

## Procedure for determining “obvious wetlands”

**Background:** NFSAM 514.34 (c) cites 7CFR part 12.6(c)(8) as the definition of obvious wetland as, “an area that is continuously inundated or saturated for long periods of time during the growing season to such an extent that access by foot to make a determination of predominance of hydric soils or prevalence of hydrophytic vegetation is not feasible, the area will be determined to be a wetland.”

NFSAM adds, “Additionally, wetland sites that are cropped or have had forage harvested by mechanical means less than 5 out of 10 years because of wet conditions are obvious wetlands.”

The definition of obvious wetland is used to determine whether a person should have reasonably known that a site was a wetland even though the site was not identified on a CPA-026. Such sites do not qualify for a Converted Wetland Technical Error (CWTE) and the person converting an obvious wetland is ineligible for USDA benefits. The definition of obvious wetlands becomes critical in determining whether a person remains eligible for USDA benefits.

The main difficulty for personnel is how to determine the “less than 5 out of 10 years” period to evaluate. Does this mean to literally look at every 10-year period and determine if any one period meets the definition? Does it mean look at only the last 10 years and ignore all other periods? What consideration should be given to precipitation patterns?

**Recommended Procedure:** The following procedure is recommended as a reasonable and defensible approach to determine which “10 year period” should be used.

Obtain the precipitation data for the nearest NOAA weather station. A “normal” rainfall pattern over any given period should include 30% wet years, 40% normal years, and 30% dry years. Using the rainfall charts generated for use with the crop history slides, which rely on the 3 months prior to when the slide was taken, a “normal” precipitation pattern exists for a 10 year period if there were three 3’s, four 2’s and three 1’s. Disregard extremely wet and dry years, such as 1993 in much of Minnesota. Add additional years beyond an initial 10 as needed to obtain the approximate 30-40-30 ratio of wet to normal to dry years. The final period selected may therefore consist of more than 10 years, and may have an occasional “hole” where an extreme year has been omitted. Analyze land use for the years selected to determine the number of years cropped or mechanically hayed. If the site was cropped or mechanically hayed less than 50% of the years selected, then the site is an obvious wetland.

If there are years where the precipitation data for the 3 months prior to the date of the slide does not tell the whole story for an area, one may examine the growing season precipitation or precipitation for the whole year. The important thing is to be consistent, logical and reasonable. If the NOAA station is some distance away but a local cooperator station is close by, the normals may be used from the NOAA station with the records of the local cooperator station to make the necessary judgment. Document carefully anything you do in evaluating precipitation records.

Based on the definition in 7CFR it would seem unlikely that temporary and seasonal wetlands would normally meet the definition of an obvious wetland. Semi-permanent and permanent wetlands would frequently meet the obvious wetland definition.

Professional judgement and experience will still be needed to make a determination. Drown-outs present another potential complicating factor. If a site was planted and then became a drown-out due to 1 or more heavy later rains, is the site considered cropped? Personnel should document their decision, make good notes as to what they see on slides, and add professional judgement, common sense, and local knowledge to their final decision.