



US Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject **INFORMATION:** Memorandum of Agreement
(MOA) on Wetland Delineation

Date **May 5, 1994**

From Director, Office of Environment
and Planning

Reply to
Attn of **HEP-42**

To Regional Federal Highway Administrators
Federal Lands Highway Program Administrator

Attached are (1) a copy of the recently signed MOA signed by the Soil Conservation Service (SCS), Corps of Engineers (COE), and Environmental Protection Agency (EPA) concerning delineation of wetlands in agricultural areas and on farm property; and (2) answers to questions about anticipated problems which might arise during the initial implementation of the MOA procedures. These questions and answers were developed jointly by the EPA, SCS, and COE. They should be passed on to divisions for transmittal to State highway agency sections responsible for wetland delineation and Section 404 permitting.

Further guidance on the implementation of the MOA will be available after the upcoming National MOA Information Meeting, scheduled for May 16-20, at the Radisson Hotel, St. Paul, Minnesota. This workshop is a Federal interagency working meeting on the implementation of the delineation MOA nationwide with SCS as the lead agency.

Problems with implementing the MOA procedures relative to highway projects should be referred to Paul Garrett at (202) 366-2067, or Fred Bank at (202) 366-5004, of my staff.

Kevin E. Heanue

2 Attachments

FHWA:HEP-42:PGarrett:nb:62067:4/20/94
Revised:PGarrett:nb:62067:5/4/94
Disk:Paul's, File name:MOA_WETD.MEM.
cc: HPD-1, HEP-1, HEP-40, HEP-41,
HEP-30, HEP-31, HEP-32,
HEP-30(GCleckly), Dave Clawson (AASHTO)
HEP-42/Files(2), HEP-42(PGarrett)



QUESTIONS and ANSWERS
on the
AGRICULTURE MOA

DEFINITION OF AGRICULTURAL LANDS

1.Q. Why doesn't the MOA's definition of agricultural land include rangeland and forestland?

1.A. The intent of the MOA is to minimize redundancy and duplication between FSA and CWA wetland delineation activities. Because rangeland and forestland wetland delineations have typically been conducted by the Corps, without overlapping delineations conducted by SCS, the signatory agencies saw no need to include rangeland or forestland in the definition. The rangeland and forestland exclusion creates a practical, identifiable distinction that can be used to identify areas where the different delineation manuals will be used and where the agencies will continue their traditional lead roles for wetland delineation.

The MOA signatory agencies recognized SCS' traditional role in delineating wetlands in consultation with FWS on intensively used and managed agricultural lands for Swampbuster. Refer to Question 22 for more information regarding the role of FWS. SCS personnel are trained and experienced in making these predominantly off-site delineations on agricultural lands using the National Food Security Act Manual (NFSAM) procedures. A significant increase in resources would be required if the definition of agricultural lands was expanded to include rangeland and forestland. It was determined, therefore, that SCS would maintain its traditional role in identifying wetlands on intensively used and managed lands in consultation with FWS, and have the Corps and EPA maintain their traditional roles on other less-intensively used lands, such as rangeland and forestland, for the purposes of Section 404 of the CWA.

In addition, the field staff need a straightforward means of determining the areas where their agency has the lead for determining wetlands jurisdiction under the MOA. Rangeland and forestland typically are predominated by natural vegetation that can be relied upon as an indicator of whether an area has hydrophytic vegetation; as such, the 1987 Manual must be used to determine jurisdiction. Conversely, cropland and other intensively used agricultural lands typically do not support a predominance of natural vegetation, therefore providing no reliable indicator of whether an area has hydrophytic vegetation. As the procedures for delineating wetlands under these two

conditions are distinct (i.e., the 1987 Manual and the FSA Manual, respectively), field staff must be trained and experienced in applying the appropriate techniques.

2.Q. Do tree farms that have the natural vegetation replaced by planted trees fit within the agricultural land definition?

