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[Docket ID NRCS–2026–0067]

RIN 0578–AA73

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Department of Agriculture (USDA) is amending its regulations to ensure that wetland determinations issued after November 28, 1990, have been and will be certified as sufficient to serve as the basis for determining ineligibility for certain USDA program benefits under the Wetland Conservation provisions of the Food Security Act of 1985, as amended. Certification requires notifying the affected person at the time of the determination and informing them of their appeal rights. This interim rule addresses inconsistencies in how wetland determinations certified and issued between November 28, 1990, and July 3, 1996, have been treated. It also responds to a February 22, 2024, Federal court ruling that determined that Natural Resources Conservation Service (NRCS) did not fully meet procedural requirements in its 2020 final rule concerning certification of pre-1996 determinations. This interim rule aligns USDA's regulations with the governing statute, legislative history, and congressional intent.

DATES: This rule is effective July 29, 2026. Comments concerning this rule must be received by September 28, 2026.

ADDRESSES: Comments, identified by Docket ID NRCS–2026–0067, should be sent using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments; or
- *Mail or Hand-Delivery:* Public Comments Processing, Attention: National Leader for Wetland and Highly Erodible Land Conservation, USDA, Natural Resources Conservation Service, 1400 Independence Avenue SW, Washington, DC 20250. In your comment, please specify the Docket ID NRCS–2026–0067.

All timely comments will be included in the rulemaking record and made available for public inspection at *https://www.regulations.gov,* including any personal information provided. Do not submit any information you consider to be private, confidential business information, or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jason Outlaw; telephone: 202–720–7838; or email: *jason.outlaw@usda.gov.* Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

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I. Background

Title XII of the Food Security Act of 1985 (''the 1985 Farm Bill''; Pub. L. 99–198) encourages USDA program participants to adopt land conservation measures by linking eligibility for program benefits to farming practices on highly erodible land and wetlands. Program benefits include most USDA commodity and conservation programs, loans, and crop insurance subsidies. In particular, the wetland conservation (WC) provisions state that after December 23, 1985, a program participant is ineligible for certain USDA program benefits if they produce an agricultural commodity on a converted wetland. After November 28, 1990, participants may not convert a wetland that makes it possible to produce an agricultural commodity and still maintain eligibility for program benefits. However, if program participants meet certain conditions, some actions are exempt from the WC ineligibility provisions. The USDA regulations implementing the Highly Erodible Land Conservation (HELC) and WC provisions of the 1985 Farm Bill are found in 7 CFR part 12.

NRCS helps farm program participants comply with WC provisions by providing certified wetland determinations. As discussed later in this rule, the Food, Agriculture, Conservation, and Trade Act of 1990 (''the 1990 Farm Bill''; Pub. L. 101–624, 104 Stat. 3573) introduced the concept of wetland certification. A wetland determination is a decision regarding whether an area is a wetland, including identifying the wetland type and size, see 61 FR 47027 (September 6, 1996). The boundary of each wetland is delineated on a certified wetland determination map, see 83 FR 63052 (December 7, 2018). To receive a wetland determination, USDA program participants must complete a HELC and WC self-certification form (AD–1026) and indicate on the form whether they have conducted (or are planning to conduct) activities that may alter land in a manner that could result in the conversion of a wetland. Examples of activities that may convert a wetland include land clearing, leveling, or the installation of drainage systems.

If the AD–1026 indicates that land is being altered in a manner that could result in wetland conversion, the request is referred to NRCS to evaluate whether a certified wetland determination needs to be completed. If a previous wetland determination exists for the area in question, NRCS must determine its certification status. If the previous determination is certified, that certification remains valid and effective until the person affected by the certification requests that NRCS review the certification, see 61 FR 47036 (September 6, 1996). If the previous determination is not certified, NRCS must conduct a new determination.

On December 7, 2018, USDA published an interim rule in the **Federal Register** (83 FR 63046–63052) that amended 7 CFR part 12 to provide USDA program participants and stakeholders transparency concerning how USDA delineates, determines, and certifies wetlands. Regarding the certification of wetland determinations, the interim rule made the following changes to 7 CFR part 12.30:

• Wetland determinations made after November 28, 1990, and before July 3, 1996, are certified wetland determinations if: (1) the determination was issued on the June 1991 version of forms NRCS–CPA–026 or SCS–CPA–026; (2) the person affected by the determination was notified by NRCS (or, by the Soil Conservation Service (SCS) prior to October 1994) that the determination had been certified; and (3) the map depicting the determination is of sufficient quality to determine ineligibility for program benefits;

• For a wetland determination map to be of sufficient quality to determine ineligibility for program benefits, the map document must be legible enough to identify the wetland areas from other ground features; and

• Wetland determinations will be certified by NRCS on a field or subfield basis.

