



Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE



Drainage Management & the Food Security Act of 1985, as amended

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FARM PRODUCTION AND CONSERVATION
FSA | NRCS | RMA | Business Center

The Food Security Act of 1985, as amended

- ONLY applies to **USDA Program Participants**
(ALL USDA Programs & Payments)
- ONLY applies to **agricultural commodity crops**
- Only applies to wetlands that existed on **December 23, 1985**
 - In some cases, after cropland is abandoned from agricultural landuse
- Administration Authority by:  **Farm Service Agency**
U.S. DEPARTMENT OF AGRICULTURE
- Technical Authority by:  **Natural Resources Conservation Service**
U.S. DEPARTMENT OF AGRICULTURE

Wetland Determination based on 3 Factors

- HYDRIC SOILS that formed in saturated or ponded conditions, either seasonally or permanently
- HYDROPHYTIC VEGETATION that grows in hydric soils
- WETLAND HYDROLOGY (water) that was in place in the soil for at least 15 consecutive days in the spring most years before December 23, 1985

It is Not All Science

- Prior Converted – Land that was farmed December 23, 1985
- Best Drained Condition – Site did not have trees December 23, 1985 then need to look at historical best drained condition



The Day the Bill Passed



Dec. 23, 1985



After
Dec. 23, 1985



Can new drainage be installed?

- USDA Program Participants can do just about anything with drainage and land clearing as long as the action does not MAKE POSSIBLE the production of an agricultural commodity crop on a wetland.



Non-wetland (NW) or Prior Converted (PC)

- Maintenance Allowed
 - Repair
 - Improve
 - Increase
- New Tile Installation Allowed
 - New tile or ditches
 - Caution: Watch out for nearby wetlands



Farmed Wetlands (FW) or Farmed Wetland Pastures (FWP)

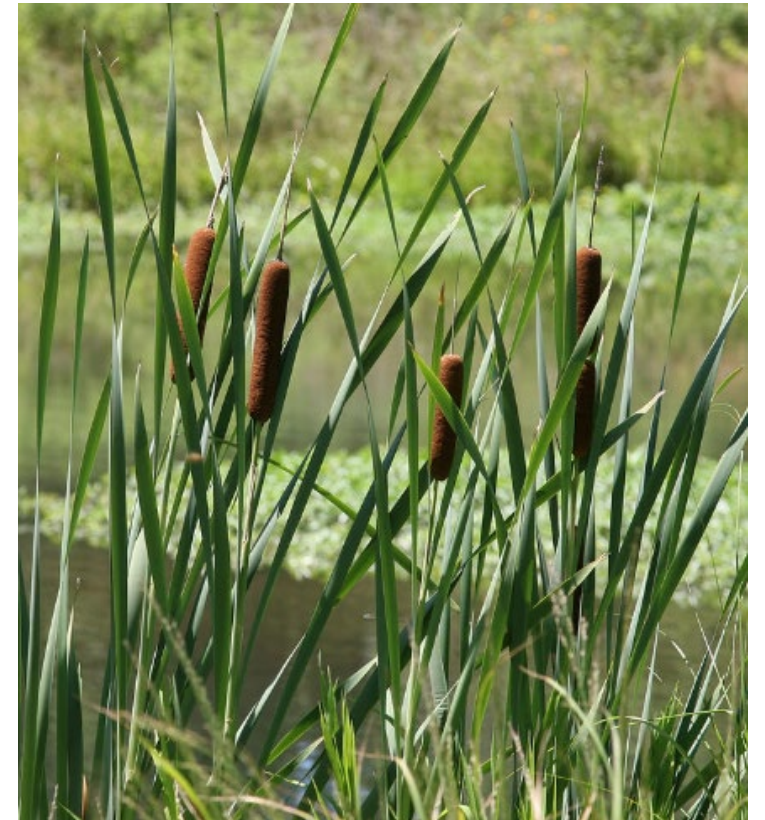
- Maintenance Allowed to Current Capacity
 - Repair
 - Cannot Increase
- New Drainage Installation Not Allowed



FWs and FWPs are areas that were drained before December 23, 1985, but not enough to completely remove the excess hydrology.

Wetlands (W)

- Maintenance Allowed to **December 23, 1985** capacity
 - Repair
 - Capability cannot Increase
- New Drainage Installation Not Allowed



Wooded Wetland

- Draining may not be a violation
 - Label will likely change
- ...action does not MAKE POSSIBLE the production of an agricultural commodity crop on a wetland.
 - Clearing trees would be a violation



