETLAND FUNCTIONAL ASSESSMENT REQUIRED (516.12)	MINIMAL EFFECT AGREEMENT REQUIRED (516.13)	APPROVAL LEVEL
<b>Pre-Conversion Minimal Effect</b>			
• Mitigation or additional conditions to minimize impact is required	Yes	Yes	NRCS Representative
• Mitigation or additional conditions is not required	Yes	No	NRCS Representative
• Categorical Minimal Effect (See 516.11d)	No	(Varies)	NRCS Representative
<b>Post-Conversion Minimal Effect</b>			
• Mitigation or additional conditions to minimize impact is required	Yes	Yes	NRCS Representative
• Mitigation or additional conditions is not required	Yes	Yes	NRCS Representative
• Categorical Minimal Effect (See 516.11d)	No	(Varies)	NRCS Representative

**NOTE:** See Part 517 for exemptions involving mitigation which include enhancement, restoration, or creation.

## 517.0 Mitigation of Lost Wetland Functions and Values

---

### **a** **Overview**

This part covers the USDA mitigation exemption for wetland functions and values lost by wetland conversion when an agreed upon mitigation plan is developed. The mitigation plan may be a stand-alone document or it may be a component of a natural resource conservation plan of the program participant.

---

### **b** **Reliance on COE Permit Decisions**

In cases where the COE will be conducting a review in accordance with their general or individual permit procedures (does not include portions of New Jersey and Michigan where the States have assumed the Section 404 program), NRCS will defer further action (beyond completion of the requested (NRCS-CPA-38) certified wetland determination/delineation) pending the COE decision. USDA program participants will be provided with the name and address of the COE contact. NRCS will notify the participant in writing that NRCS defers further action until receipt of CWA permit and will then issue a revised NRCS-CPA-026E with the appropriate labels.

In cases where the COE authorizes the wetland conversion activity in accordance with Section 404, the USDA program participant will provide NRCS a copy of the COE decision document/assessment along with any environmental documentation, functional assessment, or public interest review. It is also the responsibility of the USDA program participant to obtain CWA-Section 401 Water Quality certification. Once a copy of the COE permit decision is received, NRCS will issue the program participant the revised NRCS-CPA-026E indicating a CPD exemption will be granted.

In cases where mitigation of the converted wetland is required by the COE permitting process and the COE has issued a permit, no easement is required to meet the mitigation requirements of the Food Security Act. Permit decisions will be accepted as granted with no further conditions. A CPD exemption will be granted. It is also the responsibility of the USDA program participant to obtain CWA Section 401 Water Quality Certification.

---

*Continued on next page*

## 517.0 Mitigation of Lost Wetland Functions and Values, (Continued)

**b**  
**Reliance on**  
**COE Permit**  
**Decisions**  
(continued)

---

In cases where the COE does not conduct a permit review, then NRCS should follow the procedures in this Part to conduct a mitigation exemption procedure.

---

**c**  
**Explanation of**  
**Terms**  
**Commonly**  
**Used in the**  
**Part**

Following is a summary of the terms that are commonly used in this part:

**Mitigation:** Compensation (through restoration, enhancement, or creation) for functions and values that are lost when a wetland is converted. Easements may be required.

In cases where mitigation is required by the COE permitting process and the COE has issued a permit, no additional easements are necessary to meet wetland conservation provisions. Permit decisions will be accepted as granted with no further conditions. A CPD exemption will be granted.

**Types of Mitigation:**

- **Restoration:** The re-establishment of wetland conditions, including hydrologic conditions or native hydrophytic vegetation, to an area where a wetland had previously existed.
  - Restoration on the same site does not require an easement under the wetland conservation provisions of the 1985 Act, as amended. Off-site restoration may require an easement if restoration conducted under the 1985 Act, as amended (See Part 516.10 b and 517.0 b).
- **Enhancement:** The alteration of an existing wetland to increase its specific functions and values. Enhancement actions include new capabilities, management options, structures, or other actions to influence one or several functions and values.
  - This action may require an easement if the enhancement is conducted under the wetland conservation provisions of the 1985 Act, as amended (See Part 516.10 b and 517.0 b).

---

*Continued on next page*

## 517.0 Mitigation of Lost Wetland Functions and Values, (Continued)

---

**c**  
**Explanation of**  
**Terms**  
**Commonly**  
**Used in the**  
**Part**  
(continued)

- **Creation:** The development of the hydrologic, geochemical, and biological components necessary to support and maintain a wetland where a wetland had not previously existed. Any wetland established on a non-hydric soil will be considered a created wetland.
    - This action will require an easement if the creation is conducted under the mitigation Section of the wetland conservation provisions of the 1985 Act, as amended (See Part 516.10 b and 517.0 b).
-

**517.0      RESERVED**

## 517.14 Easement Sites Used for Mitigation

**a**  
**Proximity of  
Easement Site to  
Converted  
Wetland**

The easement site should be on the farm, or as close as possible to the farm, on which the converted wetland is located. The priorities and guidelines for locating an easement site are shown in this table. The easement site should be located where there is the greatest possibility of success.

