

**HIGHLY ERODIBLE
LAND CONSERVATION
AND WETLAND
CONSERVATION**

Interim Rule
Environmental Assessment
August 2018



USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, family status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's [TARGET Center](#) at 202-720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call 800-795-3272 (voice) or 202-720-6382 (TDD). USDA is an equal opportunity provider and employer.

Table of Contents

1.	Introduction.....	1
2.	Need for Action	3
3.	Alternatives	3
	A. No Action	3
	B. Proposed Action Alternative – Amend the regulations	3
	C. Alternatives considered but eliminated from detailed analysis.....	5
4.	Affected Environment	6
5.	Environmental Impacts.....	8
6.	Persons and Agencies Consulted.....	11
7.	References.....	12

1. Introduction

The United States Department of Agriculture (USDA) is issuing an interim rule for the Highly Erodible Land and Wetland Conservation Compliance provisions of the Food Security Act of 1985, as amended, hereafter referred to as the “conservation compliance provisions”. The Food Security Act of 1985, as amended (the 1985 Act), requires producers participating in many programs administered by USDA to abide by certain conditions on any land owned or farmed that is highly erodible or wetland. Producers participating in these programs, and any person or entity considered to be an "affiliated person" of the producer, are subject to these conservation compliance provisions. The current regulations for conservation compliance are set forth in 7 CFR Part 12.

To be eligible for most programs administered by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA), conservation compliance requires producers to apply a conservation system if they plant annually tilled crops on highly erodible land and prohibits producers from planting an agricultural commodity on a converted wetland or converting a wetland to make possible the production of an agricultural commodity. Several USDA agencies administer portions of the conservation compliance provisions. NRCS responsibilities include making technical determinations to identify highly erodible land and wetland, determining whether certain technical exemptions apply, and determining whether wetland conversion has occurred.

Conservation compliance does not apply to planting or production of perennial crops, structures built to support livestock and poultry production, or other structures on highly erodible land or wetland. Other Federal, State, and local laws that regulate activities in wetlands may apply regardless of the conservation compliance provisions and participation in USDA programs. Wetland determinations made for the purpose of conservation compliance are not necessarily valid for Clean Water Act permitting or other laws regulating activities in wetlands.

Producers choose whether to comply with the conservation provisions based on their desire to participate in covered USDA programs. NRCS helps producers comply by making highly erodible land and wetland determinations. NRCS provides this technical assistance consistent with the regulations in 7 CFR Part 12 and internal agency policy in the National Food Security Act Manual (NFSAM).

To implement the wetland conservation components of the conservation compliance provisions (the WC provisions), USDA includes in 7 CFR Part 12 definitions of terms; identification procedures for highly erodible land, wetland, and converted wetland; and exemptions from ineligibility for wetlands and converted wetlands. The last update to 7 CFR Part 12 was completed in 2015, in accordance with the amendments made by Sections 2609 and 2611 of the Agricultural Act of 2014 (2014 Act), which relinked eligibility for USDA crop insurance premium subsidies with the conservation compliance provisions. With this interim rule, USDA seeks to make minor changes to 7 CFR Part 12 to codify how NRCS makes technical determinations for land subject to the conservation compliance provisions.

The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. In addition, the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508) require Federal agencies to prepare Environmental Assessments (EAs) to assist in determining whether they need to prepare an EIS for actions that have not been categorically excluded from the requirement.

The CEQ has defined "major federal action" to include activities over which Federal agencies have control, including promulgation of regulations in which they exercise discretion. In the case of the conservation compliance provisions, Congress has prescribed many requirements in statute, and there is little discretion remaining for USDA to exercise. Many decisions that do remain are administrative in nature and fall within a category of activities excluded from the requirement to prepare an EIS. Despite this, USDA has decided to prepare this EA to review the environmental impacts of the proposed clarifications in 7 CFR Part 12.

CEQ has indicated that because an EA is a concise document, the purpose of which is to determine the need for an EIS, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted.

