



CIRCULAR 180-19-1

Title 180, National Food Security Act Manual, Fifth Edition
Part 510 (Subpart A), Part 511 (Subpart A and B), 514 (Subpart A and D), and Part 515 (Subpart A)

SUBJECT: ECS – Highly Erodible Land and Wetland Conservation Compliance

Purpose. To provide updated policy and guidance for the wetland and highly erodible land (HEL) conservation policy in Title 180, National Food Security Act Manual (180-NFSAM), Fifth Edition.

Effective Date. This circular is effective on December 7, 2018.

Background. On December 7, 2018, USDA issued an interim rule for the highly erodible land conservation (HEL) and wetland conservation (WC) provisions of the Food Security Act of 1985, as amended. This rulemaking clarified how USDA makes technical determinations for implementation of the WC and HEL provisions, located on subject land in a manner sufficient for making determinations of ineligibility for certain USDA program benefits. These changes will not result in different decisions regarding what is or is not a wetland, but, are intended to provide transparency to the public on how these technical determinations are made. The following items are addressed in the interim final rule:

- Codifying past administrative action regarding the certification status of previously conducted wetland determinations.
- Providing wetland hydrology identification procedures, including a definition of wetland hydrology, best drained condition, and normal climatic conditions.
- Establishing that NRCS will continue to use the precipitation dataset from 1971 through 2000 when evaluating normal climatic conditions when making a decision on wetland hydrology.
- Providing how decisions are made if a site meets hydrologic criteria required by certain exemptions.
- Providing that wetlands, other than the impacted one, can be assessed without an onsite evaluation when deciding whether a site meets the wetland minimal effect exemption.
- Codifying the definitions of pothole, playa, and pocosin.
- Providing a description of the wetland determination process.
- Removing the onsite assessment requirement when making an evaluation of potentially highly erodible soils.

Policy. The following NFSAM revised or additional policy will be used when making WC or HELC technical determinations.

180-NFSAM-510-A-510.0C is revised to read as follows:

C. Contents of the Manual

- (1) This manual contains USDA and NRCS policy and operating procedures for implementing Federal Regulation 7 CFR Part 12, including—
 - (i) Interim rules published
 - June 27, 1986
 - September 6, 1996
 - December 7, 2018
 - (ii) Final rules published
 - September 17, 1987
 - February 11, 1988
 - April 23, 1991
 - April 24, 2015
- (2) The procedures in this manual provide NRCS policy for implementation of the following:
 - (i) HELC
 - (ii) WC

180-NFSAM-510-B-510.12B is revised to read as follows:

B. NRCS Responsibilities

- (1) NRCS will complete certified HELC/WC determinations for tracts under the following circumstances:
 - (i) In response to Farm Service Agency (FSA) Form AD-1026, "Highly Erodible Land Conservation (HELC) And Wetland Conservation (WC) Certification" with questions 7A or 7B marked "yes," or Form NRCS-CPA-038, "Request for Certified Wetland Determination or Delineation."
 - (ii) In response to Form FSA-569 "NRCS Report of HELC and WC Compliance," if required.
- (2) NRCS will—
 - (i) Stamp the Forms FSA-AD-1026 or NRCS-CPA-038 with the date when received.
 - (ii) Establish priorities among the determination requests.
 - (iii) Complete determinations according to this part. Certified wetland determinations will be completed for the fields that have been identified on the Forms FSA-AD-1026, NRCS-CPA-038, or FSA-569 that are planned to or have undergone activities which may affect compliance with the WC provisions, and on any adjacent fields that may be or have been affected by the activity. As an alternative to entire-field determinations, for noncropland fields a certified wetland determination may be completed on a subfield basis when the area of planned or completed activities can be defined and do not warrant a field boundary adjustment by the Farm Service Agency. This may include areas of woody vegetation that are planned to but have not yet been cleared.

The policy regarding evaluation of potentially highly erodible soil map units is revised as follows:

The "Note" at 180-NFSAM-511-A-511.1A is revised to read as follows:

Note: When a field determination includes potentially highly erodible (PHEL) soil map units, follow the guidance at 180-NFSAM-511-B-511.11E to evaluate the LS factor for those map units.

180-NFSAM-511-A-511.2E(2) is deleted.

180-NFSAM-511-B-511.11E is revised to read as follows:

E. Determination Considerations

- (1) Portions of the soil map unit area outside of the field boundary will not be considered in the erodibility determination except to determine slope length as indicated in the Agricultural Research Service (ARS) Agricultural Handbook (AH) Number 703, "Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)."
- (2) When a field determination includes PHEL soil map units, the HEL determination must be conducted offsite using Light Detection and Ranging or other elevation data of an adequate resolution to make slope length and steepness (LS) measurements or through a field review to determine the correct LS factor value for the PHEL soil map units in the specific field in order to finalize the field HEL determination. In any case, where a person disagrees with an offsite determination on potentially highly erodible soils, a determination will be made onsite. The onsite investigation will be fully documented to support the determination, including the measurements used to support the LS factor value generated. (7 CFR Sec. 12.21(c))
- (3) Field observation data used to make erodibility determinations on PHEL soil map units will supersede any factors used in making office determinations of HEL. When evaluating LS in the field, use the steps in the following table:

STEP	ACTION
1	Make onsite L (slope length) and S (slope percent) measurements on several representative slopes for each PHEL soil delineation.
2	Use the procedures in ARS-AH-703-Chapter 4 when determining LS values (see attachment A).