On August 9, 2019, the National Wildlife Federation (NWF) filed a suit in the United States District Court for the District of Columbia. Among other issues, NWF contended that NRCS's 2018 interim rule violated the Administrative Procedure Act (APA) by changing its policy regarding the certification status of wetland determinations made prior to 1996 without giving a reasoned explanation. NRCS notified the court that it intended to issue a final rule so the court granted a stay while that rule could be published.

On August 28, 2020, USDA published a final rule in the **Federal Register** (85 FR 53137–53152) that adopted the provisions of the interim rule, making some changes in response to public comments received on the 2018 interim rule. In response to comments, NRCS relocated language on conducting certified wetland determinations on a field or subfield basis from 7 CFR part 12.30(c)(1) to 7 CFR part 12.30(a)(3) to clarify that the provision only applied to determinations made after the publication of the final rule (prior to this change, determinations were conducted on a tract basis). The final rule made no additional changes to the interim rule regarding certification of wetland determinations, see 7 CFR part 12.30.

On February 22, 2024, the United States District Court for the District of Columbia issued a decision, finding that NRCS violated the APA by changing its policy regarding the certification of wetland determinations made prior to 1996 without providing a reasoned explanation (*National Wildlife Fed'n* v. *Lohr,* 2024 WL 727695 (D.D.C. 2024)). In its decision, the court compared the text of the 1996 regulations with the 2020 final rule and found that NRCS changed its policy to be ''far more lenient towards certifying wetland maps, informally beginning around 2013 and formally in the 2020 final rule'' (*Lohr,* 2024 WL 727695, at 8 (D.D.C. 2024)). More specifically, the court based its decision not only on the 2020 final rule, but also on an assessment of agency practice, indicating that from 1997 to 2013, NRCS did not consider most wetland determinations made prior to 1996 as certified, but then changed its process to be more lenient and accept them as certified, despite no official agency action. The 2024 district court decision vacated (voided) the final rule, remanding (sending) the case to NRCS for further deliberation.

II. Purpose

NRCS is publishing this interim rule to adhere to the statutory Farm Bill provisions regarding certification and duration of wetland determinations. As stated in the *Lohr* decision, the APA requires an agency to provide a reasoned explanation when changing its prior policy position. This interim rule provides the history of previous statutes and regulations and explains NRCS's implementation of policy regarding the certification status of wetland determinations over time.

The APA also requires an agency to consider any serious reliance interests that may be affected by a change in policy (*FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); see also *Smiley* v. *Citibank (South Dakota), N. A.,* 517 U.S. 735, 742 (1996)). Considering reliance interests ensures that policy changes do not unfairly disrupt the expectations of regulated parties who have structured their actions around existing policy. Producers who received a certified wetland determination between November 28, 1990 and July 3, 1996, faced changing policy regarding those determinations. This created uncertainty for these producers. Producers have relied on their certified wetland determinations (since 1990) when making decisions about their agricultural operations. For example, if a producer has a wetland determination showing where wetlands are located and conversely where wetlands are not located, the producer relies on this information when planning to install drainage structures that can improve crop productivity. By relying on their certified wetland determinations, producers can take these actions on non-wetlands without risk to their eligibility for USDA program benefits. Prior versions of the wetland determination policy did not account for producers' reliance interests and were contrary to statute when post-1990 determinations were considered not certified. By maintaining the certification status of these wetland determinations, a producer can rely on these determinations that were issued as certified between 1990 and 1996.

Any rule that questioned these prior determinations would destroy producers' certainty over not only future decision-making regarding farmland but also cast into doubt decisions made decades ago. The agency's policy changes and clarifications made in this rule are designed to conform to the statute while protecting producers' reliance interests. See *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 106 (2015) (noting that the APA requires agencies to ''take[ ] into account'' the ''serious reliance interests'' affected by a policy change).

To the extent that NRCS may have received deference from the courts for its previous policies towards wetland determinations made prior to 1996, that deference ended in 2024. The Supreme Court determined that courts should not defer to an agency's interpretation of the text of a statute. See *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369 (2024). Regardless of any prior deference, this interim rule follows the statutory language governing wetland determination certification. All wetland determinations issued after November 28, 1990, are considered certified if the person affected by the certification was notified of the certification and provided information on the right to appeal.