USDA prepared EAs to analyze the environmental impacts of administering the conservation compliance provisions in 1986, 1990, and 1996. The relevant portions of those EAs are incorporated herein by reference. The 2015 update to 7 CFR Part 12 was determined not to require analysis under NEPA because the changes were either mandated by Congress in the 2014 Act and USDA had no discretion over their implementation, or were administrative in nature and fell within a category of activities excluded from the requirement to prepare an EIS.

Provision of financial assistance to producers under USDA programs are also discretionary actions subject to NEPA. As such, FSA and NRCS comply with their NEPA implementing regulations and policy when providing financial assistance, as well as other laws, regulations, Executive Orders (EO) and policy for the protection of the environment. This includes the Endangered Species Act, Clean Water Act, and EO 11990 on the Protection of Wetlands. FSA and NRCS conduct site-specific environmental evaluations before providing financial assistance to identify potential impacts to wetlands, plant and animal species of concern, and other resources; and to document how compliance with NEPA and other requirements have been met. If potential adverse impacts are anticipated, the agency identifies (in consultation with other agencies as required by law) alternatives to avoid, minimize, or mitigate adverse impacts whenever practicable. If no practicable alternatives exist or the producer will not agree to implement such alternative, the agency will not provide the financial assistance.

Producers receiving USDA financial assistance for activities that would affect wetlands are responsible for obtaining any necessary permits, such as those required under the Clean Water Act, and applicable State and local laws. Wetlands are defined differently within various Federal and State programs and for identification, delineation, and classification purposes. USDA's

identification of wetlands subject to site-specific review under NEPA and potentially under the jurisdiction of other laws, includes areas that exhibit indicators of hydric soil, hydrophytic vegetation, and wetland hydrology, regardless of their identification pursuant to the WC provisions or the applicability of any exemptions from ineligibility.

2. Need for Action

The proposed clarifications are needed to ensure that the regulations are consistent with the current technical standards being applied by NRCS in making technical determinations. In amending the regulations as proposed, USDA seeks to codify the technical determination procedures it uses, for the purposes of providing the public with transparency, providing certainty to USDA program participants, and improving the consistency of how the conservation compliance provisions are implemented by USDA in all 50 States, including the Caribbean and Pacific Island Areas. Publication of the interim rule will provide the public an opportunity to review the clarifications and provide comments to help USDA better explain the wetland identification procedures used by NRCS. This will result in improved communication, better understanding by USDA program participants of the wetland determination process, and transparency for the public.

3. Alternatives

A. No Action

Under the No Action Alternative, USDA would not update its regulations at 7 CFR Part 12. NEPA regulations at 40 CFR 1502.14 require analysis of a no action alternative as a basis for comparison against the proposed action.

Because the proposed changes to the interim rule would merely clarify some aspects of the technical procedures already being used by USDA, the main difference between the No Action and Proposed Action alternatives is that under the No Action Alternative, USDA would not provide transparency to the public concerning the procedures it uses to make wetland determinations, and the public would not have the opportunity to provide comment to help USDA better explain the wetland identification process. Therefore, the No Action Alternative would not meet the purposes of or need for the proposed action.

B. Proposed Action Alternative – Amend the regulations

USDA proposes to make the following clarifying amendments to the regulations at 7 CFR Part 12:

1. Precipitation data used in wetland determinations: The WC provisions define "wetland" in reference to normal circumstances, but wetlands are dynamic systems that can vary based on changing climatic conditions. NRCS uses a precipitation data set based on U.S. Climate Normals during the 1971-2000 period in reference to determining "normal circumstances". NRCS believes the use of this specific precipitation dataset ensures the consistency of determinations over time and represents normal climatic conditions at

enactment of the 1985 Act, especially when evaluating the scope and effect of any drainage features that were installed prior to 1985. The current regulation does not identify the use of any particular precipitation dataset. In amending the interim rule, USDA proposes to identify the precipitation data set that has been used by NRCS for nearly 20 years.

2. Definitions of pothole, playa, pocosin and other terms: Due to their residual function, unique hydrology criteria are applied to depressional wetlands identified as potholes, playas, and pocosins that were manipulated prior to 1985, though such wetland landforms are not defined in regulation. Defining these terms will provide increased consistency in their identification and greater transparency and predictability for the public. USDA plans to put into regulation the definitions that were established in policy in 1996.