Priority	Location of Easement Site	Requirements
1	On Farm	The easement site is considered on-farm if it is included on the same farm as the converted wetland.
2	Off farm, including mitigation banks	The easement site should be located in the same hydrologic unit, watershed, or project area  The watershed cannot exceed 250,000 acres.
3	Outside the watershed, including mitigation banks	See Part 517.15, Mitigation banks.

*Continued on next page*

## 517.14 Easement Sites Used for Mitigation, (Continued)

---

**b**  
**Lands**  
**Ineligible for**  
**Easement Sites**

The following land is not eligible as an easement site:

- CRP land while in CRP
  - WRP land while in WRP or Floodplain Easement lands under the Emergency Watershed Protection Program, except where provided for in accordance with Part 514.23 – Mitigation (current version of 440-V-CPM)
  - other Federal lands owned in fee title or easement, except for enhancement, if the fee title/easement holder agrees to such use
  - lands on which Federal funds were used to acquire an easement, except under a USDA mitigation banking pilot program
  - mitigation wetlands on which Federal funds are directly responsible for either:
    - creation
    - restoration, or
    - acquisition
  - land on which a lien is attached, unless the mortgage holder agrees to subordinate their interest.
- 

**c**  
**Size of**  
**Easement Site**

The size of the easement will be based on the area required to replace the functions and values lost on the converted wetland. If the size of the easement site is required to be larger than the converted site in order to provide equivalent functions and values as determined by NRCS, the person may appeal the increased size requirement.

---

## 517.17 Effective Date and Recording Mitigation Exemptions

---

**a**  
**Effective Date**  
**of Mitigation**  
**Exemption**

The exemption will allow future planting of an agricultural commodity on the converted wetland after:

- the mitigation agreement is signed by NRCS and the person receiving the exemption, and
- the easement (Exhibit 526.69), if one is required, is officially recorded on public land records by the person; and
- all practices in the plan are applied.

---

**b**  
**Label to**  
**Identify**  
**Mitigation**  
**Exemption Site**

The wetland where a mitigation exemption is granted (wetland to be manipulated) shall be labeled on USDA base maps as MIW, or CPD as appropriate (e.g., from FW to MIW, W to CPD, etc.), and the corresponding mitigation site shall be labeled with the wetland label that describes the required mitigation result (e.g., from PC to W, etc.).

---

**c**  
**Notification to**  
**Person and**  
**FSA**

Issue a revised NRCS-CPA-026E and aerial photocopy indicating the MIW status on the converted wetland and the label of the easement site. Affix the labels to the USDA base maps.

---

517.17

d

**Label to Use if a  
Violation Occurs**

---

If a violation of the wetland mitigation exemption provisions occur:

- the exemption shall be withdrawn;
  - the label for the converted wetland will be changed on the NRCS and FSA base maps from MIW to CW+year;
  - notify FSA using FSA-569 of the violation according to Part 522, Subpart F;
  - **notify COE of violation;**
  - issue a revised NRCS-CPA-026E, with aerial photocopy to the person;  
and
  - notify the person that he/she shall be ineligible for future USDA benefits that are subject to the 1985 Act, as amended.
-

## 517.32 Monitoring Mitigation Sites

---

### **a** **Monitoring**

NRCS shall conduct the follow-up inspections of the restored areas until all practices are successfully established. Inspections should:

- ensure vegetation is successfully established and if vegetation fails to establish:
  - require the area to be replanted, and
  - do not consider the area fully restored until the vegetation is established.
- ensure that hydrological features and planned landscape features are restored as planned.
- ensure that all restoration measures are installed as planned and maintained; and,
- determine if a violation of the plan has occurred.

If an area has been exempted with a CPD exemption and a violation is noted, the COE will be notified. NRCS still has responsibility to enforce wetland conservation provisions of the 1985 Act, as amended, in cases where the COE does not resolve the CWA permit violation to the satisfaction of NRCS.

Note: See Appendix Part 527.2 for guidance on monitoring plan development.

---

### **b** **Violation on the** **Mitigation Site**

If a violation on the mitigation site occurs, refer to Part 522, Subpart F.