3	Determine the predominance of HEL for a map unit by comparing the total area of the delineation to that area with an EI of 8 or greater.
4	Document all decisions with supporting data placed in the case file.

180-NFSAM-514-A-514.1A(2) is revised to read as follows:

- (2) Certified wetland determinations will be made under either of the following circumstances:
 - (i) In response to Forms FSA AD-1026 or NRCS-CPA-038 completed by a USDA program participant for the fields or subfields identified, as described in 180-NFSAM-510-B-510.12B(2)(iii)(a)
 - (ii) In response to Form FSA-569, if required as described in 180-NFSAM-510-B-510.12B(2)(iii)(a)

The following definitions are added to 180-NFSAM-514-A-514.2:

Best Drained Condition.—The hydrologic conditions with respect to depth, duration, frequency, and timing of soil saturation or inundation resulting from drainage manipulations that occurred prior to December 23, 1985, and that exist during the wet portion of the growing season during normal climatic conditions.

Normal Climatic Conditions.—The normal range of hydrologic inputs on a site as determined by the bounds provided in the Climate Analysis for Wetlands Tables or methods posted in the Field Office Technical Guide.

Playa.—A usually dry and nearly level lake plain that occupies the lowest parts of closed depressions (basins). Temporary inundation occurs primarily in response to precipitation-runoff events. Playas may or may not be characterized by high water table and saline conditions. They occur primarily in the Southern Great Plains.

Pocosin.—A wet area on nearly level interstream divides in the Atlantic Coastal Plain. Soils are generally organic but may include some areas of high organic mineral soils.

Pothole.—A closed depression, generally circular, elliptical, or linear in shape, occurring in glacial outwash plains, moraines, till plains, and glacial lake plains.

180-NFSAM-514-A-514.6 is revised to read as follows:

514.6 Wetland Hydrology

A. Definition

- (1) Wetland hydrology is defined as inundation or saturation by surface or groundwater during a growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. (7 CFR Sec. 12.2)
- (2) When a wetland is affected by drainage manipulations that occurred prior to December 23, 1985, wetland hydrology shall be identified on the basis of the best-drained condition resulting from such drainage manipulations.
- (3) When making a decision on wetland hydrology, NRCS will utilize a fixed precipitation date range of 1971-2000 for determining normal climatic conditions.
- (4) Additional methods for wetland hydrology determinations are described in the wetland identification procedures in the exhibit in section 514.8.

180-NFSAM-514-A-514.7 is revised to read as follows:

514.7 Relationship of Labels to Wetland Determinations and Delineations

The determination of whether or not land is a wetland is based on a technical determination using the Food Security Act wetland identification procedures, as described in the exhibit in section 514.8A and is independent of the assignment of wetland labels. The wetland determination process includes three distinct steps. In step 1, wetland identification, it is determined if the area of interest supports a prevalence of hydrophytic vegetation, a predominance of hydric soils, and wetland hydrology under normal circumstances. In step 2, determination of wetland type, it is determined if any exemptions to the WC provisions apply. The findings are reflected in the assignment of an appropriate wetland conservation compliance label, which is used to identify land subject to exemptions or restrictions under the Food Security Act. Such land may or may not meet the definition of wetland. Subparts B through E and part 515 contain instructions for identifying and labeling wetlands to determine whether restrictions or exemptions apply to the land per the WC provisions of the Food Security Act. In step 3, sizing of the wetland, the boundary of each wetland type determined in step 2 is delineated on the certified wetland determination map.

The definition of prior converted cropland (PC) at 180-NFSAM-514-D-514.30 is revised to read as follows:

A. Definition

- (1) Prior converted cropland (PC) is a converted wetland where the conversion occurred before December 23, 1985; an agricultural commodity had been produced at least once before December 23, 1985; and as of December 23, 1985, the area was capable of producing an agricultural commodity (i.e., did not support woody vegetation and was sufficiently drained to support production of an agricultural commodity). The conversion could include draining, dredging, filling, leveling, or otherwise manipulating (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) the wetland area. In addition, PC fails to meet the hydrologic criteria for farmed wetlands.