III. History and Background of Wetland Determination Certification

A. 1985 Farm Bill—Establishment of Wetland Conservation Provisions

Title XII of the 1985 Farm Bill (Pub. L. 99–198, 99 Stat. 1504–08) established the WC provisions (informally known as ‘‘swampbuster’’). The original provisions stated that producers were ineligible for certain USDA program benefits if they produced an agricultural commodity on a converted wetland, unless an exemption applied. The SCS, which was renamed NRCS in October 1994, began identifying wetlands on agricultural lands after the enactment of the 1985 Farm Bill (signed into law on December 23, 1985) and the interim final rule for 7 CFR part 12 (51 FR 23496–23508 (June 27, 1986)). SCS (and later NRCS) completed wetland determinations using information such as soil surveys and hydric soil lists, U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory maps, USDA aerial imagery, and site visits. According to the regulations, producers could appeal these determinations. However, Congress provided little direction in the 1985 Farm Bill as to how wetlands were to be identified other than the definitions for ‘‘wetland’’, ‘‘converted wetland’’, ‘‘hydric soil’’, and ‘‘hydrophytic vegetation.’’ The Secretary of Agriculture (Secretary) was required to develop lists of criteria for the identification of hydric soils and hydrophytic vegetation and was mandated to consult with the Secretary of the Interior when implementing the provisions in the 1985 Farm Bill.

B. 1990 Farm Bill—Introduction of Certification

The 1990 Farm Bill (Pub. L. 101–624, 104 Stat. 3573) directed the Secretary to delineate wetlands on wetland delineation maps for the first time and introduced the concept of certification, stating that:

> Upon providing notice to affected owners or operators, the Secretary shall certify each such map as sufficient for the purpose of making determinations of ineligibility for program benefits under section 1221 and shall, in accordance with section 1243, provide an opportunity to appeal such delineations to the Secretary prior to making such certification final.

The conference report accompanying the 1990 Farm Bill offered background on certification stating, ‘‘The Managers agree that the certification process is to provide farmers with certainty as to which of their lands are to be considered wetlands for purposes of Swampbuster.’’ (136 Cong. Rec. 32238 (1990)). The report also provides a description of the ‘‘current USDA wetland delineation process’’ and notes that ‘‘this process is adequate for certification of any new maps delineated after the date of enactment of this Act.’’

USDA issued regulations finalizing changes to the HELC and WC provisions in 7 CFR part 12, as required by the 1990 Farm Bill, in a final rule published at 56 FR 18630–18641 (Apr. 23, 1991). Through these regulations, USDA added this instruction to 7 CFR part 12.30(c): ‘‘The wetland determination and wetland delineation shall be certified as final by the SCS official 45 days after providing the [affected] person notice or, if appeal is filed with SCS, after a final appeal decision is made by SCS.’’ (56 FR 18640).

In May 1991, SCS revised part 512 of the National Food Security Act Manual (NFSAM) to add a ‘‘Procedure for certification’’ consistent with direction provided in the 1990 Farm Bill. The policy required SCS to ‘‘certify that the wetland delineations on each tract are sufficient to make determinations of eligibility for USDA program benefits’’ and to ‘‘Notify the [affected] person that a wetland determination has been made, and that the determination has been certified as correct and sufficient for determining eligibility for USDA programs.’’

To help implement this policy, SCS revised form SCS–CPA–026 (‘‘Highly Erodible Land and Wetland Conservation Determination’’), and beginning in June 1991, field offices used the updated form—which included the certification statement ‘‘I certify that the above determination is correct and adequate for use in determining eligibility for USDA program benefits.’’ The reverse side of the form provided appeal rights.

As described above, the regulations and policy resulting from the 1990 Farm Bill provided for wetland determination certification. Congress clearly stated that ‘‘the certification process is to provide farmers with certainty as to which of their lands are to be considered wetlands for purposes of Swampbuster’’ (136 Cong. Rec. 32238 (1990)). All affected persons who received certified determinations completed after the 1990 Farm Bill’s enactment date were provided with a certification statement by a USDA official and information notifying them of their appeal rights; therefore, these determinations are certified as a matter of law.

C. 1994 Memorandum of Agreement—An Effort To Provide One Answer

Following an August 1993 recommendation from the White House Office on Environmental Policy, USDA entered into a memorandum of agreement (MOA) with the Environmental Protection Agency (EPA), the Department of the Interior, and the Department of the Army. The purpose of the MOA (which was signed in January 1994) was to minimize duplication and inconsistencies when implementing the WC provisions and Section 404 of the Clean Water Act (CWA), which had its own requirements that could affect agricultural wetlands. The MOA outlined the agreed upon ‘‘manner in which wetland delineations and certain other determinations of waters of the United States made by the [USDA] under the [WC provisions] will be relied upon for purposes of CWA Section 404’’ (59 FR 2921). In effect, the MOA attempted to provide a single answer regarding the location of wetlands that could sufficiently implement both Section 404 of the CWA and the WC provisions.

