



Florida Guidance for Performing Certified Wetland Determinations

The purpose of this guidance is to clarify situations in which certified wetland determinations are needed for compliance with the Wetland Conservation provisions of the Food Security Act, as amended, and to describe measures to help protect wetlands in accordance with agency NEPA policy as stated in GM 190, Part 410.26. This guidance contains significant changes with regard to criteria for performing certified wetland determinations.

A. Circumstances under which a certified wetland determination will be made for a USDA program participant:

1. The participant answers YES to Question 9a or 9b on Form AD-1026 **and** at least one of the following applies:
 - (a) **the tract(s) for which the participant answered YES** (or the leased portion of it if the participant is a tenant) **contains agricultural land where production of an agricultural commodity is or was possible after December 23, 1985**, e.g., row crop field, pastureland, rangeland, or sod farm. This excludes citrus groves, tree farms, non-annually tilled horticultural crops, buildings, and other areas of the tract where mechanical tillage has not been possible since 12/23/85. For NRCS to perform a certified determination, the landowner/agent must complete and sign form NRCS-CPA-38 indicating which tract(s) meeting the above criteria has been manipulated.
 - (b) **the person proposes manipulation on any tract(s) that will make production of an agricultural commodity possible on the tract, other than for the purpose of conversion of land to citrus groves, tree farms, non-annually tilled horticultural crops, buildings, or other uses that preclude annual tillage.** If manipulation is proposed for one of these purposes, the person should be referred to the U.S. Army Corps of Engineers and the appropriate Water Management District to see if other federal or state authorization is needed for the activity. Manipulation means the alteration of hydrology or removal of woody vegetation including stems and stumps (see Part 514 of the NFSAM). For NRCS to perform a certified determination, the landowner/agent must complete and sign form NRCS-CPA-38 indicating which tract meeting the above criteria is proposed to be manipulated.
2. A potential Food Security Act wetland violation (CW or CW+yr) is reported or observed on the tract (or on the leased portion if the program participant is a tenant and the landowner is not a program participant). When this occurs, NRCS and FSA must complete Form FSA-569 and NRCS will conduct a certified wetland determination unless access to the tract is denied.
3. The participant requests a certified determination (landowner/agent signs a NRCS-CPA-38).

Note that NRCS will only conduct certified wetland determinations for USDA program participants for the purpose of determining eligibility for program benefits. In addition, if a person answers yes to Question 10, a certified determination is NOT needed because these activities do not result in wetland conversion under the Food Security Act. A converted wetland is defined by the Act as a “wetland that has been drained, dredged, filled, leveled, or otherwise manipulated...for the purpose or to have the effect of making the production of an agricultural commodity possible...” Because these activities do not make production of an agricultural commodity possible, or do so only for a limited time until the planned land use that precludes

annual tillage is installed, they are considered not to make production possible and therefore do not meet the definition of converting a wetland under the Act.

The AD-1026 Form is expected to be updated to clarify when referrals for certified wetland determinations are needed. This should reduce referrals of USDA clients to NRCS for determinations since activities that are not potential Swampbuster violations, i.e., that do not have the potential to result in a CW or CW+yr designation, do not need to be evaluated by NRCS in a certified wetland determination unless specifically requested by the landowner/agent.

Until Form AD-1026 is revised, a Florida NRCS form has been developed to record whether a certified wetland determination is necessary. When a USDA program participant is referred by FSA to NRCS for a wetland determination, this form will be provided to the person to complete. Based on the person's responses on the form regarding land uses on his/her tract(s) and previous or proposed manipulation, NRCS will assess whether a wetland determination is warranted. **A copy of the completed form (Form FL-CPA-43 *Supplement to Form AD-1026 for Assessing the Potential for Wetland Conversion Activities Subject to the Food Security Act of 1985*) will be provided to the person and to FSA. The original will be kept on file by NRCS with a copy of the AD-1026. Use of this form is mandatory until further notice.**

B. Wetland protection policy for NRCS compliance with NEPA:

If wetlands or other sensitive areas are present in the planning unit, agency policy requires protection of these resources to the extent practicable (GM 190, Part 410). Use 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. Estimate, or delineate in the field if necessary, the location of wetland boundaries and apply NRCS Conservation Practice Standards (which may include buffer requirements) to protect wetlands in the planning unit. Florida Conservation Practice Standards for Nutrient Management (Code 590), Waste Utilization (Code 633) and others 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 meet wetland criteria.)

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. Documentation in the project file (e.g., FL-CPA-52 Environmental Evaluation) 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.

Examples of situations where a sensitive area evaluation would be appropriate include:

- A change in land use is proposed that may negatively impact wetlands (or other sensitive areas such as sinkholes) 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.
- Management actions will occur that may negatively impact water quality of wetlands in the planning unit.

For a sensitive area evaluation, a wetland boundary can be identified, recorded, and marked on the planning map in the course of planning activities. 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 similar format.

C. Additional Information on Conducting Certified Wetland Determinations:

- Conservation technical assistance is not considered a program subject to the Wetland Conservation Provisions of the Food Security Act. Therefore, a USDA program participant can get technical assistance from NRCS even if there is an existing wetland violation on the tract/planning unit. However, he/she will lose eligibility for USDA benefits until the violation is resolved. 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.
- 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., soil survey, NWI map, aerial photos). 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).