2.A. No. While tree farms typically replace native plant communities with selected tree species, thus establishing atypical plant communities, on-site delineation procedures contained in the 87 Manual are appropriate for the delineation of such wetlands. The off-site procedures used on agricultural lands were not developed for delineating wetlands in heavily managed timber stands, particularly since mapping conventions generally are not sensitive enough to detect differences between wetlands and non-wetlands in timber production areas. Such sensitivity, required for accurate delineations, is generally provided through on-site techniques, which are described in the 1987 Manual.

3.Q. Is there a time-frame associated with the term "intensively-used"?

3.A. No, the term is independent of the time or duration of the land management or use. The term "intensively used" refers to the degree of management or use of lands such that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation.

4.Q. For the purposes of differentiating between agricultural land and non-agricultural land, are blueberries a wetland crop?

4.A. Blueberries, when grown or harvested under natural conditions and in the absence of intensive land management, are not considered a wetland crop, but rather natural vegetation. When blueberries are grown under intensively managed conditions, such as an orchard, such lands may be considered agricultural lands. If the individual owner or manager is a USDA program participant, as defined in the MOA, and blueberries are part of a larger farm operation, then SCS, in coordination with the Corps, would have the lead for delineating wetlands on the land, including the blueberry area.

5.Q. If land is set aside from crop production under a USDA set-aside program, and wetland conditions (including wetland vegetation) return, will the land be considered agricultural land or non-agricultural land for the purposes of the MOA?

5.A. It should be considered agricultural land, unless it has been abandoned, as defined by the NFSAM. Cropland set

aside from crop production under a USDA set-aside program will be considered agricultural land for the purposes of the MOA if it was agricultural land when it entered the set-aside status.

6.Q. Are lands intensively used and managed for growing turf and/or sod considered agricultural lands under the MOA?

6.A. Yes, to the extent that such areas typically are intensively used and managed such that the vegetation cannot be relied upon to indicate whether or not the area would support hydrophytic vegetation.

7.Q. Are there any size limitations associated with "narrow bands" and "small pockets" of non-agricultural lands interspersed among agricultural lands?

7.A. No, the MOA provides the flexibility for the agencies to determine the extent of these areas based on agreements reached between the agencies in each State. Nevertheless, it is the intent of the signatory agencies to limit these areas to truly narrow bands and small pockets.

ALLOCATION OF RESPONSIBILITY

8.Q. Whom do landowners contact if they are seeking a wetland delineation on non-agricultural land for purposes of Section 404?

8.A. The Corps unless the landowner is a USDA program participant. SCS will make the delineation in consultation with FWS and in coordination with the Corps or EPA if the person is a USDA program participant.

9.Q. Who are USDA program participants?

9.A. USDA program participants are those individual landowners or operators who are eligible to receive USDA program benefits covered under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (FACTA). Questions regarding an individual's eligibility should be directed to the appropriate local office of the SCS.

10.Q. Does the MOA supersede or rescind agreements entered into previously by any of the signatory agencies, such as local agreements between EPA and FWS regarding Section 404 enforcement or the 1984 Wetlands Technical Assistance MOU between SCS and Farmers Home Administration?

10.A. No. Other than giving SCS the lead for wetland delineation on agricultural lands for the purposes of

Swampbuster and Section 404, the MOA does not affect previous policy, procedures or agreements established between any of the signatory agencies.

11.Q: If a non-agricultural activity is proposed that would cross agricultural and non-agricultural land, should the project proponent go to the SCS or the Corps for a wetland delineation?

11.A: If a single linear project, such as a utility corridor or highway is proposed that would cross both agricultural and non-agricultural lands, the Corps would have the lead for the wetland delineation for the project. The Corps would consult with SCS and rely on previous wetland delineations made by SCS in accordance with the MOA.

12.Q. How will SCS delineate "other waters" for Section 404 purposes?

12.A. Delineations of "other waters" that are regulated pursuant to Section 404 of the CWA, may be made by SCS only after the interagency oversight team, convened pursuant to Section V.B.2. of the MOA, has agreed on appropriate local procedures and guidance for the delineation of "other waters" by SCS. In many instances, properties on which SCS is identifying wetlands also contain other waters of the United States, such as rivers and lakes. These waters are not wetlands, and may not be identified by SCS mapping conventions. These waters, while not regulated by FSA, are subject to Section 404 jurisdiction. Thus, in order to streamline the federal process of identifying all waters that may be subject to regulation, the MOA provides for the delineation of "other waters" by SCS in coordination with the Corps or EPA.