The 1994 MOA had a significant impact on future NRCS policies and procedures related to wetland determination certification. Its implementation formalized a process, described in the paragraphs below, in which prior determinations were evaluated to determine if they were acceptable for implementation of both the CWA and WC provisions. As a result, a previously issued certified wetland determination could be considered insufficient and replaced with a new certified determination, without regard to whether it had already been issued as certified (because the determination was conducted after passage of the 1990 Farm Bill). Some aspects of the 1994 MOA were subsequently rendered obsolete by the 1996 Farm Bill, and it was fully nullified in 2005; however, its effect on wetland determination certification was long-lasting, particularly the concept of evaluating prior certifications for quality.

To understand the 1994 MOA’s effect on wetland determination certification, it is necessary to differentiate between determinations made before and after its effective date of January 6, 1994. For determinations made *after* that date, the MOA established which agency had the lead for wetland identification and enforcement on agricultural and non-agricultural lands. It also required SCS to work cooperatively with the Army Corps of Engineers (USACE), EPA, and USFWS to develop or update wetland mapping conventions. Determinations completed by SCS on agricultural lands *after* the effective date were certified for WC purposes and accepted by EPA and

USACE for determining CWA Section 404 wetland jurisdiction.

For determinations made *before* the effective date, the MOA did not provide specific direction on evaluating prior SCS wetland delineations. Instead, SCS issued guidance in a March 1994 NFSAM update (180–V, Third Edition (March 1994)), which stated that the 1990 Farm Bill:

> . . . amended the wetland provisions of [the 1985 Farm Bill] to include a certification requirement for all wetland determinations. Since wetland determinations made before the effective date of [the 1990 Farm Bill] did not require certification, a post certification process must be used.

This ''post-certification process'' required that determinations completed before November 28, 1990, be ''post-certified'' if the determination was appealed. If the determination was not appealed, it could be considered certified only if there was a satisfactory assessment of wetland inventories (maps of potential wetlands), mapping conventions, and a sample of determinations in each field office. In effect, this required an assessment of the reference maps and procedures used to identify wetlands, as well as a sample of previously conducted determinations completed under the jurisdiction of each field office, conducted under the direction of the SCS or NRCS State Conservationist. For certifications completed after the 1990 Farm Bill but before the implementation of the 1994 MOA, the evaluation process was the same except that it added a requirement that the affected persons had to have been notified of the determination and provided appeal rights, and it omitted the requirement to assess a sample of determinations.

To summarize the policy generated by the 1994 MOA that applied retroactively to determinations issued between November 28, 1990, and January 6, 1994, determinations were considered certified if they were: (1) appealed; or (2) conducted according to adequate wetland inventories and mapping conventions and the affected person had to have been notified of the determination and provided appeal rights. Beginning on January 6, 1994 (the effective date of the 1994 MOA), all new determinations had to be completed according to jointly approved mapping conventions and were certified for USDA purposes and accepted for CWA purposes.

Because of the 1994 MOA, NRCS was at times certifying new determinations that replaced previously issued determinations, regardless of whether the previous determinations were issued before or after passage of the 1990 Farm Bill. More importantly, the 1994 MOA introduced a process that replaced previously certified determinations based on whether they were acceptable for Section 404 of the CWA.

D. 1995 Moratorium on Wetland Determinations—Congressional Concerns

Implementation of the 1994 MOA generated significant concern in the agricultural community, particularly regarding SCS (NRCS) unilaterally changing wetland delineations. In response to these concerns, Senator Grassley introduced legislation on January 25, 1995, intending to halt NRCS wetland determinations until the new farm bill was enacted. In introductory remarks, Senator Grassley described the situation in Iowa (where new wetland determinations were being issued pursuant to the 1994 MOA), contending that ''farmers can never be certain if their conduct is allowed under the current regulatory scheme'' (141 Cong. Rec. S1703 (1995)).

During Daniel Glickman's nomination hearing before Congress, he was encouraged to place a moratorium on new wetland determinations and was asked whether it would be prudent to halt the current recertification of new wetland delineations until the new farm bill was enacted. Daniel Glickman was sworn in as Secretary of Agriculture on April 5, 1995. The next day, and in response to these congressional concerns, Secretary Glickman issued a moratorium on wetland determinations, absent a specific request from the farmer. On April 13, 1995, NRCS issued direction to State Conservationists that all previously provided determinations were ''frozen'' and would only be replaced by new certified determinations when requested by the person affected by the existing determination. This guidance provided a form that required a signature from the affected person who requested the new wetland determination.

E. 1996 Farm Bill—Further Statutory Clarification

The Federal Agriculture Improvement and Reform Act of 1996 (''the 1996 Farm Bill''; Pub. L. 104–127), signed into law on April 4, 1996, addressed ongoing concerns regarding wetland determinations by stating that a final certification remains ''valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification . . .'' (Pub. L. 104–127, 110 Stat. 988). Consistent with this change, the 1996 Farm Bill also removed the 1990 Farm Bill requirement for the periodic review and update of wetland delineations (which was never implemented) and added that a certified wetland delineation was not ''subject to a subsequent wetland certification or delineation by the Secretary, unless requested by the [affected] person . . .'' (Pub. L. 104–127, 110 Stat. 988).