USDA is also adding definitions of the terms “best drained condition”, “normal climatic conditions”, and “wetland hydrology” to clarify how these terms have long been used in policy, training, and application; and revising the definition of “wetland determination” to clarify how hydrology indicators are used in assigning WC provision labels of Prior Converted Cropland, Farmed Wetland, and Farmed Wetland Pasture.

3. Certification of wetland determinations: NRCS began making wetland determinations in 1986, but the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) required NRCS to certify wetland determinations. The 1990 Act directs USDA to delineate wetlands on a map, provide notice to affected producers, certify each map as sufficient evidence to determine ineligibility, and provide producers an opportunity to appeal the mapped delineation prior to the certification becoming final. As stated in the 1990 Act’s Conference Report, the certification process was “to provide farmers with certainty as to which of their lands are to be considered wetlands” for purposes of the WC provisions. These 1990 Act requirements were incorporated into the April 23, 1991 version of 7 CFR Part 12. As required by The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), certified wetland determinations remain valid and in effect as long as the land is in agricultural use or until the producer makes a valid request for review of the determination.

The 1996 interim rule at §12.3 identified that determinations completed after July 3, 1996, are considered certified and that “Actions taken and determinations made prior to July 3, 1996, are subject to regulations set forth in this part as of July 2, 1996, except as otherwise provided in this part.” While the 1996 interim rule in §12.21(c) specified that wetland determinations made after July 3, 1996 would be considered certified, it did not specifically identify the certification status of pre-July 3, 1996 wetland determinations. However, under the pre-July 3, 1996 version of the regulations, a wetland determination was certified if it was delineated on a map, notice was provided to the producer that such determination was sufficient for determining ineligibility, and the producer was given an opportunity to appeal the determination. USDA is updating the rule to clarify that wetland determinations completed between November 28, 1990 and July 3, 1996 under the regulations in effect from April 23, 1991 through July 2, 1996 are certified if they meet the requirements for certification in the 1990 Act and associated regulation. This additional language in §12.21(c) is for clarification purposes, and does not change the

legal status of any wetland determination made between November 28, 1990 and July 3, 1996, nor does NRCS have discretion to change certified wetland determinations except under the limited circumstances identified in the current regulations. Thus, the clarifying language in this rule does not change in any way how NRCS administers the certified wetland determination portion of the WC provision, the regulatory basis for certified wetland determinations, nor how such determinations are certified as a matter of law.

4. Simplification of hydrology criteria: Current regulatory language provides hydrology criteria with reference to the "number of days" of inundation or soil saturation for the wetland types of farmed wetland, farmed wetland pasture, and prior converted cropland. The wetland scientific community has moved away from establishing any such "number of days" standard which cannot reasonably be applied over broad geographic regions. USDA proposes to provide greater technical detail on the indicators used to determine if hydrology criteria are met when assigning WC provision labels for Prior Converted Cropland, Farmed Wetland, and Farmed Wetland Pasture. As documenting a certain number of days of inundation or saturation is a difficult and seldom-used practical standard, this change is not expected to affect the scope of protection currently afforded to farmed wetlands and farmed wetland pasture.
5. Wetland minimal effect exemption: The 1985 Act provides for an exemption for wetland conversions which have only a minimal effect on the functional hydrological and biological value of the wetland and other wetlands in the area. Current regulatory language requires the minimal effect determination be based upon a functional assessment made during an on-site evaluation, even for other wetlands in the area. This requirement is overly burdensome and on-site evaluations cannot always be made on property not controlled by the subject person. Removing this requirement will better allow USDA to provide this statutory exemption to USDA program participants, but is not expected to provide a substantially different decision than the current language, as effective functional assessments can also be conducted remotely.
6. Other minor technical corrections.

