Conservation Compliance & Wetlands

The Food Security Act of 1985 requires producers participating in most programs administered by the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS) to abide by certain conditions on any land owned or farmed that is highly erodible or considered a wetland. Producers participating in these programs, and any person or entity considered to be an “affiliated person” of the producer, are subject to these conditions.

Definition of a Wetland

A “wetland” is an area that:

• Has a predominance of hydric soils (wet soils);
• Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of water tolerant vegetation typically adapted for life in saturated soil conditions, and;
• Under normal circumstances supports a prevalence of such vegetation.

Wetlands are not always cattail marshes with standing water. Seasonally saturated forested wetlands are some of Michigan’s most productive wetlands in terms of providing important functions and values of water quality protection, floodwater storage, and valuable wildlife habitat. Wetlands can be relatively dry for long periods of time.

Wetland Determinations

NRCS is the agency within the USDA tasked with making the technical determination if land should be classified as a wetland or if a wetland conversion has occurred.

FSA determines who is impacted by an NRCS technical determination of non-compliance, what penalties will be applied, and acts on requests for the application of an exemption, such as the good faith relief exemption.

Identifying Wetland Status

FSA maintains official USDA records of wetland determinations. Producers may obtain aerial imagery of their farms and a printout of their farm and tract records from the FSA office administering their farm; however, it is important to know that determinations may not have included all of the producer’s land.

If a producer is uncertain of the highly erodible land and wetland determinations for their land, they should contact the FSA office administering their farm records for assistance.

Conservation Compliance

To be in compliance with the highly erodible land conservation and wetland conservation provisions, producers must agree, by certifying on Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification), that they will not:

• Produce an agricultural commodity on highly erodible land without a conservation system;
• Plant an agricultural commodity on a converted wetland;
• Convert a wetland to make possible the production of an agricultural commodity.

Producers planning to remove fence rows, convert woodlots to cropland, combine crop fields, divide a crop field into two or more fields, install new drainage, or improve or modify existing drainage, must notify the FSA and update Form AD-1026. FSA will notify NRCS and NRCS will then provide highly erodible land or wetland technical determinations.
Appealing a Wetland Determination

If a producer believes a wetland determination is not correct, they have the right to appeal the determination within 30 days of receiving it.

Wetland determination appeals usually require an on-site field review. These reviews must be conducted during the growing season (typically between May 1 and Nov. 1) and are conducted in the order the appeal was received.

Producers are encouraged to communicate with their local NRCS field office during the appeal process. NRCS staff can answer questions regarding authorized uses and maintenance of wetlands, and provide information about restoring or mitigating converted wetlands. Contacting NRCS will not affect the status of an ongoing wetland conservation appeal.

Non-Compliance with Wetland Conservation Requirements

Producers participating in FSA and NRCS programs who are not in compliance with wetland conservation compliance provisions are not eligible to receive benefits for most programs administered by FSA and NRCS. If a producer is found to be out of compliance, they may also be required to refund past payments and may be assessed liquidated damages.

A participant who violates wetland conservation compliance provisions is determined ineligible for applicable FSA and NRCS benefits for the year in which the conversion occurred and ineligibility continues until a converted wetland is restored or mitigated.

A planting violation on a converted wetland results in ineligibility for benefits for the year or years when the planting occurred.

Regaining Eligibility from Non Compliance

Producers found to be in violation of conservation compliance provisions, but did so in good faith and without the intent to violate, may file a request to regain eligibility for the period in violation at the FSA office where their farm records are administered. If the request is approved, producers are required to take corrective action within an established period not to exceed one year.

Your local NRCS office can provide information about restoring conservation compliance either through restoring or mitigating a converted wetland, or utilizing a wetland mitigation bank. Wetland mitigation bank credits are not available in all areas of Michigan.

Additional Information

Contact the FSA or NRCS office at your local USDA Service Center for any questions about conservation compliance. More information about conservation compliance, including links to Michigan wetland mitigation banks, can be found on the NRCS-Michigan website at: www.nrcs.usda.gov/wps/portal/nrcs/mi/programs/farmbill/cc/.