13.Q. Has the MOA made SCS responsible for implementing Section 404 on all agricultural lands?

13.A. No, the MOA only allocates the responsibility for the delineation of wetlands on agricultural lands to SCS, in consultation with FWS. The Corps and EPA will continue to regulate activities that involve the discharge of dredged or fill material into waters of the U.S., including wetlands, pursuant to Section 404 of the Clean Water Act.

14.Q. What role will SCS have in Clean Water Act enforcement?

14.A. If within the course of administering their responsibilities, SCS personnel observe activities that may require Clean Water Act authorization, they will advise the local Corps District. Any ensuing CWA enforcement will be handled by the Corps or EPA consistent with the Army and EPA Enforcement MOA dated January 19, 1989.

In pursuing enforcement activities, the MOA signatory agencies will rely upon delineations made by the lead enforcement agency, providing a single Federal delineation for potential violations of Section 404 and/or Swampbuster. To avoid potential conflicts among the agencies regarding a delineation for an enforcement case, Part IV.K. of the MOA includes provisions for appropriately identifying and recognizing the lead enforcement agency.

15.Q. Under what circumstances will SCS accept Corps or EPA delineations for Swampbuster?

15.A. SCS will accept Corps or EPA wetland delineations for purposes of determining Swampbuster jurisdiction in situations where a delineation has already been made by the Corps or EPA in conjunction with a potential CWA violation, and where SCS has not made a final delineation. SCS will use such delineations in the appeals process, if any.

16.Q. Why are delineations made by SCS on non-agricultural lands for program participants done so in coordination with the Corps or EPA?

16.A. At this time, the agencies believe that proper coordination is necessary to ensure that there is consistency between SCS wetland delineations on non-agricultural lands and those made by the Corps and EPA. Typically, delineations on non-agricultural lands require the use of on-site procedures, and SCS is not as experienced as are the Corps and EPA in the application of the 1987 Manual for such purposes. By working with more experienced delineators in the Corps and EPA, SCS field personnel will have the opportunity to become proficient in the use of the 1987 Manual and on-site delineations, thereby ensuring the accuracy and consistency of wetland delineations among the agencies.

17.Q. Why is there a 45-day time frame required for coordination, and how does it relate to existing Section 404 program time frames?

17.A. Section VI.A. defines the term "coordination" as the Corps or EPA review, comment and approval of SCS wetland delineations. The 45-day coordination period begins for the Corps or EPA with the date of receipt of all pertinent information from SCS. This time frame is not related to the Corps or EPA deadlines for processing permit applications or any other aspect of the Section 404 program. The agencies believe the 45-day time frame is a reasonable period of time for the Corps or EPA to review the delineation documentation, conduct an on-site field inspection, if necessary, and to provide SCS with a response as to the acceptability of the delineation for Section 404 purposes.

Furthermore; if a 404 permit application is involved, the Corps will generally respond within 30 days.

18.Q. Why is SCS required to coordinate with the Corps or EPA for wetland delineations on large tracts of non-agricultural lands, but not for wetland delineations on narrow bands and small pockets of non-agricultural lands immediately adjacent to or interspersed among agricultural lands.

18.A. SCS has traditionally delineated small pockets and narrow bands of wetlands that occur in agricultural lands as part of the wetland mapping and inventory effort, particularly since those types of wetland areas have a high potential for conversion to agriculture. In contrast, the delineation of large areas of non-agricultural lands is not amenable to the application of the off-site delineation procedures commonly used by SCS, and instead would typically require the use of on-site techniques as contained in the 1987 Manual. Thus, in order to expand SCS delineation on non-agricultural lands beyond small, incidental inclusions, a significant increase in SCS training and field resources would be required.

19.Q. How does the MOA affect the Section 404 permit process?

