

For: State and County Offices

**Certified Wetland Determinations**

Approved by: Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

A recent court ruling (*National Wildlife Federation v. Lohr et al.*) in the United States District Court District of Columbia has affected certain requests for certified wetland determinations to be completed by NRCS, specifically those requests that involve land where a prior wetland determination exists that was issued between November 29, 1990, and July 2, 1996.

**B Purpose**

This notice:

- advises actions NRCS is taking regarding certain wetland determination requests as the result of the court ruling
- communicates impacts to the FSA AD-1026/FSA-569 producer referral process for wetland determinations to NRCS.

**2 NRCS Hold on Certain Wetland Determinations**

**A New AD-1026/FSA-569 Referrals Impacted**

In response to the ruling NRCS has initiated a temporary hold on servicing certain new wetland determination requests. This applies to both AD-1026 certifications (a certification with “yes” to 7 A or 7 B in part B of AD-1026) and FSA-569's (referred to determine converted wetland after November 28, 1990, or planting on a converted wetland) that involve a previous wetland determination issued from November 29, 1990, to July 2, 1996.

<b>Disposal Date</b>	<b>Distribution</b>
January 1, 2025	State Offices; State Offices relay to County Offices

## Notice CP-778

### 2 NRCS Hold on Certain Wetland Determinations (Continued)

#### A New AD-1026/FSA-569 Referrals Impacted (Continued)

The NRCS hold is temporary and will have minimal impact to producers as it only applies to requests tied to acreages with previous determinations issued within the specific date range. NRCS will notify FSA of all wetland determination requests that are being placed on temporary hold.

#### B FSA Procedure

FSA will continue to refer all AD-1026 or FSA-569 requests to NRCS by entering them into the Conservation Desktop HELC/WC request tracking tool, including those that may include the parameters discussed in subparagraph A (including acreage with previous determinations of non-wetland (NW) and prior converted (PC)), with the date of request entered as the date referred to NRCS.

Any NRCS/FSA State or local process developed where FSA did not refer certain AD-1026's due to the presence of any prior wetland determination must now be ceased, and all AD-1026 or FSA-569 referrals must be transmitted to NRCS. FSA must advise producers making certification with planned activities described in item 7 of AD-1026, they are applicable to a "yes" to question 7 A or 7 B and need to be referred to NRCS for a wetland determination, regardless of any existing wetland determination completed between November 29, 1990, through July 2, 1996.

### 3 Action

#### A State Office Action

State Offices will:

- ensure that County Offices are notified of the contents of this notice
- contact the National Office Conservation Compliance Program Manager, Joe Fuchtman ([joseph.fuchtman@usda.gov](mailto:joseph.fuchtman@usda.gov), 202-260-9146) with any questions about this notice.

#### B County Office Action

County Offices will implement procedures in subparagraph 2 B.