

Federal Register

**Friday
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Part II

**Department of
Agriculture**

**Office of the Secretary
Farmers Home Administration**

**7 CFR Parts 12, 1940, 1941, 1943, 1945,
and 1980**

**Highly Erodible Land and Wetland
Conservation; Interim Rule**



DEPARTMENT OF AGRICULTURE**Office of the Secretary****Farmers Home Administration****7 CFR Parts 12, 1940, 1941, 1943, 1945, and 1980****Highly Erodible Land and Wetland Conservation****AGENCY:** Office of the Secretary and Farmers Home Administration, USDA.**ACTION:** Interim rule.

SUMMARY: The purpose of this rule is to set forth the terms and conditions under which a person who has produced an agricultural commodity on highly erodible land or newly converted wetland shall be declared ineligible for certain benefits provided by the U.S. Department of Agriculture, i.e., commodity price support or production adjustment payments, farm storage facility loans, disaster payments, payments for storage of CCC grain, Federal crop insurance, and loans made under any provision of law administered by the Farmers Home Administration, as required by Subtitles B and C of Title XII of the Food Security Act of 1985 (Pub. L. 99-198).

DATES: Effective June 24, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 1986.

Comments must be received on or before August 26, 1986, in order to be assured of consideration.

ADDRESS: Comments should be mailed to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Mr. Alex King, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-4542. Single copies of the combined environmental assessment, regulatory impact analysis, and regulatory flexibility analysis are available through this office.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under U.S. Department of Agriculture (the "Department") procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "major." It has been

determined that an annual effect on the economy of \$100 million or more may result from implementation of the provisions of this interim rule. Copies of the regulatory impact analysis are available upon request.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

The Secretary of Agriculture has determined that this action may have a significant economic impact on a substantial number of small entities. The analysis prepared for this action includes a regulatory flexibility analysis.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Emergency Conservation Program—10.054; Emergency Loans—10.404; Farm Operating Loans—10.406; Farm Ownership Loans—10.407; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Rice Production Stabilization—10.065; Federal Crop Insurance—10.450; Soil and Water Loans—10.416, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In order to meet the statutory deadline for the issuance of regulations implementing the provisions of Subtitles B and C of Title XII of the Food Security Act of 1985 (the "Act") and in order to provide producers of commodities sufficient time to make their production plans for the 1987 crop year in conformity with the provisions of Subtitles B and C, it has been determined that this interim rule shall be effective upon filing with the Federal Register.

Section 1244 of the Act provides that the Secretary of Agriculture shall issue such regulations as are necessary to carry out Subtitles B and C of Title XII of the Act not later than 180 days after the enactment of the Act. The Act was signed into law on December 23, 1985. The time period provided for in the Act ends on June 21, 1986. Further, producers of winter wheat will soon be finalizing

their plans for the 1987 crop. It is necessary that these producers be aware of the actions which they may have to take or refrain from taking in order to maintain eligibility for benefits provided by the Department with respect to the 1987 crop.

Comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Statutory Authority

This activity is required pursuant to Subtitles B and C of Title XII of the Act. Sections 1211 and 1221 of the Act were designed to remove the incentive that certain benefits provided by the Department could give producers to cultivate highly erodible land or to convert wetlands for the purpose of producing an agricultural commodity. Sections 1211 and 1221 of the Act provide generally that any person, who in any crop year, produces an agricultural commodity on a field in which highly erodible land is predominant without an approved conservation system or on newly converted wetland shall be ineligible for commodity price support or production adjustment payments, farm storage facility loans, disaster payments, payments for storage of Commodity Credit Corporation grain, and Federal crop insurance, and loans made, insured, or guaranteed under any provision of law administered by the Farmers Home Administration if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible lands or to conversion of wetlands for agricultural production.

This interim rule adds a new Part XII to Subtitle A of Title 7 of the Code of Federal Regulations (CFR) to implement the provisions of Subtitles B and C of Title XII of the Act. Since the ineligibility provisions affect several agencies of the Department, it was determined, in order to ensure consistent and fair application of the provisions of the Act, that one regulation be issued by the Secretary of Agriculture (the "Secretary") which generally sets forth: (1) The definitions of highly erodible land, wetland, and converted wetland; (2) the activity which would cause a producer to be ineligible under the provisions of the Act; (3) the exemptions contained in the Act; (4) the responsibilities of each agency of the Department with respect to implementation of the provisions of the Act; and (5) the appeal rights of any person who is denied eligibility under the provisions of this interim rule for benefits provided by the Department.

This interim rule shall be applicable to all affected agencies of the Department, namely the Agricultural Stabilization and Conservation Service (ASCS), the Commodity Credit Corporation (CCC), the Farmers Home Administration (FmHA), the Federal Crop Insurance Corporation (FCIC), and the Soil Conservation Service (SCS).

In addition, this interim rule amends the Farmers Home Administration (FmHA) regulations by adding Exhibit M to Subpart C of Part 1940 of Chapter XVIII of this Title and by making other conforming changes to the FmHA farmer program loan making regulations for the purpose of implementing the Act's requirements.

Discussion

A. 7 CFR Part 12—Highly Erodible Land and Wetland Conservation

(1) General

Under the provisions of this interim rule, before any person can be determined to be eligible for any of the benefits listed in sections 1211 and 1221 of the Act ("program benefits") from the Department of Agriculture, it must be determined whether such person owns, operates, or otherwise has an interest in any highly erodible land or wetland and such person must certify that such person will not produce an agricultural commodity on highly erodible land or converted wetland during the year in which the person is applying for benefits, unless such production is exempt from the provisions of sections 1211 and 1221 of the Act.

Each agency of the Department to which a person applies for benefits remains responsible for determining the person's eligibility. However, certain determinations which must be made in accordance with Subtitles B and C of Title XII of the Act may not be within that agency's expertise.

Therefore, § 12.6 of the interim rule assigns the responsibility for making certain determinations required to be made under the provisions of the interim rule to SCS, ASCS, FmHA, and FCIC.

Generally, the SCS shall make any determinations which are necessary with respect to the identification of highly erodible land or wetland, the adequacy of conservation plans, conservation systems, and other technical issues. The ASCS shall make determinations regarding cropping history, field boundaries, status of persons as producers, and other issues generally within that agency's expertise. The FmHA is responsible for determining whether loan proceeds would be used for a purpose which would contribute to excessive erosion of

highly erodible lands or to the conversion of wetlands for agricultural production.

Any determination which must be made in order to implement the provisions of this interim rule and with respect to which an agency has not been specifically assigned the responsibility to render such determination shall be made by the agency to which the person has applied for program benefits.

Any person who has been or would be denied program eligibility due to a determination rendered by an agency under the provisions of this interim rule shall have the opportunity to obtain a review of such determination. A request for reconsideration of, or appeal from, a determination must be filed with the agency of the Department that rendered the adverse determination in accordance with that agency's appeal regulations.

(2) Definition of Highly Erodible Land

Section 1201(a)(7) of the Act provides several alternative definitions of highly erodible land. The erodibility of land may be determined based upon the SCS Land Capability Classification System, the use of the Universal Soil Loss Equation and the Wind Erosion Equation, a determination of the actual erosion occurring on the land, or a combination of some of these methods. These options are discussed in detail in the environmental assessment prepared for the purposes of this interim rule.

The criteria used to identify highly erodible land affect how much land will be covered by these provisions of the Act. The 1982 National Resources Inventory (the "1982 NRI") indicates that 185.4 million acres of cropland are eroding at more than the rate of natural soil replacement, i.e., the soil loss tolerance level. Also, the 1982 NRI indicates that up to 494 million acres of pasture, range, forest, and other farmland have a potential to be converted to cropland in the future. Approximately 46 percent of this potential cropland acreage is subject to excessive erosion. Thus, if the provisions of the Act are to be effective, a majority of this acreage must be defined as being highly erodible.

It has been determined that, for the purpose of this interim rule, highly erodible soils will be identified by the application of factors from the Universal Soil Loss Equation and Wind Erosion Equation.

The use of these factors will enable the Department to determine the potential of the soil to erode excessively when cultivated without adequate conservation treatment. Erosion potential considers the physical effect

that climate, topography, and soil properties have on the erosion process, but excludes the practices and management that may or may not be applied by man. Erosion potential is determined by dividing the potential maximum average annual rate of erosion for each soil by the established soil loss tolerance rate for such soil. The potential average annual rate of erosion is determined by application of factors from the Universal Soil Loss or Wind Erosion Equation to each area of land identified on a soil map as a soil map unit.

The major advantages of using erosion potential criteria instead of other alternatives which were considered by the Department include: (1) The ability to apply this criteria to noncropland that may be cultivated in the future; (2) the ability to apply the criteria to soil map units, which are the smallest delineations of soil properties, thus facilitating the preparation of a list of high erodible soil map units; and (3) coverage of a high percentage of the soils that are currently eroding excessively. Using these factors as set forth in § 12.21 of the interim rule, 117.9 million acres of cropland and 227.3 million acres of noncropland are identified as being highly erodible. This amounts to 24.5 percent of all agricultural land and accounts for 58 percent of all cropland erosion.

