

Guidance for Completing FSA Form AD 1026

There has been a lot of confusion on completing FSA form AD 1026 to determine eligibility for USDA benefits for maintenance and improvement of surface and subsurface drainage projects on farmland. The first thing to do is look at existing field determination maps to evaluate the existence of any (W) wetlands or (FW) farmed wetlands or (PC) prior converted.

Any farmland with a (W) or (FW) is subject to the 1985 Swampbuster Act and may need a determination for setback requirements. You will need to contact NRCS to determine setback requirements and this may entitle a field visit by a NRCS technician.

Any (PC) cropland is exempt from the 1985 Swampbuster Act and CWA provisions. PC's retain this provision as long as they are in agriculture production. The definition of a PC as defined in the National Food Security Act Manual – 3rd Edition, Part 514.31 – *Prior converted cropland is a converted wetland where the conversion occurred prior to December 23, 1985, an agricultural commodity had been produced at least once before December 23, 1985, and as of December 23, 1985, the converted wetland did not support woody vegetation and met the following hydrologic criteria: (A) Inundation was less than 15 consecutive days during the growing season or 10 percent of the growing season whichever is less in most years (50 percent chance or more); and (B) if a pothole, playa or pocosin, ponding was less than 7 consecutive days during the growing season in most years (50 percent chance or more) and saturation was less than 14 consecutive days during the growing season most years (50 percent chance or more).*

In a letter dated January 15, 2008 from the Chief of the NRCS, Arlen Lancaster, he issued the following statement; Previously-issued wetland determinations are valid and can be relied upon by USDA participants, with one exception: omission of “obvious wetlands” on previously-issued wetland determination maps will not entitle the USDA participant to convert these wetlands without jeopardizing USDA benefits. **An obvious wetland is defined** as an area that is continuously inundated or saturated for long periods of time during the growing season to such an extent that access by foot to make a determination of a predominance of hydric soils or prevalence of hydrophytic vegetation is not feasible. Additionally, wetland sites that are cropped, or have had forage harvested by mechanical means less than 5 out of 10 years because of ponding, flooding or saturation, are obvious wetlands.

If you still have concerns about completing the AD 1026 form correctly, please seek advice from a drainage professional or legal counsel. Completing the form incorrectly could subject your parcel to a new determination and/or to the loss of farm program payments.

(See Page 3 for Non/Dr

- 1. Name of Producer
- 4. Do you have a Applicant co
- 5. For farm loc or other nor
- 6. Are you a number (Contac
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- 8. Lis

10. Since December 23, 1985, or during the current crop year, or during the term of a requested USDA loan, has anyone performed, or **will anyone perform any activities to:**

This question is relevant to any maintenance or improvement that is performed on a (W) wetland or (FW) farmed wetland that is identified on the parcel in question. In this context the definition of activities is any draining, dredging, filling, leveling, or land clearing that is/ or will be performed in a designated wetland area. In this case the appropriate answer to questions 10 A or B should be Yes. 10 C may be answered yes or no.

If the parcel has a (PC) prior converted cropland, it is exempt from the 1985 Swampbuster ACT and CWA (Clean Water Act) provisions. In this case the answers to questions 10 A, B, & C should be no.

| | YES | NO |
|---|-----|-------------------------------------|
| 9. For the parcel(s) listed above, or the term of a requested USDA loan, did you or will you plant and produce an agricultural crop for which a highly erodible determination has not been made? | | |
| 10. Since December 23, 1985, or during the current crop year, or during the term of a requested USDA loan, has anyone performed, or will anyone perform any activities to: | | |
| A. Create new drainage systems, or conduct land leveling, filling, dredging, land clearing, excavation, or stump removal, that has NOT been evaluated by NRCS? <i>If "YES", indicate year(s):</i> _____ | | <input checked="" type="checkbox"/> |
| B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate year(s):</i> _____ | | <input checked="" type="checkbox"/> |
| C. Maintain an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s):</i> _____ <small>Note: Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.</small> | | <input checked="" type="checkbox"/> |

- 11. If "YES" to Items 5, 10A and/or 10B or 10C enter the following for the land the answer applies to:
 - A. Farm and/or tract/field number: _____
 - B. Activity: _____
 - C. Current land use (specify crops): _____
 - D. County: _____

A "YES" answer in Items 5, 9 or 10 authorizes FSA to refer this AD-1026 to NRCS. If you check "YES" to Item 10C, NRCS does not have to conduct a certified wetland determination. (Contact your County FSA Office if you are unsure about the answers to Items 5, 9 and 10.)

Continuous AD-1026 Certification:

I have read the AD-1026 Appendix and understand and agree that my eligibility for certain USDA program benefits is contingent upon this certification of compliance with highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended, and if a determination is made that results in a violation and ineligibility, I agree to refund all applicable payments.

- I agree to the terms and conditions stated on AD-1026 Appendix on all land in which I have or will have an interest and understand that I am responsible for any non-compliance with these provisions.
- I agree that I will file a revised AD-1026 if there are any changes in my operation or activities that may affect compliance with these provisions.
- I understand that affiliated persons are also subject to compliance with these provisions and their failure to comply or file AD-1026 will result in loss of eligibility to persons or enterprises with whom they are affiliated. (See Page 3 of this form for affiliated persons.)

12. Signature of Producer **I hereby certify that the information on this form is true and correct to the best of my knowledge, and I authorize NRCS to make a HEL and/or certified wetland determination on the tract or farm numbers listed above.**

Producer's Signature

Date (MM-DD-YYYY)

13. Referral to NRCS (Completed by FSA) Sign and date if a NRCS determination is needed for any reason including a "YES" answer in Items 5, 9, 10A, 10B, or 10C.

13A. Signature of FSA Representative

13B. Date (MM-DD-YYYY)