---

**517.32 RESERVED**

## Subpart B

## AD-1026 Referrals for Scope and Effect Evaluations

### 522.20

### Overview

---

**a**

#### Introduction

This section provides the conditions for which AD-1026's will be referred to NRCS for wetland and/or scope and effect evaluations:

- if questions 8, 9, and 10 are all answered "no", FSA will not refer the AD-1026 to NRCS for wetland determinations.
  - if one or more of the questions 8, 9, and 10 are answered "yes", FSA will review previous determinations and refer the AD-1026 to NRCS for certified wetland determinations only if needed. If needed, the person must also complete form NRCS-CPA-38.
-

## 522.21 AD-1026 Question 8(b)

---

**a**  
**Question 8(b)**

This is question 8(b) on AD-1026.

During the crop year entered in item 3 above, or the term of a requested USDA loan will you:

(b) plant or produce an agricultural commodity on land on which planting was made possible by drainage, dredging, filling, leveling, or any other means after December 23, 1985, and NRCS has not evaluated and approved drainage activities.

**b**  
**Purpose of Question**

The purpose of question 8(b) is to allow the person to identify any manipulation so NRCS can verify whether planting the area will be considered a violation.

**c**  
**Farm Service Agency Procedure for Question 8(b)**

If question 8(b) is answered "n" the Farm Service Agency will:

- not refer the AD-1026 to NRCS for certified wetland determinations
- will advise the person that any proposed manipulations will require a certified wetland determination from NRCS requested on NRCS-CPA-38

NRCS will not conduct certified wetland determinations when no manipulation is proposed. Continuation of on-going farming and ranching practices is not a manipulation and does not require a certified wetland determination.

## 522.22 AD-1026, Question 9

---

This is question 9 on AD-1026.

**a**  
**Question 9**

Since December 23, 1985, have you or has anyone on your land, or will you or anyone on your land during the crop year entered in item 3 above, or the term of a requested USDA loan:

- (a) conduct(ed) any land clearing, drainage, (tile or open ditch), filling, leveling, or dredging to create a new drainage system that has not been evaluated by NRCS? Indicate year if answered "Yes". \_\_\_\_\_
- (b) conduct(ed) any drainage activities to maintain, improve, or modify an existing drainage system that has not been evaluated by NRCS"? Indicate year if answered "yes". \_\_\_\_\_

**b**  
**Purpose of**  
**Question 9(a)**  
**and (b)**

The purpose of Question 9(a) and (b) is to allow the person to identify areas on which any wetland manipulation will occur so NRCS can initiate a determination and/or complete a scope and effect evaluation in advance of the activity if the area was not previously evaluated by NRCS.

---

**c**  
**Farm Service**  
**Agency**  
**Procedure for**  
**Question 9(a)**  
**or (b)**

If question 9(a) or (b) is answered "n" Farm Service Agency will:

- not refer the AD-1026 to NRCS for certified wetland determinations
- advise the person that any proposed manipulations will require a certified wetland determination from NRCS requested on NRCS-CPA-38.

NRCS will not conduct certified wetland determinations when no manipulation is proposed. Continuation of ongoing farming and ranching practices is not a manipulation and does not require a certified wetland determination.

---

## 522.23 AD-1026, Question 10

---

This is question 10 on AD-1026.

**a**  
**Question 10**

Will you conduct any activities for fish production, trees, vineyards, shrubs, building construction, or other nonagricultural purposes that have not been evaluated by NRCS?

---

**b**  
**Purpose of**  
**Question 10**

The purpose of question 10 is to allow the person to identify any areas the person intends to convert for non-agricultural uses so the person can request an exemption in advance of the conversion if a wetland is involved.

---

**c**  
**Farm Service**  
**Agency**  
**Procedure for**  
**Question 10**

If question 10 is answered "n", Farm Service Agency will:

- not refer the AD-1026 to NRCS for certified wetland determinations
- will advise the person that any proposed manipulations will require a certified wetland determination from NRCS requested on NRCS-CPA-38.

NRCS will not conduct certified wetland determinations when no manipulation is proposed. Continuation of ongoing practices relating to fish production, trees, vineyards, and shrubs do not require a certified wetland determination.

---

## 522.24 NRCS Action For AD-1026 Referrals For Wetland Determinations/ Certifications And Scope And Effect Evaluation

---

**a**  
**NRCS Action**

NRCS shall:

- date stamp the AD-1026 when received from FSA.
  - establish a priority based on 511.1
- 

**b**  
**Complete Wetland Determination**

Where a determination has not been completed, provide the person form NRCS-CPA-38 (Part 526.96). When the form is completed by the person, finalize determinations as per Part 514. Wetland determinations are to be completed for the whole tract (or portion of tract remaining if total tract was not previously completed).

---

**c**  
**Complete Scope and Effect Determination**

Conduct Scope and effect determination when required as per Part 515.

