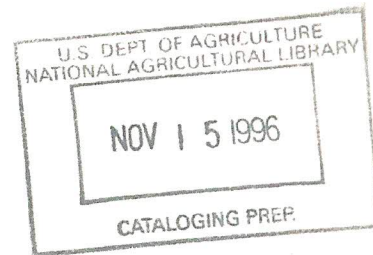


Reserve ^s of
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National Food Security Act Manual

Title 180
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EXHIBIT

15

Part 511 - Highly Erodible Land Conservation

511.63

§511.63 Default.

If the conservation district takes no action within 45 days of receipt of the plan, SCS will approve or disapprove the plan. See §510.34(b).

§511.64 Conservation District disapproval.

If the conservation district disapproves the conservation plan, the person has the option to prepare an amended plan and resubmit it to the conservation district for approval, or the person may appeal the disapproval to SCS. See §510.35.

511-20

(180-V-NFSAM, Second Ed., August 1988)

PART 512 - WETLAND CONSERVATION

Subpart A - General

- §512.00 Requirements of the law.
- §512.01 Definitions.
- §512.02 thru
- §512.09 Reserved.

Subpart B - Wetland Criteria

- §512.10 Hydric soils.
- §512.11 Criteria for hydric soils (see SCS National Soils Handbook).
- §512.12 Elements of the hydric soil map unit list.
- §512.13 Prevalence of hydrophytic vegetation.
- §512.14 Criteria for identifying Converted Wetland (CW) after December 23, 1985.
- §512.15 Criteria for identifying Prior Converted Croplands (PC) before December 23, 1985.
- §512.16 Criteria for determination of abandonment.
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Subpart C - Wetland Exemptions

- §512.20 Wetland exemptions determined by SCS.
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Subpart D - Use, Maintenance, and Improvements

- §512.30 Maintenance and improvement of drainage.
- §512.31 Use of prior converted croplands (PC).
- §512.32 Use of converted wetlands (CW).
- §512.33 Use of converted wetland with minimal effect (MW).
- §512.34 Use of third party converted wetlands.
- §512.35 Use of other wetlands.
- §512.36 Summary of use, maintenance and improvement of various wetland conditions.
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- §512.39 Reserved.

512-1

(180-V-NFSAM, Second Ed., August 1988)

Part 512 - Wetland Conservation

512.21

§512.21 Minimal effect determination (MW).

(a) Requirements. The minimal effect determinations may be made with FWS concurrence by the District Conservationist or by the State Conservationist in consultation with FWS. Minimal effect determinations will be made after:

(1) making an onsite environmental evaluation which is supported by documentation that indicates minimum effect on hydrological and biological values of the wetland (§516.13), and

(2) consulting with the FWS on each site (FWS may elect not to review some). SCS will make arrangements for FWS consultation.

(b) Mitigation. Mitigation can only be considered when making decisions to exempt converted wetlands or wetlands to be converted from wetland conservation provisions under certain limited circumstances. In these cases, benefits provided as a result of mitigation will be considered when conducting an environmental evaluation prior to making a decision on minimal effect.

(1) Plans for mitigation action shall be reviewed and approved by the District Conservationist and concurred in by the FWS prior to installation if it is to be considered part of the minimal effect determination.

(2) Where mitigation features support a minimal effect determination, these features become a part of the minimal effect determination and cannot be changed or eliminated without approval by SCS and concurrence of FWS.

(c) Area of consideration for minimal effect. In making minimal effect determinations the environmental evaluation will assess the effects of the wetland conversion on the wetland to be converted as well as other wetland and nonwetlands in the area that will be effected by the conversion.

512-14

(180-V-NFSAM, Second Ed., August 1988)

Subpart C - Wetland Exemptions

512.22(a)

(d) Procedure for making a minimal effects determination. Generally, a request in writing for a minimal effect determination will be made prior to conversion of the wetland. In cases where a wetland is converted prior to the request in writing for the MW determination, the person must demonstrate to the satisfaction of SCS that the effect was minimal. (In this latter case there is a risk of ineligibility if an agricultural commodity is produced prior to the determination). SCS may provide available information but not technical assistance to enable the person to demonstrate that the effect was minimal.

