



Frequently Asked Questions About USDA Wetland Compliance

Q: What is the timeframe for the Natural Resources Conservation Service (NRCS) to complete their on-site investigation?

A: The National Food Security Act Manual (NFSAM) states in section 510.20 that an on-site determination will be completed within 60 calendar days unless weather conditions or a heavy workload do not permit, in which case the determinations will be made as soon as practical.

Q: What are small acre exemptions and when do they apply? Does “squaring up fields” qualify for this?

A: (NFSAM 520.14 A and 6-CP Par 201 Pg 2-3; Par 206 Pg 2-9) Applies to small areas such as non-cropland areas, abandoned farmsteads, areas around wells, rock piles, etc. within or adjacent to HEL field.

(NFSAM 514.40 C) States that removal of woody vegetation, including stumps, from an area so small that production on the area is not possible, such as clearing a fence line in a manner that will not permit the use of normal farming equipment on the cleared area, will not be considered conversion. Understand that making the production of an agricultural commodity POSSIBLE is the trigger for non-compliance of wetland provisions.

Q: What is the timeframe for manipulated wetland (WX) exemption?

A: Policy does not specifically provide a timeframe for installation of activities exempted under the WX label. However, there is a requirement that all WX exemptions must have a WX agreement signed by the participant and NRCS. This agreement will define the timeframe and provide a basis for monitoring.

Q: When do producers need to fill out a new AD-1026 with the Farm Service Agency (FSA)?

A: Any time there is a land use change (e.g., forest to cropland), a change in management/cropping system (e.g., adding a new crop to a rotation), change in control (e.g., picking up new acres or dropping acres previously farmed), improvement or modification to a drainage system, or any other situation that might constitute a significant change. Review form AD-1026 and appendix and contact FSA for more detailed instructions.

Q: What responsibilities does NRCS have after a determination has been made?

A: The technical determination letter that is sent to the producer when the determination is transmitted should include the recommendation that the producer (participant) should contact NRCS or the local Soil and Water Conservation District (SWCD) to get assistance in developing a conservation system/plan.

Q: When transmitting a technical determination, who does NRCS contact?

A: Only the names identified by Farm Service Agency that are found in their records system, SCIMS.

Q: How are consultants' (non-NRCS) technical determinations handled? Can a producer hire a consultant to complete a technical determination?

A: The National Food Security Act Manual (NFSAM) states in section 518.12 (C) that the Secretary is the only authority assigned legal authority to make Highly Erodible Land (HEL) and/or Wetland Conservation (WC) compliance determinations. The Secretary is unable to delegate that authority to anyone other than an NRCS employee. If an individual wants to hire a consultant to assist with delivery of a technical determination, that is their choice. However, it must be made clear that FSA cannot accept a determination of the HELC/WC provisions from anyone other than NRCS. NRCS could accept documentation from a consultant and utilize their data to help expedite the process. Understand that this means NRCS would be accepting data, authenticating its accuracy and making a determination of compliance based on that data. In other words, NRCS would be issuing the determination, not the consultant.



**US Army Corps
of Engineers®**

Frequently Asked Questions About Obtaining a US Army Corps of Engineers Jurisdictional Determination

Q: What gives the US Army Corps of Engineers authority to regulate activities in waters of the US (rivers, streams and wetlands)?

A: Section 10 of the Rivers and Harbors Act of 1899 authorizes the US Army Corps of Engineers (Corps) to regulate activities in, over and under navigable waters of the US. Section 404 of the Clean Water Act authorizes the Corps to regulate the placement of dredged or fill material in waters of the US, including streams and wetlands. These regulated activities also include mechanized land clearing of wetlands.

Q: Why should I have my property checked for wetlands and streams that are regulated by the Corps?

A: Many land areas have regulated wetlands or waters on them. Prudent lot purchasers, developers, landowners, and their real estate agents and attorneys, have their property checked for the presence of wetlands prior to purchase or before beginning any construction or land clearing activity to make sure they get the appropriate wetland permits and are in compliance with wetland laws. If you suspect either jurisdictional waters or wetlands exist on your property, it is recommended that you have a jurisdictional determination (JD) completed prior to undertaking any work such as filling, excavating or land clearing. The Corps must approve any JD in order for it to be considered valid for Section 404 of the Clean Water Act. No other Federal, State or local agency or private entity has this authority under Section 404 of the Clean Water Act.

Q: What is the difference between NRCS's National Food Security Act JDs and Corps Section 404/10 JDs?

Jurisdictional determinations performed by the Natural Resource Conservation Service (NRCS) are only applicable to the National Food Security Act. Corps JDs are conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in the request. The Corps JD may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work. It is strongly recommended that you have both NRCS and Corps representatives review your property or project area for jurisdictional wetlands to make sure your project and construction activities are in compliance with the National Food Security Act, Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

Q: How do I get the Corps to perform a jurisdictional determination on my property?

A: Most JDs require collection of information onsite. You can go to our website at: <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx> to find the Regulatory Field office near you and contact the project manager responsible for your area to make an appointment with them. Due to present workload it may not be possible for a Corps project manager to accomplish your determination in a timely manner. You may wish to hire an environmental consultant to expedite the process. A consultant will typically gather the necessary information and submit it to the Corps for final approval. The Corps does not maintain a list of consultants nor recommend or endorse any particular consulting firm. Names and contact information can be obtained from the local Yellow Pages, Chamber of Commerce, or similar sources.

Q: Are there Permits or exemptions under Section 404 of the Clean Water Act to allow me to do work in wetlands or streams?

Yes, after a Corps JD has been performed on your property you can discuss your options with the Corps project manager on what permits (regional general permits, nationwide permits, individual permit) or exemptions are available for you to utilize to complete your project.