**United States Department of Agriculture**

NRCS
Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

**National Food Security Act Manual (NFSAM)** **August 10, 2006**
180-V-NFSAM
Circular No. 1, (Parts 513, 514, 515, 527)

**SUBJECT:** CPA - National Food Security Act Manual, Sections: 513.11h; 513.31a; 514.11a; 514.12b; 514.22f; 514.23e; 514.51d & e; and 527.4

**Purpose:** To amend parts of the 3rd Edition of the National Food Security Act Manual that require on-site determinations when: 1) certifying the wetland determinations and delineations; 2) the producer performs maintenance.

Effective Date: This circular is effective upon receipt.

Explanation of Changes: This circular incorporates the following changes:

The 3rd Edition of the National Food Security Act Manual (NFSAM) requires that site visits are required, in the following circumstances:

1. When making a certified wetland determination.
2. When the producer indicates on the Form AD-1026 that maintenance is planned.
3. When making an eligibility determination associated with the withholding of benefits.
4. When a person requests an on-site determination.
5. If an adequate wetland determination cannot be made using off-site procedures.
6. Pre-conversion minimal effect exemptions.

**Action:** Policy is amended through the circular as follows:

1. **The requirement for an on-site visit in ALL cases before a certified wetland determination is completed is being removed from the 3rd Edition NFSAM, except as provided in paragraph 3 below.**

   - State Conservationists have the authority and responsibility and must ensure that certified wetland determinations and delineations made in their state are of sufficient quality to make determinations of ineligibly. A site visit is not required for wetland determinations and delineations on actively managed cropland and pasture land if the State Conservationist determines that off-site tools are adequate to allow NRCS to make an accurate determination and delineation.

NOTE: Wetland determinations and delineations made by NRCS for purposes of the Wetland Conservation Provision of the Food Security Act of 1985 (FSA of 1985), as amended (16 U.S.C. §§ 3801, 3821-3824), are to be based on the conditions of the wetland areas as of December 23, 1985. Given the availability and quality of off-site information, field visits may not be necessary in all cases when making wetland determinations and delineations.

2. **The requirement for an on-site visit before a landowner/producer conducts maintenance of drainage systems is being removed from the 3rd Edition NFSAM.**

   NOTE: It is the landowners/producers responsibility to perform maintenance on a drainage systems without changing the scope and effect of the system. In the past, NRCS staff were instructed to conduct on-site visits to help ensure that landowners/producers did not inadvertently convert additional wetlands while performing maintenance resulting in a violation of the Wetland Conservation Provision of the FSA of 1985. Current workload levels throughout the country may not afford NRCS staff the time to make these field visits.

3. **On-site visits will continue to be required in the following cases:**

   - When there is an appeal.
   - Prior to withholding any benefits when a determination of eligibility will be made.
   - When a USDA participant requests an on-site determination.
   - If an adequate wetland determination cannot be made using off-site information.
   - When a USDA participant requests a pre-conversion minimal effect exemption.

4. The following pages from the 3rd Edition of the NFSAM have been amended to remove the requirements for on-site visits prior to certification and delineation, as well as on-site visits prior to conducting maintenance. Amended paragraphs are:

   - 513.11 h
   - 513.31 a
   - 514.11 a
   - 514.12 b
   - 514.22 f
   - 514.23 e
   - 514.51 d
   - 514.51 e
   - 527.4

State Conservationists will continue to carry out appropriate quality control reviews of certified wetland determinations.

**Contact:** If further information is needed, please contact the Branch Chief, Conservation Technical Assistance Branch, Conservation Planning and Technical Assistance Division, (202) 690-4979.

/s/

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Dist: NFSAM

## 513.11 Agricultural Wetland Definitions, Criteria, Indicators, and Procedures

### (h) Wetland Identification Procedures

All wetland determinations/delineations will be conducted and/or verified by qualified staff (i.e., certified by STC (for off-site procedures) and receive a passing grade for the COE Regulatory IV course) (when on-site wetlands determinations using the CORE 1987 Manual are required), using appropriate tools including methodologies developed as part of the approved mapping conventions.

**Off-site procedures:**

- Must be based on wetland mapping conventions approved by NRCS, COE, EPA, and FWS.
- State wetland mapping conventions must be field tested prior to approval by NRCS, COE, EPA, and FWS.
- State wetland mapping will be used to determine wetlands in lieu of on-site procedures or verifications.

**On-site procedures:**

- Will be made when the off-site tools are not adequate to make a wetland determination and delineation.
- Must be made using all three wetland criteria:
  - Hydric soils
  - Hydrophytic vegetation
  - Wetland hydrology

(See NFSAM Section 527.4 for the procedure for making wetland determinations and delineations).

