

TN-NRCS WETLAND MINIMAL EFFECT EXEMPTION DETERMINATION

The Natural Resources Conservation Service (NRCS) may allow minimal effect exemption determinations to exempt qualifying wetlands from USDA jurisdiction as per the 1985 Food Security Act, as amended. Title 7, Code of Federal Regulations (CFR), Part 12, Subpart C, "Wetland Conservation," states:

§12.31 On-site wetland identification criteria.

- (d) ***Minimal effect determination.*** For the purposes of §12.5(b)(1)(v) of this part, NRCS shall determine whether the effect of any action of a person associated with the conversion of a wetland, the conversion of wetland and the production of an agricultural commodity on converted wetland, or the combined effect of the production of an agricultural commodity on a wetland converted by someone else has a minimal effect on the functions and values of wetlands in the area. Such determination shall be based upon a functional assessment of functions and values of the wetland under consideration and other related wetlands in the area, and will be made through an on-site evaluation. A request for such determination will be made prior to the beginning of activities that would convert the wetland. If a person has converted a wetland and then seeks a determination that the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of NRCS that the effect was minimal.

The production of an agricultural commodity on any portion of a converted wetland in conformance with a minimal-effect determination by NRCS is exempt under §12.5(b)(1)(v) of this part. However, any additional action of a person that will change the functions and values of a wetland for which a minimal effect determination has been made shall be reported to NRCS for a determination of whether the effect continues to be minimal. The loss of a minimal effect determination will cause a person who produces an agricultural commodity on the converted wetland after such change in status to be ineligible, under §12.4, for certain program benefits. In situations where the wetland values, acreage, and functions are replaced by the restoration, enhancement or creation of a wetland in accordance with a mitigation plan approved by NRCS, the exemption provided by the determination will be effective after NRCS determines that all practices in a mitigation plan are being implemented.

Upon request from the participant, TN-NRCS employees with appropriate Wetland Job Approval Authority will complete the worksheet, "Wetland Parameters for TN-NRCS Wetland Minimal Effect Exemption Determination," to evaluate if a wetland meets the requirements of a minimal effect exemption determination. This type of determination is applicable only to wetlands prior to manipulation. Wetlands that have been altered to a condition capable of crop production are not eligible for the exemption.

WETLAND PARAMETERS FOR TN-NRCS WETLAND MINIMAL EFFECT EXEMPTION DETERMINATION

Landowner Name: _____

Farm No.: _____ Tract No.: _____ Field No.: _____

Evaluator(s): _____ Date: _____

General Questions (circle all that apply)		
1	Is the wetland known to contain a documented nonexperimental population of state or federally listed threatened or endangered aquatic or semi-aquatic plants, or aquatic animals species?	10
2	Does the wetland fall within an area designated by the U.S. Fish and Wildlife Service as " Critical Habitat " for any threatened or endangered aquatic or semi-aquatic plant or aquatic animal species?	10
3	Does the wetland fit within the species composition concept for any plant community found in the state of Tennessee ranked G2, G1, or more imperiled at the "Association" classification level according to the NatureServe and Natural Heritage Ranking system?	10
4	Is the wetland comprised of overstory trees with an average diameter at breast height (dbh) of greater than or equal to 18 in?	10
Total for Questions 1-4:		
5 Size of Impact to Wetland (acres are cumulative per tract over time) (circle one)		
5a	> or = 1.0 acre	10
5b	> 0.1 - 1.0 acre	5
5c	0.0 - 0.1acre	1
Total for Question 5:		
6 Retention of Water in Soil (circle one)		
6a	No alterations to hydrology	10
6b	Prior to 12/23/1985, ditches were installed that removed surface water, evidence of saturation.	5
6c	Prior to 12/23/1985, subsurface or surface drainage was installed that altered water retention over 51% of the site.	1
Total for Question 6:		
Vegetative Complexity (Percent Invasive Species listed as Alert, Severe Threat, Significant Threat, or Lesser Threat according to the TN Exotic Pest Plant Council at http://www.tneppc.org/invasive_plants) (circle one) DO NOT EVALUATE FOR NATURAL, HERBACEOUS-ONLY WETLANDS.		
7a	Three or more vegetative strata present, signs of regeneration of vegetation, small isolated areas of invasive species within the wetland unit (<10% invasive species).	10
7b	Two vegetative strata present, little evidence of complexity of vegetation, obvious signs of invasive species present within the wetland unit (10-50% invasive species).	5
7c	One vegetative strata present, wetland severely impacted, or woody vegetation, invasive species dominate within the wetland unit (>51% invasive species).	1
Total for Question 7:		
8 Landscape Connectivity (circle one)		
8a	Does the wetland occur within 0.5 mile of other wetlands or other water bodies (excluding farm ponds less than 1.0 acre in size)?	10
8b	Does the wetland occur 0.5 to 1.0 mile of other wetlands or other water bodies (excluding farm ponds less than 1.0 acre in size)?	5
8c	Does the wetland occur >1.0 mile of other wetlands or other water bodies (excluding farm ponds less than 1.0 acre in size)?	1
Total for Question 8:		
TOTAL SCORE:		
Wetlands with a total score of 9 or below qualify for Minimal Effect Exemption.		

NOTES: