

Natural Resources Conservation Service

Highly Erodible Land and Wetland Conservation
The Final Rule



Jennifer Heglund
Assistant State Conservationist, State HEL and Wetland Specialist

Final Rule Background

- Final Rule Published August 28, 2020
 - 7 CFR Part 12
 - https://www.federalregister.gov/documents/2020/08/28/2020-18626/highly-erodible-land-and-wetland-conservation
- USDA issued a final rule for the Highly Erodible Land (HEL) and Wetland Conservation (WC) provisions of the Food Security Act of 1985, as amended (the 1985 Farm Bill).
- The Rule makes permanent many of the changes made in the Interim Rule, responds to comments received, and makes further adjustments to some of the comments received.









Interim Rule Overview



Interim Rule

- Published December 7, 2018
- Public comment period through February 5, 2019
- Purpose: Provide transparency on how USDA determines wetlands and highly erodible land.
- Received over 350 comments from 65 commenters.
 - One of the 65 comments was submitted by an organization that submitted a spreadsheet of 15,094 substantively identical comments.





Interim Rule

- Designed for producers to better understand whether their actions may result in ineligibility for program benefits.
- Clarified the certification status of previously completed wetland determinations.
- Defined precipitation data for normal climatic conditions.
- Provided a means for determining potentially highly erodible land offsite.



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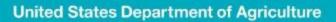


Interim Rule

- Wetland determinations can be done on a field or sub-field basis.
- Simplified hydrology criteria for farmed wetlands (FW) and farmed wetland pasture (FWP).
- Added definitions for pothole, playa, and pocosins.
- Provided that offsite analysis can be used for wetland minimal effect.



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Final Rule Overview





The Conservation Compliance Final Rule

Responded to public comment and finalized changes made in the Interim Rule with a few minor changes in response to the public comment received.

- In identifying non-pothole Farmed Wetlands (FW) and Farmed Wetland Pasture (FWP) USDA will use hydrology indicators identified in the NRCS Field Office Technical Guide (FOTG) instead of those from regional supplements to the Corps of Engineers Wetland Delineation Manual.
 - North Dakota will use State Offsite Methods as vetted through Federal Register in 2017







The Conservation Compliance Final Rule

- 2. Codified that making wetland determinations can be done on a field or sub-field basis.
- 3. Added the 2018 Farm Bill requirement that USDA will make a reasonable effort to include the affected person in an on-site investigation, conducted prior to making a potential wetland violation technical determination. Although already common practice, this provision is being added to the regulation.
- 4. Added clarification that consideration of best-drained condition will not occur when a wetland supported woody vegetation on December 23, 1985, such that production of an agricultural commodity was not possible on that date.







Details on Featured Topics



Best Drained Condition

- This rulemaking does not change past implementation of the "once PC, always PC" concept.
- NRCS will not identify wetland hydrology based on the best drained condition when a wetland supported woody vegetation such that production of an agricultural commodity was not possible on December 23, 1985.
- This is in keeping with the definitions of "prior-converted cropland" and "farmed wetland" established in the 1996 interim rule, which specifies that PC and farmed wetland cannot support woody vegetation as of December 23, 1985.



Certification Status of 1990-1996 Wetland Determinations

- The interim rule did not change the legal status of any certified wetland determination made between 1990 and 1996.
- Following enactment of the 1990 Farm Bill, certification was accomplished by completion of the SCS-CPA-026 form which provided certification of the wetland and appeal rights.
- The interim rule clarified their status as it has existed under the regulations in place at the time the wetland determinations were originally conducted and certified.



Normal Climatic Conditions and Precipitation Data

- Climatologists recognize a 30-year period of record as a minimum for statistical accuracy.
- Because NRCS must consider best drained conditions that existed on or before December 23, 1985, it must use the 1971 through 2000 data set to have enough years of data to evaluate observations of hydrology indicators.
- The continued use of the 1971 through 2000 data set is appropriate in all situations. It provides fairness, consistency, and predictability for USDA participants by correlating determinations to the statutory date of December 23, 1985.



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Part 12-Highly Erodible Land Conservation and Wetland Conservation

Regulatory Changes





Final Rule Regulatory Changes

In § 12.2—

- Clarified the difference between "farmed wetland" and "farmed wetland pasture" is with respect to whether production of an agricultural commodity occurred at least once prior to December 23, 1985.
- Removed the required use of hydrology indicators in the regional supplements to the Corps Manual, and instead identifies the use of hydrology indicators as set forth in the local NRCS Field Office Technical Guides (FOTG).

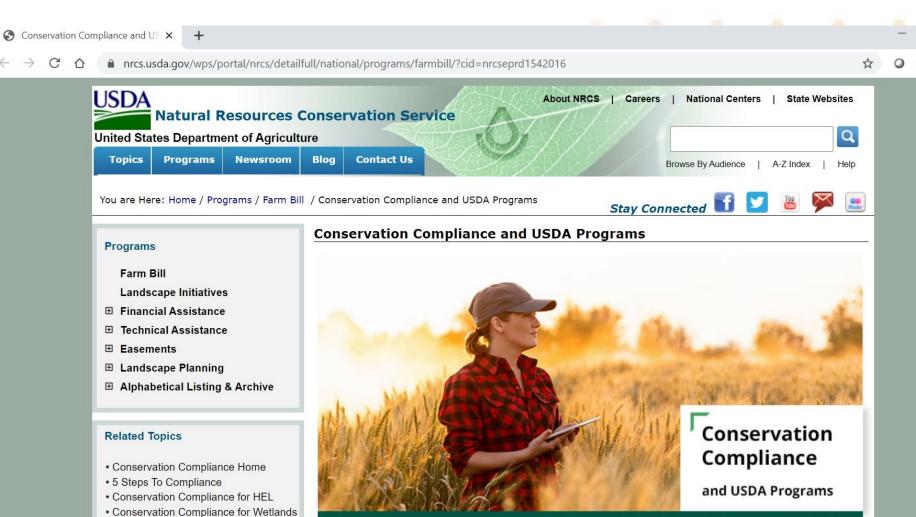
In §12.30—

- Clarified that wetland determinations, delineations and certifications will be done on a tract, field, or sub-field basis.
- Added language that NRCS will make a reasonable effort to include the affected person in the on-site investigation.

In §12.31–

 Added language that when a wetland is affected by pre-1985 drainage manipulations and did not support woody vegetation on December 23, 1985, such that production of an agricultural commodity on that date was possible, wetland hydrology will be identified on the basis of the best-drained condition resulting from such drainage manipulations.







HEL DeterminationsWetland Determinations



Questions and Answers

