**Revised State Offsite Methods (SOSM) for Wetland Determinations in Iowa, Minnesota, North Dakota and South Dakota**

## Background

The United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) has improved the way it makes wetlands determinations in the Prairie Pothole states (Iowa, Minnesota, North Dakota and South Dakota) to help process them more quickly and efficiently. The State Offsite Methods (SOSM) are state-developed procedures for making USDA conservation compliance wetland determinations (swampbuster determinations). Swampbuster determinations allow USDA to determine participant eligibility for certain USDA programs (most Farm Service Agency and Natural Resources Conservation Service (NRCS) programs and Federal crop insurance premium subsidies).

In the Prairie Pothole states, NRCS staff have been using offsite procedures for swampbuster determinations since August, 1988. In 2014, in an effort to improve efficiency, speed and reliability, NRCS proposed the development and implementation of SOSM procedures that utilize technology and are consistent throughout the four states.

To maximize transparency NRCS conducted a series of six listening sessions in the summer of 2014 to solicit public comments from producers and conservation and agricultural groups. The revised draft procedures were publically reviewed by each states' State Technical Committee and the procedures were posted in the Federal Register on November 5, 2014. The original 90-day comment period that was extended through February 20, 2015.

The material and information posted in the Federal Register on SOSM are internal agency operational procedures. This is not a rule making action and doesn't involve any change or revision to the existing conservation compliance regulatory language found in 7 CFR Part 12.

### Why is NRCS updating its procedures?

NRCS has been making swampbuster determinations using offsite methods for over 20 years and has updated these methods to utilize new technologies, create consistency and increase efficiencies.

### How will this affect me?

Swampbuster determinations will be made more quickly. NRCS will be issuing most ***preliminary*** swampbuster determinations for cropland sites using the SOSM without a site visit. Offsite methods have a high degree of accuracy due to the development and use of highly detailed topographic maps and the use of many years of aerial photography.

### What if I still want a field visit?

NRCS will conduct an on-site review of the preliminary swampbuster determination at the request of an agricultural producer. In addition, NRCS must always conduct an onsite field visit if there is a possibility the swampbuster determination may result in the denial of USDA benefits.

### When did the new process take effect?

On July 13, 2015, Iowa, Minnesota, North Dakota and South Dakota implemented the updated SOSM process for identifying wetlands on private lands.

### What is the legal and regulatory basis for the SOSM?

The Wetland Compliance provisions are found in the Food Security Act 1985, as revised. In statutory language, Congress directs the Secretary of Agriculture is to "...delineate, determine, and certify all wetlands located on subject land on a farm." Further, in regulation at 7 CFR 12.30(a)(4) the NRCS is directed to "develop and utilize off-site and on-site wetland identification procedures." The revised SOSM are part of the off-site wetland identification procedures.

**How does NRCS use aerial photos for wetland mapping and how does it determine "normal" conditions?**

Aerial photos are one of many offsite resources used by the SOSMs to help determine wetland conditions. The NRCS determines what is "normal" by using a weighted average of the climate data in the months before the date the imagery was taken. This weighted average is compared with the average climate data from the 1971 to 2000 period to determine if the imagery is reflective of "normal, wet, or dry" conditions.

**What rights are available to producers if they disagree with an NRCS wetland determination?**

All agency wetland determinations are issued with appeal rights. Producers can chose to accept their preliminary determination or request a reconsideration. During the reconsideration process NRCS must make a field visit and meet with the producer on their land. Producers who remain unsatisfied with their final determination are provided additional appeal rights and NRCS must make additional field visit(s) during the formal appeals process. The following are the general steps:

1) Preliminary technical determination is provided (via offsite or onsite methods)
2) Producer may request reconsideration with a field visit
3) If decision remains adverse after field visit:
4) Producer may appeal to the USDA Farm Service Agency (FSA) County Committee or directly to the USDA National Appeals Division – second level of appeal
5) If FSA County Committee finds merit to the appeal, it is referred to the NRCS State Conservationist for review and another field visit
6) If decision remains adverse after field visit:
7) Producer may appeal to the USDA National Appeals Division

**What happens if I request a field visit review of my swampbuster wetland determination?**

If you request a field visit review of your determination, you will be contacted by NRCS to schedule the visit. The NRCS will meet with you onsite to explain the technical basis for the determination. Participants will also be given the opportunity to provide additional information pertinent to the determination, such as historic drainage activity which may not be in USDA records or apparent in offsite references. The end result of any field visit is to ensure that the determination is correct and that the participant understands the technical basis for the determination.

**How do I get more information?**

If additional information is needed please contact the State Conservationist for your State as listed below.

Iowa – Rick Ellsmore, Acting State Conservationist, 210 Walnut Street, Room 693, Des Moines, Iowa 50309-2180; Phone 515/284-6655; Rick.Ellsmore@nh.usda.gov

Minnesota – Cathee Pullman, State Conservationist, 375 Jackson Street, Suite 600, St. Paul, Minnesota 55101-1854; Phone 651/602-7900; Cathee.Pullman@mn.usda.gov

North Dakota- Mary Podoll, State Conservationist, 220 E. Rosser Avenue, Room 278, P.O. Box 1458, Bismarck, North Dakota 58502-1458; Phone 701/530-2000; mary.podoll@nd.usda.gov

South Dakota – Jeffrey Zimprich, State Conservationist, Federal Building, Room 203, 200 Fourth Street, S.W.; Huron, South Dakota 57350-2475; Phone 605/352-1200; jeff.zimprich@sd.usda.gov