



FAQs

September 2021

USDA Proposes Revisions to Include Hydrology Indicators to Identify Farmed Wetlands

Q: What are farmed wetlands?

A: Farmed wetlands are areas that were converted to crop production (drained and/or cleared) prior to December 23, 1985, but still retain wetland characteristics.

Q: What is the hydrology requirement for farmed wetlands?

A: For non-playas, pocosins, or potholes, farmed wetlands require at least 15 days of water inundation during the growing season. Farmed wetlands must also have hydric soils and support wetland plants under normal circumstances (in the absence of farming).

Q: What does it mean if I have a farmed wetland?

A: A farmed wetland's drainage may be maintained to the scope and effect of the drainage as originally constructed (prior to December 23, 1985). Any additional drainage that would increase production or allow the wetland to be farmed in additional years would be a potential violation of the wetland conservation provisions and could result in ineligibility for certain USDA program benefits.

Q: What are the wetland conservation provisions?

A: On December 23, 1985, Congress enacted the Food Security Act of 1985 which linked eligibility for many United States Department of Agriculture (USDA) program benefits to the highly erodible land and wetland conservation provisions. Under the wetland conservation provisions, producers agree to not plant an agricultural commodity on converted wetlands or convert wetlands to make possible the production of an agricultural commodity.

Q: Why is USDA proposing this change to the Field Office Technical Guides?

A: In the August 2020 final rule for the wetland conservation provisions, USDA indicated it had removed the required use of hydrology indicators in the United States Army Corps of Engineers manual, and instead explained that the hydrology indicators used for the identification of a farmed wetland which is not considered a playa, pocosin, or pothole would be set forth in the local NRCS Field Office Technical Guides (FOTGs). The identification of hydrology indicators in the local NRCS FOTG provides an opportunity for local input (through consultation with the NRCS State technical committee), transparency to the public, and allow the indicators to be reflective of local conditions which meet the required inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years. USDA has now finalized its proposed text for each state's Field Office Technical Guides



FAQs

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that provides hydrology indicators for making farmed wetland determinations and is seeking public comment on these changes. The specific changes to the guides for each State can be found through the *Federal Register* or on the NRCS website.

Q: What public input has been considered regarding these changes?

A: In 2018, NRCS published an Interim Rule making the process of determining farmed wetlands more transparent. The Interim Rule did not make any changes to the existing farmed wetland criteria and simply codified longstanding processes used to identify farmed wetlands. The Interim Rule provided a 60-day public comment period. In August 2020, USDA published the Final Rule after consideration of the public comments received. NRCS made a change in the Final Rule that it would no longer rely on the Army Corps of Engineers indicators and would publish its own indicators in the NRCS Field Office Technical Guides. However, NRCS identified that until those indicators were finalized, it would continue to use the Army Corp of Engineers indicators.

NRCS has consulted with State Technical Committees in the development of these changes to the Field Office Technical Guides. The specific indicators have been drafted and the proposal to add them to the guides has now been published in the *Federal Register* for comment. NRCS welcomes further comments from the public regarding the use of these indicators to help identify farmed wetlands that are not playas, pocosins, or potholes.

Q: How will these indicators get used?

A: One of NRCS' roles is to make wetland determinations that locate and certify the existence of wetlands subject to the wetland conservation provisions on producers' land. If NRCS finds that an area meets the 3 criteria for wetlands (hydric soil, hydrophytic vegetation, and wetland hydrology), then NRCS can use these indicators to decide if the 15-day inundation requirement is met for the area to be determined a farmed wetland.

Q: How did NRCS identify farmed wetlands previously?

A: Prior to the August 2020 Final Rule, NRCS used Group B (Evidence of Recent Inundation) hydrology indicators from the regional supplements to the U.S. Army Corps of Engineers Wetland Delineation Manual. NRCS will continue to use the regional supplement indicators until these new NRCS Field Office Technical Guide indicators are finalized and adopted.

Q: Will this make it harder to determine that land is a farmed wetland or make it harder to participate in USDA programs?



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A: Neither. The 15-day inundation criteria have not changed. USDA is establishing the Field Office Technical Guide indicators to provide for local input, transparency to the public, and allow the indicators to be reflective of local conditions which meet the required inundation for 15 consecutive days or more during the growing season. NRCS will also no longer rely on indicators in other Federal guidance such as regional supplements to the Army Corps of Engineers Wetland Delineation Manual.

Q: What is the current process and criteria and how does this differ?

A: The criteria for non-playa, pocosin, or pothole farmed wetlands have not changed. The farmed wetland criteria have long-been defined in regulation to require inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years. With the adoption of the Field Office Technical Guide indicators, the process will also not appreciably change. Many of the new indicators are similar to the existing Army Corps of Engineers regional supplement indicators, but the FOTG indicators reflect wetland conditions as observed in the local agricultural landscape. NRCS will continue to make field observations in many farmed wetland determinations. NRCS will also continue to use aerial photo observations in many cases, as farmed wetlands exist in cropland which often shows evidence (or the lack thereof) of early growing season hydrology on aerial photos.

Q: What if my state does not have a farmed wetland Indicator document to be posted to its NRCS Field Office Technical Guide?

A: The August 2020 Final Rule identified that NRCS can also use:

- 1) Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or
- 2) The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.

Q: Do these indicators affect what may be waters of the United States (WOTUS)?

A: These NRCS indicators do not affect what the U.S. Environmental Protection Agency or U.S. Department of the Army may determine to be “waters of the United States” (WOTUS).