C. Alternatives considered but eliminated from detailed analysis

USDA considered an alternative of updating its regulations as proposed under Alternative B, except the precipitation dataset used in making wetland determinations would change every 10 years to one based on the most recent 30-year U.S. Climate Normals dataset (currently 1981-2010.) This alternative was eliminated from detailed analysis because it would not meet the need for the proposed action to ensure that the regulations are consistent with the current technical standards being applied by NRCS in making wetland determinations. It also would undermine the purpose of the proposed action to provide certainty to producers and go against Congressional intent to provide certainty as expressed in the Conference Manager's Report for the 1990 Act and strengthened in statutory language in the 1996 Act.

4. Affected Environment

The Affected Environment was described in the U.S. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL ASSESSMENT FOR THE WETLAND CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT 1985, completed in June 1986, and applicable portions of the description there are incorporated herein by reference and updated below.

In 1991, NRCS' National Resources Inventory (NRI) completed a wetlands survey that confirmed wetland conversions had slowed compared to those occurring before the 1985 Act and that agricultural activities seemingly had less impact on wetland conversions than expected (Schnepf 2008.) The Wetland Reserve Program (now the Wetland Reserve Easement component of the Agricultural Conservation Easement Program) authorized by Congress in 1990 and offered nationwide by 1995 has helped to restore wetland hydrology to millions of acres of cropland. The Conservation Reserve Program authorized in 1985 and first available in 1986 also helps protect wetlands in agricultural landscapes. In fact, the period between 1997 and 2007 was the first decade in modern history that saw a nationwide increase in palustrine and estuarine wetlands (U.S. Department of Agriculture, 2015b.) Most of the gains were in the highly agricultural central region of the U.S.

The 2010 NRI Summary Report included an analysis of data (Sucik and Marks 2014) showing the status and recent trends of wetlands in each of NRCS' four Regions (Figure 1). The NRI uses a modified Cowardin (Cowardin et al., 1979) classification system to recognize five different types of wetland and deepwater habitats; marine (oceans), lacustrine (lakes), riverine (rivers), estuarine (saltwater marsh), and palustrine (freshwater marsh). The analysis combines these into two major categories: palustrine and estuarine wetlands and other aquatic habitats. Palustrine and estuarine wetlands comprise nearly 70% of wetlands in the U.S. outside of Alaska.

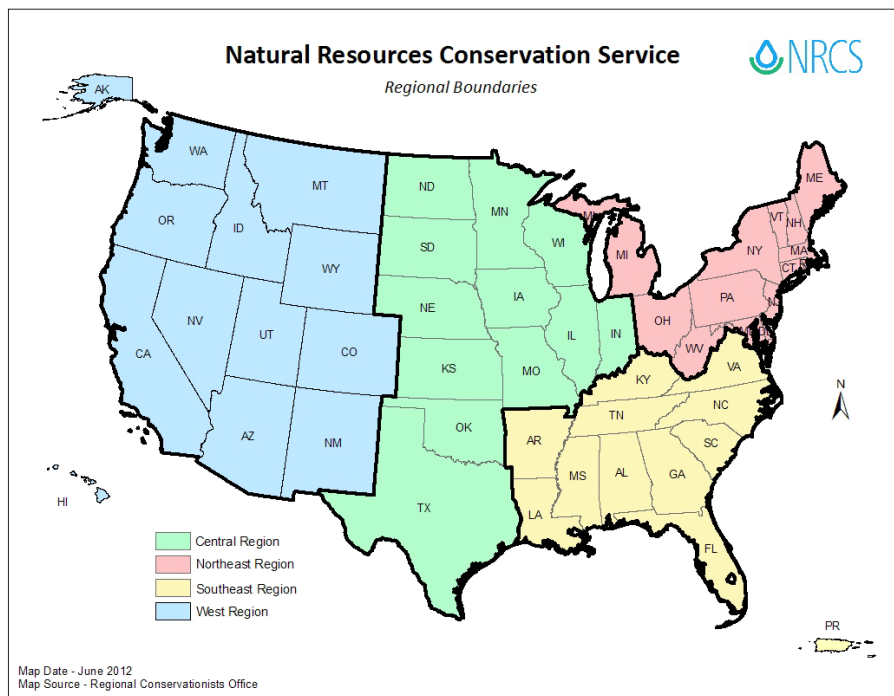


Figure 1. NRCS regional boundaries.