---

**d**  
**Forward Wetland Determination and/or Scope and Effect Determination**

Once the preliminary technical determinations are made, forward to the USDA program participant via the NRCS-CPA-026E

---

**522. RESERVED**

**Subpart B**

**Recording Certified Wetland Determinations and Notifications**

**523.20**

**Overview**

**a  
Responsibilities**

---

**NRCS shall delineate each certified wetland determination for a whole tract (Part 522.24) on the FSA/NRCS base map. FSA will be responsible for maintaining and transferring determinations to subsequent hard copy maps. Where geographic information systems are operational, NRCS will be the custodian of all certified wetland determinations.**

---

**b  
Transferring to  
New Aerial  
Photography**

---

**When FSA receives new aerial photography, follow the steps in this table for transferring wetlands that were certified by NRCS on a previous set of official USDA aerial photography.**

**NOTE: The new aerial photography shall not be used until written documentation is received to indicate the NRCS review is complete and certified wetlands are accurate.**

---

<b>Step</b>	<b>Action</b>
<b>1</b>	<b>FSA personnel will transfer certified wetlands to new aerial photography.</b>
<b>2</b>	<b>NRCS personnel will review new aerial photography to verify accuracy of the certified wetlands and make applicable corrections.</b>
<b>3</b>	<b>NRCS will provide FSA with written documentation that lists aerial photography by map numbers that have been reviewed and certified as accurate.</b>

## 523.21 Wetland Labels for Use in Delineated Wetlands

**a** Labels on wetlands indicate status of compliance requirements  
**Introduction**

**b** A description of the various labels and the paragraph reference is provided in  
**Labels and Reference**  
 this table.

Wetland Determination	Label Delineated Area	Reference
Artificial and Irrigation Induced Wetland	AW	514.33 and 515.21
Categorical Minimal Effect	CMW	Part 517
Commenced Conversion Exemption	CC	514.36 and 515.21
Converted Wetland after 11/28/90	CW + year	514.24 and 515.21
Converted Wetland between 12/23/85 and 11/28/90	CW	514.24 and 515.21
Converted Wetland Technical Error	CWTE	515.34 and 515.21
COE Permit Decision	CPD	516.10 and 517
Farmed Wetland	FW	514.22 and 515.21
Farmed Wetland Pasture or Hayland	FWP	514.23 and 515.21
Minimal Effect Wetland	MW	Part 516
Minimal-Effect w/Mitigation	MWM	Part 517
Mitigation Wetland	MIW	Part 517
Non-wetland	NW	514.37 and 515.21
Not Inventoried	NI	514.11d
Other Waters of the United States	OW	513.22b and 514.26
Prior Converted Cropland	PC	514.31 and 515.21
Third Party Exemption	TP	514.35 and 515.21
Wetland	W	514.21 and 515.21
Wetland altered but not cropable	WX	514.38 and 515.21
Wetland converted before 12/23/85, but not cropped	NW	514.24 and 515.21
Wetland Converted for Non-Agricultural Use	CWNA	514.32 and 515.21

# 526.48 NRCS-CPA-38 Request for Certified Wetland Determination/Delineation (Revised)

U.S. Department of Agriculture  
Natural Resources Conservation Service

NRCS-CPA-38  
9/00

## REQUEST FOR CERTIFIED WETLAND DETERMINATION/DELINEATION (for use only when the USDA Program Participant requests a certified wetland determination/delineation)

OWNER	AGENT – (OPERATOR)
Name:	Name:
Address:	Address:
Phone:	Phone:

Have you previously received a wetland determination or delineation on this tract from the Natural Resources Conservation Service (formerly Soil Conservation Service), or the COE of Engineers  Yes  No

Location of Property (description): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

County/Parish:	State:
----------------	--------

Farm No: \_\_\_\_\_ Tract No: \_\_\_\_\_ Acres in tract: \_\_\_\_\_  Map or aerial photograph with the tract/acre outlined

PURPOSE OF REQUEST FOR DETERMINATION/DELINEATION (list all USDA programs that apply):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- I certify that I am the owner or agent of the owner for the property previously described.
- I grant the Natural Resources Conservation Service (or their designated agent the right to enter the property previously described to ascertain the extent of wetlands on said property
- I understand that the certified wetland determination/delineation will be recorded on USDA base maps and may be released to the public or utilized in any of the USDA agencies data bases, or published on official USDA wetland maps.

Signature of Owner:	Date:
Signature of Agent: (As authorized by the owner)	Date:

18 U.S.C Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or devises a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

**526.48 NRCS-CPA-38 Request for Certified Determination/Delineation (Reverse)**

**For Official Use Only**

**Tracking Received** - Date   /  /  

**Conducted** - Date   /  /  

**Product to client** - Date   /  /        **Appealed**  **Yes**     **No**

**Remarks:** \_\_\_\_\_  
\_\_\_\_\_

**Notes:** Purpose of request is to establish a workload priority  
Proof of ownership required, such as property tax receipt  
If accepting the agent of owner request, a written designation is required

## 526.63a 2-4-5 Rule

### 2-4-5 Rule

Using output from the HGM worksheet, calculate the reduction in functions caused by the conversion activity for each of the Hydrology and Biogeochemistry functions in the model.