The highly erodible land criteria used for this interim rule is not the same as the criteria presently used for the Conservation Reserve Program (CRP). However, the primary purpose of the CRP is to reduce excessive erosion by taking cropland out of production. The use of the land classification system in conjunction with criteria concerning the actual erosion which is occurring on the land ensures that the CRP is directed toward the most excessively eroding cropland first.

Soil map units shall be used by the Department as the basis for identifying highly erodible lands. A soil map unit represents an area of the landscape shown on a soil survey map which consists of one or more soils and is described in soil survey reports. Because each soil map unit has a unique set of physical and chemical properties, it is the basis to which the factors of the Universal Soil Loss Equation and the Wind Erosion Equation can be applied.

The Act provides that a person shall be ineligible for certain program benefits if the person produces an agricultural commodity on a field in which highly erodible land is predominant without an approved conservation system. Therefore, the Department must make a

determination of predominance with respect to each field on the farm that contains highly erodible soils. If the criterion to determine the predominance of highly erodible land is set too high, a large amount of highly erodible land would be excluded from the provisions of the Act. If the criterion are set too low, too much land that is not highly erodible will be covered by the provisions of the Act.

Section 12.22 (a) of the interim rule provides that fields containing 33.33 percent or more of the total field acreage identified as soils that are highly erodible shall be determined to be predominantly highly erodible. Generally, this highly erodible area produces most of the erosion that occurs on the field and constitutes a predominant factor limiting production on that field.

Further, § 12.22 (a) of the interim rule provides that any field shall be determined to contain a predominance of highly erodible land if the field contains 50 or more acres of highly erodible land. The Department is concerned that large fields of cropland that contain sizeable amounts of highly erodible lands would not be determined to be highly erodible through the application of the 33.33 percent criterion. For example, if 1000 acres were broken out or continued to be used for cropland under the 33.33 percent criterion, slightly more than 330 acres could be highly erodible without the field being classified as a highly erodible field. Cultivation on such large amounts of highly erodible land without adequate conservation treatment is not consistent with the intent of the Act. The Department, upon request, will assist producers in structuring field boundaries so that highly erodible areas are not included in such fields.

The criteria for determining whether a field is predominantly highly erodible are not the same as the criteria used for the CRP. Two-thirds of a field must be highly erodible in order for such field to be eligible to be placed in the CRP. Again, the two-thirds criterion under the CRP is intended to ensure that the most highly erodible fields are included in the CRP. This maximizes the beneficial impact on erosion reduction and allows the Department to place more highly erodible land into the CRP per dollar expended than lower criteria would allow.

(3) Definition of Wetland

Section 1201(a)(16) of the Act defines wetland as land that has a predominance of hydric soil and that is inundated or saturated by surface or groundwater at a frequency and

duration sufficient to support and under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions. Therefore, in order for an area to be a wetland, such area must, under normal circumstances, contain both a predominance of hydric soils and a prevalence of hydrophytic vegetation.

Section 12.02(a)(13) of the interim rule adopts the statutory definition of hydric soil: Soil that in its undrained condition is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. Section 1201(b) of the Act provides that the Secretary shall develop criteria for the identification of hydric soils and shall develop a list of such hydric soils. It has been determined that the criteria to be used in the identification of hydric soils and in the development of the list of such soils shall be the criteria and soils set forth in the publication "Hydric Soils of the United States 1985." This publication was developed by the National Technical Committee for Hydric Soils, chaired by SCS, and is currently used by several agencies in defining wetland. The list of hydric soils and their criteria are the products of over 5 years effort of the Committee which is composed of an interagency team of soil scientists. The criteria used to develop the list are consistent with the criteria contained in the statutory definition.

The determination of the predominance of hydric soil in a given area shall be based on the occurrence of hydric soils in a soil map unit. A soil map unit may have a hydric soil as a major component (which would be indicated by that unit having a hydric soil as part of the name of the soil map unit) or as an inclusion or minor part of the soil map unit. A soil map unit may also be named for a miscellaneous area that meets hydric soil watertable, ponding, or flooding criteria such as riverwash, playas, beaches, or water.

The predominance test is a method of identifying soil map units that have components or inclusions of hydric soils or miscellaneous areas that meet hydric soil watertable, ponding, or flooding criteria. This test of predominance was chosen because other alternatives considered do not protect significant wetlands such as potholes, or other areas meeting hydric soil criteria.

Section 1201(a)(9) of the Act defines hydrophytic vegetation as a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The Act

provides that the Secretary shall develop criteria for the identification of hydrophytic vegetation and shall develop a list of such vegetation.

Section 12.31 of the interim rule provides that the "National List of Plant Species that Occur in Wetlands" (the "National List") which was developed by the National Wetland Plant List Review Panel shall be used for the identification of hydrophytic vegetation. The National List and its classification of plant species into indicator groups based on their preference for wetland conditions is currently used in wetland determinations by a number of agencies. The National List was established through the use of definitions of hydrophytic vegetation which are consistent with the definition contained in the Act.

As stated above, in order for an area to be a wetland, such area must, under normal circumstances, contain a prevalence of hydrophytic vegetation. Section 12.31(b) of the interim rule provides for the use of a sample of the frequency of occurrence for all plants within the plant community in an area, identified by indicator groups, to arrive at a weighted average value for the purpose of determining whether or not a prevalence of hydrophytic vegetation exists in the area. In the event the vegetation on an area has been altered prior to an on-site evaluation, prevalence of hydrophytic vegetation will be determined based upon the hydrophytic vegetation which typically exists on the same hydric soil map unit in the local area.

The Department considered a number of methods to determine prevalence of hydrophytic vegetation within a plant community. The chosen evaluation process is primarily based upon research conducted by the Fish and Wildlife Service, U.S. Department of the Interior, and researchers at North Carolina State University. The weighted average method has been selected to determine prevalence because it is relatively simple to perform, is as accurate as other methods, and is objective.

The Department will review the use of the weighted average test and other methodologies to determine a prevalence of hydrophytic vegetation.

The Department intends to provide SCS handbook guidance to SCS field office personnel in order to ensure that office determinations regarding the identification of wetland are made based upon the best possible information. SCS intends to instruct its field office personnel to use, in addition to soil survey maps, other available

natural resource information such as National Wetland Inventory Maps and ASCS aerial photographs when making wetland and determinations. SCS intends to provide in its handbook that the district conservationist will review office determinations and make on-site determinations as to whether an area meets wetland criteria if: (1) Soil survey maps were not available to support the office determination; or (2) the information from the soil survey map conflicts with information from other sources such as National Wetland Inventory Maps or ASCS aerial photographs.

(4) Definition of Converted Wetland

Section 1201(a)(4) of the Act defines converted wetland as wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible if such production would not have been possible for such action, and before such action, such land was wetland and such land was neither highly erodible land nor highly erodible cropland.

Section 12.32(a) of the interim rule provides that a wetland shall be determined to have been drained, dredged, filled, leveled, or otherwise manipulated for the purpose or to have the effect of making the production of an agricultural commodity possible if (1) one or more of the hydric soils criteria of such wetland has been removed or (2) the hydrophytic vegetation on such wetland has been removed or destroyed.

The removal of one or more of the hydric soils criteria or the removal or destruction of hydrophytic vegetation removes one or more of the criteria that characterizes an area as wetland. The removal of one or more of the hydric soils criteria or the removal or destruction of hydrophytic vegetation is an objective measure of the effect an action has on a wetland. It is a good indication as to whether the action has been taken for the purpose or to have the effect of making the production of an agricultural commodity possible on such wetland.

It should be noted that an area cannot be determined to be a converted wetland unless such area was a wetland before the drainage activity occurred. Therefore, as stated earlier, in cases where the vegetation has been removed, modified, or destroyed, SCS will determine the prevalence of hydrophytic vegetation as it existed prior to the alteration based upon the occurrence of

such vegetation typically found on the same soil map unit in the local area.

The Act also provides that wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year is possible as a result of a natural condition, such as a drought, and is not assisted by an action of the producer that destroys natural wetland characteristics. Section 12.32(b) of the interim rule incorporates these provisions.

During the comment period for this interim rule, the Department will be conducting pilot testing regarding the effectiveness and practicality of the criteria and methodology for making determinations under the wetland conservation provisions of this interim rule. This testing process will be carried out in consultation with the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers.

(5) Other Definitions

Section 1201(a)(1) of the Act defines an agricultural commodity as any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugarcane planted or produced in a State. Section 12.2(a)(1) of the interim rule adopts this definition.

Section 12.2(a)(19) of the interim rule defines the term "person" to mean an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof and such person's affiliates. Section 12.11 of the interim rule specifies which persons shall be considered to be affiliated for the purposes of this interim rule.

For purposes of the provisions of this interim rule it has been determined that an agricultural commodity shall be considered to have been "produced" on highly erodible land or converted wetland if the agricultural commodity has been planted. The Department recognized that considerable damage to such lands occurs at the time of planting with the breaking of the land.