The analysis shows the Northeast region of the U.S. experienced a gradual loss of over 100,000 acres of palustrine and estuarine wetlands between 1992 and 2010. Urban development was the primary reason for wetland losses in the Northeast.

The Southeast Region had a modest gain in total wetland acres between 1992 and 2010, but there was a reduction of more than 200,000 acres of palustrine and estuarine wetlands there according to NRI data. Wetland losses in the Southeast are also driven primarily by urbanization as well as rising sea levels. Despite the losses, the Southeast Region remains rich in wetlands. As of 2010, the Southeast contained 17% of the land area in the conterminous U.S., but 43% of the nation's palustrine and estuarine wetlands.

The Central Region leads production of corn, soybeans, wheat, sorghum, and cotton. However, despite increases in land values and demand for these commodity crops, the region has seen an increase in palustrine and estuarine wetland acres since 1992.

Due to the West Region's arid climate, only about 1% of the nation's non-federal wetlands occur there, after Alaska is excluded. NRI data show a modest, slow and steady increase in the restoration and creation of palustrine and estuarine wetlands between 1992 and 2010.

About 70% of land in the U.S. is privately owned and many of the Nation's remaining wetlands occur on working lands devoted to the production of food, fiber, and forest products. Population growth results in increased urbanization that contributes to the continued loss of agricultural and forest lands and the wetlands they support. In addition, agricultural producers make economic decisions regarding land use that continue to contribute to wetland conversion, often on lands not subject to the WC provisions. Producers may decide the value of USDA benefits is less than the value of economic returns they can expect from converting wetlands to commodity crop production, especially when commodity prices are high. The WC provisions do not apply to conversion activities conducted by non-USDA participants. Other agricultural activities that can result in loss of wetlands and are exempt from the WC provisions include planting and production of perennial crops such as blueberries and almonds, construction of structures such as barns, installation of agricultural infrastructure, and creation of ponds for livestock water or irrigation.

Climate plays an important role in the genesis and identification of wetlands. U.S. Climate Normals are three-decade averages of climatological variables including temperature and precipitation. This dataset contains daily and monthly normals of temperature, precipitation, snowfall, heating and cooling degree days, frost/freeze dates, and growing degree days calculated from observations at approximately 9,800 stations operated by the National Oceanic and Atmospheric Administration's (NOAA's) National Weather Service. Every 10 years, NOAA's National Centers for Environmental Information (NCEI) updates the 30-year dataset. The 1981–2010 U.S. Climate Normals dataset is the latest release of NCEI's Climate Normals. In the early 2020s, a dataset based on precipitation averages from the period 1991-2020 will become available.

Compared with the same calculations for 1971–2000, the 1981–2010 dataset shows fewer days with snow on the ground and less total annual snowfall across much of the contiguous United States; wetter conditions over much of the Great Plains, Midwest, and northern California; and drier conditions over much of the Southeast and Pacific Northwest (Arguez, et al. 2012, Durre, et al. 2013, Figure 2).

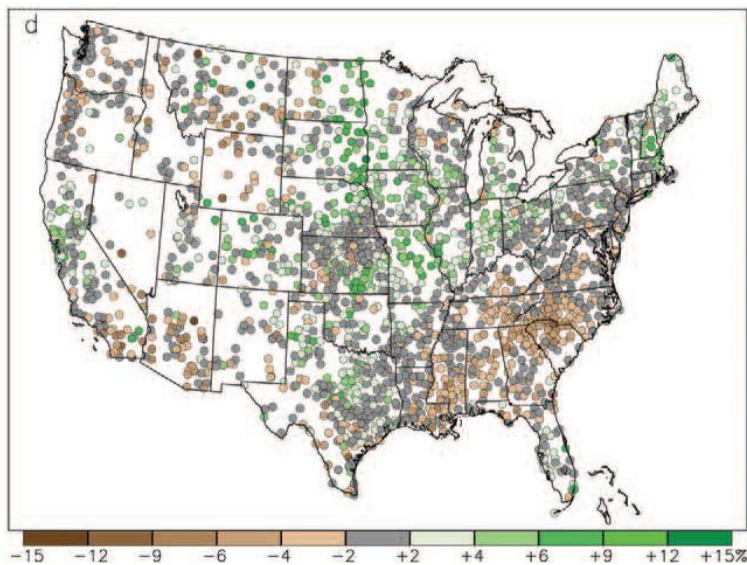


Figure 2. Percent difference between precipitation normals for 1981–2010 and comparable averages for the 1971–2000 period. Only stations with at least 25 years of complete monthly data in both time periods are plotted. From: Arguez, et al. 2012.