19.A. The Section 404 permit process (e.g., permit application, public notice, comment period, etc.) are not affected by the MOA. As discussed in Question 13, the MOA only allocates the responsibility of delineation of wetlands on agricultural lands to SCS, not the implementation of the regulatory program.

20.Q. Will the MOA affect EPA's authority under Section 404(c)?

20.A. No. The MOA has no effect on EPA's authority under Section 404(c).

21.Q. Is SCS responsible for providing landowners with guidance on the Section 404 program?

21.A. Technical assistance provided by SCS to landowners on the Section 404 program shall be limited to general, published material relating to the Section 404 program as provided by the Corps or EPA for this purpose. The Corps and EPA remain the primary point of contact for specific guidance on the regulatory requirements of the Section 404 program. SCS will direct landowners to the Corps or EPA for such information, particularly if the landowner is proposing a project that may involve a discharge of dredged or fill material in a wetland area or other waters of the U.S.

22.Q. Has the role of FWS changed as a result of the MOA?

22.A. No. SCS is required by FSA to consult with FWS on wetland issues involving Swampbuster. With regard to the Section 404 program, FWS has the opportunity to review and comment on all proposed individual permit activities through the public notice process. FWS will continue its USDA technical assistance role during the implementation of Swampbuster, as well as comment on proposed activities under review by the Corps.

23.Q. How does the MOA affect State and local wetlands programs?

23.A. The MOA creates no new, explicit policies binding upon State or local agencies. Nevertheless, certain state and local government agencies currently rely upon wetland delineations conducted for the purposes of Section 404 in the implementation of their own programs, and those agencies should recognize that SCS will now conduct some portion of those delineations as per the provisions of the MOA.

24.Q. In states that have assumed the Section 404 program, what agency will be responsible for making wetland delineations on agricultural land?

24.A. In states that have assumed the Section 404 program, the state will make the delineations on agricultural lands for the purposes of Section 404 only in the waters in which the state has assumed the Section 404 program. In categories of waters for which the State has not assumed the program, the MOA applies.

DELINEATION PROCEDURES

25.Q. What are the differences between the wetland criteria and procedures to be used on agricultural lands (i.e., the National Food Security Act Manual) and those to be used on non-agricultural lands (i.e., the Corps 1987 Manual), and what is the practical implication of those differences?

25.A. The two manuals differ slightly in the wetland hydrology and wetland vegetation criteria. The agencies have worked together to minimize the inconsistencies between the two manuals, and the slight differences between the criteria in the two manuals should have no practical effect. It should be emphasized that under the provisions of Section IV of the MOA, the two manuals will not both be used for any single wetland area. The NFSAM will be used to delineate wetlands on agricultural lands and the 1987 Manual will be used on non-agricultural lands.

Most SCS delineations have been and will continue to be done on cropland using the NFSAM. The critical criteria in the NFSAM for cropped wetlands are in the definitions of prior converted cropland and farmed wetland. To be delineated as farmed wetland and subject to both Swampbuster and CWA Section 404, a cropland area must be inundated by ponding or flooding during the growing season for at least 15 consecutive days or a number of consecutive days greater than or equal to 10% of the growing season in most years, whichever is less. For cropped playas, potholes and pocosins, ponding for at least 7 consecutive days or saturation for at least 14 consecutive days during the growing season in most years is required. The NFSAM recognizes a number of data sources that can be used to determine whether or not these criteria are met, including aerial photographs, climate data, and site-related hydrologic data. The NFSAM procedures for on-site delineations of agricultural lands are similar to those found in the 1987 Manual for natural wetlands, and include hydrology indicators, soils indicators and remotely sensed data.

For non-agricultural lands, the 1987 Manual and supplemental guidance on wetland hydrology criterion requires that an area be ponded, flooded, or saturated to the surface during the growing season in most years for a number of consecutive days equivalent to at least 5% of the growing season. The 1987 Manual includes a number of field indicators for use in determining whether this criterion is met, with an emphasis on on-site observations.

26.Q. What manual will be used for on-site wetland delineations on agricultural lands and non-agricultural lands?

