

# Part 513 - Preparing to Make Wetland Determinations and/or Delineations

## 513.0 Overview

a  
Background

The 1985 Act, as amended, requires that upon a client request, wetlands be identified, determined, certified, and delineated. NRCS is the lead agency responsible for certified wetland determinations on all lands for which an NRCS-CPA-38 has been received.

b  
Purpose

The purpose of this part is to provide a definition of wetland, describe criteria and procedure for identifying wetlands, and explain agency coordination procedures which are necessary for making wetland determinations for the 1985 Act, as amended, and Section 404 of the Clean Water Act.

c  
Training

To determine and/or delineate wetlands on agricultural land, personnel must be trained in the use of the NFSAM. Where native vegetation has not been removed, the Corps approved training on the 1987 Corps Wetland Delineation Manual must have been completed.

To determine and/or delineate wetlands on non-agricultural land, including narrow bands adjacent to or small pockets interspersed among agricultural land, the personnel must complete the Corps approved training on the 1987 Corps Wetland Delineation Manual.

In addition, NRCS, FWS, Corps, and EPA are encouraged to provide supplemental interagency wetland determination and/or delineation training.

d  
Adequacy of Staff Skill Level

It is policy that all activities related to wetland conservation provisions will be conducted by employees that have adequate training and experience, as determined by the STC. Further, only employees who have, at a minimum, successfully completed the Corps approved Reg IV delineation course will conduct (or review/approve delineations of consultants) wetland determinations/delineations on lands where native vegetation is undisturbed, using the 1987 Corps Manual.

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Qualified  
Employee Roster

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Each STC will be responsible for maintaining a roster of qualified employees, by both training and experience, who have demonstrated knowledges and skills to conduct wetland determinations/delineations, scope and effect evaluations, functional assessments, minimal effects evaluations, mitigation planning, and mitigation easements.

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## Subpart F — Certification

### 514.60 Certification of Wetland Determinations

#### (a) Regulatory Language (7 CFR §12.30(c))

Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for USDA program benefits (16 U.S.C. §3822(a)(3)). All certified wetland determinations must be completed in accordance with the determination procedures outlined in Part 514, Subparts B and C.

#### (b) Job Approval Authority Requirements

Certified wetland determinations must be completed by a qualified NRCS employee, as determined by the State Conservationist. Qualified employees must meet the following criteria:

- Have completed all the required training, including update courses.
- Has the appropriate job approval authority and classification.
- Has demonstrated proficiency in making certified wetland determinations.

#### (c) Effective Date of Certifications

All wetland determinations made after November 28, 1990 and provided to the landowner with appeal rights are considered certified wetland determinations (PL101-624 – Nov. 28, 1990).

In accordance with the Act at 16 U.S.C. §3822(a)(4), “A final certification...shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary.”

Accordingly, NRCS will review a previously certified wetland determination if requested by any affected person. All requests for review of a wetland determination must be made on form AD-1026.

#### (d) Detrimental Reliance on a Certified Wetland Determination

A person will not be ineligible for program benefits as a result of taking an action in reliance on a certified wetland determination that did not correctly identify the area as wetlands subject to the Act (including farmed wetland, farmed wetland pasture or manipulated wetland).

#### (e) Appeals of Certified Wetland Determinations

Prior to finalizing a certified wetland determination, NRCS will notify the person affected by the certification and provide an opportunity to appeal it. NRCS will certify the wetland determination as final 30 days after providing the person notice of certification or, if an appeal is filed with USDA, after the administrative appeal procedures are exhausted (See Part 521 and the Conservation Programs Manual, Part 510 for NRCS policy and procedure regarding appeals). NRCS appeal procedures are contained in 7 CFR Part 614.

In the case of an appeal, NRCS must review and certify the accuracy of the determination for all lands subject to the appeal to ensure that it is accurate. Prior to a decision being rendered

on the appeal, NRCS will conduct an onsite investigation (known as a reconsideration) of the subject land.

**(f) Preparing the Certified Wetland Determination**

NRCS will delineate all wetlands subject to the WC provisions by outlining the boundaries of the wetland on aerial photography, digital imagery, or other graphic representation. If possible, NRCS will use GPS to digitally map the wetland boundary in the field and to import that data onto digital orthophotoquadrangle maps (DOQ's) or other GIS digital photo imagery. Refer to Part 514, Subpart B to determine the appropriate labels to apply to the delineated wetlands.

The complete boundaries and acreage of all areas within the tract that were delineated and identified must be shown on the map, including areas identified as NW. All other parts of the tract, outside of the delineated areas, will be labeled NI. This must be clearly depicted on the certified wetland determination map. Use the label and acreage information from the map to prepare the CPA-026e [Link to Form and Instructions](#). Provide a copy of the CPA-026e, along with the supporting documentation, to the producer and FSA.

**(g) Communicating with the Landowner**

Prior to conducting a site visit, NRCS employees should contact the producer and landowner and provide them the opportunity to be present during the site visit. This will allow NRCS to explain the procedures and requirements of the Act and to acquire background information on the site from the producer and landowner. Good communication with the producer and landowner has been shown to improve their understanding of the conservation compliance provisions and reduce the numbers of appeals.

## Subpart G — Labels-- Authorized Use, Maintenance, and Improvements

### 514.70 Authorized Use, Maintenance and Improvements

The following table provides a summary of the wetland types, labels, criteria, authorized uses and authorized maintenance activities for compliance with the WC provisions of the Act. Persons planning maintenance activities are to be advised in writing to contact the COE for Clean Water Act permit requirements.

Many old wetland determinations used labels that are not included in this part. When a certified wetland determination is conducted on a site, either because the existing determination is not certified or the participant requested a review of a certified determination, NRCS will apply the criteria provided in this part and label the area accordingly. This will in effect update the old label. Labels on areas for which a certified determination is not required do not need to be updated. Updating the labels will not affect a participant's eligibility under the Act, as the criteria for identifying wetlands and exemptions have not changed.

Areas that were labeled "Commenced Conversion" (commenced conversion determinations must have been requested from FSA by September 19, 1988 and the manipulation or conversion must have been completed by January 1, 1995) will be labeled PC or FW, as applicable.

**NOTE:** Use the paragraph reference to locate additional information on the wetlands identified in this table.

Name and Label	Criteria For Determination	Authorized Activities	Authorized Maintenance	Paragraph Reference
(AW) Artificial Wetland	Man-made wetlands on areas previously nonwetland.	No restrictions.	No restrictions.	Part 514.23 [link these references]
(CW-CME) Categorical Minimal Effect Exemption	Converted wetland is exempt because the activity is conducted per the approved list of Categorical Minimal Effect exemptions identified in 7 CFR Part 12.	Per conditions of the approved list.	Per conditions of the approved list.	Part 515.01
(CW-CPM) COE Permit w/ Mitigation	Converted wetland is exempt because the activity is authorized by a COE permit and satisfies the mitigation requirements of the Act	Per COE permit conditions.	Per COE permit conditions.	Part 515.20
(CW)	Converted after 12/23/85 and	Additional	Maintenance	Part 514.14