

Public Notice

U.S. Army Corps of Engineers, Norfolk District
Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-REG

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Regional Supplements Grandfather Provision and Wetland Delineations

Background: As each of the two Virginia Regional Supplements (RSs) to the Corps of Engineers Wetland Delineation Manual was developed, Public Notices (PNs) were issued noting the dates that these manuals would be phased-in. These PNs also provided a grandfather provision:

“Effective 30 days from the date of this public notice:

- Interim Atlantic & Gulf Coastal Plain Regional Supplement (AGCP) – 02 January 2009
- Interim Eastern Mountains & Piedmont Regional Supplement (EMP) – 01 October 2010

... the Supplement data forms and indicators must be used for any data collection for wetland delineations. Field data collected for wetland delineations using the 1987 Manual prior to the effective date of this notice, but not yet submitted to the appropriate Corps District for review and formal approval, will be grandfathered. Documentation must be submitted to the appropriate Corps District which clearly shows the field data was collected prior to 30 days from the date of this notice in order to qualify for this grandfather provision. Once this documentation and the field data have been reviewed and approved by the appropriate Corps District, a written determination will be issued.”

“...anyone performing a wetland delineation during this interim period using the Supplement who believes it has resulted in a significantly different boundary line than the 1987 Manual may also complete the delineation using the 1987 Manual and submit both delineations. Enough points to adequately describe the representative plant communities, soils, and hydrology of the site(s) and to clearly document the difference in boundaries between the two methods must be included. Data recorded on both the existing 1992 data forms and the new Supplement data forms, maps indicating the location of the field site and data collection points (upland and wetland), and a completed field evaluation questionnaire for each delineation must be submitted as part of the jurisdictional determination request to the appropriate Corps District Office. The District will make the final determination based on analysis of all the submitted information.”

What does the “grandfathering” cover?: The grandfather provision only applies to how the wetland delineation information is packaged (i.e., applicants that meet the grandfather requirements can submit the field data on the 1987 Manual datasheets), it does not preserve an opportunity to have the delineation evaluated under the rescinded portions of the 1987 Manual & associated guidance. The wording in the PN grandfather provision emphasizes the collection of “field data”, not on how our office will evaluate that field data. Regardless of what datasheets are submitted to our office, **all** wetland delineations that we perform or confirm should be done using the applicable current regional supplements and any related guidance.

The time when “grandfathering” meant potentially using the superseded portions of the 1987 Manual in lieu of the RSs ended after the 1-year test periods for each interim RS (i.e., 02 January 2010 for the AGCP, and 01 October 2011 for the EMP). This was clearly described in the PNs announcing implementation of the interim RSs, and at the same time all 1987 Manual guidance related to field indicators and growing season was also rescinded. The intent of the grandfather provision was to spare applicants from having to spend time & money to re-do already completed fieldwork, especially for larger projects.

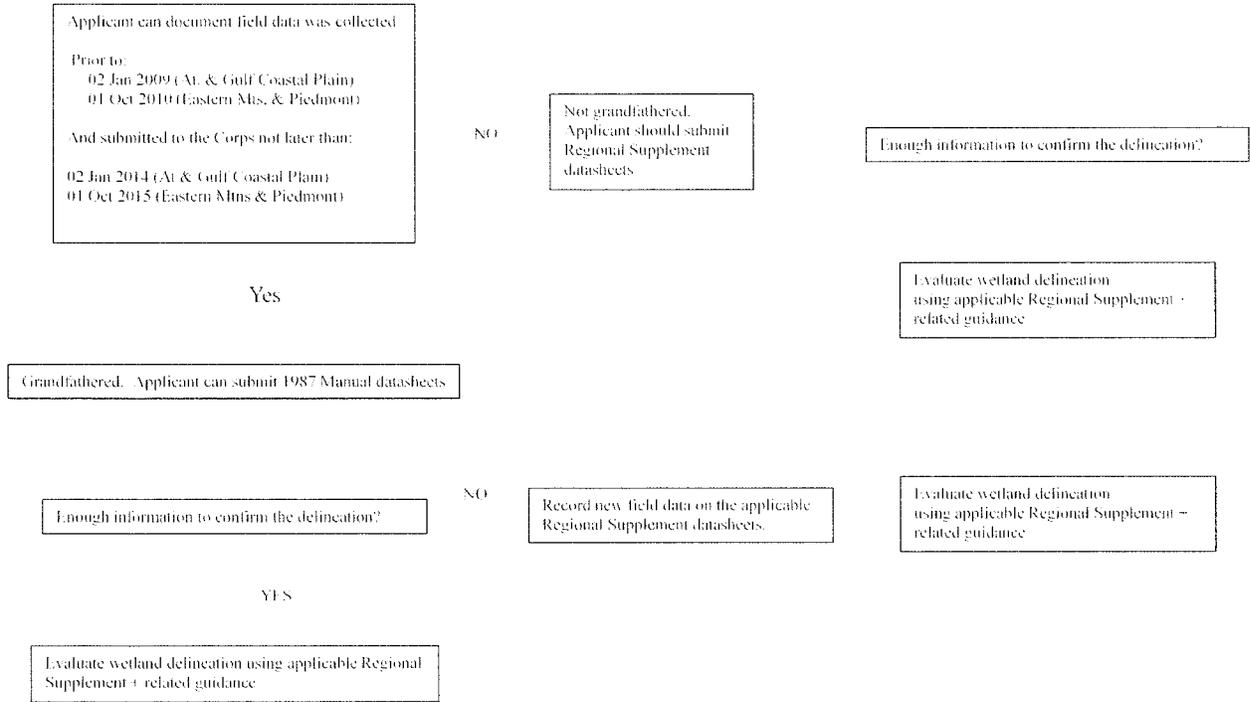
The grandfather provision only applies to projects that have not already been confirmed using the RSs and where applicants can document the field data was collected prior to the RS phase-in dates.

Expiration of Grandfathering: Regardless of whether delineations/data sheets meet these guidelines for acceptance for grandfathering, 1987 manual field datasheets collected prior to the phase-in dates will not be accepted more than 5 years after the issuance of the interim supplements. Therefore, no data sheets or delineations will be grandfathered (i.e., acceptable using the old requirements of the 1987 manual, pre-supplements) after the following dates:

- Interim Atlantic & Gulf Coastal Plain Regional Supplement (AGCP) – 02 January 2014
- Interim Eastern Mountains & Piedmont Regional Supplement (EMP) – 01 October 2015

District Practice: Regardless of when datasheets are completed & submitted, their whole intent is to characterize the existing field conditions of a site so that a determination can be made whether or not wetlands are present. If a project manager determines the submitted datasheets are insufficient to confirm a delineation based on the applicable RS methodology, then the applicant must prepare new RS datasheets.

General procedures are outlined in the following flowchart:



If you have any questions regarding this notice you may contact Kimberly Prisco-Baggett at 757-201-7873 or via email at kimberly.a.baggett@usace.army.mil

FOR THE DISTRICT COMMANDER:

William T. Walker
Chief, Regulatory Branch