## 513.31 Use of Wetland Inventories

### a What are Inventories

Wetland inventories are maps that outline the location of potential wetlands and are usually developed using off-site remote sensing. Inventories may be used to make wetlands determinations and/or to identify areas to investigate on-site when the off-site tools are not adequate to make wetland determinations and delineations.

NOTE: Wetland inventories **are not** certified wetland determinations/delineations for the purposes of determining ineligibility for USDA benefits under the Food Security Act of 1985, as amended.

## 514.11 Applicability and Scope of Wetland Determinations

### a When to Make Certified Wetland Determinations

NRCS responsibilities are to provide a certified wetland determination and delineation on agricultural land when requested by a USDA program participant, when:

- Forms AD-1026 and/or NRCS-CPA-038 is received.
- A potential wetland conservation violation has been reported.
- Other USDA program policies require a certified wetland determination/delineation.

All wetland determinations and delineations completed after July 3, 1996, are considered as being certified.

All wetland determinations/delineations will be conducted and verified by properly trained staff, using all appropriate tools, including methodologies in the approved State Mapping Conventions.

NOTE: If a USDA wetland conservation exemption is required and a COE permit is necessary, NRCS will provide the program participant with the name and address of the appropriate COE contact. It is the responsibility of the USDA program participant to request all appropriate permits from the COE.

### b Wetland Determinations Remain With the Land

All certified wetland determinations/delineations, conditions, and exemptions remain with the land and apply to subsequent owners and operators that are USDA program participants, and are valid under the wetland conservation provisions as long as the site remains in agricultural use or until such time a violation occurs.

Subsequent owners may have appeal rights, if they request a review of the certified wetland determination in accordance with the statute at 16 U.S.C. 3822(a)(4)), and the new certified wetland determination/delineation is changed. Any owner may request a review,

## 514.12 Wetland Determination and Delineation Procedures

### a Wetlands Defined

Wetland determinations/delineations shall be made based on the conditions on the land as of December 23, 1985.

### b Off-site Procedures

A preliminary step in the wetland determination/delineation process may include identifying potential wetlands through the wetland inventory process. This process entails a review of off-site inventory tools. The procedure for the identification of potential wetlands is defined in the State Mapping Conventions approved by the MOA Partners who include EPA, FWS, COE, and NRCS. (See Section 513.30)

### c Onsite Procedures

Onsite procedures will be used:

- If the off-site tools are not adequate to make wetland determinations and delineations.
- In response to an FSA-569 or a whistleblower complaint, or when making a determination of violation prior to benefits being withheld.
- When the tract has been randomly selected for a compliance review.
- If requested by a USDA program participant.
- To assess the scope and effect of existing and/or planned hydrologic manipulations.
- If a USDA program participant appeals the wetland determination.

## 514.22 Farmed Wetland

### e Use of FW

Areas designated as farmed wetland (FW) can be used as follows:

- Can produce agricultural commodities without loss of eligibility for USDA benefits.
- Existing drainage systems or other hydrologic manipulations can be maintained per Part 515.12.

### f Intended Maintenance on FW

A USDA participant may request approval before performing maintenance on existing systems on FW by completing a revised AD-1026. However, producers are not required to request permission and/or an on-site evaluation of their maintenance plans.

Reference: See Part 515.13 for requesting and processing maintenance requests.

### g Maintenance Caution

Remind USDA participants to exercise caution when maintaining their drainage systems, so that the producer doesn't improve the system and inadvertently drain neighboring wetlands. Producers are responsible for their decisions on maintenance and drainage once they are informed using Form AD-1026.

## 514.23 Farmed Wetland Pasture and Hayland

### e Intended Maintenance on FWP

A USDA participant may request approval before performing maintenance on existing systems on FWP by completing a revised AD-1026. However, producers are not required to request permission and/or an on-site evaluation of their maintenance plans.

Reference: See Part 515.13 for requesting and processing maintenance requests.

### f Maintenance Caution

Remind USDA participants to exercise caution when maintaining their drainage systems, so that the producer doesn't improve the system and inadvertently drain neighboring wetlands.

## 514.51 Certifying Wetland Determinations and Delineations

### d Procedures for Certification

NRCS will provide certified wetland determinations/delineations on tracts where a Form AD-1026 and/or a Form NRCS-CPA-38 have been received using the following procedures:

1. Review existing tract determinations/delineations to determine if they were made according to mapping conventions approved by interagency oversight Team. (See Sections 513.30 and 519.13.)
2. Notify the person that the determination/delineation has been certified as correct.
3. Notify the person that the determination/delineation is sufficient for determining eligibility for USDA programs.
4. Provide Form NRCS-CPA-026E and mark the USDA base maps showing the location of all wetland labels on the tract.

