



## Florida Guidance for Performing Certified Wetland Determinations

The purpose of this guidance is to clarify procedures for completing wetland determinations for compliance with the Wetland Conservation provisions of the Food Security Act, as amended, and with NEPA according to policy as stated in GM 190, Part 410.26.

1. A certified wetland determination will be made for a USDA program participant when:
  - (a) the participant answers yes to Question 9a, 9b or 10 on AD-1026 form.<sup>1</sup>
  - (b) a potential wetland violation is reported or observed on the tract (or on the portion of the tract being leased by the program participant if he/she is a tenant and the landowner is not a program participant).
  - (c) the participant requests a certified determination (landowner/agent signs a NRCS-CPA-38).

If the participant is a tenant on the tract for which a certified determination is needed and the landowner is not a USDA program participant, the portion of the tract that is not being leased by the participant **will be labeled NI**.

2. In some cases, a sensitive area evaluation may be sufficient to meet planning needs and comply with agency policy. For example, a wetland boundary can be identified, recorded, and marked on the planning map in the course of planning activities without completing the additional paperwork needed for a certified wetland determination. Although this information must be documented, be sure to note in the documentation that the purpose is for **a sensitive area evaluation, not a certified wetland determination**. Results of a sensitive area evaluation should be documented using existing forms (NRCS-CPA-6 form, Corps of Engineers datasheets, aerial photo, etc.) or a format specifically created for this evaluation. Example of situations where a sensitive area evaluation would be appropriate include:
  - (a) A change in land use is proposed that may negatively impact wetlands in the planning unit (but does not involve manipulation), for example, conversion of native vegetation to pasture that does not involve drainage or removal of woody vegetation.
  - (b) Management activities will occur that may negatively impact the water quality of wetlands in the planning unit.

If wetlands or other sensitive areas are present in the planning unit, agency policy requires protection of these resources to the extent practicable (see GM 190, Part 410). Use the FL-CPA-30 (Planning Considerations & Environmental Concerns Checklist) and wetland mapping tools (see Florida Mapping Conventions) to determine whether wetlands are likely to exist in areas that may be negatively affected by planned practices. Delineate or estimate the location of wetland boundaries and apply NRCS Conservation Practice Standards (which may include buffer requirements) to protect wetlands in the

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<sup>1</sup> Note: AD-1026 revision dated 8/23/02 deleted reference to wetlands in Question 8. If Question 10 is answered yes, only the portion of the tract affected by the activity needs a wetland label, unless it is an FSA inventory property. The rest of the tract will be labeled NI.

planning unit. Florida Conservation Practice Standards for Nutrient Management (Code 590), Waste Utilization (Code 633) and other conservation practices will be applied as appropriate to determine any conservation buffer requirements. (Note: Buffers may consist of natural or planted vegetation but may only include areas determined not to be jurisdictional wetlands, such as PC or AW, or authorized converted wetlands such as CWNA or MW areas.)

3. When providing **conservation technical assistance** for agricultural producers who are **not** USDA program participants, requests for wetland determinations generally should be referred to the Corps of Engineers. However, certain situations, such as a producer considering USDA program participation in the future, may justify NRCS performing this service to help ensure the producer's future compliance with the Food Security Act. Therefore, a certified wetland determination may be made for a non-USDA program participant upon request when the non-participant is an agricultural producer for whom NRCS is providing conservation technical assistance. In such cases, the portion of the tract outside of the planning unit will be labeled NI. When performing a certified determination for a non-USDA program participant, an NRCS-CPA-38 form must be signed by the landowner (or authorized agent of the landowner), and a footnote recorded on the form that the request is from a non-participant.

Conservation technical assistance is not considered a program subject to the Wetland Conservation Provisions of the Food Security Act. Therefore, a producer can get technical assistance from NRCS even if there is an existing wetland violation on the tract/planning unit. (If the producer is a USDA program participant, however, he/she will lose eligibility for USDA benefits until the violation is resolved.) Proposed manipulation (see definition, NFSAM Part 514.20) of wetlands in the planning unit is likely to necessitate a certified wetland determination. If manipulation of a wetland is proposed in the planning unit and the person does not wish to avoid/minimize/mitigate wetland impacts according to NRCS recommendations and obtain all necessary permits, NRCS will withdraw assistance on the planning unit.

#### Additional Instructions:

**For Food Security Act Compliance:** When a certified determination is requested, if Florida Wetland Mapping Convention tools **and a site visit** clearly indicate no hydric soil, wetland hydrology, or wetland vegetation on the tract/planning unit, a certified wetland determination may be issued without the need for determination fieldwork (e.g., filling out Corps datasheets) as long as all appropriate documentation supporting the determination is included in the file (e.g., maps, CPA-6 notes). In addition, areas that will not be affected by manipulation may be labeled as NI. However, a certified determination cannot consist solely of the NI label.

All wetland labels will receive a certification date except NI, since a determination is not actually done in NI areas. The certification date cannot be entered until the client has had 30 days to review the determination (or at the end of the appeal process). Copy wetland determinations to the Corps of Engineers for concurrence where appropriate per instructions in the Florida Mapping Conventions. When concurrence is needed, do not send the certified determination to the client until after it is received from the Corps.

**For NEPA Compliance:** Management activities in the planning unit will be assessed for their potential to negatively impact wetlands located both inside and outside of the planning unit. For example, application of pesticides, prescribed burning and roller chopping, if performed according to NRCS practice standards, should not negatively impact wetlands. However, piling of brush or debris from uplands into a wetland, while not a Swampbuster violation, will negatively impact wetlands and may be a Clean Water Act violation. NRCS-CPA-6 planning notes or other appropriate format should record the fact that potential negative impacts to wetlands resulting from activities in the planning unit were assessed. All planning and application will comply with NEPA requirements.