26.A. The 3rd edition of the NFSAM will be used for conducting on-site and off-site delineations of agricultural lands. For on and off-site delineations of non-agricultural lands, the 1987 Manual will be used. As discussed in Question 52, training in the NFSAM and the 1987 Manual is required in order to conduct on-site delineations on agricultural land, and non-agricultural land, respectively.

27.Q. Under the provisions of Paragraph IV. G. of the MOA, a final written delineation made by SCS will be adhered to by all the signatory agencies for five years, unless new information warrants revision of the delineation before the expiration date. What constitutes "new information"?

27.A. The MOA gives two examples of the kind of new information that could warrant revision of a delineation before its expiration date: data on landscape changes caused by a major flood; or a landowner's notification of intent to abandon agricultural use associated with the

return of wetland conditions on a prior converted cropland. The MOA also provides flexibility for consideration of other types of new information that would warrant such revision of a delineation.

28.Q. Does the MOA require the SCS field office personnel to go on-site before wetland delineations are made final and used by the Corps or EPA for Section 404 purposes?

28.A. It is dependent upon the degree to which site-specific delineation precision is required. The use of off-site mapping conventions will likely continue to be the most common method for delineating wetlands on agricultural lands. The wetland mapping conventions, which interpret a combination of remotely sensed data, such as low-altitude aerial photography, soil survey maps, and Fish and Wildlife Service National Wetland Inventory maps, along with the processes in the MOA for interagency review and oversight, are intended to ensure that off-site delineations made by SCS are of the appropriate accuracy for use in the Section 404 program.

If detailed, site-specific information is needed to precisely delineate a wetland boundary, a field delineation by SCS is required. The NFSAM contains specific technical guidance on the application of on-site delineation procedures, and advocates on-site delineations wherever off-site procedures are deemed inadequate to accurately delineate wetlands.

29.Q. Can landowners hire private consultants to make wetland delineations of agricultural land?

29.A. Individuals routinely hire consultants to conduct delineations for Section 404 purposes, and such delineations are submitted to the Corps or EPA for review or approval. Similarly, SCS will review delineations on agricultural lands performed by private consultants on behalf of landowners. These delineations will be carefully reviewed on an individual basis, and a determination will be made by SCS as to the acceptability of the delineations for FSA and Section 404 purposes.

30.Q. If a landowner obtains a wetland delineation from a private consultant, to whom should the landowner submit the delineation for approval?

30.A. The agencies will process the landowner's request for approval of a consultant's delineation in accordance with the MOA in the same manner as a landowner's request for a delineation will be processed. For example, SCS will have the lead for approval of consultant delineations on agricultural lands and SCS's decision will be recognized by the Corps and EPA for the Section 404 program.

31.Q. What is the landowner's responsibility in regard to the expiration of the delineation?

31.A. Upon the expiration of the existing delineation, landowners should contact the agency that conducted the delineation, particularly if they intend to alter the wetland area. At that time, SCS will conduct a new delineation. In addition, SCS intends to update the delineations every five years, and will notify landowners of the new delineations.

MAPPING CONVENTIONS

32.Q. What are wetland mapping conventions?

32.A. Mapping conventions are state-specific procedures to interpret and correlate off-site and remotely sensed data to long-term hydrologic conditions. In areas where the natural vegetation has been removed and where hydrology may have been modified, off-site techniques may be necessary to correctly elucidate long-term wetland conditions. Thus, mapping conventions are generally applicable to repeatedly disturbed areas, such as crop fields. Mapping conventions may vary slightly by state or region in response to regional differences in wetland characteristics and the availability of off-site data. The NFSAM contains guidance for use in developing these conventions.

33.Q. Under the MOA, will new mapping conventions be developed for every state?

33.A. Not necessarily. The MOA requires the concurrence of the signatory agencies on the mapping conventions used to delineate wetlands on agricultural lands in the future. Previously, SCS worked with the FWS and State Technical Committees to develop mapping conventions; the other signatory agencies were rarely involved. In many states, the interagency oversight teams may find that previously developed mapping conventions are acceptable without modification; in other states, mapping conventions may require refinement. By obtaining concurrence of all four signatory agencies on mapping conventions, the agencies ensure that the best off-site procedures will be used for delineating wetlands subject to both Swampbuster and Section 404.

