

WETLAND INFORMATION FOR USDA PARTICIPANTS Fact Sheet



How does a USDA participant meet their wetland compliance responsibilities?

Farmers that participate in USDA programs can achieve their wetland compliance responsibilities by taking these actions:

- Indicate your intention to perform any drainage activities that have not been previously evaluated by NRCS. This is done by completing the AD-1026 form.
- Self certify that you will comply with the USDA wetland protection requirements by not performing any additional drainage activity in protected wetland areas. This is done by signing the AD-1026 form.
- Limit all drainage activity so that protected wetland areas are not adversely impacted by additional drainage activities.

Is USDA approval required before drainage activities can be installed?

No – the USDA wetland compliance provisions are not administered through an approval process. USDA does not issue drainage permits. Wetland compliance is administered through farmer self certification and does not require USDA prior approval of proposed drainage activity. By providing certified wetland determinations NRCS is proactively assisting farmers by indicating which specific areas are wetlands that are protected from new or additional drainage activity.

USDA has no authority to delay or shut down drainage activity. Participating farmers are responsible to limit their drainage activities to insure protected wetland areas are not adversely impacted.

What happens if I install drainage prior to receiving a certified wetland determination and NRCS subsequently determines that a protected wetland area has been altered?

If a USDA participant has taken the following actions their risk of being found in violation with the wetland conservation provisions will be minimized;

- Update your AD-1026 and disclose to USDA your planned drainage activities.
- Use your **existing** USDA issued wetland inventory as a guide and avoid drainage activities in any identified wetland area.
- Avoid drainage activity in any area which is an “obvious” wetland, regardless of whether the obvious wetland has been identified on your wetland inventory.

What if there is no existing NRCS issued wetland inventory of my land?

USDA participants do not need prior approval from USDA to install drainage improvements. Participants can assume the risk that their drainage activities will not result in altering and converting a protected wetland area. If you plan to install drainage improvements without a wetland determination you need to be aware that any drainage in a high risk area could result in altering a wetland and a subsequent violation of the USDA wetland conservation provisions. High risk areas include any site without a previous crop history and cropped areas that are consistently wet.

What happens if USDA determines that a wetland violation has occurred on land where I installed drainage?

When USDA identifies that a wetland violation has occurred the person responsible for converting the wetland is at risk to lose USDA benefits for their entire farm operation, dating back to the time when the wetland was altered. If the drainage activity which resulted in the wetland violation was unintentional the participant can request that FSA grant Good Faith. In order for FSA to approve Good Faith the person responsible for the wetland violation must agree to restore or mitigate the converted wetland area. These actions will either restore or replace the wetland values that were altered through drainage. FSA deals with requests for Good Faith on a site specific basis.

How can a farmer find out which areas on their land USDA considers to be wetlands that need to be protected from additional drainage?

USDA requires farmers to disclose their intention to conduct drainage improvements on the AD-1026 form. Farmers that indicate their proposed plans for new drainage will be receiving a certified wetland determination from NRCS. These certified determinations indicate the location of areas subject to protection through the USDA wetland compliance provisions. These determinations are issued to farmers via certified mail and contain a full explanation of the procedures for farmers to request agency reconsideration of any disputed wetland area.

What is a certified (final) wetland determination?

USDA has had wetland protection provisions since 1985. Initially, many NRCS offices provided farmers with wetland inventory maps indicating those wetland areas which required protection from new drainage activities. In the 1996 Farm Bill, Congress decided that the inventory maps, while providing good information, were not completely accurate and since then these inventory maps have been in the process of being replaced by certified wetland determinations

Why is USDA involved in wetland protection?

Starting in December 1985 Congress passed farm bill legislation that removed incentives to produce ag commodities on converted wetlands. The continuing legislation recognizes that participation in USDA programs is a publicly funded benefit. In return for these public benefits, farmers agree to restrict their drainage activities. Wetlands provide a wide range of public benefits including water quality protection by trapping sediment and nutrient runoff, potential flood reduction, carbon sequestration and wildlife habitat.

Will NRCS complete certified wetland determinations on all my land?

No – NRCS will limit the area of the certified determination to the cropland field boundaries where drainage improvements are proposed. When new drainage is proposed in non-cropland areas NRCS will issue a certified wetland determination for the area to be impacted.

What drainage activities can I conduct in and around an area identified as a wetland?

When wetlands are identified on your land you have these options:

- Request a drainage set-back distance from NRCS. Based on the soil type, and depth of the proposed drainage improvement work NRCS will provide you with a drainage set-back distance which defines the zone near identified wetlands where drainage improvement activity is restricted. Keep all drainage improvement activities outside of the set-back distance and any potential adverse wetland impacts will be minimized.
- Use non-perforated tile in areas within drainage set-back distances. When subsurface tile drainage is planned to go through wetland areas and their protected drainage set-back zone – non-perforated tile can be installed to allow drainage water to flow to an outlet.
- Drain the wetland and **mitigate** the lost wetland values by replacing them by either restoring a previously converted wetland or with wetland credits purchased through the MN Wetland Mitigation Bank.

If I have small areas in the middle of my fields classified as wetlands that I would like to tile, would mitigation be an option? If so what would mitigation involve?

Yes mitigation could work for these situations. Wetland mitigation involves restoring a comparable site that is currently classified as prior converted (PC) or purchasing wetland credits. PC sites eligible for mitigation could be on your own farm, or could be purchased from a mitigation bank. The mitigation plan will detail the required actions needed to restore the wetland functions and comparably replace the wetland areas that will be drained. From a farming perspective, mitigation may allow an existing wetland area located in the middle of a field which poses a problem by having to farm around or through, to be re-

placed with an out of the way location, such as along the edge of a field.

A mitigation plan must be signed prior to installing drainage in protected wetland areas. The most common misconception of mitigation is that an existing wetland area can be used to compensate for draining a protected wetland area. Mitigation is only allowed on areas where prior converted wetlands existed, these areas were previously drained and now they will be restored to wetland status.

I have arranged for a drainage contractor to install tile on my farm this fall will NRCS be able to provide me assistance with a certified wetland determination prior to date my contractor arrives on the farm?

The decision on when and where to install tile is left to the USDA participant. NRCS can project an estimated turn-around time to complete a certified wetland determination for the area proposed to be drained. Farmers are not required to have a NRCS certified wetland determination prior to conducting drainage activities. In some cases NRCS may have previously issued a non-certified wetland inventory for the area. Participants can use these officially released NRCS inventory maps as a guide in developing drainage plans. Participants should always be leery of conducting drainage activities in areas that have not historically been cropped and in cropped areas that consistently experienced wetness problems.

What if I chose to stay out of USDA programs can I install drainage improvements on any land I own?

The USDA wetland conservation provisions only apply to USDA participants. However, if you chose to become a non-participant, drain wetlands and in future years seek reinstatement into USDA farm programs you will likely need to restore or mitigate all converted wetland sites.

And, you need to be aware that the State of Minnesota also has jurisdiction which restricts drainage activities within wetland areas as defined by the Minnesota Wetlands Conservation Act (WCA). This state law protects many of the same wetland areas protected under the USDA provisions. For more information you should consult your local government entity charged with enforcing the WCA wetland provisions.

More Information

For more information, visit your local **USDA service center**, or check on the Minnesota NRCS web site at www.mn.nrcs.usda.gov.

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