For the wetland that is within the project area (that is the area that encompasses all activities related to the proposed or ongoing project) determine for each of the Hydrology and Biogeochemistry functions in the model if the conversion action results in exceeding the "minimal" threshold level using the following table:

Determining if the reduction exceeds the established threshold level	
Index of functional performance in relation to reference standard (index value) prior to manipulation:	Threshold level is exceeded if the manipulation would cause the index function to be decreased by :
0.8 to 1.0	more than 20 percent of existing level
0.5 to 0.79	more than 40 percent of existing level
<0.5	more than 50 percent of existing level

#### Decision Rule:

If 50 percent or more of the functions present in either the Hydrology or Biogeochemistry functional group are reduced beyond the threshold level, the effect is not minimal.

If fewer than 50 percent of the Hydrology functions and fewer than 50 percent of the Biogeochemistry functions are reduced beyond the threshold level, and no important habitat functions identified by FWS or the State Technical Committee are lost, the effect is minimal.

*Continued on next page*

## 526.63a 2-4-5 Rule, (Continued)

---

The approach to processing HGM output for use in making minimal effects determinations is provided as a national framework for direct application or to be modified by the State Conservationist in consultation with the State Technical Committee, to better reflect local conditions. Threshold levels may be adjusted through modification of baseline index of performance categories or shifting the acceptable level of decrease within each category. The process may also be modified by altering the decision rule, if appropriate.

Where reference standards are not yet available for the HGM subclass being considered (thus precluding use of HGM in making minimal effects determinations) use the decision procedures developed by NRCS in consultation with the State Technical Committee (see Part 526.63).

---

**526.63a RESERVED**

## 526.64 Minimal Effect Evaluation Worksheet

### Background and Rationale

A minimal effect exemption determination is defined in 516.11a as "...a determination that the conversion or proposed conversion of a wetland will have a minimal effect on the hydrological and biological functions of the wetland." The following procedure describes the technical approach required to conduct a minimal effect evaluation. The approach utilizes the hydrogeomorphic functional assessment of the wetland proposed for modification. Evaluation of secondary and cumulative impacts must be considered as part of the minimal effect determination. Reference is made to Appendix 527.6 for the hydrogeomorphic wetland functional assessment procedures.

Wetland functions defined by the national hydrogeomorphic models are grouped into four classes: hydrology, biogeochemistry, plant community maintenance, and faunal community/habitat maintenance. Specific functions are defined within each function class for each hydrogeomorphic wetland subclass and class (e.g., prairie pothole subclass of the depression class, overbank flow dominated subclass of the riverine class). All determinations of function for project wetlands are made by comparison with standards developed for reference wetlands of the same subclass. For a minimal effect determination, the presence of hydrology and biogeochemistry functions are critical to the presence and maintenance of wetland plant communities and faunal communities and habitat. If most of the hydrology and biogeochemistry functions are not present or intact, or will become altered by a wetland conversion activity, community and habitat maintenance functions will most likely be significantly altered or eliminated. Therefore, a minimal effect determination for a proposed or pre-conversion wetland activity focuses on the presence and level of hydrology and biogeochemical functions and the impact of reducing those functions on plant community and faunal community/habitat maintenance. All the functions are defined by the hydrogeomorphic subclass reference wetlands and associated reference standards.

## SUBPART E Sample Letters

### 526.80 Letter of Transmittal that COE Permit Decision Exemption Applies

Example letter when NRCS defers to COE permit actions.

Mr./Mrs./Ms.

X

This is to notify you that as of the date of this letter, I am making a preliminary technical determination that *[enter the following as appropriate:]*

• field(s) [number(s) #] shown in Section I of the attached NRCS-CPA-026E "HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION" Form is (are) highly erodible because the highly erodible soil map units in the field constitute 33.33 percent or more of the acreage in the field or equal to 50 or more acres.

• field(s) [number(s) #] shown in Section II of the attached NRCS-CPA-026E "HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION" Form contain wetland determinations with the labels/certifications as indicated. These areas met the criteria of hydric soils, wetland plants and soil or surface wetness.

*This wetland certification:*

As a result of statutory and regulatory changes, the Natural Resources Conservation Service (NRCS) appeal process has changed. Under the appeals process, this preliminary technical determination will become final within 30 calendar days unless you request either of the following options:

(1) A field visit be made by our office to review with you the basis for our preliminary technical determination, answer any questions you have concerning the determination, and to gather additional information from you concerning the preliminary determination.

