

Farm Management

Wetland damage could cost you

WETLANDS became a significant issue for farmers with the introduction of the Swampbuster provisions in the 1985 Farm Bill. The Swampbuster program protects wetlands thought to be beneficial by regulating water flow, increasing water quality and allowing increased biodiversity. In essence, the Swampbuster



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rules cause any farmer who converts a wetland into agricultural production to

become ineligible for government program payments.

A farmer who unknowingly drains a wetland could be shocked to find he or she is ineligible for Farm Service Agency payments and is required to pay back all program payments from the time the wetland was converted. Therefore, it is important for farmers to

be at least somewhat familiar with the Swampbuster program.

Wetland determinations are the responsibility of the Natural Resources Conservation Service and are made based upon three criteria: 1) presence of wetland-type vegetation, 2) hydrology of the soil (amount of water in soil), and 3) hydric soils (soils subjected to prolonged water saturation). If all three of these criteria are met, a wetland determination can be made. If NRCS makes a wetland determination, the landowner can appeal the determination. The primary basis for the appeal is that one or more of the three criteria were not met.

Upon signing up for program payments with FSA, every farmer must sign form AD-1026 declaring that he or she will not farm a wetland or convert a wetland for that program year. This includes both land owned and rented. If a farmer produces crops on converted wetlands on leased land, he or she will be in violation of the AD-1026 form and the Swampbuster regulations. Therefore, it is very important that tenant farmers confirm with the landlord, and perhaps even NRCS, that the farm they are leasing does not have any wetlands.

Appeals allowed

NRCS and FSA provide producers with appeal processes if they are determined to be ineligible for payments due to wetlands conversion. FSA allows a good-faith appeal to the local county committee. This appeal involves the farmer explaining his or her actions to the county committee and claiming that the actions were not intended to convert a wetland. The producer essentially claims that his or her actions were in good faith, albeit possibly in violation of the Swampbuster program. If the county committee accepts the good-faith argument, payment eligibility is restored. However, the converted wetland must be remediated to its original condition at the landowner's expense.

A producer also may appeal through NRCS. This process is more formal, starting in the National Appeals Division and often ending in the federal courts. This process can be very costly and time-consuming, and does not always end in a successful appeal. A producer facing ineligibility likely will find that the good-faith appeal with the county committee offers a better chance of success and is the less expensive option.

Mitigation options

The Swampbuster program does allow for the conversion of wetlands if the lost wetlands are compensated for. Under the guidance of NRCS, farmers can convert a wetland if they establish another wetland elsewhere. This mitigation option usually requires the farmer to replace the converted wetland area with an even bigger wetland area.



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