NRCS Climate Analysis for Wetlands Tables, known as the WETS Tables, were developed to help identify average climatic conditions which can affect the presence of wetland hydrology. The WETS Tables define the normal range for monthly precipitation and growing season required to assess the climatic characteristics for a geographic area over a representative period.

5. Environmental Impacts

Under both the No Action and Proposed Action Alternatives, NRCS would continue to use its existing technical procedures, therefore the environmental impacts described below are the same for both Alternatives. USDA’s administration of the WC provisions would continue to discourage agricultural producers from converting wetlands to commodity crop production. However, eligibility for USDA benefits is only one of a producer’s considerations when deciding whether to convert wetlands on land they farm or own to agricultural production or other uses and compliance with the WC provisions remains voluntary.

Adding and modifying the definitions of terms in the regulations will not change the way USDA identifies wetlands subject to the WC provisions, and therefore will not have any environmental impact.

Removing the requirement to conduct an on-site functional assessment of wetlands in the area to determine whether a minimal effect exemption applies is also not expected to result in

substantive differences in the extent of wetlands subject to the WC provisions. The requirement to evaluate the functional hydrological and biological value of wetlands in the area when determining minimal effect is set in the U.S. Code. However, NRCS does not usually have permission to make on-site visits to conduct functional assessments on wetlands in the surrounding area of a wetland where a minimal effect exemption has been requested. As better quality aerial imagery, Light Detection and Ranging (LiDAR) data, and other remote sensing technology has become available, NRCS is able to complete accurate functional assessments offsite. NRCS will continue to make an onsite visit of the subject land to conduct an onsite functional assessment of the area where a minimal effect exemption has been requested.

Congress has made clear that USDA is to provide certainty to producers that the extent of wetlands mapped under final certified wetland determinations will not change over time. As stated in the 1990 Act Conference Manager's Report, the purpose of certification of wetland determinations "is to provide farmers with certainty as to which of their lands are considered wetlands" for purposes of compliance with the WC provisions. The 1996 Farm Bill strengthened statutory certainty for producers by ensuring that certified wetland determinations remain valid and in effect as long as the land is used for agricultural purposes, unless the producer requests a review from USDA. USDA clarified in the 1996 interim rule that a person may request review of a certification only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination. Because of the certification requirements in statute and regulation, USDA has no discretion to re-determine certified wetland determinations (i.e., those conducted after November 28, 1990 that meet the notification, provision of appeal rights, and mapping requirements) unless a violation of the WC provisions has occurred, or the person requests review under the limited circumstances allowed by regulation. The language in the interim rule on certification is simply a restatement of the original regulatory provision and no change is being made to these determinations' regulatory status as being certified or not certified.

Identifying a specific precipitation dataset based on the 1971-2000 U.S. Climate Normals used in making decisions regarding the presence or absence of wetland hydrology will also meet Congress' intent to provide certainty for producers. If NRCS updated the precipitation dataset used based on current U.S. Climate Normals, the total acres of wetlands identified as subject to the WC provisions would change every 10 years. Areas previously identified as wetland might no longer meet the criteria and vice versa. Under the 1981-2010 dataset, more acres of wetlands would be identified than under the 1971-2000 dataset, due to an overall increase in precipitation. However, the differences would not be evenly distributed nationwide. More acres would be mapped in regions experiencing increases in precipitation, such as the Great Plains, Midwest, Northern California and fewer acres would be mapped in those experiencing less precipitation (Southeast and most of the arid West.) USDA program participants in areas experiencing a decrease in precipitation since 1981 could request review of their certified wetland determinations based on a decrease in hydrology, and new determinations would result in fewer acres of wetlands subject to compliance and increases in wetlands converted to the production of agricultural commodities. These changes would be most likely to result in the Southeast, which is still experiencing loss of palustrine and estuarine wetlands and the arid West, where the extent of wetlands is naturally limited and therefore disproportionately important to maintain.