On September 6, 1996, USDA issued regulations that implemented the 1996 Farm Bill changes regarding wetland certification (61 FR 47019–47038). According to section 12.30(c)(1) of these regulations, ''Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for program benefits under § 12.4 of this part . . .'' and it goes on to state, ''All wetland determinations made after July 3, 1996, will be done on a tract basis and will be considered certified wetland determinations.'' Section 12.30(c)(6) states that as long as the affected person is in compliance with the wetland conservation provisions and the area is used for agricultural purposes, ''a certification made under this section will remain valid and in effect until such time as the person affected by the certification requests review of the certification by NRCS.''

Because the September 1996 regulations specifically addressed only determinations made after July 3, 1996, there has been confusion about the certification status of determinations made prior to that date. However, the preamble to the September 1996 rule stated that if NRCS certified a wetland determination prior to July 3, 1996, the certification would be valid (61 FR 47025), even though the regulatory text itself was silent on pre-1996 determinations. The 1996 regulations referenced the procedures for certification in the 1994 MOA, acknowledging that the signatory agencies recognized the importance of providing certainty to the agricultural community regarding the status of wetland determinations that had *not* been certified, and stating that the agencies would coordinate to develop policies and procedures for evaluating the accuracy of existing *non-certified* determinations (61 FR 47022).

However, NRCS policy issued in November 1996 did not fully reflect the principles communicated in the 1996 Farm Bill and the September 1996 USDA regulations. Differing from the 1994 policy initially implementing the 1994 MOA, the November 1996 policy did not consider the statutory date of November 28, 1990. Instead, it based certification status on whether the existing determination met the criteria of the 1994 MOA (and other subjective criteria). If the prior determination did not meet the MOA's criteria, it was subject to replacement with a new determination. The 1996 policy required that the affected person be notified of the proposed changes to their determination and that NRCS ''encourage the [affected] person to seek a certified wetland determination'' (NFSAM, 180–V, Third Edition, Amend. 2, § 519.13(d) (Nov. 1996)). To document a request under the 1996 policy, NRCS formally issued a new form, the ''Request for Certified Wetland Determination/Delineation'' (NRCS–CPA–38).

The November 1996 policy did not explicitly state that if NRCS had certified a wetland determination prior to July 3, 1996, the certification remained valid. However, the November 1996 policy did support the certification status of determinations conducted between November 28, 1990, and July 3, 1996, if the person affected by the determination did *not* submit a NRCS–CPA–38 requesting that the existing certified determination be changed.

F. Post-1996 Farm Bill Policy

The statement that ''all wetland determinations completed after July 3, 1996 are considered certified'' first appeared in an August 1998 NRCS policy update (NFSAM, 180–V, Third Edition, Amend. 3, § 514.11(a) (Aug. 1998)). The 1998 policy continued to base pre-1996 certification status on the criteria in the 1994 MOA and continued to require a signed NRCS–CPA–38 to initiate a new certified wetland determination. Therefore, the practice in the 1998 policy was a continuation of the practice established in the September 1996 regulations and subsequent November 1996 NRCS policy, and all determinations conducted after November 28, 1990, were considered certified and not subject to replacement without a request from the person affected by the determination.

In February 2005, USDA and USACE withdrew from the 1994 MOA, citing (among other things) privacy concerns and the requirement for interagency coordination when revising wetland determinations. NRCS revised its policy in August 2006, eliminating the requirement that a producer sign the NRCS–CPA–38 prior to NRCS conducting a certified wetland determination; however, a person could still request a wetland determination by completing AD–1026 or NRCS–CPA–38. Regarding post-1996 determinations, the 2006 policy provided slightly revised wording, stating that ''[a]ll wetland determinations and delineations completed after July 3, 1996, are considered as being certified,'' but the policy continued to base pre-1996 certification status on criteria established in the 1994 MOA (NFSAM, 180–V, Third Edition, Circular No. 1, § 514.11(a) (Aug. 2006)). However, at this time the policy regarding how previously completed determinations were provided to affected persons was changed. The policy established in 1994 said that if persons affected by the determination had previously appealed the determination or chose not to exercise their appeal rights, then they did *not* have a right to further appeal a determination. The 2006 policy created a venue for affected persons to appeal determinations, but only when the affected persons requested change to a determination issued after November 28, 1990. The 2006 policy stated that the affected person does not have appeal rights ''unless he/she requests that the decision be reviewed and is consequently changed'' (NFSAM, 180–V, Third Edition, Circular No. 1, § 514.51(d) (Aug. 2006)). If the determination was changed, then the affected person would have the right to appeal. The 2006 policy further bolstered the practice established in the November 1996 policy in which all determinations conducted after November 28, 1990, were considered certified and were not subject to replacement unless an affected person requested a review of the determination.