Section 12.2(a)(20) of the rule defines a "producer" as a person who, as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof. This definition is consistent with the definition for a "producer" as set forth in 7 CFR 719.2(t).

Section 1201(a)(5) of the Act provides that a field shall have the same definition as it is defined in 7 CFR 718.2(b)(9). 7 CFR 718.2(b)(9) defines a

field as a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features. Accordingly, § 12.2(a)(11) of the interim rule adopts this definition.

(6) Farmers Home Administration Loans

Sections 1211(1)(E) and 1221(1)(E) of the Act provide that a person shall not be eligible for any loans made, insured, or guaranteed under any provisions of law administered by the FmHA if the Secretary determines that the proceeds of such loans will be used for either a purpose that will contribute to excessive erosion of highly erodible land or a purpose that will contribute to conversion of a wetland for agricultural production. FmHA has amended its regulations by adding Exhibit M and has made other conforming changes to its Farmer Program loan making regulations for the purpose of implementing the requirements of the Act. The amendments make it clear that an applicant will not be eligible for a Farm Operating Loan, Farm Ownership Loan, Emergency Loan, or Soil and Water Loan if FmHA determines that the proceeds of such insured or guaranteed loan will be used for either a purpose that will contribute to excessive erosion of highly erodible land or a purpose that will contribute to conversion of a wetland for agricultural production.

(7) Federal Crop Insurance

In accordance with the provisions of this interim rule, FCIC shall deny crop insurance to persons who produce an agricultural commodity on highly erodible land or converted wetland. Regulations governing the eligibility of a producer to obtain crop insurance shall be amended to conform to the provisions of this rule. FCIC shall require producers participating in the crop insurance program to provide a certification to FCIC as required in § 12.7 of the interim rule. All direct marketing insurance companies under contract with FCIC, reinsured companies, and current insureds shall be required to comply with the provisions of this rule. Because insurance policies are in effect and liability already assumed for the 1986 crop year, FCIC will require compliance with the provisions of this rule beginning with the 1987 crop year.

(8) Exemptions

Section 1212 of the Act provides that, during the period beginning December 23, 1985, and ending on the later of January 1, 1990, or the date that is 2 years after the date land on which a crop of an agricultural commodity is produced was mapped by the SCS, no person shall become ineligible under the highly erodible land conservation provisions for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on any land that was: (a) Cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity; or (b) set-aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

These exemptions allow affected persons to continue the production of agricultural commodities on highly erodible land through January 1, 1990 (or 2 years after SCS maps the land), without having to actively apply a conservation plan to maintain program eligibility. This provision has been incorporated in § 12.5(a) of the interim rule. This exemption is applicable only in cases where the land was cultivated to produce an agricultural commodity or was used as set-aside or diverted acreage under any production adjustment program. Land that was devoted to perennial crops not requiring annual tilling during the years 1981-1985 is not included, since such plants are not included in the definition of agricultural commodity as set forth in the Act.

Section 1212 of the Act also provides that no person shall become ineligible under the highly erodible land conservation provisions for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity planted before December 23, 1985, or during any crop year beginning before such date. This exemption is incorporated in the interim rule.

Section 1212 of the Act also provides that no person shall become ineligible for program payments as the result of the production of a crop of an agricultural commodity on highly erodible land if such person is using a conservation system on such land. This provision is incorporated in the rule. A person is considered to be using an approved conservation system when the planned conservation practices are being used on the land in accordance with the conservation plan.

Additionally, section 1212 of the Act provides that if, as of January 1, 1990, or 2 years after the SCS has completed a

soil survey for the farm, whichever is later, a person is actively applying a conservation plan based upon the local SCS technical guide, such person shall have until January 1, 1995, to comply with the plan without being subject to program ineligibility. This provision applies only in cases where the highly erodible land was cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity or the highly erodible land was used as set-aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity. This provision was incorporated in § 12.5(b) of the interim rule.

Section 12.5(c)(4) of the interim rule exempts persons from the ineligibility provisions of the interim rule if such person produced a crop of an agricultural commodity on highly erodible land in reliance on an agency determination that such land was not highly erodible.

Section 1222(a) of the Act provides, in part, that no person shall become ineligible under the wetland conservation provisions for program benefits as the result of the production of a crop of an agricultural commodity on converted wetland if the conversion of such wetland was commenced before the date of enactment of the Act (December 23, 1985).

It has been determined that a person shall be considered to have commenced the conversion of a wetland by December 23, 1985, if, prior to December 23, 1985, such person: (1) Began substantial earth moving for the purpose of draining the wetland or (2) legally and financially committed substantial funds, by entering into a contract for earth moving, or otherwise, for the purpose of draining the wetland. The Department shall determine the amount of land which is exempt under this provision based upon the amount of land which would be drained by the earth moving required in the contract or, if there is no contract, which would be drained by the earth moving which had begun prior to December 23, 1985.

Section 1222(a) of the Act provides that no person shall become ineligible under the wetland conservation provisions for program loans, payments, and benefits as a result of the production of a crop of an agricultural commodity on an artificial lake, pond, or wetland created by excavating or diking nonwetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), settling basin, cooling, rice production, or flood control.

This provision allows a producer to produce agricultural commodities on lands resulting from the conversion of artificial wetland that was itself created from nonwetland and still maintain eligibility for program benefits.

Section 12.31(c) of the interim rule provides that a wetland shall be considered to be an artificial wetland if such wetland meets the criteria for classification as a wetland but would not meet such criteria if the area was in its natural, undrained state. The rule also provides that wetlands created in order to mitigate the loss of other wetlands as a result of irrigation or flood control projects shall not be considered to be artificial wetlands.

Under the exemptions listed in section 1222 of the Act, the Secretary may also exempt a person from the wetland conservation provisions of the Act with respect to any action associated with the production on an agricultural commodity on converted wetland if the effects of such action individually and in connection with all other similar actions authorized by the Secretary in the area on the hydrological and biological aspects of wetlands are minimal. Section 12.31(d) of the rule provides that SCS, in consultation with the Fish and Wildlife Service, U.S. Department of the Interior, shall determine through an on-site evaluation whether any such actions shall have only a minimal impact on wetlands. The determination will be based upon an environmental evaluation analyzing the effect of the action on the maintenance of wetland values. The environmental evaluation of the proposed wetland alteration activities will provide a determination as to whether or not the effects of such alteration will be minimal in relation to the wetland and its values. The Department will review different methodologies (such as the Adamus method, which is a test developed by the Federal Highway Administration for the purpose of determining wetland functional values) for the purpose of analyzing the effect of an action on the maintenance of wetland values.

A review of the legislative history concerning minimal effects indicates that a minimal effect is one which does not significantly alter wetland functional values and that the minimal effect exemption is expected to be rarely used.

Since this interim rule was not issued in advance of the planting of the 1986 crops of agricultural commodities, it has been determined that, in order to ensure a fair and reasonable determination of ineligibility, producers should not be denied eligibility for program benefits with respect to the 1986 crop under the

provisions of this interim rule. Therefore, § 12.5(f) of the interim rule provides that a person shall not be determined to be ineligible under the provisions of the interim rule, for any program benefits with respect to the production of a crop of a commodity which was planted during the period December 23, 1985, through June 27, 1986.

(9) Compliance

The Department will not rely entirely on certifications (as provided in accordance with § 12.7 of the interim rule) in determining whether a person has produced an agricultural commodity on highly erodible land or on converted wetland. ASCS will inspect annually a representative number of farms to determine whether persons are adhering to the requirements of eligibility set forth in this interim rule. In the past, ASCS has inspected at least 15 percent of the farms which are identified on field certifications.

The Department will also withhold or require a refund of any program benefits otherwise due a person if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the provisions of this interim rule. Program benefits will be denied persons who attempt to maintain their eligibility for program benefits by creating entities that serve as the person's alter ego and produce on either highly erodible land or converted wetland.

B. 7 CFR Part 1940—General

In order to implement the provisions of Subtitles B and C of Title XII of the Act, it has been determined to amend subpart G of Part 1940 of Chapter XVIII of Title 7 of the CFR by adding a new Exhibit M. This amendment applies to insured Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans, and also Farmer Program Guaranteed Loans and explains the circumstances under which applicants and borrowers proposing to produce an agricultural commodity on a converted wetland or a field on which highly erodible land is predominant will be determined to be ineligible for FmHA financial assistance.

Exhibit M incorporates the provisions of 7 CFR Part 12 with respect to the implementation of the Act. FmHA will coordinate its activities in implementing the Act with the Soil Conservation Service (SCS), the Agricultural Stabilization and Conservation Service (ASCS) and the Federal Crop Insurance Corporation (FCIC).

Paragraph 5 of Exhibit M provides that each applicant, at the time of loan

application, must consult with SCS to determine if the applicant's farm property contains any wetland or highly erodible land, and if so, whether any of the exemptions contained in 7 CFR 12.5 apply. This consultation with SCS need not be repeated by the applicant for a subsequent loan as long as there is no change in either the applicant's farm property or the status of any previous exemptions.