34.Q. What is the relationship between the interagency mapping convention review and approval process and the certification process?

34.A. Once mapping conventions are agreed to by the agencies, an evaluation of the accuracy of delineations conducted by SCS prior to the effective date of the MOA will be conducted by the interagency oversight team as part of the certification process. If, during this review, two of the four signatory agencies agree that SCS wetland delineations in a certain area, or a generic class of wetlands in a particular area, are inaccurate, those delineations will be given high priority for certification.

For those certifications done after the effective date of the MOA that require the use of mapping conventions, the agreed-upon mapping conventions resulting from the interagency review process will be used.

35.Q. What is the process if the agencies cannot agree on mapping conventions within the 120 day time-frame?

35.A. If unresolved issues prevent agreement on the mapping conventions at the state level, and all attempts to reach agreement between the agencies have been exhausted, such unresolved issues will be elevated to the headquarters offices of the signatory agencies for resolution.

DELINEATION PROCESS REVIEW AND OVERSIGHT

36.Q. What will the role of the Corps and EPA be in SCS wetlands delineations on agricultural lands?

36.A. The MOA provides specific opportunities for Corps and EPA involvement in SCS wetland delineations on agricultural lands. This will primarily occur through the interagency concurrence on mapping conventions, the wetland delineation certification process, and the EPA and Corps programmatic review of SCS delineations. These functions are designed to achieve interagency consistency in wetland delineations on a programmatic basis, thereby avoiding the difficulties inherent in case-by case dispute resolution.

37.Q. If the Corps or EPA exercises the option to declare a "special case" in a specific geographic area, what will be the effect on the timeliness with which landowners obtain wetland delineations for the purposes of CWA Section 404?

37.A. If an area is designated a "special case" under the MOA, the SCS cannot make the wetland delineation for Section 404 until final guidance addressing the concerns raised in the special case is issued by the Corps or EPA. During that interim period and within the special case area, the Corps would strive to prioritize the delineation of those sites for which activities regulated pursuant to Section 404 were proposed over the delineations of sites for which no 404

activity was proposed. In addition, as is common practice in the Section 404 program, project proponents could employ the services of a qualified consultant to perform the delineation during the interim period and submit the delineation directly to the Corps for review.

38.Q. For the purposes of the first-year interagency quarterly review of SCS wetland delineations, when will the first year begin?

38.A. A 120 day time frame has been established for the interagency review and concurrence to mapping conventions, which will begin once Part 513 of the NFSAM 3rd edition is issued. The "first year" will begin subsequent to this 120 day period as SCS may then begin making off-site wetland delineations for the purposes of Section 404, using these mapping conventions.

RELIANCE ON PREVIOUS SCS WETLAND DELINEATIONS FOR CWA PURPOSES

39.Q. How will the new priority certification process change SCS's wetland delineation certification process?

39.A. The process by which SCS will conduct and prioritize wetland certifications is established in Part V.C. of the MOA. The certification process remains an important tool by which SCS ensures the accuracy of its wetland delineations, and is required by FSA for all wetland delineations made prior to 11/28/90. Because these delineations, as well as more recent ones, may be relied upon for the purposes of Section 404, it is necessary for their accuracy to be reviewed by an interagency oversight team. The interagency oversight team will determine the technical acceptability of mapping conventions used to make delineations prior to 11/28/90, and the degree of accuracy in which those conventions were applied, to determine where to prioritize certification efforts. This process of prioritization differs only slightly from that mandated by FSA in that the signatory agencies, rather than SCS alone, may identify delineations in need of re-evaluation.

Because of the nature of off-site delineations, SCS has always anticipated that some inaccurate wetland delineations have been made that will require correction through the certification process. While allowing the signatory agencies to jointly identify such errors may increase the number of priority certification areas, the agencies jointly believe that the process will improve the overall validity and reliability of SCS delineations, which in turn benefits the landowner and the wetland resource.