Future decadal updates of the U.S. Climate Normals would likely include periods of widespread and severe drought, particularly in the West and Great Plains. If NRCS decided to continually update to the current decadal dataset, such periods would result in fewer acres of wetland identified as subject to the WC provisions.

The overall impact of maintaining use of the 1971-2000 dataset is expected to be negligible over time. This is because NRCS must determine the hydrology conditions that existed under “normal circumstances.” NRCS’s evaluation of normal circumstances includes not only normal climatic conditions reflected in the precipitation data, but also drainage actions and other manipulations that enabled agricultural use of wetlands before passage of the 1985 Act. Pre-1985 manipulations are “grandfathered in” by the statute as part of normal circumstances. In other words, when NRCS makes a certified wetland determination, the decision on a positive indicator for wetland hydrology is often based on conditions that existed on the site on or before December 23, 1985, after any hydrologic manipulations made before that date. December 23, 1985 falls near the middle of the 1971-2000 precipitation dataset, which therefore represents the normal climatic conditions at that time.

In addition, as discussed above, NRCS has no authority to change final certified wetland determinations, except under limited circumstances. Changing the precipitation dataset used to make wetland determinations over time could result in the same landform area extending across field boundaries being assigned different wetland statuses (i.e. wetland or non-wetland) and exemption labels, based on when the determination was made. The resulting certified wetland delineation map would not be scientifically or politically defensible.

Since the 1996 interim rule, NRCS must also determine the number of days inundation or saturation is or would be present under normal circumstances, to distinguish between wetlands converted to commodity crop production before December 23, 1985 that had little or no remaining hydrology (Prior Converted Cropland) and those that had sufficient hydrology remaining to meet the definition of wetland (Farmed Wetland or Farmed Wetland Pasture.) In practice, it is not possible to ascertain the number of days hydrology is present without the installation of monitoring equipment and observation of data collected over several years of normal climatic conditions. Therefore, NRCS almost always determines the presence or absence of wetland hydrology under normal circumstances based on indicators, including remotely-sensed data as described in NRCS’ Engineering Field Handbook Chapter 19, *Hydrology Tools for Wetland Delineation*.

Remotely sensed data includes aerial photography, multi-spectral imagery (including infrared), and other image sources. Such data is commonly used to help make wetland determinations on cropland, as it provides a useful opportunity to assess site conditions over a period of time. NRCS evaluates the images for signatures that indicate the presence of wetland conditions on the ground. Wetness signatures in an image are evidence that wet conditions existed on or before the date that the image was collected. A series of images, collected during years when precipitation was normal or drier than normal, is used to determine whether wetland hydrology is present in most years. WETS Table data, collected from a weather station near the wetland determination site, is used to determine whether the image is reflective of normal climatic conditions. Because

NRCS often must determine the wetland hydrology conditions that existed on or before December 23, 1985, it needs to use climate data collected for enough years prior to that date to ensure evaluation of images taken during normal or drier climatic periods. Sufficient years of climate data prior to December 23, 1985 is provided by the 1971-2000 precipitation dataset, but would not be by the current (1981-2010) or future datasets.

Because NRCS commonly uses the precipitation dataset to evaluate the presence of wetland hydrology on crop and pasture land as indicated by signatures on a series of aerial images under normal climatic conditions, continually updating to the current 30-year dataset would make it more difficult for NRCS to render accurate certified wetland determinations based on the intent of Congress to “grandfather in” hydrology manipulations resulting in conversions of wetlands that were completed or commenced prior to December 23, 1985. Further, the current dataset in use would continue to change over time, decreasing the certainty Congress intended to provide to producers.