Paragraph 5 of Exhibit M also provides that if any applicant's property contains wetlands or highly erodible land, the applicant must certify that the proceeds of the FmHA loan will not be used for either: (1) A purpose that will contribute to conversion of a wetland to produce an agricultural commodity, or (2) a purpose that will contribute to the production of an agricultural commodity on a nonexempt field on which highly erodible land is predominant unless such production is done in accordance with an approved conservation system. Compliance with these procedures will be documented by FmHA as a part of its environmental assessment process. If an applicant does plan to use the proceeds of an FmHA loan to convert a wetland for agricultural production or to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, such applicant will not be eligible for the loan.

During the term of a loan received by a borrower whose property contains a wetland or a field on which highly erodible land is predominant, FmHA will review the borrower's compliance with the provisions of Exhibit M as an element of loan servicing which includes scheduled farm visits, development of a farm plan of operation, and other contacts with borrowers. Lenders of FmHA guaranteed loans are also responsible for monitoring compliance as part of their servicing activities. If it is determined that a borrower has misused the proceeds of an FmHA insured loan, as defined in Exhibit M, that loan will be declared to be in default. In a similar case for a guaranteed loan, any failure of the lender to adequately implement the compliance requirements of Exhibit M will be considered negligent servicing and any loss attributed to such negligent servicing will not be paid by FmHA.

The basic need to amend Subpart G of Part 1940 stems from the language in sections 1211(1)(E) and 1221(1)(E) of the Act. They provide that a person shall not be eligible for any loans made, insured, or guaranteed under any provisions of law administered by FmHA if the Secretary determines that the proceeds of such loans will be used for

either a purpose that will contribute to excessive erosion of highly erodible land or a purpose that will contribute to the conversion of a wetland for agricultural production. It has been determined and is so stated in paragraph 3 of Exhibit M that excessive erosion of highly erodible land results whenever a nonexempt field on which highly erodible land is predominant is used to produce an agricultural commodity without conformance to an approved conservation system. This position has been taken because it is consistent with the standard set by the Act for the production of an agricultural commodity on nonexempt highly erodible land. That is, such production must be done in accordance with an approved conservation system.

A second issue related to the implementation of section 1211(1)(E) is the definition of the phrase "a purpose that contributes to" excessive erosion or conversion of a wetland. It has been determined and is so stated in paragraph 3 of Exhibit M that the proceeds of a loan will be considered to be used for a purpose that contributes to excessive erosion or conversion of a wetland if proceeds are used to purchase the affected land, plan the conversion, drain or plow the land, and plant an agricultural commodity on a nonexempt converted wetland over any of the ten years following the conversion. The use of a ten-year period following the crop year in which the wetland was converted has been selected because this period provides a clear economic break or economic disincentive to the approach of using non-FmHA funds to convert a wetland and then applying for FmHA funds to cultivate the converted wetland. From an economic perspective, it would not be economically feasible for a person to take such an approach in hopes of obtaining FmHA funding if such funding is not possible until ten years into the future. Consequently, after ten years there is no longer a nexus between the conversion and the use of FmHA proceeds for FmHA to determine that the proceeds of the loan are being used for a purpose that contributes to conversion of a wetland for agricultural production. An alternative to the above definition was considered which would cover only those proceeds used for costs directly associated with the conversion of the wetland or the plowing of the highly erodible land. This second alternative was not adopted because it provides too limited an approach in meeting the legislation's purpose of reducing the conversion of wetland and the cultivation of highly erodible land

when accommodated by USDA financial assistance programs. Furthermore, the selected approach makes FmHA's implementation procedures more consistent with those of the other affected USDA agencies.

Conforming changes to the Farmer Program loanmaking regulations are also being made to insure that the requirements found in Exhibit M are considered before such loans are approved or guaranteed.

List of Subjects

7 CFR Part 12

Highly erodible land, Wetland, Conservation, Price support programs, Federal crop insurance, Farmers Home Administration loans, Incorporation, Loan programs—Agriculture, Environmental protection.

7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Accordingly, the regulations of Subtitle A and Chapter XVIII of Title 7 of the Code of Federal Regulations are amended as follows:

Subtitle A—Office of the Secretary of Agriculture

1. Subtitle A—Office of the Secretary of Agriculture is amended by adding a new Part 12, Highly Erodible Land and Wetland Conservation, as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Subpart A—General Provisions

Sec.

- 12.1 General.
- 12.2 Definitions.
- 12.3 Applicability.
- 12.4 Determination of ineligibility.
- 12.5 Exemptions.
- 12.6 Administration.
- 12.7 Certification.

Sec.

- 12.8 Action based upon advice or action of Department.
- 12.9 Scheme or device.
- 12.10 Appeals.
- 12.11 Affiliated persons.

Subpart B—Identification of Highly Erodible Land

- 12.20 Responsibilities of Soil Conservation Service.
- 12.21 Criteria for identifying highly erodible lands.
- 12.22 Field application of highly erodible map units.
- 12.23 Reconsideration and appeals.

Subpart C—Wetland Conservation

- 12.30 Responsibilities of Soil Conservation Service.
- 12.31 Criteria for identification of wetland.
- 12.32 Criteria for identification of converted wetland.
- 12.33 Wetland determination procedures.

Authority: Secs. 1201–1223, 1241–1244 of Pub. L. 99–198 (99 Stat. 1504 *et seq.*; 16 U.S.C. 3801–3823, 3841–3844).

Subpart A—General Provisions

§ 12.1 General.

(a) This part sets forth the terms and conditions under which a person, who, after December 23, 1985, produces an agricultural commodity on highly erodible land or converted wetland, shall be determined to be ineligible for certain benefits provided by the U.S. Department of Agriculture.

(b) The purposes of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

- (1) Reduce soil loss due to wind and water erosion;
- (2) Protect the Nation's long term capability to produce food and fiber;
- (3) Reduce sedimentation and improve water quality;
- (4) Assist in preserving the Nation's wetlands; and
- (5) Curb production of surplus commodities.

§ 12.2 Definitions.

(a) The following definitions shall be applicable for the purposes of this part:

- (1) "Agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugarcane planted or produced in a State;
- (2) "ASCS" means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture which is generally responsible for administering commodity production adjustment and certain conservation programs of the Department;

(3) "Conservation District (CD)" means a subdivision of a State organized pursuant to the applicable State Soil Conservation District Law;

(4) "Conservation plan" means the plan describing the conservation system which must be or has been established on highly erodible cropland in order to control erosion on such land;

(5) "Conservation system" means the part of a cropland resource management system for a field or group of fields that provides for cost efficient and practical erosion reduction based upon the standards set forth in the SCS field office technical guide. A conservation system may include single practices or a combination of practices;

(6) "Converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible if: (i) Such production would not have been possible but for such action; and (ii) before such action (A) such land was wetland; and (B) such land was neither highly erodible land nor highly erodible cropland;

(7) "CCC" means the Commodity Credit Corporation, a wholly-owned government corporation within the U.S. Department of Agriculture organized under the provisions of 15 U.S.C. 714 *et seq.*;

(8) "Department" means the U.S. Department of Agriculture;

(9) "FmHA" means the Farmers Home Administration, an agency of the U.S. Department of Agriculture which is generally responsible for providing farm loans and loan guarantees under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) and other laws;

(10) "FCIC" means the Federal Crop Insurance Corporation, a wholly-owned government corporation within the U.S. Department of Agriculture organized under the provisions of 7 U.S.C. 1501 *et seq.*;

(11) "Field" means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands or croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features;

(12) "Highly erodible land" means land that, if used to produce an agricultural commodity, would have an excessive average annual rate of soil erosion as determined through

application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope;

(13) "Hydric soils" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(14) "Hydrophytic vegetation" means a plant growing in—

(i) Water; or

(ii) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(15) "Landlord" means a person who rents or leases farmland to another person;

(16) "Local ASCS office" means the county office of the Agriculture Stabilization and Conservation Service serving the county or a combination of counties in the area in which the producer's land is located for administration purposes;

(17) "Operator" means the person who is in general control of the farming operations on the farm during the crop year;

(18) "Owner" means a person who has legal ownership of farmland including a person who is purchasing farmland under contract;

(19) "Person" means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof and such person's affiliates as provided in § 12.11 of this part;

(20) "Producer" means a person who, as owner, landlord, tenant or sharecropper, is entitled to share in the crop available for marketing from the farm or in the proceeds thereof;

(21) "Secretary" means the Secretary of the U.S. Department of Agriculture;

(22) "Sharecropper" means a producer who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for such labor;

(23) "SCS" means the Soil Conservation Service, a technical conservation agency within the U.S. Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department;

(24) "Soil map unit" means an area of the landscape shown on a soil map which consists of one or more soils;

(25) "Tenant" means a person usually called a "cash tenant", "fixed-rent tenant", or "standing rent tenant" who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or a person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator if the tenant does not have control of the farm operation; and

(26) "Wetland," except when such term is part of the term "converted wetland," means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances does support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitutions of farms, allotments and bases (7 CFR Part 719).