In January 2008, NRCS modified its certification policy (NFSAM, 180–V, Fourth Edition, Amend. 4, § 514.1(A)(1) (Jan. 2008)) to reflect 7 CFR 12.30(c)(1) and to read as follows:

> Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for USDA program benefits. All wetland determinations made after July 3, 1996, are considered certified determinations.

The 2008 policy removed any reference to evaluating prior determinations to meet established criteria stating that ''All certified wetland determinations, conditions, and exemptions remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification'' consistent with 16 U.S.C. 3822 (a)(4). For the first time, NRCS policy clearly communicated the 1996 statutory and regulatory provisions regarding duration of certification (NFSAM, 180–V, Fourth Edition, Amend. 4, § 514.1(C) (Jan. 2008)).

The fifth edition of the NFSAM was issued in January 2010 and addressed determinations made before July 3, 1996, by adding the following text to the 2008 policy statement on certification: ''Determinations made prior to July 3, 1996, are considered certified if they met the procedural (appeal rights) and quality mandates as provided in 7 CFR part 12'' (NFSAM, 180–V, Fifth Edition, § 514.1(A)(1) (Jan. 2010)). However, no further guidance was provided on how determinations met the procedural and quality mandates.

In response to a recommendation in a USDA Office of Inspector General (OIG) audit report, NRCS issued policy in January 2017 that was later incorporated into December 2018 and August 2020 rules. This policy confirmed that determinations issued between 1990 and 1996 were certified if: (1) the person was notified of the certification and provided appeal rights; and (2) the map document was of sufficient quality to determine the location of designated wetlands in relation to other ground features.

IV. Summary of This Rulemaking

This interim rule establishes that all wetland determinations issued after November 28, 1990, are certified if the person was notified of the certification and provided appeal rights when the determination was issued.

A. What This Rule Means

Farmers, ranchers, forest landowners, and land managers must comply with the wetland conservation provisions of the 1985 Farm Bill to maintain their eligibility for USDA program benefits. NRCS helps producers maintain their eligibility by providing certified wetland determinations. When determinations indicate that wetlands are present, producers have the option to tailor their activities to avoid wetland conversion so that they can continue to receive USDA program benefits, or they may receive a statutory exemption (such as mitigation for wetland conversion impacts) to maintain eligibility for USDA programs. If the wetland determination does not indicate wetlands are present, the producer can proceed with their activities without risk to their USDA program eligibility.

As discussed in this interim rule, there has been confusion on the status of wetland determinations issued between November 28, 1990, and July 3, 1996; however, the statutory basis for the certification status of these determinations is clear. If a determination is certified, a producer can immediately act based on the certification and does not have to undergo the administrative and technical wetland determination process of obtaining a new determination. If a producer disagrees with a certified wetland determination, the producer can ask for the existing certification to be reviewed. In addition, according to the current regulation in 7 CFR part 12.30(c)(6), which is unaffected by this rulemaking, a producer may request review of a certified wetland determination if a natural event has altered the topography or hydrology of the land, or if NRCS agrees that an error exists.

This interim rule provides certainty to producers who have a certified determination issued any time between November 28, 1990, and July 3, 1996. By clarifying the regulation to ensure conformance with the statutory provisions, administrative burden is reduced for both the producer and NRCS by avoiding the additional work created by new wetland determinations that would unnecessarily replace issued determinations that are legally certified. Current regulations provide the opportunity for a producer to request review of a certification if the producer disagrees with their existing certified determination.

B. Change in Policy Reflected in This Rule

Prior to NRCS's January 2017 guidance, its policy on wetland determination certification was contained in the 2010 NFSAM, 180–V, Fifth Edition, § 514.1(A)(1) (Jan. 2010):

> Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for USDA program benefits. All wetland determinations made after July 3, 1996, are considered certified determinations (7 CFR 12.30(c)(1)). Determinations made prior to July 3, 1996, are considered certified if they met the procedural (appeal rights) and quality mandates as provided in 7 CFR 12.

Implementation of this policy was inconsistent, and consequently, treatment of pre-1996 wetland determinations was inconsistent, which was captured in the findings of the previously mentioned 2017 OIG report. OIG observed that NRCS was rejecting most pre-1996 determinations as certified, and then later began accepting them as certified beginning in 2013.