40.Q. When are previous SCS wetland delineations acceptable for Section 404 purposes?

40.A. The MOA established a certification process for those SCS delineations made prior to the effective date of the MOA to determine their use for Section 404. Based on the findings of the certification process, existing SCS wetland delineations on agricultural lands and those small pockets of non-agricultural lands interspersed among agricultural lands may be relied upon for establishing CWA jurisdiction. However, previously made SCS delineations may not apply to Section 404 in certain areas where problems with mapping conventions or the application of mapping conventions have been identified by the interagency oversight team. Specifically, where two of the four signatory agencies agree that SCS wetland delineations in a certain area, or a generic class of wetlands in a particular area, are inaccurate, those delineations will be given high priority for certification by SCS. Until the high priority certification is completed, and the requisite corrective measures are taken, wetland delineations in that area may not be relied upon for Section 404 purposes. In the interim, the Corps will provide delineations in that area for 404 purposes.

41.Q. When will SCS begin making delineations for Section 404 purposes on agricultural lands?

41.A. The MOA provides that only mapping conventions concurred upon by all signatory agencies will be used by SCS for wetland delineations, and establishes the process for mapping convention development, review and approval in Part V.A. of the MOA. In addition, the MOA provides that delineations on agricultural lands must be performed by personnel who are trained in the use of the NFSAM, and delineations on non-agricultural lands must be performed by personnel who are trained in the use of the 1987 Manual. The specific provisions for training are contained in Part V.E. of the MOA and discussed in Question 50.

When the requirements of the MOA relative to these delineation issues are met by SCS, SCS will begin the delineation of wetlands on agricultural lands for the purposes of determining Section 404 jurisdiction.

42.Q. How will the signatory agencies in a state know if the accuracy of previous SCS delineations on agricultural lands are suitable for Section 404 purposes?

42.A. Through the review of mapping conventions, or based on previous experience with SCS delineations, the agencies will be aware of accuracy problems with previous SCS wetland delineations on agricultural lands. In other instances, interagency oversight procedures will be used to check the

accuracy of previous delineations, with an emphasis on field verification. If accuracy problems are found through these oversight procedures, recertification priorities can be adjusted accordingly, and if necessary, Section 404 applicability of previous delineations may be suspended by EPA or the Corps, as appropriate, until recertified.

For example, SCS procedures previously allowed the application of scope and effect drainage calculations for delineation purposes on wetlands that were manipulated through installation of drainage systems in the past, but still exhibit wetland conditions. Because of changes in the 3rd edition of the NFSAM that disallow this practice, maps produced using this practice will most likely need to be revised.

43.Q. What is the process for updating certified wetland maps?

43.A. The 1990 Farm Bill requires that certified SCS wetland maps be periodically updated. SCS will conduct such updates on a five-year cycle using the agreed-upon mapping conventions developed by the interagency oversight team. Updated maps will be subject to interagency review and oversight as detailed in Part V.B. of the MOA. Such updating occurs subsequent to the certification of wetland maps, the process for which is detailed in Part V.C. and discussed in Question 39.

44.Q. Why are SCS delineations on agricultural lands valid for the purposes of FSA and Section 404 for five years, while Corps delineations for 404 purposes are valid for as little as three years?

44.A. By establishing a five-year update cycle for SCS delineations, the MOA is reconciling the current differences between the effective period of Section 404 delineations and FSA delineations, which are three to five years and ten years, respectively. To further close the gap between the two agencies, the Corps intends to reissue Regulatory Guidance Letter 90-6 to provide that Corps districts generally make written delineations valid for 5 years.

45.Q. In cases where SCS delineations in a geographic area are being reevaluated under the high priority certification process, will all landowners in the geographic areas be notified by letter as to the status of their delineations?

45.A. No. Only persons who are USDA program participants will be notified of the high priority certification status of their existing wetland delineation. It is impracticable and unnecessary to identify all non-USDA participants in the area as such persons will not typically be aware of the SCS mapping efforts.

