

Wetland Conservation Provisions Questions and Answers

Corps — U.S. Army Corps of Engineers

EPA — Environmental Protection Agency

FSA — Farm Service Agency

FWS — U.S. Fish and Wildlife Service

NRCS — Natural Resources Conservation Service

USDA — U.S. Department of Agriculture

Q. Why are *certified* wetland determinations important? How long are they valid?

A. *Certified* wetland determinations are used for determining USDA farm program eligibility, and are valid as long as the land is in agricultural use. However, a landowner can request review of a certified wetland determination at any time.

Q. Who determines if an area has wetlands?

A. NRCS provides certified wetland determinations. Landowners may hire a consultant to identify and delineate wetlands, and NRCS will review the work and make the final wetland determination.

Q. Is there a minimum size to a wetland?

A. No. If a site meets wetland criteria, it is a wetland and subject to Swampbuster requirements.

Q. What happens if the Swampbuster provisions are violated?

A. The landowner may lose USDA program benefits. For example, if a landowner produces a crop on a converted wetland, he or she may lose benefits for that year. Or, if a landowner converts a wetland after November 28, 1990, he or she may lose benefits for the year that the conversion took place, and for the years that follow, until the wetland functions are restored.

Q. If a landowner meets Swampbuster requirements, is he/she automatically in compliance with the Clean Water Act (CWA)?

A. NRCS and the Corps of Engineers strive to provide consistent information and determinations to the public regarding wetlands. However, there are inherent differences in the swampbuster provisions of the Food Security Act of 1985 and in Section 404 of the Clean Water Act, which occasionally result in areas being subject to the jurisdiction of one agency, but not the other.

NRCS advises participants to check with the Corps prior to conducting any planned activities that may affect wetlands.

Q. How does a landowner get a minimal effect exemption?

A. Landowners must request a minimal effect exemption at the local NRCS office. A conservationist will visit the wetland, discuss the proposed action, and determine if effects are minimal. If the planned manipulation is considered a potential conversion and if it does not qualify for a categorical minimal effect exemption, NRCS will conduct a wetland functional assessment and determine if the proposed project will have minimal effect on the wetland functions and values in the area.

Categorical minimal effects are exemptions for common agriculture- related activities and practices that do not require case-by-case evaluation.

Q. What is a "good faith" exemption?

A. Good faith, as it relates to wetland conservation, is a determination by FSA that a wetland violation occurred without intent of the landowner to violate. If FSA grants a good faith violation, NRCS will assist in the development of a mitigation plan to restore the wetland functions. The practices in the plan must be installed within 1 year. If the practices in the plan are properly installed, and all conditions are met, the landowner will not risk loss of program benefits due to the wetland violation.

Q. How does a landowner mitigate (offset) for losses of wetland functions?

A. Mitigation includes the creation, enhancement, or restoration of a site that compensates for the loss of the wetland functions of the site in question. The mitigation site should be in the same general area of the local watershed (8-digit HUC), must have a recorded easement to USDA, and must provide equivalent functions of the site being considered for conversion.

Q. Can a landowner clean ditches, repair tile, or remove trees and stumps from a wetland?

A. For Swampbuster, the scope and effect of the drainage system as it existed on December 23, 1985 may be maintained in most cases. This means that tile may be repaired and ditches may be cleaned as long as no added drainage capacity is achieved.. USDA program participants must complete form AD-1026 to indicate the proposed project.

Trees and stumps may be removed only if the effect is minimal, or if wetland functions are replaced through mitigation and all required permits are obtained prior to the activity. Normal timber harvesting practices for a site that remains in timber production are not normally affected by Swampbuster.

Q. Has "abandonment" been abolished?

A. For prior converted cropland (PC) in agricultural use, yes. Areas that met the criteria of PC on December 23, 1985, may be determined to be PC as long as that land is used for agriculture. Landowners with farmed wetlands (FW) and farmed wetland pastures (FWP) may allow them to return to wetland status and convert them back to their present agricultural use without violating Swampbuster, provided NRCS has documented the hydrologic and vegetative baseline conditions and the restoration plan.

Q. When purchasing or renting farmland, what questions should be asked about wetlands?

A. Potential buyers or renters should ask the following questions:

Have certified wetland determinations been completed for the property?

What are the types of wetlands present and what are the associated restrictions?

Are there any wetland conversions that occurred after December 23, 1985?

If there are converted wetlands, what are the options to resolve the situation and avoid a violation?

For More Information

NRCS, [FSA](#), Cooperative Extension Service, or your local conservation district can provide more information. Your [USDA Service Center](#) is listed in the telephone book under *U.S. Department of Agriculture*.

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