(2) Mediation be used in an attempt to settle your concerns with the preliminary technical determination. See the enclosed brochure for information on the mediation process. Contact:

**[List name and address of State Mediation Service.]**

If you choose to use mediation, NRCS will pay up to one-half of the costs that are appropriate and reasonable which are associated with securing the services of a trained mediator, when the services are provided on other than a voluntary basis. The NRCS will have final discretion over what is considered appropriate and reasonable.

A final technical determination will be issued within 30 days after the field visit, if one is requested, and/or within 30 days following the completion of mediation. If neither is requested, this preliminary determination becomes final on *(enter date, 30 days away)*. The final technical determination, whether it is a result of the expiration of the 30-day period following receipt of this preliminary technical determination or receipt of a final determination may be appealed to the Farm Service Agency, *(enter name of the appropriate county)* county committee at the address below. If you take no action during the preliminary 30 calendar day period, your appeal rights begin *(enter 30 calendar day date)* and ends on *(enter 60 calendar day date)*. If you appeal the decision, we will forward a copy of our administrative record to the county committee for their use in deciding your appeal.

XXXXXX County Committee

1234 Street

City, State Zip Code

If you are the owner of this tract and have a tenant, I urge you to discuss this letter and accompanying NRCS-CPA-026E with your tenant. Likewise, if you are the tenant of this tract of land, I urge you to discuss this letter with your landlord.

*Continued on next page*

# 526.80 Letter of Transmittal that COE Permit Decision Exemption Applies (Continued)

This project may qualify for a COE of Engineers (COE) permit exemption under the wetland conservation provisions of the Food Security Act. You must pursue your next action with the COE to obtain a Clean Water Act (CWA) Section 404 permit. As part of the process you may also be required to obtain CWA Section 401, Water Quality Certification from the [insert name of applicable state agency]. To begin the Section 404 permitting process contact:

COE of Engineers Person

COE of Engineers District

Address

Upon receipt of a copy of the COE permit, NRCS will be able to proceed with issuance of a revised NRCS-CPA-026E notifying you of your wetland conservation compliance options with USDA programs. The appropriate Food Security Act exemptions will also be noted, as well as any further action upon your part.

Sincerely,

\_\_\_\_\_  
USDA/NRCS District Conservationist

cc: County Soil and Water Conservation District

**526.80 RESERVED**

# 526.80 a Letter of transmittal of a completed Form NRCS-CPA-026

Mr.  
X

Dear [Producer Name]:

This is to notify you that as of the date of this letter, I am making a preliminary technical determination that *[enter the following as appropriate:]*

• field(s) [number(s) #] shown in Section I of the attached NRCS-CPA-026E "HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION" Form is (are) highly erodible because the highly erodible soil map units in the field constitute 33.33 percent or more of the acreage in the field or equal to 50 or more acres.

• field(s) [number(s) #] shown in Section II of the attached NRCS-CPA-026E "HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION" Form contain wetland determinations with the labels/certifications as indicated. These areas met the criteria of hydric soils, wetland plants and soil or surface wetness.

*This wetland certification:*

\_\_\_\_\_ Includes "other waters of the United States" as defined by the United States COE of Engineers.

\_\_\_\_\_ Does not include "other waters of the United States" as defined by the United States COE of Engineers, which include but are not limited to tidal waters, lakes, rivers, streams, mud flats, and intermittent and perennial streams which are regulated under the Clean Water Act. Contact the United States COE of Engineers regarding permits requirements.

*In order to maintain your USDA program eligibility and comply with the Clean Water Act, contact us prior to performing the following activities:*

- land clearing
- drainage (tile or open ditching)
- drainage maintenance
- filling, leveling, or dredging
- land use changes
- any activity involving "other waters of the United States" as defined above.

As a result of statutory and regulatory changes, the Natural Resources Conservation Service (NRCS) appeal process has changed. Under the appeals process, this preliminary technical determination will become final within 30 calendar days unless you request either of the following options:

(1) A field visit be made by our office to review with you the basis for our preliminary technical determination, answer any questions you have concerning the determination, and to gather additional information from you concerning the preliminary determination.

(2) Mediation be used in an attempt to settle your concerns with the preliminary technical determination. See the enclosed brochure for information on the mediation process. Contact:

**[List name and address of State mediation Service.]**

If you choose to use mediation, NRCS will pay up to one-half of the costs that are appropriate and reasonable which are associated with securing the services of a trained mediator, when the services are provided on other than a voluntary basis. The NRCS will have final discretion over what is considered appropriate and reasonable.