§ 12.3 Applicability.

The provisions of this part shall apply to private land, Indian tribal land, and State or local government owned land in the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 12.4 Determination of ineligibility.

(a) Except as provided in § 12.5, any person who, after December 23, 1985, produces an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland shall be ineligible:

(1) As to any commodity produced on any land during that crop year by such person:

(i) For any type of price support or payment made available under the Agricultural Act of 1949, the CCC Charter Act, or any other Act;

(ii) For a farm storage facility loan made under section 4(h) of the CCC Charter Act;

(iii) For any disaster payments made under the Agricultural Act of 1949;

(iv) For crop insurance under the Federal Crop Insurance Act;

(v) For a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act or any other provision of law administered by the FmHA, if FmHA determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetland for agricultural production; or

(2) For a payment made under section 4 or 5 of the CCC Charter Act during such crop year for the storage of an agricultural commodity owned by CCC.

(b) A person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland if:

(1) SCS has determined either that—

(i) Highly erodible land is predominant in such field or

(ii) The land is converted wetland;

(2) ASCS has determined that the person, as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the land, or in the proceeds thereof; and

(3) ASCS has determined that the land is planted to an agricultural commodity or was planted to an agricultural commodity during the year for which the person is requesting benefits.

§ 12.5 Exemptions.

(a) During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is two years after the date land on which a crop of an agricultural commodity is produced was mapped by the SCS for purposes of classifying such land as highly erodible, and except as provided in paragraph (b) of this section, no person shall be determined to be ineligible for benefits in accordance with this part as the result of the production of a crop of an agricultural commodity on any highly erodible land:

(1) That was planted to an agricultural commodity in any year 1981 through 1985; or

(2) That was set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(b) *Conservation plan.* (1) With respect to the production of an agricultural commodity on any land identified in paragraph (a) of this section, if, as of January 1, 1990, or the date that is 2 years after the date SCS has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan based on the local SCS technical guide and approved by the CD, in consultation

with the local ASC committees and SCS acting on behalf of the Secretary, or by SCS acting on behalf of the Secretary, such person shall have until January 1, 1995, to fully comply with the plan without being determined to be ineligible for benefits in accordance with § 12.4 of this part.

(2) Except as provided in paragraph (b)(3) of this section, a conservation plan developed for the purposes of this paragraph and a conservation system developed for the purposes of paragraph (c) of this section must provide for the reduction of soil loss to a level not in excess of the soil loss tolerance level established for the soil that is the subject of the plan.

(3) A conservation plan developed for the purposes of this paragraph and a conservation system developed for the purposes of paragraph (c) of this section may provide for the reduction of soil loss to a level not in excess of two times the soil loss tolerance level established for the soil that is the subject of the plan if SCS determines, through the application of reasonable judgement of local professional soil conservationists and after consideration of the economic consequences in establishing requirements for measures to be included in conservation plans, that reduction of soil loss on such land to a lower level is impracticable.

(c) A person shall not be ineligible for program benefits in accordance with § 12.4(a), as the result of the production of a crop of an agricultural commodity which was:

- (1) Planted before December 23, 1985;
- (2) Planted during any crop year beginning before December 23, 1985;
- (3) Produced on highly erodible land in an area:

(i) Under a conservation system that has been approved by the CD after the CD determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district; or

(ii) Not within a CD, under a conservation system determined by SCS acting for the Secretary to be adequate for the production of such agricultural commodity on highly erodible land; or

(4) Produced on highly erodible land in reliance on a determination by SCS that such land was not highly erodible land, except that this paragraph (c)(4) shall not apply to any agricultural commodity that was planted on any land after SCS determines that such land is highly erodible land, and the person is notified of such determinations.

(d) *Exemptions for converted wetland.*

(1) A person shall not be determined to be ineligible for program benefits in

accordance with § 12.4 as the result of the production of a crop of an agricultural commodity on:

(i) Converted wetland if the conversion of such wetland was commenced before December 23, 1985;

(ii) An artificial lake, pond or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control;

(iii) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(iv) Wetland on which production of an agricultural commodity is possible as a result of a natural condition, such as drought, and is possible without action by the producer that destroys a natural wetland characteristic; or

(v) Converted wetland if SCS has determined that the actions of the person with respect to the production of an agricultural commodity on the converted wetland, individually and in connection with all other similar actions authorized by the Secretary in the area, would have only a minimal impact on the hydrological and biological aspect of wetland.

(2) The conversion of a wetland will be considered to have been commenced before December 23, 1985, if, before December 23, 1985, earth moving for the purpose of draining the wetland was actually started, or the person applying for the benefits has legally and financially committed substantial funds by entering into a contract providing for earth moving, or otherwise, for the purpose of converting the wetland.

(e) The provisions of § 12.4(a) shall not apply to any loan as described in § 12.4(a) that was made before December 23, 1985.

(f) A person shall not be determined to be ineligible in accordance with the provisions of this part for any benefits listed in § 12.4(a) with respect to the production of a crop of a commodity which was planted during the period December 23, 1985, through June 27, 1986.

(g) *Landlords and tenants.* (1) Except as provided in paragraph (g)(2), the ineligibility of a tenant or sharecropper (as determined in accordance with § 12.4) for benefits shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on lands other than those in which the tenant or sharecropper has an interest.

(2) Paragraph (g)(1) shall not be applicable to a landlord if the

production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985.

§ 12.6 Administration.

(a) A determination of ineligibility for benefits in accordance with the provisions of this part shall be made by the agency of the Department to which the person has applied for benefits. All determinations required to be made under the provisions of this part shall be made by the agency responsible for making such determinations, as provided in this section, and shall be binding on all other agencies of the Department.

(b) *Administration by ASCS.*

(1) The provisions of this part which are applicable to ASCS will be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field in part by State ASC committees (STC) and county ASC committees (COC).

(2) The Deputy Administrator, State and County Operations, ASCS (hereinafter referred to as the "Deputy Administrator") may determine any question arising under the provisions of this part which are applicable to ASCS and may reverse or modify any determination of eligibility with respect to programs administered by ASCS made by a STC or COC in connection with the provisions of this part.

(3) ASCS shall make the following determinations which are required to be made in accordance with this part:

(i) Whether a person is a producer on a particular field in accordance with § 12.4(b);

(ii) The establishment of field boundaries in accordance with § 12.2(a)(11);

(iii) Whether land was planted to an agricultural commodity in any of the years, 1981 through 1985, in accordance with § 12.5(a)(1);

(iv) Whether land was set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any crop to reduce production of an agricultural commodity in accordance with § 12.5(a)(2);

(v) Whether the agricultural commodity planted on a particular field was planted before December 23, 1985, or during any crop year which began before December 23, 1985, in accordance with § 12.5(c) (1) and (2);

(vi) Whether the production of an agricultural commodity on highly

erodible land or converted wetland by a landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper in accordance with § 12.5(g); and

(ii) Whether highly erodible land is predominant on a particular field in accordance with § 12.4(a);

(iii) Whether a person is actively applying a conservation plan that is based on the local SCS technical guide and which is approved by—

(A) The CD, in consultation with local ASC committees and SCS acting on behalf of the Secretary, or

(B) By SCS acting on behalf of the Secretary;

(iv) Whether a person is using a conservation system that has been approved by the CD in accordance with § 12.5(c)(3) of this part or, in an area not within a CD, a conservation system determined by the SCS be adequate for the production of a specific agricultural commodity on highly erodible land;

(v) Whether production of an agricultural commodity on a wetland is possible as a result of a temporary natural condition and is possible without action by the producer that destroys a natural wetland characteristic; and

(vi) Whether the actions of a person with respect to the production of an agricultural commodity on the converted wetland would have only a minimal impact on the hydrological and biological aspect of wetland.

(vii) Whether the conversion of a particular wetland was commenced before December 23, 1985 in accordance with § 12.5(d)(1)(i).

(4) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of ASCS to determine to any requirement specified in this part as a prerequisite for obtaining program benefits.

(c) *Administration by SCS.*

(1) The provisions of this rule that are applicable to SCS shall be administered under the general supervision of the Chief of the SCS and carried out in the field by the state conservationist and district conservationist.

(2) SCS shall make the following determinations which are required to be made in accordance with this part:

(i) Whether land is highly erodible or is a wetland or a converted wetland in accordance with the provisions of this part;

(3) SCS will provide such other technical assistance in the implementation of the provisions of this part as is determined to be necessary.

(d) *Administration by FmHA.*

(1) The provisions of this part which are applicable to FmHA will be administered under the general supervision of the FmHA Administrator through FmHA's State, district, and county offices.

(2) FmHA shall determine whether the proceeds of any loan made, insured or guaranteed under any provision of law administered by FmHA will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland as required in accordance with the provisions of this part.

(e) The provisions of this part which are applicable to FCIC will be administered under the general supervision of the Manager, FCIC.