   NOTE: NRCS will assure that the USDA base maps are correctly labeled and marked.

5. If the initial determination was given to the person between November 28, 1990 and the date of the certification letter and was not appealed, or if the decision (either before or after November 28, 1990) was appealed, the participant does not have additional appeal rights unless he/she requests that the decision be reviewed and is consequently changed. For all other determinations/delineations, offer appeal rights.
6. It is NRCS policy that all wetland determinations/delineations be conducted and/or verified using all appropriate tools including methodologies in the approved State mapping conventions by properly trained staff.

### e Notification

All certified determinations/delineations will be based on the State mapping conventions approved by the interagency oversight team or by use of procedures in Section 527.4 and will be completed when the USDA participant makes a request using the Form AD-1026 and/or Form NRCS-CPA-038.

Certified wetland determinations/delineations become effective when the USDA participant is notified on Form NRCS-CPA-026 with copies of appropriate delineation maps. NRCS will notify the USDA participant and FSA that the determination/delineation will be certified 30 days after the determination is issued unless the participant requests appeal or mediation within the required timeframe.

USDA participants who have already appealed the certified wetland determination/delineation will not have appeal rights unless determination is changed or revised.

FSA will provide mailing labels for all current owners, operators, and tenants for every tract on which a Form AD-1026 has been completed.

Other cooperating agencies will be notified of wetland certifications upon request.

## 527.4 Wetland Criteria/Indicators/Procedures (Cont'd)

### Off-site Procedures

Off-site procedures are dependent on the availability of information for making wetland determinations/delineations, the quality of this information, and the ability to interpret these data. Off-site determinations/delineations must be based on wetland mapping conventions that have interagency concurrence and that have been field tested to ensure adequate correlation between office information and actual wetland conditions.

The following information should be utilized when making off-site determinations/delineations: (See Chapter 513, Subpart C for procedures for developing off-site wetland mapping conventions)

1. U.S.G.S. topographic maps depicting the site and the watershed.
2. National Wetland Inventory (NWI) maps, State wetland maps or local wetland maps.
3. NRCS soil survey maps where hydric soils or soils with hydric inclusions on the site have been previously identified.
4. Aerial photos or FSA slides of the site. Mapping conventions must be followed when interpreting aerial photography. Depending upon the location, wetland signatures may include:
   a. Hydrophytic vegetation
   b. Surface water
   c. Saturated soils
   d. Flooded or drowned-out crops
   e. Stressed crops due to wetness
   f. Differences in vegetation patterns due to different planting dates
   g. Inclusion of wet area into set-aside programs.
   h. Other
5. Climatological data to ensure that the wetland signatures are reflective of long term hydrological conditions. The Hydrology tools for Wetland Delineation Manual provides a procedure for the use of the climatological data to ensure the signatures are representative.
6. Data and analysis shall be made based on the conditions on the land and information as of December 23, 1985.

### On-site Determinations

When wetlands can not be identified off-site by an approved mapping convention process, use on-site procedures to make certified wetlands determinations/delineations.

## 527.4 Wetland Criteria/Indicators/Procedures (Cont'd)

### WETLAND CRITERIA/INDICATORS/PROCEDURES FOR AGRICULTURAL LAND FOR DECISIONS REGARDING FOOD SECURITY ACT

| Verification, Determination, and Delineation | Agricultural Land (native vegetation is disturbed/removed) | Narrow Bands & Small Pockets in Ag Lands | Agricultural Land (native vegetation is undisturbed) |
|---|---|---|---|
| MANUAL (Procedures) | NFSAM | COE 87M* | COE 87M* |
| CRITERIA | NFSAM | COE 87M | COE 87M* |
| Soils | NTCHS*** | | |
| Vegetation | NFSAM | | |
| Hydrology | | | |
| INDICATORS | | COE 87M | COE 87M*** |
| Soils | Field Indicator of Hydric Soils | | |
| Vegetation | COE 87M | | |
| Hydrology | COE 87M & Hydrology Tools | | |
| TRAINING REQUIRED: | NFSAM ** | COE Reg. IV | COE Reg. IV |

* Supplemented with guidance documents
** COE Reg. IV training - highly recommended
*** Use Indicator of Hydric Soils for Agricultural Land (National Technical Committee for Hydric Soils)