46.Q. Through the certification process, can PC's be changed to FW's, and vice versa?

46.A. Yes. The purpose of the certification process is to identify and correct inaccuracies in original wetland delineations that have relied heavily on off-site procedures. The agencies recognize that large-scale, off-site delineation efforts can result in incorrect wetland delineations, and that some areas designated PC will, upon closer examination, be changed to FW, and vice versa. Furthermore, the procedures in the NFSAM have been revised such that wetland delineations in crop fields will rely more heavily on the exhibition of long-term wetland conditions rather than the scope and effect of existing drainage systems if maintained to maximum efficiency.

47.Q. In many states, SCS has prepared wetland inventory maps, using mapping conventions, that identify "potential wetland areas". Since landowners have not had the opportunity to appeal these wetland inventory maps, these potential wetland areas are not considered final wetland delineations by SCS. How will these wetland inventory maps and the potential wetland areas be treated in the certification process?

47.A. Wetland inventory maps depicting wetlands on agricultural lands will be subject to the same interagency review for accuracy in the certification process as would other previously made SCS wetland delineations.

APPEALS

48.Q. What is the current SCS appeals process?

48.A. The 3rd Edition of the NFSAM will retain the 4-step appeals process currently utilized by SCS. This process includes the reconsideration of wetland delineations at the Field Office level, and subsequent appeals to the Area Conservationist, the State Conservationist, and the Chief of SCS. Appeals at the Area and State level typically involve a field review of the wetland area in question, while the Chief's level is restricted to an administrative review of the appeal record. The Chief's level is the final level of the FSA appeals process.

49.Q. Why does the MOA contain a provision allowing the Corps or EPA to not accept an SCS wetland delineation which resulted from an appeal?

49.A. It is possible for SCS to make an appropriate delineation, consistent with the MOA and acceptable for

Section 404 purposes, which is subsequently overturned as a result of an appeal. At that time, the Corps and EPA may find that the new delineation, which resulted from the appeal, is no longer representative of CWA jurisdiction, and therefore unacceptable for statutory reasons.

TRAINING

50.Q. How will delineation training for all federal agencies be handled?

50.A. Section V.E. of the MOA provides that field staff of all signatory agencies who delineate wetlands on non-agricultural lands must complete interagency wetland delineation training on the 1987 Manual through headquarters approved interagency training courses. Delineations on agricultural lands must be performed by personnel who are trained in the use of the NFSAM.

Due to the great demand by agency field personnel for training, it is anticipated that training courses in the 1987 Manual will be added to those currently available through the Corps training program. These courses will be developed as equivalent, interagency courses in the 1987 Manual and will be taught by interagency instructors. As the development of these additional courses is in preliminary stages, details as to location, cost and timing cannot be provided at this time.

Because the NFSAM procedures for conducting on-site wetland delineations on agricultural lands rely heavily upon the 1987 Manual, SCS field staff conducting any on-site delineations on agricultural lands must also receive the 1987 Manual training prior to conducting such delineations. The NFSAM delineation procedures shall also be taught during the interagency delineation training to ensure all field personnel are trained in the technical procedures for off-site delineations, mapping convention development, etc. SCS is currently working with the other agencies to plan for this and other similar training needed by SCS field staff.

Through this approach, SCS anticipates training a core group of wetland delineation specialists to implement the MOA. The number and location of these specialists will depend primarily on the relative wetland delineation workload for a given state or geographic area. These trained specialists will subsequently serve on interagency oversight teams and wetland mapping teams, as well as conduct on-site delineations. The products of these specialists, such as county wetland maps, may be relied upon by other SCS staff in conducting day-to-day FSA responsibilities.

51.Q. Do SCS, EPA and FWS delineators need to be "certified" through the Corps Wetland delineation Certification Program to delineate wetlands?

51.A. As with the Corps, SCS, EPA and FWS delineators do not need to be certified to delineate wetlands. However, all federal agency staff must receive the training currently provided through headquarters approved interagency training course prior to delineating wetlands for the 404 program. This training is considered equivalent to the certification training required of non-governmental delineators.