(1) The District Conservationist will process a request for a minimal effect determination by completing an onsite environmental evaluation using the procedures contained in Section 515.13. If after completing the evaluation it is determined that a minimal effect determination is appropriate, the DC may make a minimal effect determination with concurrence from FWS. However, if FWS does not concur that the effect is minimal, the determination will be raised to the STC for a decision to be made in consultation with FWS. If the DC determines a minimal effect determination is not appropriate, the data will not be forwarded to the STC. In the latter case, the person's only recourse is through the SCS appeals process.

(2) For wetland appeals reaching Level III, the State Conservationist will consider whether the minimal effect determination procedures should be implemented.

(3) A minimal effects determination is effective only when the SCS has reviewed all the alternatives that were evaluated and agrees with the selected alternative.

(4) A minimal effects determination is granted only after the person agrees to and signs the minimal effect agreement (Exhibit §516.12).

§512.22 Wetland exemptions determined by ASCS.

(a) Third party conversion. These are wetlands that are converted after December 23, 1985 by actions of persons other than the person applying for USDA benefits, or any of the person's predecessors in interest. The conversion cannot be the result of a scheme or device. Further drainage improvements cannot be made without loss of USDA benefits. The third party conversion must be for purposes other than the conversion of wetland for agricultural production. In cases where the conversion is done by a drainage district, watershed district or similar entity, the action will be attributed to the person and the person applying for benefits will be considered to have caused or permitted the drainage. These will not be considered third party conversions.

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(180-V-NFSAM, Second Ed., August 1988)

Part 512 - Wetland Conservation

512.22(b)

(b) Commenced Conversions (CC). Where the conversion of a wetland began before December 23, 1985, a person may apply for a determination that would enable the person to complete the conversion and produce an agricultural commodity on the converted wetland without losing USDA benefits.

(1) The conversion of a wetland may be determined by ASCS to be commenced if:

(i) any of the construction activities including flood water reductions that would convert wetland were actually started; or

(ii) the person applying for benefits has expended or legally committed substantial funds either by entering into a contract, or by purchasing construction supplies or material for the direct purpose of converting the wetland.

(2) For lands which are within the boundaries of a drainage district or similar entity, the conversion of a wetland is considered to have been commenced if before December 23, 1985:

(i) a project drainage plan which includes detailed planned drainage measures, has been officially adopted,

(ii) the district or other entity started installation of the drainage measures, or legally committed substantial funds toward the conversion of wetlands by entering into a contract or by purchasing construction supplies and/or materials to convert wetland(s), and

(iii) the person applying for benefits can show that the wetland conversion with which they are associated was the basis of a financial obligation to the district or other entity and a specific assessment for the project construction or a legal obligation to pay a specific assessment was made for the person's land prior to December 23, 1985.

(3) The following requirements shall apply to all determinations of commencement.

(i) All persons who have a wetland or converted wetland on which conversion began before December 23, 1985 may, by September 19, 1988, request ASCS to make a determination of commencement. Otherwise, the person forfeits the right to have such a determination made in the future.

512-16

(180-V-NFSAM, Second Ed., August 1988)

Subpart C - Wetland Exemptions

512.22(b)(3)(vii)

(ii) The persons must show that the commenced activity has been actively pursued. "Actively pursued" means that efforts to complete the conversion have actively continued on a regular basis since initiation of the conversion, except for delays due to circumstances beyond the person's control.

(iii) Any conversion activity considered to be commenced must be completed on or before January 1, 1995, or the exempt status will be lost unless there are justifiable circumstances.

(iv) Only those wetlands for which the construction has begun or to which the contract or purchased supplies and materials relate may qualify for a determination of commencement.

(v) ASCS is required to consult with the FWS on each commenced determination.

(vi) Federally assisted project activities which convert wetlands or provide outlets for persons to convert wetlands for the production of an agricultural commodity may cause a person to become ineligible for USDA program benefits. Federally assisted projects started before December 23, 1985 need to have a commenced determination made by ASCS. In addition to the commenced determination for the project, individuals within the project will need to request a commenced determination and/or a third party determination on their own land in addition to the commenced determination for the project.

(vii) SCS will determine the extent of the area on which conversion has commenced. The determination is based on the extent of work done, contracted for, or supplies or materials purchased prior to December 23, 1985. The extent of work allowed is limited to the physical extent of work done, contracted for or materials purchased.

512-17

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