§ 12.7 *Certification.*

(a) In order for a person to be determined to be eligible for any of the benefits specified in § 12.4—

(1) It must be determined, in consultation with SCS, whether any farm in which the person applying for the benefits has an interest as owner, operator, or producer contains highly erodible land, wetland or converted wetland if the conversion of such wetland occurred after December 23, 1985;

(2) The person applying for the benefits must certify (Form AD-1026 Highly Erodible Land and Wetland Conservation Certification) that such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year in which the person is seeking such benefits, unless such production is exempt, in accordance with § 12.5 of this part, from the provisions of § 12.4 of this part;

(3) With respect to a request for a loan made, insured or guaranteed under any provision of law administered by the FmHA, the person applying for the loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands; and

(4) The person applying for the benefits must authorize any representative of the Department access to all land which such person owns or operates, or has an interest in for the purpose of verifying any such certification.

(b) Each agency of USDA shall make all certifications received by it and the results of investigations concerning such certifications available to other agencies.

(c) A certification made in accordance with this section does not relieve any

person from compliance with the provisions of this part.

§ 12.8 *Action based upon advice or action of Department.*

The provisions of Part 790 of this Title, as amended, relating to performance based upon the action or advice of a COC or STC shall be applicable to the provisions of this part.

§ 12.9 *Scheme or device.*

All or any part of the benefits listed in § 12.4 otherwise due a person from the Department may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the provisions of this part. Such acts shall include, but are not limited to, concealing from the Department any information having a bearing on the application of the provisions of this part or submitting false information to the Department or creating entities for the purpose of concealing the interest of a person in a farming operation or to otherwise avoid compliance with the provisions of this part.

§ 12.10 *Appeals.*

Any person who has been or would be denied program benefits in accordance with § 12.4 as the result of any determination made in accordance with the provisions of this part may obtain a review of such determination in accordance with the administrative appeal procedures of the agency which rendered such determination.

§ 12.11 *Affiliated persons.*

(a) For purposes of this part, the following persons are considered to be "affiliated" and, in addition the actions of such persons will be considered for the purposes specified in this part to be the actions of the person who has requested benefits from the Department:

(1) The spouse and minor child of such person and/or guardian of such child;

(2) Any corporation in which the person is a stockholder, shareholder, or owner of more than 20 per cent;

(3) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(4) Any trust in which the person or any person listed in paragraphs (a) (1) through (3) of this section is a beneficiary or has a financial interest.

(b) If the person who has requested benefits from the Department is a corporation, partnership, or other joint venture, then, for purposes of applying paragraph (a), of this section, the person who has requested benefits from the

Department shall be considered to be such corporation, partnership, or other joint venture, and each individual owner, participant, or stockholder therein, except for persons with a 20 per cent or less share in a corporation.

Subpart B—Identification of Highly Erodible Land

§ 12.20 Responsibilities of Soil Conservation Service.

In implementing the provisions of this part, SCS shall, to the extent practicable:

- (a) Develop and maintain criteria for identifying highly erodible lands;
- (b) Prepare, and make available to the public, lists of highly erodible soil map units;
- (c) Make soil surveys for purposes of identifying highly erodible land; and
- (d) Provide technical guidance to conservation districts which must approve conservation plans and systems in consultation with local county ASC committees and SCS for the purposes of this part.

§ 12.21 Criteria for identifying highly erodible lands.

(a) Soil map units will be used as the basis for identifying highly erodible land. The erodibility of a soil is determined by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil. The T value represents the maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity.

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of the Universal Soil Loss Equation (USLE):

- (i) Rainfall and runoff (R),
- (ii) The degree to which the soil resists water erosion (K), and
- (iii) The function (LS), which includes the effects of slope length (L) and steepness (S).

(2) The potential average annual rate of wind erosion is estimated by multiplying the following factors of the Wind Erosion Equation (WEQ): Climatic characterization of windspeed and surface soil moisture (C) and the degree to which soil resists wind erosion (I).

(3) The USLE is explained in U.S. Department of Agriculture Handbook 537, "Predicting Rainfall Erosion Losses." The WEQ is explained in Agriculture Handbook 346, "Wind Erosion forces in the United States and Their Use in Predicting Soil Loss." Values for all the factors used in these equations are contained in the SCS field office technical guide and the references which are a part of the guide.

(b) A soil map unit subject to significant erosion by water or by wind, but not both, shall be determined to be highly erodible if either the RKLS/T or the CI/T value equals or exceeds 8.

(c) Whenever a soil map unit description contains a range of slope length and steepness characteristics that produce a range of LS values which result in RKLS/T quotients both above and below 8, the soil map unit will be entered on the list of highly erodible soil map units as "potentially highly erodible." The final determination of erodibility for an individual field containing these soil map unit delineations is made by an on-site investigation.

§ 12.22 Field application of highly erodible map units.

(a) Highly erodible land shall be considered to be predominant on a field if:

- (1) 33.33 percent or more of the total acreage is identified as soil map units which are highly erodible; or
- (2) 50 or more acres in such field is identified as soil map units which are highly erodible.

(b) A person may request the modification of field boundaries for the purpose of excluding highly erodible land from a field. Such a request must be submitted to, and is subject to the approval of ASCS.

(c) Small areas of noncropland, such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees, or brush, which shall be included in existing fields which meet the requirements of § 12.5(a) shall be considered to meet the requirements of § 12.5(a).

§ 12.23 Reconsiderations and Appeals.

A producer may request a reconsideration of any determination rendered by SCS in accordance with the provisions of this part and may appeal any determination rendered by SCS after such reconsideration in accordance with the Reconsideration and Appeal Procedures Regulations of SCS (7 CFR Part 614).

Subpart C—Wetland Conservation

§ 12.30 Responsibilities of Soil Conservation Service.

In carrying out the provisions of this part, SCS shall, to the extent practicable:

- (a) Make available to the public an approved county list of hydric soil map units, based upon the National List of Hydric Soils;
- (b) Maintain a list of hydrophytic vegetation derived from the National

List of Plant Species That Occur in Wetlands;

(c) Consult with the Fish and Wildlife Service on determinations of minimal effect made pursuant to § 12.5(d)(1)(v);

(d) Consult with the Fish and Wildlife Service on other matters concerning wetland and converted wetland;

(e) Provide national leadership in the development and application of criteria to identify hydric soils in consultation with the National Technical Committee for Hydric Soils; and

(f) Consult with the U.S. Fish and Wildlife Service in developing the National List of Plant Species that Occur in Wetlands and in providing guidance in applying the lists of hydric soils and plant species in matters concerning wetland and converted wetland.

§ 12.31 Criteria for identification of wetland.

(a) *Hydric Soils.* (1) SCS shall identify hydric soils through the use of published soil maps which reflect soil surveys completed by SCS. If a published soil map is unavailable for a given area, SCS may use unpublished soil maps which were made according to the specifications of the National Cooperative Soil Survey or may conduct an on-site evaluation of the land.

(2) In accordance with § 12.2(a)(26) of this part, SCS shall determine whether an area of land has a predominance of hydric soils, as follows:

(i) If a soil map unit has hydric soil as part of its name, that portions of the soil map unit related to the hydric soil shall be determined to have a predominance of hydric soils;

(ii) If a soil map unit is named for miscellaneous area that meets the criteria for hydric soils (i.e., riverwash, playas, beaches, or water) the soil map unit shall be determined to have a predominance of hydric soils; or

(iii) If a soil map contains inclusions of hydric soils, potentially wet miscellaneous areas, or other potentially wet areas as specifically identified in the description accompanying that soil map unit, that portion of the soil map unit shall be determined to have a predominance of hydric soils.

(3) *List of hydric soils.* (i) Hydric soils are those soils which meet criteria set forth in the publication "Hydric Soils of the United States 1985" which was developed by the National Technical Committee for Hydric Soils and which is incorporated by reference. It may be obtained upon request by writing the Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013. It is also available for inspection at the Office of

the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on June 24, 1986. The materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

(ii) An official list of hydric soil map units shall be maintained at the local SCS office and shall include—

(A) All soils from the National List of Hydric Soils that can be found in that field office area, and

(B) Any soil map units or areas which the State conservationist determines to meet such hydric soil criteria.

(iii) Any deletions of a hydric soil unit from the hydric soil map unit list must be made according to the established procedure contained in the publication "Hydric Soils of the United States 1985" for adding or deleting soils from the National List of Hydric Soils.

(b) Hydrophytic vegetation consists of plants growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(1) A plant shall be considered to be a plant species that occurs in wetland if such plant is listed in the National List of Plant Species That Occur in Wetland. It may be obtained upon request from the U.S. Fish & Wildlife Service, National Wetland Inventory, Monroe Bldg. Suite 101, 9720 Executive Center Drive, Saint Petersburg, Florida 33702.

(2) In accordance with § 12.2(a)(26) of this part, land shall be determined to have a prevalence of hydrophytic vegetation if:

(i) SCS determines through the use of the formula specified in paragraph (b)(3) of this section that a prevalence of hydrophytic vegetation exists on such land; or

(ii) In the event the vegetation on such land has been altered prior to an on-site evaluation, SCS determines that a prevalence of hydrophytic vegetation typically exists on the same hydric map unit in the local area.