A final technical determination will be issued within 30 days after the field visit, if one is requested, and/or within 30 days following the completion of mediation. If neither is requested, this preliminary determination becomes final on *(enter date, 30 days away)*. The final technical determination, whether it is a result of the expiration of the 30 day period following receipt of this preliminary technical determination or receipt of a final determination may be appealed to the Farm Service Agency, *(enter name of the appropriate county) county committee* at the address below. If you take no action during the preliminary 30 calendar day period, your appeal rights begin *(enter 30 calendar day date)* and ends on *(enter 60 calendar day date)*. If you appeal the decision, we will forward a copy of our administrative record to the county committee for their use in deciding your appeal.

XXXXXX County Committee

1234 Street

City, State Zip Code

If you are the owner of this tract and have a tenant, I urge you to discuss this letter and accompanying NRCS-CPA-026B with your tenant. Likewise, if you are the tenant of this tract of land, I urge you to discuss this letter with your landlord.

Sincerely,

\_\_\_\_\_  
District Conservationist

Enclosure

cc:

(County) Soil and Water Conservation District

## **527.4 Wetland Criteria/Indicators/Procedures**

### **I. INTRODUCTION**

Wetland is defined as land that;

1. has a predominance of hydric soils and
2. is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

Wetlands are identified through the confirmation of wetland criteria. All three wetland criteria, hydric soils, hydrophytic vegetation, and wetland hydrology, must be met for an area to be identified as wetland. Each criterion must be independently assessed by collecting, analyzing, and documenting data to support the determination. NRCS must demonstrate that an area is wetland, and each determination or delineation must be supported by sufficient evidence. Evidence is gained by collecting data through mandatory technical procedures that indicate if wetland criteria are met. The criteria, indicators, and procedures for making wetland determinations and delineations are contained in this Section.

Refer to the "Wetland Criteria/Indicators/Procedures table" for the correct manual to utilize for making wetland determinations on agricultural lands, nonagricultural lands, and narrow bands and small pockets in agricultural lands.

**527.4 Wetland Criteria/Indicators/Procedures (Continued)**

**WETLAND CRITERIA/INDICATORS/PROCEDURES FOR  
AGRICULTURAL & NON AGRICULTURAL LAND  
FOR DECISIONS REGARDING FOOD SECURITY ACT**

<b>ON-SITE VERIFICATION/ DETERMINATION /DELINEATION</b>	<b>Agricultural Land (native vegetation is disturbed/removed)</b>	<b>Narrow Band &amp; Small Pockets Ag Lands</b>	<b>Agricultural and Non-Agricultural Land(native vegetation is undisturbed)</b>
<b>MANUAL (Procedures)</b>	NFSAM	COE 87M*	COE 87M*
<b>CRITERIA</b>	NFSAM	COE 87M	COE 87M
Soils	NTCHS***		
Vegetation	NFSAM		
Hydrology			
<b>INDICATORS</b>		COE 87M	COE 87M***
Soils	Field Indicator of Hydric Soils		
Vegetation	COE 87M		
Hydrology	COE 87M & Hydrology Tools		
<b>TRAINING REQUIRED:</b>	NFSAM**	COE Reg. IV	COE Reg. IV

\*Supplemented with guidance documents

\*\*COE Reg. IV training – highly recommended

\*\*\*Use Indicator of Hydric Soils for Agricultural Land (National Technical Committee for Hydric Soils)

## 527.4 Wetland Criteria/Indicators/Procedures (Cont'd)

### Growing Season

The growing season is defined as that part of the year when soil temperatures at 19.7 inches below the soil surface are higher than biologic zero (5 degrees C). As this quantitative determination requires in-ground instrumentation, growing season may be estimated by approximating the number of frost free days. The growing season can be approximated as the period of time between the average date of the last killing frost to the average date of the first killing frost. This represents a temperature threshold of 28 degrees F or lower at a frequency of 5 years in 10. Growing season data can be obtained from the Climate Data Access Network (CDAF), at Portland, Oregon. The State Climate Data Liaison (CDL) in the state office has the procedure for obtaining the data.

In certain parts of the country where the plant communities have adapted to regional conditions, local methods of determining growing season may be more accurate than that described above. Such methods may be used when accompanied by the technical rationale.

## 527.4 Wetland Criteria/Indicators/Procedures, (Continued)

### III. INDICATORS FOR WETLANDS ON AGRICULTURAL LANDS

The interaction of soils, vegetation and hydrology results in the development of characteristics unique to wetlands. These characteristics are represented by specific indicators which can be used to assist in verification of the presence of hydric soils, hydrophytic vegetation, and wetland hydrology. The following Sections describe the various indicators for soils, vegetation, and hydrology that should be used in determining wetland boundaries. While the indicators are initially considered as independent variables in the determination process, it is the preponderance of the evidence—that is, the weight of all the indicators together—that leads to the final determination of the wetland conditions. These indicators are gathered during on-site reviews.