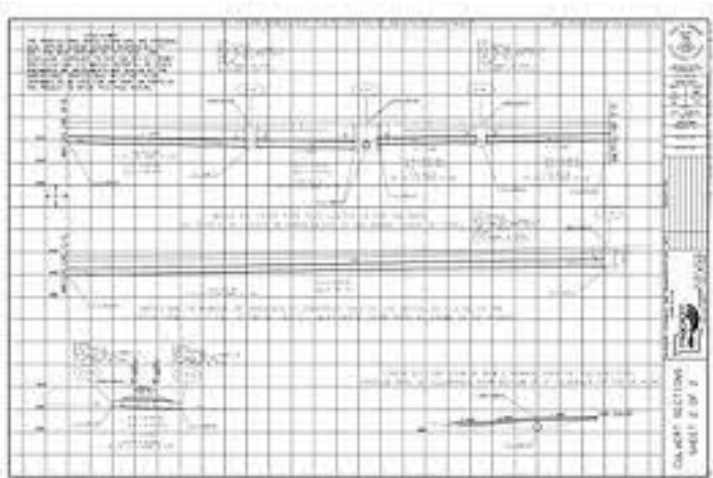
Crop Insurance Subsidies

- 2014 Farm Bill
 - February 4, 2014
- Action before date
 - Eligible
- Action after date
 - NOT Eligible





How will USDA evaluate drainage improvements on cropland near a Food Security Act of 1985, as amended, Wetland?



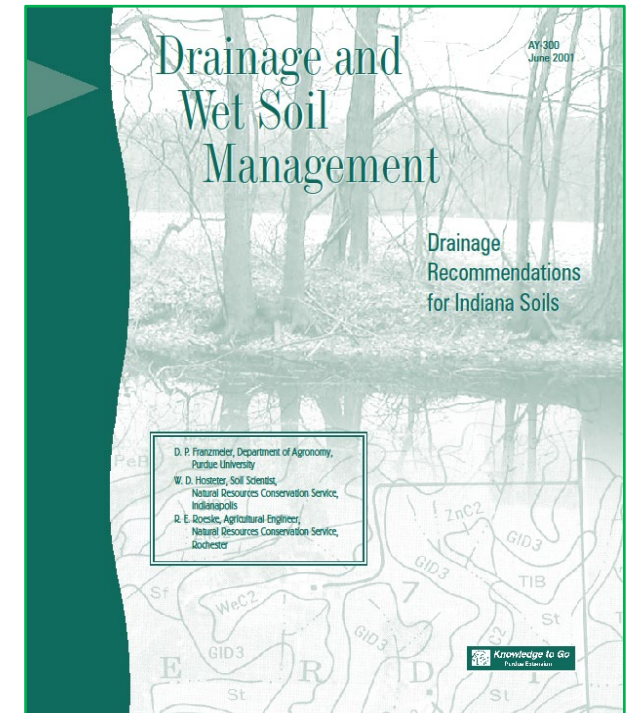
Drainage Plans

Aerial Imagery



Field Visit

Purdue Extension Bulletin AY-300



APPEALS OF ADVERSE DETERMINATIONS & DECISIONS

Congress passed The Administrative Appeals Act in 1946.

- It is federal law that regulates how federal agencies create and issue regulations, including how to disagree with agency decisions
- For NRCS the appeals processes include (in order of occurrence) -
 1. Reconsideration of the determination by NRCS – field visit
 2. A hearing with FSA to request NRCS to review the determination again – field visit with new NRCS employees
 3. A hearing with the **National Appeals Division** to redirect NRCS to review or change the determination – administrative
 4. Civil court action
 5. A Review of a Certified Determination can be requested

APPEALS OF ADVERSE DETERMINATIONS & DECISIONS

And finally, USDA program participants have the right –

- To contact their Senator or Congressman to air their grievances and to request contact with NRCS for a review
- To be assisted by an attorney at any stage of the determination process, including part or all of the appeals processes
- To be assisted by a consultant in submitting their own proposed determination, meeting with NRCS to discuss the determination, and arguing on behalf of the participant in the appeals process
- Farm Bureau is an excellent source of providing information and connections for its members.

Wetland Restoration and Mitigation

- Restore On-site
 - Agreement
- Mitigate Off-site
 - Agreement
 - NRCS Easement
- Mitigation Banking Program
 - <https://www.mitigation.org/>



Wetland Conservation Interim Rule and Policy Update

- USDA published an Interim Rule, effective July 29, 2026
 - Restores clarity and consistency for determinations made between November 28, 1990, and July 3, 1996
 - Prior to 2018, regulatory text was silent on pre-1996 wetland determinations
 - Aligns Statutory Provisions
 - Definition Update:

“Certification of a wetland determination means that the wetland determination is sufficient for the purpose of making a determination of ineligibility for program benefits...”

Wetland Conservation Interim Rule and Policy Update

- USDA published an Interim Rule, effective July 29, 2026
 - Adheres to the legislative history of certification provisions, specifically the 1990 & 1996 Farm Bill
 - Certification Clarification:
“All wetland determinations issued after November 28, 1990, are considered certified if the person affected by the certification was notified of the certification and provided information on the right to appeal.”
 - Remedies Court-Identified Deficiencies in the 2020 rule



QUESTIONS?

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