In summary, most of the changes to the current regulations as described in the proposed action are administrative in nature and the remainder simply clarify some aspects of the technical procedures already being used by NRCS. Therefore, the proposed action is not expected to substantially change the extent of agricultural lands subject to the conservation compliance provisions over time, and so will not have any significant direct, indirect, or cumulative impact on the environment. In addition, Congress has prescribed many requirements USDA must follow when implementing the conservation provisions, and USDA has no discretion to deviate from the authority as provided by Congress. The proposed action is intended to provide transparency to producers and stakeholder organizations about how NRCS determines, delineates, and certifies wetlands located on subject land in a manner sufficient for making determinations of ineligibility for certain USDA program benefits. Implementation of the proposed action will also allow producers to understand whether their actions will result in ineligibility for USDA program benefits by providing timely and scientifically-based wetland determinations.

6. Persons and Agencies Consulted

Lee Davis, NRCS, Biologist, Ft. Worth, TX

Andree DuVarney, NRCS, National Environmental Coordinator (retired)

Karen Fullen, NRCS, Environmental Compliance Specialist, Portland, OR

Martha Joseph, NRCS, Special Assistant, Washington, DC

James Marron, NRCS, National Water & Climate Center, (retired)

Melissa Martin, NRCS, Science Advisor, Washington, DC

Norman Melvin, NRCS, Wetlands Team Leader, (retired)

Jason Outlaw, NRCS, National Leader for Wetland and Highly Erodible Land Conservation, Washington, DC

Charile Rewa, NRCS, Conservation Effects Assessment Project Wildlife Component Leader, Beltsville, MD

Don Riley, NRCS, Environmental Compliance Specialist, Greensboro, NC

Daria Scala, Ph.D, NRCS, Management Analyst, Washington, DC

Jason Steele, NRCS, Management Analyst, Washington, DC

7. References

16 U.S. Code 3801-3824.

7 CFR Part 12.

Arguez, A., I. Durre, S. Applequist, R.S. Vose, M.F. Squires, X. Yin, R.R. Heim, and T.W. Owen, 2012: NOAA's 1981–2010 U.S. Climate Normals: An Overview. *Bull. Amer. Meteor. Soc.*, 93, 1687–1697, <https://doi.org/10.1175/BAMS-D-11-00197.1> Accessed July 3, 2018.

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. U.S. Fish and Wildlife Service, Washington, DC. FWS/OBS-79/31, 131 pp.

Durre, I., M.F. Squires, R.S. Vose, X. Yin, A. Arguez, and S. Applequist, 2013: NOAA's 1981–2010 U.S. Climate Normals: Monthly Precipitation, Snowfall, and Snow Depth. *J. Appl. Meteor. Climatol.*, 52, 2377–2395, <https://doi.org/10.1175/JAMC-D-13-051.1> Accessed July 2, 2018.

Schnepf, Max. 2008. *A History of Natural Resource Inventories Conducted by the USDA's Soil Conservation Service and Natural Resources Conservation Service*. Soil and Water Conservation Society. Updated by Patrick Flanagan 2016. 40 pp.

Sucik, Michael T. and Elizabeth Marks. 2014. *The Status and Recent Trends of Wetlands in the United States: 2010 National Resources Inventory*, USDA Natural Resources Conservation Service, Ghent, NY, and Center for Survey Statistics and Methodology, Iowa State University, Ames, Iowa.

U.S. Department of Agriculture. 2015a. *Hydrology Tools for Wetland Identification and Analysis*, in Part 650 Engineering Field Handbook National Engineering Handbook, Natural Resources Conservation Service, Washington, DC.

U.S. Department of Agriculture. 2015b. *Summary Report: 2012 National Resources Inventory*, Natural Resources Conservation Service, Washington, DC, and Center for Survey Statistics and Methodology, Iowa State University, Ames, Iowa.

U.S. Department of Agriculture. 2000. *Summary Report: 1997 National Resources Inventory (revised December 2000)*, Natural Resources Conservation Service, Washington, DC, and Statistical Laboratory, Iowa State University, Ames, Iowa, 89 pages.

U.S. House. 1990. *Conference Report to Accompany Food, Agriculture, Conservation, and Trade Act of 1990*, (H.R. Rep. No.101-916). Available from: The National Agricultural Law Center; Accessed: July 31, 2018.