



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

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- 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



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 for at least 15 consecutive days in the spring most years before December 23, 1985

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

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



Dec. 23, 1985



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.**

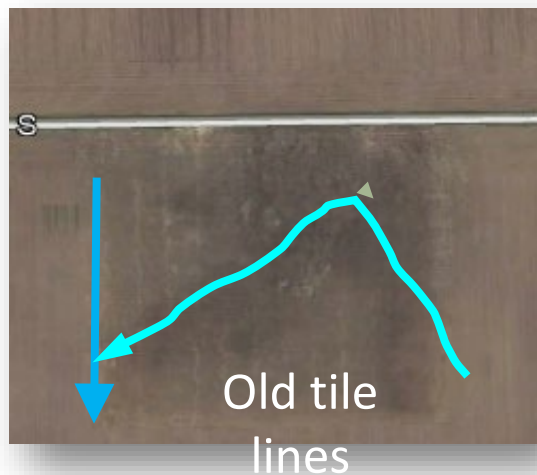
Checking in with your NRCS office will help you stay eligible for USDA program benefits.

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

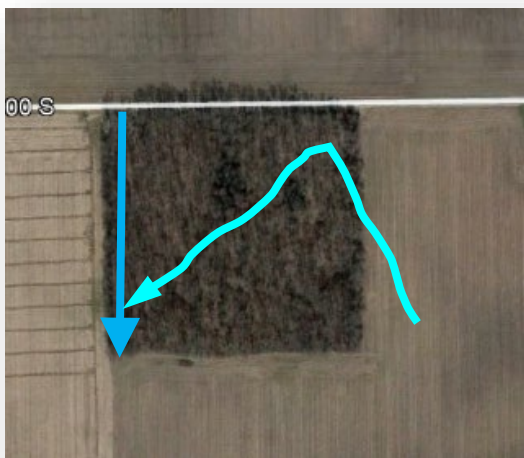


Crop fields and woods without a wetland



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

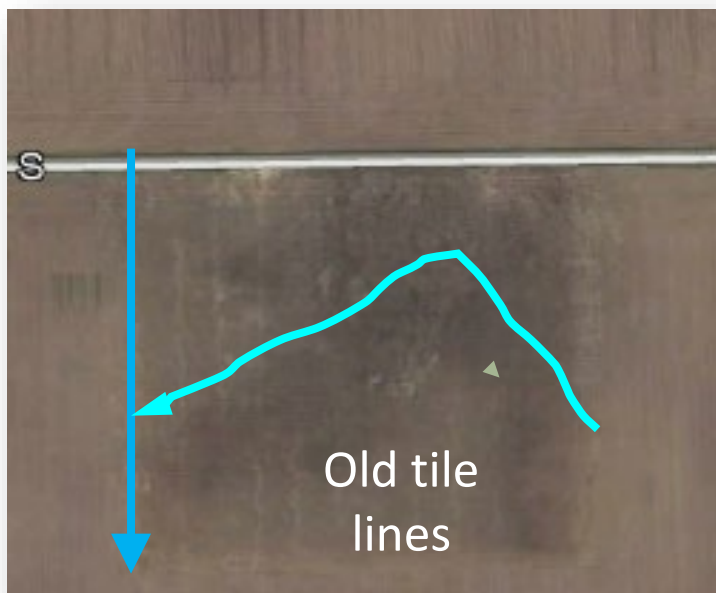
Caution – look out for nearby wetlands and do not drain those unless allowed