This inconsistent treatment of pre-1996 determinations can be attributed to a lack of definitive criteria in the 2010 policy provided above. When considering the status of a pre-1996 determination, NRCS had to determine if it ''met the procedural (appeal rights) and quality mandates as provided in 7 CFR 12'' (NFSAM,180–V, Fifth Edition, § 514.1(A)(1) (Jan. 2010)). The procedural requirement was clearly met if there was evidence that appeal rights were provided with the determination. However, applying the quality mandate was more difficult. With no criteria provided in the policy, staff had to consider the ''quality mandates as provided in 7 CFR 12'' for additional criteria. Referring to the CFR, staff would only discover that ''Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for program benefits'' (61 FR 47036). Consequently, to evaluate a pre-1996 determination according to the quality mandate, staff needed to decide if the certification was ''of sufficient quality to make a determination of ineligibility for program benefits'' without any additional guidance on what qualified as ''sufficient quality.''

This interim rule does not constitute a change in the certification status of pre-1996 determinations as established in the regulatory preamble to the 1996 text, which stated that ''If NRCS certified a wetland determination prior to July 3, 1996, the certification will remain valid'' (61 FR 47025). However, this interim rule changes how these determinations will be treated. Previously, discretion was left to NRCS to decide if a determination conducted between November 28, 1990, and July 3, 1996, was certified; however, this rule confirms that those determinations are certified if the person affected by the determination was notified of the certification and provided appeal rights.

This interim rule reflects the statutory language of the 1990 Farm Bill which required that a determination be certified as sufficient for the purpose of making a determination of ineligibility for program benefits, at the time it was issued, and the statutory language of the 1996 Farm Bill which requires that such determinations remain valid as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review. The change to adhere to the statutory text provides certainty to producers so they can rely on their existing certified determination while continuing to manage their agricultural operations. Clarity is also provided on how to implement these statutory provisions, removing the prior subjectivity left in interpreting the ''quality'' mandate.

C. Justification for the Interim Rule

The certification status of determinations issued after November 28, 1990, is based on legislative and regulatory history:

- Regulations and policy were put in place following the 1990 Farm Bill to certify determinations, and Congress intended the certification process to provide farmers with certainty about whether their lands were considered wetlands;
- Congress raised concerns regarding the constant replacing of previous determinations under the 1994 MOA, as changing determinations undermined the reliance of producers on previous certified determinations; and
- The 1996 Farm Bill addressed these concerns by clarifying that a final certification remains ''valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary.'' (Pub. L. 104–127, 110 Stat. 988).

In the preamble to the regulations implementing the 1996 Farm Bill, USDA explained that a certified wetland determination made prior to July 3, 1996, remained valid.

Despite the preamble's clarity, some confusion remained because the regulation itself only addressed determinations conducted after July 3, 1996. In clarifying the status of determinations made prior to July 3, 1996, NRCS is adhering to the statutory direction provided by Congress while taking into consideration the reliance interest of producers by confirming the status of their wetland determinations. NRCS has no independent authority to question prior certified wetland determinations of land in agricultural use. Only a person affected by the prior determination may request a review of their determination.

V. Regulatory Certifications

A. Executive Orders 12866, 13563, and 14192

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192, ''Unleashing Prosperity Through Deregulation,'' announced the Administration policy to significantly reduce the private expenditures required to comply with Federal regulations to secure America's economic prosperity and national security and the highest possible quality of life for each citizen and to alleviate unnecessary regulatory burdens placed on the American people. In line with the Executive Order requirements, the Agency chose this regulatory approach, which provides clarity with respect to the certification status of wetland determinations issued between November 28, 1990, and July 3, 1996, to minimize burden on American producers. This rule is not an Executive Order 14192 regulatory action because it does not impose any more than de minimis regulatory costs.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

C. Environmental Review

As previously mentioned, the 1996 Farm Bill clarified that a final certification remains ''valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary.'' (16 U.S.C. 3822(a)(4)). Because this rule implements that clear congressional direction on the status and treatment of previously conducted and issued wetland determinations, it is not necessary to take any action other than what is set forth in this rule to confirm the certification of the wetland determinations issued as certified after November 28, 1990. According to USDA regulations implementing the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), NEPA does not apply in circumstances where Congress has prescribed, by statute, decisional criteria with sufficient completeness and precision such that a Federal agency retains no residual discretion to alter its action based on the consideration of environmental factors (7 CFR part 1b.2(e)(4)). Similarly, the Endangered Species Act applies only to actions in which the agency has discretionary Federal involvement or control (50 CFR 402.03). Therefore, USDA will not prepare an environmental assessment or environmental impact statement for this action, nor will it undergo consultation under Section 7 of the Endangered Species Act.

