



United States Department of Agriculture



Drainage Management and The Food Security Act of 1985, as amended

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What are we talking about today?

Why is the USDA Food Security Act important?

How does USDA evaluate my drainage actions?

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The Food Security Act of 1985, as amended

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

The Food Security Act of 1985, as amended



A Food Security Act of 1985, as amended, Wetland Determination is based on 3 factors -

1. HYDRIC SOILS that formed in saturated or ponded conditions, either seasonally or permanently
2. HYDROPHYTIC VEGETATION that grows in hydric soils
3. WETLAND HYDROLOGY (water) that was in place in the soil long enough to support hydrophytic vegetation in the spring in the majority of years

What is a Food Security Act of 1985, as amended, Wetland?

It depends on what the land was like on December 23, 1985.

NOT croppable due to
woody vegetation



CROPPABLE if not enough
trees to prevent access



Dec. 23, 1985

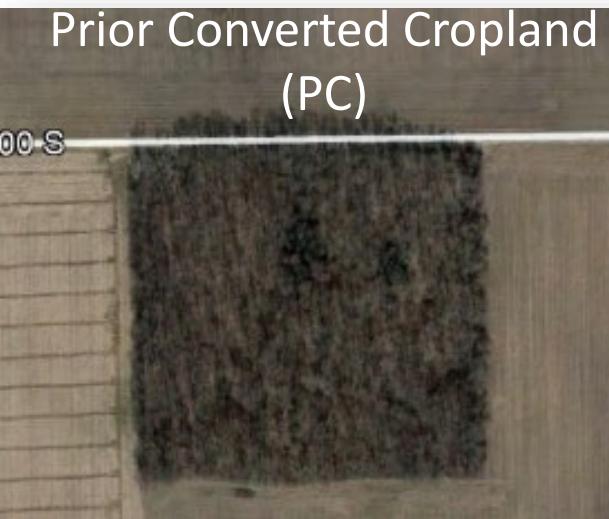


BDC - Hydrology Removed before 12/23/85

Wetland (W) if all 3
factors are present



Prior Converted Cropland
(PC)



After
Dec. 23, 1985



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What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?

What can I do with my existing drainage in my fields?

What can I do if I want to put in new drainage?

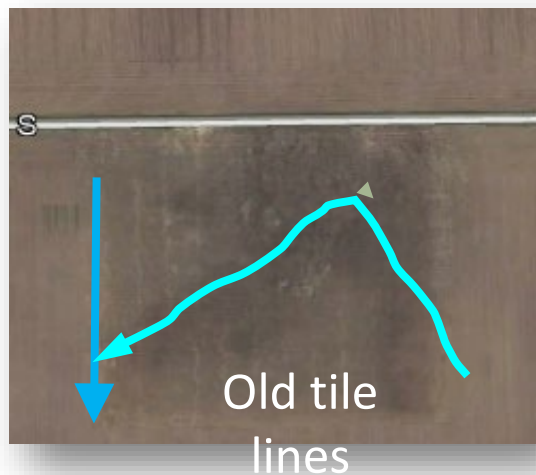
- USDA Program Participants can do just about anything with drainage and land clearing as long as the action does not MAKE POSSIBLE the production of an agricultural commodity crop on a wetland.
- Checking in with your NRCS office will help you stay eligible for USDA program benefits.
- Plus, you get appeal rights if you do not like the determination.
- And, if we give you incorrect information, you are not held in violation, unless it is an obvious wetland (surface water).
- You do not get this exemption if you make a mistake without a determination.

What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?

Crop fields and woods without a wetland

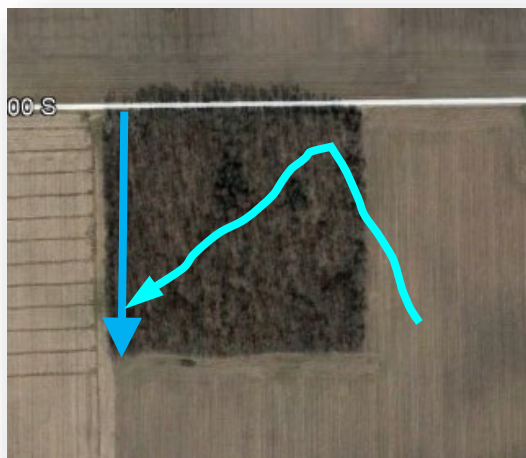
What about old drainage?

Drainage in a **PC** (Prior Converted) crop field or a **NW** (Non-Wetland) woods can be repaired, improved, and even increased



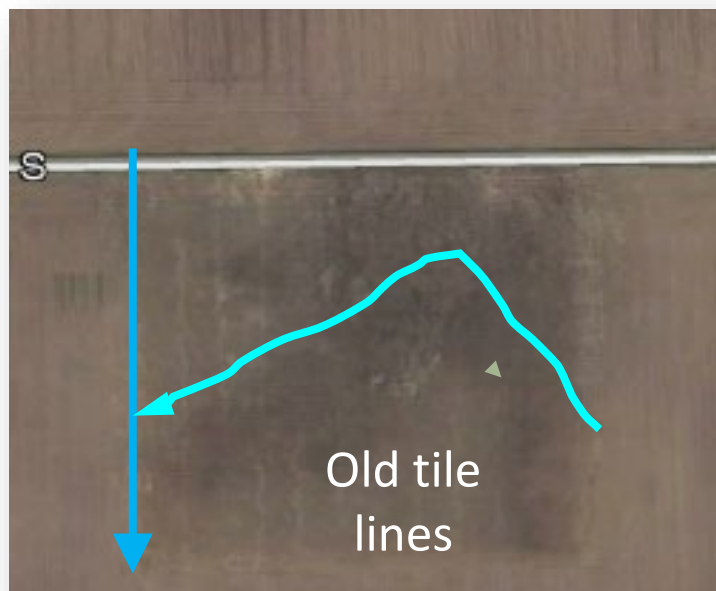
What about new drainage?