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 at its current capacity



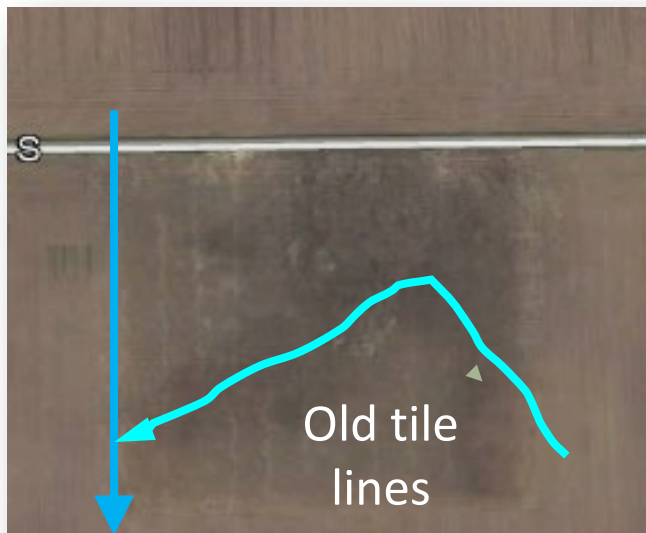
What about new drainage?

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



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

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



Grassland Wetlands

What about old drainage?

Drainage of a grassy or weedy **W** wetland (Reed Canarygrass, Cat-tails, Phragmites, “weeds”, etc.) can be maintained at its **December 23, 1985** capacity

What about new drainage?

No, except that . . .

Wetlands in 2024 that were not wetlands on December 23, 1985 are not wetlands, ask for a review of your determination

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



WOODED WETLANDS

What about old drainage?

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

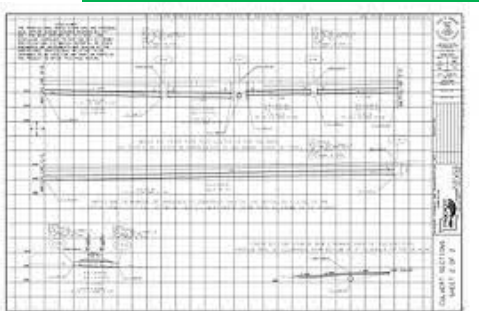
Congress added to the 2014 Farm Bill a provision that allows producers to receive premium subsidies on cropland that contains a violation of the Wetland Conservation provisions committed before February 4, 2014.

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

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

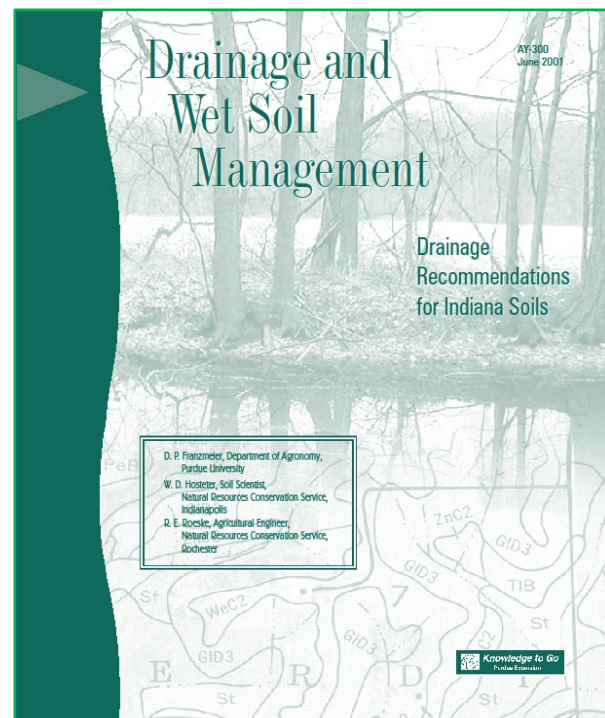
Design plans or documents from drainage contractors that show drainage has been kept away from non-woody wetlands



A review of aerial imagery to look for indicators of a converted wetland and/or drainage installation

A field visit, especially if the woods was cleared before drainage was installed

Purdue Extension
bulletin AY-300





APPEALS OF ADVERSE DETERMINATIONS AND 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



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APPEALS OF ADVERSE DETERMINATIONS AND 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.

A faded background image of four people standing in a field of tall grasses and wildflowers, looking towards the horizon. The image is semi-transparent, allowing the text to be overlaid.

QUESTIONS??

www.in.nrcs.usda.gov

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

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