D. Executive Order 13175

This rule has been reviewed in accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation at this time. If a Tribe requests consultation in the future, NRCS's Federal Preservation Officer will work with the Office of Tribal Relations, as needed, to ensure meaningful consultation is provided.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

F. Paperwork Reduction Act, Congressional Review Act, and Effective Date

Section 1246 of the Food Security Act of 1985 (16 U.S.C. 3846) provides that regulations issued under Title XII of such Act, including those at 7 CFR part 12, are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and are to be published as interim rules that are effective upon publication with an opportunity for notice and comment. The section also requires the Secretary to use the authority at 5 U.S.C. 808 regarding the effective date of the rule for purposes of the Congressional Review Act (CRA). Pursuant to 5 U.S.C. 808(2), the Secretary has determined that there is good cause to waive the 60-day delayed effective date otherwise required by the CRA because the rule implements a statutory mandate that the regulations be effective immediately upon publication. Delaying effectiveness would leave producers without clarity on certification status, undermining the reliance interests of agricultural producers and delaying critical program administration. Making this rule effective immediately is therefore necessary, reasonable, and not contrary to the public interest.

G. E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

This rule has a potential impact on participants for many programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture.

List of Subjects in 7 CFR Part 12

Administrative practice and procedure, Coastal zone, Crop insurance, Flood plains, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

For the reasons stated in the preamble, USDA amends 7 CFR part 12 as follows:

PART 12—HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION

■ 1. The authority citation for part 12 continues to read as follows:

Authority: 16 U.S.C. 3801, 3811–12, 3812a, 3813–3814, and 3821–3824.

Subpart C—Wetland Conservation

■ 2. Amend § 12.30 by revising paragraph (c)(1) to read as follows:

§ 12.30 NRCS responsibilities regarding wetlands.

* * * * *

(c) *Certification of wetland determinations and wetland delineations.* (1) Certification of a wetland determination means that the wetland determination is sufficient for the purpose of making a determination of ineligibility for program benefits under § 12.4. NRCS may certify a wetland determination without making a field investigation. NRCS must notify the person affected by the certification and provide an opportunity to appeal the determination prior to the certification becoming final. All wetland determinations issued after November 28, 1990, are considered certified if the person affected by the certification was notified of the certification and provided information on the right to appeal.

* * * * *

Stephen Vaden,

Deputy Secretary, United States Department of Agriculture.

[FR Doc. 2026–15284 Filed 7–28–26; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–3874; Project Identifier MCAI–2025–01426–T; Amendment 39–23425; AD 2026–15–13]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2025–16–12, which applied to all Airbus SAS Model A319–151N, –153N, –171N, and –173N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, –272NX, –253NY, and –271NY airplanes. AD 2025–16–12 required revising the existing airplane flight manual (AFM) and the existing FAA-approved minimum equipment list (MEL), allowed replacement of each affected high-pressure bleed valve (HPV) as an optional terminating action, and prohibited the installation of affected parts. Since the FAA issued AD 2025–16–12, the FAA has determined that repetitive replacement of the HPV clips is necessary to address the unsafe condition. This AD continues to require the actions in AD 2025–16–12 and requires repetitive replacement of each affected HPV clip. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 2, 2026.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 29, 2025 (90 FR 39102, August 14, 2025; corrected August 22, 2025 (90 FR 40964)).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–3874; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2026–3874.

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3539; email: *Frank.Carreras@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2025–16–12, Amendment 39–23110 (90 FR 39102, August 14, 2025; corrected August 22, 2025 (90 FR 40964)) (AD 2025–16–12). AD 2025–16–12 applied to all Airbus SAS Model A319–151N, –153N, –171N, and –173N airplanes; Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, –272NX, –253NY, and –271NY airplanes. AD 2025–16–12 required revising the existing AFM and the existing FAA-approved MEL, allowed replacement of each affected HPV as an optional terminating action, and prohibited the installation of affected parts. The FAA issued AD 2025–16–12 to address high pressure and temperatures in the duct downstream from the pressure regulating valve, which could lead to duct burst and result in damage to several systems or the airframe and consequent loss of control of the airplane.

The NPRM was published in the **Federal Register** on April 29, 2026 (91 FR 23025). The NPRM was prompted by EASA AD 2025–0096, dated April 28, 2025 (EASA AD 2025–0096) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that occurrences were reported of HPV butterfly seal retention clip rupture, which causes the butterfly seals to no longer be retained in the butterfly groove. This may increase internal leakage, triggering an alert that the HPV has failed in the open condition. It may also release foreign object debris, which could damage the systems (*e.g.,* engine bleed air system and pneumatic system) downstream from the HPV on the engine pylon and wing.

In the NPRM, the FAA proposed to continue to require the actions in AD 2025–16–12 and require repetitive replacement of each affected HPV clip, as specified in EASA AD 2025–0096. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–3874.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

Conclusion

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered any comments received, and determined