(3) Formula for determination of prevalence of hydrophytic vegetation.

(i) *Plant classification*—The National List of Plant Species that Occur in Wetlands classifies vascular plant species found in the United States and Puerto Rico into five indicator groups based upon their requirements for wetland conditions. Obligate species are expected to occur in wetlands more than 99 percent of the time; facultative wet species, 66–99 percent of the time; facultative species, 33–66 percent of the time; facultative upland species, 1–33

percent of the time; and upland species, less than 1 percent of the time.

(ii) *Ecological indices*—The following ecological index values have been assigned the plant indicator groups for use in the formula to determine prevalence:

Indicator group	Ecological index
Obligate	1
Facultative wet	2
Facultative	3
Facultative upland	4
Upland	5

PI = Prevalence Index.

F = Frequency of Occurrence of Plant Species.

n(1-5) = Ecological Index Values for Indicator Groups.

$$PI = \frac{(1 \times \sum F_1) + (2 \times \sum F_2) + (3 \times \sum F_3) + (4 \times \sum F_4) + (5 \times \sum F_5)}{\sum (F_1 + F_2 + F_3 + F_4 + F_5)}$$

(B) A mean prevalence index (PI) value of less than 3.0 shall indicate that the area exhibits a prevalence of hydrophytic vegetation.

(c) *Artificial wetlands.* (1) A wetland shall be considered to be an artificial wetland in accordance with § 12.5(d)(1)(ii) of this part if such wetland meets the criteria for classification as a wetland as set forth in this part, but would not meet such criteria if the area was in its natural, undrained state.

(2) Wetlands which are created in order to mitigate the loss of other wetlands as a result of irrigation or flood control projects shall not be considered to be artificial wetlands for the purposes of § 12.5(d)(1) (ii) and (iii) of this part.

(d) SCS, in consultation with the Fish and Wildlife Service, U.S. Department of the Interior, shall determine whether the effect of any action of a person associated with the production of an agricultural commodity on converted wetland on the hydrological and biological aspect of wetland is minimal in accordance with § 12.5(d)(1)(v) of this part. Such determination shall be based upon an environmental evaluation analyzing the effect of the action on the maintenance of wetland values and upon an on-site evaluation. In most situations, such determinations will be

¹ All plants not on the National List of Plant Species That Occur in Wetlands.

(iii) *Specific criteria*—If the area in question has met the criteria for hydric soils, SCS will use line transects to sample the frequency of occurrence of all plants within the community identified by indicator group to arrive at a prevalence index to indicate whether or not a prevalence of hydrophytic vegetation exists.

(iv) (A) The following formula shall be used to calculate the prevalence index, where:

made prior to the beginning of activities that would convert the wetland. If a person has converted a wetland and subsequently seeks a determination that the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of SCS that the effect was minimal.

§ 12.32 Criteria for identification of converted wetland.

(a) For the purpose of determining whether land is a converted wetland in accordance with § 12.2(a)(6) of this part, a wetland shall be determined to have been drained, dredged, filled, leveled, or otherwise manipulated for the purpose or to have the effect of making the production of an agricultural commodity possible if the producer or any of the producer's predecessors in interest caused or permitted:

(1) The removal of one or more of the hydric soils criteria of such wetland; or

(2) The removal or destruction of hydrophytic vegetation on such wetland and a prevalence of hydrophytic vegetation is determined to exist on the same hydric soil map unit in the local area.

(b) A wetland shall not be considered to be converted if—

(1) Production of an agricultural commodity on such land is possible as a

result of a natural condition, such as drought, and

(2) It is determined that such production is not assisted by the action of the person producing such agricultural commodity that alters or destroys natural wetland characteristics. The temporary destruction of hydrophytic vegetation (except trees) as a result of the production of an agricultural commodity shall not be considered as altering or destroying natural wetland characteristic if such vegetation can and is allowed to return following cessation of the natural condition which made production of the agricultural commodity possible.

§ 12.33 Wetland determination procedures.

(a) A producer may obtain a wetland determination by making a written request to the SCS district conservationist. The determinations will be made in writing, and a copy will be provided to the producer.

(b) *Office determination.* (1) A determination of whether or not an area meets wetland criteria may be made by the district conservationist based upon existing records or other information and without the need for an on-site determination. If the person does not agree with the determination made by the district conservationist a determination shall be made based on an on-site evaluation.

(2) The office determination shall, if practicable, be made within 15 calendar days after receipt of the written request.

(c) *On-site determination.* (1) An on-site determination as to whether an area meets wetland criteria shall be made by the district conservationist if—

(i) Access to the property is provided, and

(ii) The person has disagreed with office determination made under paragraph (b) of this section, or

(iii) Adequate information is not available to the district conservationist to support an office determination.

(2) The on-site determination will be made as soon as possible, but no later than 60 calendar days following a request unless site conditions are unfavorable for the evaluation of predominance of hydric soils or prevalence of hydrophytic vegetation, in which case the time period may be extended by the district conservationist until such time as site conditions permit an adequate evaluation.

(3) If an area is continuously inundated or saturated for long periods of time 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 considered to be a wetland.

(d) A producer may request a reconsideration of any determination rendered by SCS in accordance with this part and may appeal any determination rendered by SCS after such reconsideration in accordance with the Reconsideration and Appeal Procedures Regulations of SCS (7 CFR Part 614).

PART 1940—GENERAL

2. The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

3. Section 1940.301 is amended by adding paragraph (c)(18) to read as follows:

§ 1940.301 Purpose.

(c) * * *
(18) Title 7, Part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation

4. Section 1940.304 is amended by revising paragraph (a)(1) to read as follows:

§ 1940.304 Special policy.

(a) * * *
(1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500-3, Land Use Policy, which is included as Exhibit A. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as Exhibit J, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of

these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that—

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

For Farmer Program loans and guarantees, see Exhibit M of this subpart for additional requirements regarding wetland and highly erodible land conservation.

* * * * *

5. Section 1940.310 is amended by revising paragraph (e)(2) to read as follows:

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

* * * * *

(e) * * *

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, and amendments and revisions to approved projects, including the provision of additional financial assistance for actions other than those covered by Exhibit M of this subpart, that do not alter the purpose, operation, location, or design of the project as originally approved;

* * * * *

6. Exhibit C is amended by revising paragraphs 1. and 2.a.(3) to read as follows:

Exhibit C—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500-3, Land Use Policy

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97-98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Departmental Regulation 9500-3, Land Use Policy, also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this Subpart. For additional requirements that apply to some Farmer Program loans and guarantees and that cover the conservation of wetlands and highly erodible land, see Exhibit M of this subpart.

2. * * *

a. * * *

(3) *Wetlands*—There is no central data source or inventory for determining the location of wetlands. Many government agencies are in the process of completing wetland surveys. The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Exhibit K contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information is available from other sources. Topographic maps prepared by USGS often depict the general existence of wetlands. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of SCS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in Exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that Exhibit.

* * * * *

7. Exhibit M is added to read as follows:

Exhibit M—Farmer Program Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land

[FmHA Instruction 1940-G]

1. *Background.* This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation of Title XII of the Food Security Act of 1985, Pub. L. 99-198. The purposes of these Subtitles are to: Reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. *Applicability.* The provisions of this exhibit apply to insured and guaranteed Farmer Program loans. For the purpose of this subpart "Farmer Program loans" means Farm Operating Loans, Farm Ownership Loans, Emergency, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed loan and borrower means a recipient of either an insured or guaranteed loan.

3. *FmHA prohibited activities.* Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan made or guaranteed by FmHA will not be used either: (a) For a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See

§ 12.2(a)(1) of Subpart A of Part 12 of this chapter, which is Attachment 1 of this exhibit and is available in any FmHA office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. *U.S. Department of Agriculture (USDA) definitions.*

In implementing this exhibit, FmHA will use the USDA's definitions of the terms found at § 12.2 of Subpart A of Part 12 of this chapter (Attachment 1 of this exhibit which is available in any FmHA office).

b. *Highly erodible land conservation.*

FmHA will conclude that excessive erosion of highly erodible land results or would result whenever: (1) A field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved by SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. *Wetland conservation.*

FmHA will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS: (1) A wetland has been or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible, and (2) neither the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. *Use of loan proceeds.*

To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

- (1) The purchase of the affected land;
- (2) Necessary planning, feasibility, or design studies;
- (3) Obtaining any necessary permits;
- (4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;
- (5) Any labor costs;
- (6) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or
- (7) For the same time period as in subparagraph 3d(6) above, any costs

associated with using for on-farm purposes an agricultural commodity grown on the affected land.

