

Massachusetts Minimal Effect Procedure

Discussion: Part 515 of the National Food Security Act Manual (NFSAM), Fourth Edition, allows NRCS to grant a USDA program participant an exemption from Swampbuster in situations where the proposed action will have a minimal effect on the wetland functions and values. This minimal effect procedure applies to pre-conversion conditions. If a person has converted a wetland and then seeks a minimal effect determination, the burden will be on the participant to demonstrate to the satisfaction of NRCS that the conversion was minimal. NRCS should follow the guidance in the NFSAM (515.1 C.) for post conversion minimal effect evaluations and contact the State Office if assistance is needed.

The minimal effect exemption may be used more than one time per tract; however, the cumulative impact of minimal effect exemptions may not exceed 1/3rd of an acre (14,500 sf) per tract.

Procedure: This form was designed for use by Massachusetts NRCS field office staff in response to a landowner request for a Minimal Effect Exemption (MW). Gather information as needed to answer all questions in Steps 1 through 6 on the attached sheets. If needed, elevate the request to the State Office as indicated. The District Conservationist must sign and date the form after the determination has been made.

- If a minimal effect exemption was denied, send the landowner a letter notifying them of the decision and stating their appeal rights.
- If the planned activity qualifies for a Minimal Effect Exemption with Conditions, develop a Minimal Effect Agreement (per Section 515.3 of NFSAM) that outlines the planned use of the area and describes, in detail, any specific conditions that are required to ensure that the effect remains minimal. The Agreement must be signed by both the landowner and NRCS.
- For all Minimal Effect Exemptions granted, proceed as follows:
 - a) Provide a copy of the completed minimal effect procedure (and minimal effect agreement, if applicable) to the landowner along with a revised NRCS-CPA-026E and a copy of the FSA certified wetland determination map.
 - b) Place a copy of the completed minimal effect procedure, revised NRCS-CPA-026E, certified wetland determination map and minimal effect agreement (as applicable) in the field office case file.
 - c) Forward a copy of the completed minimal effect procedure to the State Resource Conservationist.
 - d) Notify FSA of the exemption by providing the CED with a copy of the completed minimal effect procedure, the minimal effect agreement (as applicable), the revised NRCS-CPA-026E and the revised certified wetland determination map.

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Step 1: Identify and characterize the wetland to be impacted

Name of Minimal Effect Applicant: _____ County: _____

Farm No: _____ Tract No: _____ Field No: _____

Wetland Determination: _____ (attach copy of NRCS-CPA-026)

Note: *If a certified wetland determination has not been previously completed for the area in question, do a wetland investigation to determine the appropriate wetland label. A certified wetland determination will need to be completed for both the area in question and the field/tract as appropriate.*

Wetland Description (NWI Classification): _____

Dominant Plants: _____

Proposed Activity: _____

Is proposed impacted area a portion of a larger wetland? Yes _____ No _____

If yes, total size of wetland _____

Step 2: NRCS cumulative effects determination

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Have minimal effect exemption(s) previously been approved for conversion of more than 0.33 acre of wetland contiguous with the work site, regardless of tract boundaries?
<input type="checkbox"/>	<input type="checkbox"/>	Have minimal effect exemption(s) previously been approved for conversion of more than 0.33 acre of wetland on this tract?

If the answer to both of the above is "no", proceed to step 3.

If the answer to either of the above is "yes", a minimal effect exemption cannot be granted.

Step 3: Size of the proposed manipulation

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed manipulation less than 1/3 rd of an acre?

If "yes", proceed to Step 4.

If "no", a minimal effect exemption cannot be granted.

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Step 4: Red flag determination		
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located within an Area of Critical Environmental Concern (ACEC)?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located within Estimated Habitat of Rare Wildlife?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in an area shown as a Certified Vernal Pool?

If the answer to all of the above is “no”, proceed to step 5.

If the answer to any of the above is “yes”, minimal effect exemptions will normally not apply; however, exceptional circumstances may exist. Mitigation of impacts and project specific conditions will likely apply. Consult with the landowner regarding potential limitations on the exemption relative to the site. If the producer wishes to proceed after consultation, elevate the request to the State Office.

Step 5: Yellow flag determination		
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located within an area designated as BioMap Core Habitat?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in an area that could be a vernal pool?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in an area protected by an easement?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in a DEP wetland protection area (Zone II, IWPA)?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in wetlands associated with a perennial stream, river or natural lake?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in a wetland that forms a corridor between two or more areas of natural vegetation (regardless of width or length)?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity visible from watercourses designated as wild or scenic rivers?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located within the Massachusetts Coastal Zone?
<input type="checkbox"/>	<input type="checkbox"/>	Is the proposed activity located in a NHESP Natural Community polygon?

If the answer to all of the above is “no”, proceed to step 6.

If the answer to any of the above is “yes”, project specific conditions may apply to the conversion activity. Consult with the landowner regarding potential limitations on the exemption relative to the site. If the producer wishes to proceed after consultation, elevate the request to the State Office.

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Step 6: Decision for Minimal Effect Exemption

Using the "Massachusetts Minimal Effect Procedure", the Natural Resources Conservation Service (NRCS) has determined that the proposed action to be undertaken by the individual named in Step 1 will make possible the production of an agricultural commodity and that the proposed wetland manipulation:

Check one

- Will have only a minimal effect on the wetland functions and values; therefore, a Minimal Effect Determination without Conditions is granted.

- Will have only a minimal effect on the wetland functions and values as long as the work is done according to the Minimal Effect Agreement; therefore, a Minimal Effect Determination with Conditions is granted. The District Conservationist will prepare a Minimal Effect Agreement and it must be signed by both the landowner and NRCS.

- Will result in more than minimal effects on the wetland functions and values; therefore, a minimal effect determination is denied.

District Conservationist: _____ Date _____

Agency Notification and Other Permits

This decision is only valid for the purposes of the Wetland Conservation provisions of the 1985 Food Security Act, as amended. The proposed action may require permits under Section 404 of the Clean Water Act and the Massachusetts Wetlands Protection Act. Before commencing the proposed activity, please contact the following agencies to check if a permit is required before you commence manipulation of any wetlands under a minimal effect determination.

Regulatory Office
New England District
US Army Corps of Engineers
696 Virginia Road
Concord MA 01742-2751
(978) 318-8338 (phone)
(978) 318-8303 (fax)

DEP Western Region
436 Dwight Street
Springfield, MA 01103
Phone: 413-784-1100

DEP Northeast Region
205B Lowell Street
Wilmington, MA 01887
Phone: 978-694-3200

DEP Central Region
627 Main Street
Worcester, MA 01608
Phone: 508-792-7650

DEP Southeast Region
20 Riverside Drive
Lakeville, MA 02347
Phone: 508-946-2700