Note: Reference (7 CFR Section 12.2)

The definition of farmed wetlands (FW) at 180-NFSAM-514-D-514.31 is revised to read as follows:

A. Definition

- (1) Farmed Wetlands (FW) are wetlands that were drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) before December 23, 1985; an agricultural commodity had been produced at least once before December 23, 1985; and as of December 23, 1985, the area was capable of producing an agricultural commodity (i.e., did not support woody vegetation and was sufficiently drained to support production of an agricultural commodity); and that meet all of the following criteria:
 - (i) If the area is not a pothole, playa, or pocosin, it experienced inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50-percent chance or more), as determined by having met any of the following hydrologic indicators:
 - Inundation is directly observed during a site visit conducted under a period of normal climatic conditions or drier;
 - The presence of any indicator from group B (Evidence of Recent Inundation) of the wetland hydrology indicators contained in the applicable regional supplement to the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual is observed;
 - The presence of conditions resulting from inundation during the growing season is observed on aerial imagery, and the imagery is determined to represent normal or drier than normal climatic conditions (that is, not abnormally wet). This includes the use of State offsite methods posted in the Field Office Technical Guide; or
 - The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data, demonstrate that the wetland would experience inundation during the growing season in most years (50-percent chance or more).
 - (ii) If the area is a pothole, playa, or pocosin, it experienced inundation for at least 7 consecutive days or saturation for at least 14 consecutive days during the growing

season in most years (50-percent chance or more) as determined by having met any of the following hydrologic indicators:

- Inundation or saturation is directly observed during a site visit conducted under a period of normal climatic conditions or drier;
- The presence of one primary or two secondary wetland hydrology indicators contained in the applicable regional supplement to the USACE Wetland Delineation Manual is observed;
- The presence of conditions resulting from inundation or saturation during the growing season is observed on aerial imagery, and the imagery is determined to represent hydrologic conditions that would be expected to occur under normal or drier than normal climatic conditions (that is, not abnormally wet). This includes the use of State offsite methods posted in the Field Office Technical Guide; or
- The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data, demonstrate that the wetland would experience inundation or saturation during the growing season in most years (50-percent chance or more).

(iii) Production was made possible or enhanced by the manipulation.

(iv) The area has not been abandoned (sec. 514.33).

Note: Reference (7 CFR Sec. 12.2)

- (2) The presence and extent of pothole, playa, and pocosin wetlands in each State will be determined by the State conservationist with advice from the State technical committee.

The definition of farmed wetland pasture or hayland (FWP) at 180-NFSAM-514-D-514.32 is revised to read as follows:

A. Definition

A farmed wetland pasture or hayland (FWP) is a wetland that was drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) and used for pasture or hayland (includes native pasture or hayland) as of December 23, 1985, and meets both of the following criteria:

- (i) The area experienced inundation for at least 7 consecutive days during the growing season or saturation for at least 14 consecutive days during the growing season in most years (50-percent chance or more) as determined by having met any of the following hydrologic indicators:
- Inundation or saturation is directly observed during a site visit conducted under a period of normal climatic conditions or drier;
 - The presence of one primary or two secondary wetland hydrology indicators contained in the applicable regional supplement to the USACE Wetland Delineation Manual is observed;
 - The presence of conditions resulting from inundation or saturation during the growing season is observed on aerial imagery, and the imagery is determined to represent hydrologic conditions that would be expected to occur under normal, or drier than normal climatic conditions (that is, not abnormally wet). This includes the use of State offsite methods posted in the Field Office Technical Guide; or
 - The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data, demonstrate that the wetland would experience inundation or saturation during the growing season in most years (50-percent chance or more).
- (ii) The area has not been abandoned (sec. 514.33).

Note: Reference (7 CFR Sec. 12.2)

180-NFSAM-515-A and 180-NFSAM-515-A-515.1B and C are revised to read as follows:

B. Minimal Effect Evaluations Before Conversion Has Occurred

- (1) A minimal effect evaluation will be conducted when a USDA participant requests a minimal effect exemption (7 CFR Sec. 12.31(d)). The minimal effect evaluation includes an assessment of the functional level of the wetland before project impacts, and an assessment of functional level after project completion. The functional assessment component of the evaluation for the subject wetland will be based on an onsite evaluation of site conditions and must be documented using approved functional assessment

- worksheets. Functional assessments of other wetlands in the area may be done offsite based on a general knowledge of wetlands in the area.
- (2) The USDA participant must provide NRCS with the following information before the required site visit:
 - (i) Description of the proposed activity
 - (ii) Location of the proposed activity
 - (iii) Any existing restrictions on the property in question, such as easements or permit conditions
- C. Minimal Effect Evaluations After Conversion Has Occurred
- (1) If a person has converted a wetland and then seeks a determination where the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of NRCS the effect was minimal (7 CFR Sec. 12.31(d)).
 - (2) If a wetland conversion has already occurred, NRCS will use the best available information to complete the functional assessment. Any functional assessments of other wetlands in the area may be done offsite based on a general knowledge of wetlands in the area. The following information sources (not inclusive) should be considered:
 - (i) Current and previous site visits and documentation
 - (ii) Prior wetland determinations and delineations
 - (iii) State wetland mapping conventions
 - (iv) Interviews with landowner or others
 - (v) Reference sites of the same hydrogeomorphic (HGM) class and subclass

Filing Instructions. This circular is to be printed in hardcopy and retained in local files until such time as the NFSAM is updated to include this information.