#### Soils Indicators

The Field Indicators of Hydric Soils of the United States (Reference Section II of FOTG) shall be used to indicate if the soils criterion is met. The Field Indicators do NOT, however, identify every hydric soil and the lack of observation of one of the Field Indicators does not necessarily mean the soil is NOT hydric.

When soil conditions are difficult to interpret or seem inconsistent with the landscape, vegetation, or hydrology, it may be necessary to obtain the assistance of an experienced wetland delineator or soil scientist. It is expected that occasions will arise where confirmation of saturation and reduction, as required by the hydric soil definition, will depend on intensive data collected by direct measurement or by other means.

To fully document a hydric soil, the soil should be examined and described to whatever depths are necessary to test for the presence of applicable hydric soil indicators. In most soils, the depth of excavation should be at least 50 cm or 20 inches. Document features observed. Compare the soil features observed to that required by each Field Indicator. Specify which indicators have been met.

#### Vegetation Indicators

NFSAM criteria may be documented by use of the appropriate vegetation Sections of the "COE of Engineers Wetlands Delineation Manual" (Waterways Experiment Station Technical Engineers Report Y-87-1, January 1987) and current National guidance, i.e., October 7, 1991, Questions and Answers on the 1987 Manual and the COE of Engineers, March 6, 1992, guidance to the field " Clarification and Interpretation of the 1987 Manual."

## 527.4 Wetland Criteria/Indicators/Procedures, (Continued)

### Hydrology Indicators

NFSAM criteria may be documented through use of indicators from the appropriate hydrology Sections of the "COE of Engineers Wetlands Delineation Manual" (Waterways Experiment Station Technical Engineers Report Y-87-1, January 1987) and the COE of Engineers March 1992 guidance to the field "Clarification and Interpretation of the 1987 Manual".

In addition, the following analytical techniques may be used to supplement indicators and procedures found in the COE 1987 Manual. These techniques are outlined in the Hydrology Tools for Wetland Delineation Manual:

- (a) Use of Stream and Lake Gages
- (b) Runoff Volumes
- (c) Remote Sensing
- (d) DRAINMOD
- (e) Scope and Effect Equations
- (f) NRCS Drainage Guides
- (g) Observation Wells

### IV. PROCEDURES

Certified wetlands determinations are conducted through either on-site verification of off-site procedures, or on-site procedures. Off-site procedures should only be utilized where the application of remote sensing technology can effectively identify wetlands, such as on open agricultural lands. Off-site procedures must be made according to wetland mapping conventions that have been agreed to by NRCS, EPA, COE, and FWS as per the MOA (Appendix 527.12) and verified on-site.

Mapping conventions must be based on field-tested correlation between off-site information and on-site wetland determinations. Mapping conventions must reflect regional differences in interpretation of wetland signatures (See 513, Subpart C).

On-site procedures are required according to Section 514.12b. On-site procedures require examination of the site for the presence of wetland criteria described in Section II (of this part) and use of the procedures prescribed in Section III (of this part) to document Indicators.

---

*Continued on next page*

## 527.4 Wetland Criteria/Indicators/Procedures, (Continued)

### Off-site Procedures

Off-site procedures are dependent on the availability of information for making a wetland determination, the quality of this information, and the ability to interpret these data. Off-site procedures must be based on wetland mapping conventions that have interagency concurrence and that have been field tested to ensure adequate correlation between office information and actual wetland conditions. All certified wetland determinations must be verified on-site even when using off-site procedures.

The following information should be utilized when using off-site procedures: (See Chapter 513, Subpart C for procedures for developing off-site wetland mapping conventions)

1. U.S.G.S. topographic maps depicting the site and the watershed.
2. National Wetland Inventory (NWI) maps, state wetland maps or local wetland maps.
3. NRCS soil survey maps where hydric soils or soils with hydric inclusions on the site have been previously identified.
4. Aerial photos or FSA slides of the site. Mapping conventions must be followed when interpreting aerial photography. Depending upon the location, wetland signatures may include:
  - a. hydrophytic vegetation
  - b. surface water
  - c. saturated soils
  - d. flooded or drowned-out crops
  - e. stressed crops due to wetness
  - f. differences in vegetation patterns due to different planting dates
  - g. inclusion of wet area into set-aside programs
  - h. other.
5. Climatological data to ensure that the wetland signatures are reflective of long term hydrological conditions. The Hydrology Tools for Wetland Delineation Manual provides a procedure for the use of the climatological data to ensure the signatures are representative.

### On-site Determinations

Although wetlands may be identified off-site by an approved mapping convention process, all certified wetland determinations must be verified or conducted on-site.