New tile/ditches can be installed in **PC** fields
New tile and ditches can be installed in **NW** woods even after being cleared



Caution – look out for nearby wetlands and do not drain those unless allowed

What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?



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

What about old drainage?

Drainage of a soggy or seasonally ponded **FW** or **FWP** can be maintained, repaired, or replaced to its land use conditions on December 23, 1985

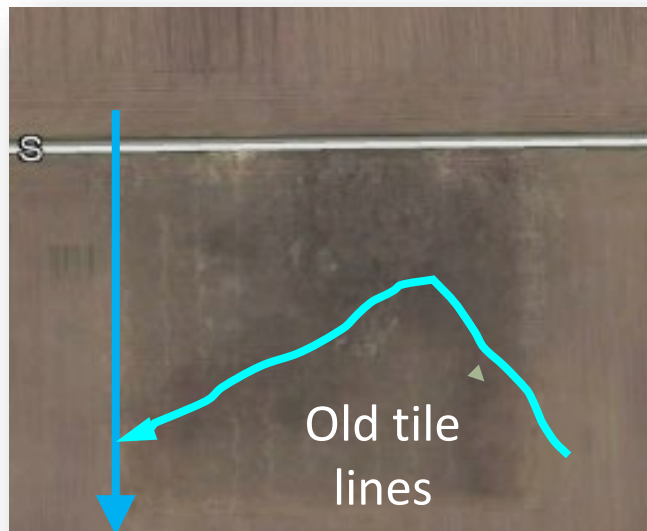
FW's and FWP's are areas that were drained before December 23, 1985 but not enough to completely remove the excess hydrology.

What about new drainage?

Possibly. **FW** and **FWP** labels may now be changed to **PC** or **NW** under recently updated procedures. Check /our NRCS office.



What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?



Grassland Wetlands

What about old drainage?

Grassy or weedy **W**etland (Cat-tails, Reed Canarygrass, Phragmites, “weeds”) can be maintained at **December 23, 1985** capacity

What about new drainage?

No, except that . . . “Wetlands” in 2025 . . . that were not wetlands on December 23, 1985 . . . may not be FSA 1985 protected wetlands, ask for a review

Drainage can even be increased with NRCS review if the existing drainage is decreased under upfield/upgrade drainage increases (capacity can be increased - capability cannot be increased)

What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?

WOODED WETLANDS

What about old drainage?

Check with NRCS to see if the tile has been factored into the current determination.

Drainage in or around a **W** (Wetland) **woods** can be improved - as long as the woods remain in trees, even if harvested



What about new drainage?

Tile or a ditch can be installed in the woods to help drain crop fields around the woods or higher up in the watershed.

Draining a woody wetland is not a violation as long as it stays woody.

Clearing the trees in a wetland enough to make it croppable is the violation – even if it is not drained



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What can USDA Program Participants do with a Food Security Act of 1985, as amended Wetland?



United States
Department of
Agriculture

Risk Management Agency

**What about Crop
insurance premium
subsidies?**

YES

USDA allows producers to receive premium subsidies on crop insurance on farms that contain a violation of the Wetland Conservation provisions committed before February 4, 2014.

Land that is ineligible for participation in USDA programs because of a Food Security Act of 1985, As Amended, violation can still be enrolled in the Crop Insurance Premium Subsidy Program

This does not include land/producers ruled ineligible for actions taken after February 4, 2014

APPEALS OF ADVERSE DETERMINATIONS AND DECISIONS

- For NRCS the appeals processes include (in order of occurrence) -
 1. Reconsideration of the determination by **NRCS** – field visit
 2. A hearing with the **FSA County Committee** – can request NRCS to review the determination again – field visit with new NRCS employees
 3. A hearing with the **National Appeals Division** – can direct NRCS to review or change the determination – administrative without field visit
 4. Civil court action – only after the appeals process is used
 5. A Review of a Certified Determination can be requested of **NRCS**
- The Farm Service Agency also has appeals process for adverse benefit decisions



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The Food Security Act of 1985, as amended



APPEALS OF ADVERSE DETERMINATIONS AND DECISIONS

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** for all or part of the determination process and 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.
- Remember, this determination is a Food Security Act, not the Clean water Act



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The Food Security Act of 1985, as amended

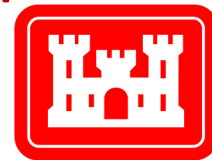
Are you good to go with a determination in hand?

NOT SO FAST . . .



You've got permits, exemptions, and appeal processes for the Clean Water Act and state laws

DNR
Indiana Department of
Natural Resources



The Food Security Act and the Clean Water Act and the state laws don't always neatly line up



Communication and using the process is the key!



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QUESTIONS??

www.in.nrcs.usda.gov

<https://www.nrcs.usda.gov/getting-assistance/financial-help/conservation-compliance-appeals-process>

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