(8) Additionally, if loan proceeds will be or have been substituted to pay other costs so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. *Prohibited activities under other USDA financial assistance programs.*

Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Conservation Reserve Program Contract. Farmer Program applicants and borrowers, therefore, can be affected not only by the FmHA prohibited activities but also by the broad USDA sweep of the Subtitle B and C restrictions. Should a Farmer Program applicant rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or the lender of an FmHA guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in Part 12 of this chapter, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. *Applicant's responsibilities.*

a. *Required information.* Every applicant for a Farmer Program loan will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA. Once an applicant has provided FmHA with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA loan proceeds will be applied

or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility on FmHA borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 10 below. The property or properties will be listed and described in accordance with the Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of its Form CPA-26, "Highly Erodible Land and Wetland Conservation Determination," is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification."

b. Required actions.

If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop an SCS approved conservation system, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. *FmHA's application review.* The FmHA County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by Subparts A, B, and C of Part 12 of this chapter and further explained in this exhibit, to be final and controlling in the remaining FmHA decisionmaking process for this exhibit. See paragraph 11 of this exhibit for the applicant's (and lender's, in the case of a guaranteed loan) appeal rights regarding decisions rendered by ASCS and SCS. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of this subpart.

a. No highly erodible land, wetland, or converted wetland present.

The requested loan can be approved under the provisions of this exhibit and, except for documenting this result, no further action is required.

b. Converted wetland present.

The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph (c)(1) of paragraph 10 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph (d) (6) or (7) of paragraph 3 of this exhibit. If not, the County Supervisor will so document this and complete step two immediately below. If yes, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph d of this paragraph.

c. Highly erodible land or wetland present.

The County Supervisor will discuss with the applicant (and lender, in the case of a guaranteed loan) and review the intended uses of the FmHA loan proceeds as evidenced in any relevant applicant materials.

(1) *Proceeds to be used for prohibited activity.* If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of its ineligibility for the FmHA loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

(c) For a guaranteed loan, insert a condition on the conditional commitment (either Form FmHA 449-14, "Conditional Commitment for Contract of Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," as applicable) requiring the lender to state in the loan instruments that the loan will be in default should any proceeds of the loan be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of

wetlands to produce an agricultural commodity.

(d) Review the term of the proposed loan and take the following actions, as applicable.

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible to include in the loan a condition that requires the borrower to demonstrate, prior to loss of the exemption, that the borrower is actively applying an SCS approved conservation plan. This condition will be inserted only if, prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS resolve any doubts as to what extent production would be able to continue under application of a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayment ability can be demonstrated and an insured loan is approved, the County Supervisor will insert in Form FmHA 1940-17 the addendum set forth in subparagraph c(2)(b)(i) of this paragraph and the following indented additional language after the last sentence of that addendum: feasible eligible loan purposes that could be helpful in implementing a conservation plan, should the latter be an appropriate cure. Substitution of non-FmHA monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) *Proceeds not to be used for a prohibited activity.* If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 7 of this exhibit.

(b) If an insured loan is approved:

(i) Insert as an addendum to Form FmHA 1940-17, "Promissory Note," the following language. For a guaranteed loan, include this language as an element of the FmHA conditional commitment.

"Addendum to Promissory Note"

Addendum to promissory note dated _____ in the amount of \$_____ at an annual interest rate of _____ percent. This agreement supplements and attaches to the above note. Borrower recognizes that the loan described on the above note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M. Borrower _____

Borrower

(ii) In consultation with the Office of General Counsel (OGC), ensure that an additional covenant will be added to the mortgage/deed of trust/security agreement which reads as indicated below.

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will

"Borrower further agrees that, prior to loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR Part 12, Borrower must demonstrate that Borrower is actively applying an approved conservation plan on that land which has been determined to be highly erodible prior to 1990 or two years after the Soil Conservation Service has completed a soil survey for that land, whichever is later."

For a guaranteed loan, FmHA's conditional commitment will require the lender to place these additional requirements in its loan instruments. Borrowers will be advised in writing that a statement from the SCS issued prior to either 1990 or two years after the SCS has completed a soil survey of the borrower's land and stating that the borrower is actively complying with an approved conservation plan will be considered adequate demonstration of compliance.

(ii) *Loan term exceeds January 1, 1995.* If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit up until that date (See subparagraph b(4) of paragraph 10 of this exhibit) the County Supervisor will determine if it is financially feasible to place a condition in the loan that requires the borrower to demonstrate prior to January 1, 1985, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with an approved SCS conservation system. Such a condition will not be used unless, prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA and SCS resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. If in considering the use of this condition, loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan is approved, the County Supervisor will insert in Form FmHA 1940-17 the addendum set forth in subparagraph c(2)(b)(i) of this paragraph, the additional sentence required by subparagraph c(2)(d)(i) of this paragraph, and, after that sentence, the following indented language:

"Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with an approved Soil Conservation Service conservation system."

For a guaranteed loan, FmHA's conditional commitment will require the lender to place

these additional requirements in its loan instruments. Borrowers will be advised in writing that a statement from SCS issued prior to January 1, 1995, and stating that the borrower is complying with an approved conservation plan will be considered adequate demonstration of compliance.

(e) Implement the actions in paragraph d below if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance program subject to wetland or highly erodible land conservation restrictions.

d. *Highly erodible land, wetland, or converted wetland present and applicant intends to use other USDA financial assistance program(s), including crop insurance, to repay FmHA loan.*

The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed. If the applicant is eligible and the term of the requested loan will extend to either one of the periods identified in subparagraphs c(2)(d)(i) or (ii) of this paragraph, the applicant must either: (1) Agree to accept the applicable loan condition, if feasible and not otherwise already required under subparagraph c(2)(d)(i) or (ii) of this paragraph, or (2) demonstrate alternative repayment sources for the term of the loan.

7. *Required FmHA documentation.* The actions taken and determinations made by FmHA to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All Farmer Program applications subject to this exhibit will undergo at a minimum the completion of Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions." On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA loan under this exhibit, (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility, and (e) any conditions to be placed in an approved loan. If the application under review meets the definition of a Class I action as defined in § 1940.311 of this subpart, the above documentation will be included as an exhibit to Form FmHA 1940-21, "Environmental Assessment for Class I Action." If the application meets the definition of a Class II action as defined in § 1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV.4. of Exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

8. *Borrowers' Responsibilities.* In addition to complying with any loan conditions required as a result of FmHA's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of, any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibilities under the loan provisions.

9. *FmHA Monitoring.* As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contacts with borrowers, FmHA staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan conditions. If at anytime FmHA becomes aware of the borrower's violation of these provisions or related loan conditions, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetlands and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA guaranteed loans must also monitor compliance as part of their servicing responsibilities. Failure to do so will be considered negligent servicing and any loss attributed to such negligent servicing will not be paid by FmHA.

10. *Exemptions and determining their applicability.* Following is a list of exemptions from the provisions of this exhibit as well as a description of how FmHA will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in Subparts A, B, and C of Part 12 of this chapter (Attachment 1 of this exhibit which is available in any FmHA office) and does not modify or limit any of those exemptions.

a. *Exemption from wetland and highly erodible land conservation.* Any loan which was closed prior to December 23, 1985, or any loan for which either Form FmHA 1940-1, "Request for Obligation of Funds," Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. *Exemptions from highly erodible land conservation.* The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed SCS Form CPA-26 will be

considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting. The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the latter of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b(3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the local SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b(5), (6) and (7) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate for the production of a specific agricultural commodity or commodities on any highly erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

c. Exemptions from wetland conservation. The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed SCS Form CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA review.

(1) A converted wetland is exempt if the conversion of such wetland was commenced before December 23, 1985. The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA purposes.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) An artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; and (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A Wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt if SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

11. *Appeals.* Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this exhibit may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter except as provided by this paragraph. Appeals questioning either (a) the presence of a wetland converted wetland, or highly erodible land on a particular property, or (b) application to a property of the exemptions identified in subparagraphs b and c of paragraph 10 of this exhibit must be filed directly with the USDA agency making the controlling determination and in accordance with its appeals procedures. See §§ 12.10 and 12.23 of Subpart A of Part 12 of this chapter (Attachment 1 of this exhibit which is available in any FmHA office).

12. *Working with other USDA agencies.*

a. Coordination. FmHA State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA requests for site information or for the application of the exemptions contained in paragraph 10 of this exhibit. State Directors

will ensure that FmHA field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of the paragraph will be established.

b. Information exchange. FmHA State Directors will develop with ASCS State Executive Directors a system for FmHA to routinely receive notification whenever ASCS determines a violation has occurred under its wetland and highly erodible land conservation restrictions. FmHA State Directors will in turn provide to any interested USDA agency the following information.

(1) Upon request, copies of site information or exemption decisions made by SCS for FmHA application reviews;

(2) Upon request, copies of exemption decisions made by FmHA; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA as a result of the monitoring activities identified in paragraph 9 of this exhibit.

13. *Relationship of the requirements of this exhibit to the wetland protection requirements of Exhibit C of this subpart.*

The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in Exhibit C of this subpart regarding wetland protection cover all FmHA loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, Farmer Program applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of Exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA could make the loan, the requirements of Exhibit C of this subpart would have to be met to include an FmHA finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of Exhibit C of this subpart before FmHA approval of the requested financial assistance could be provided.

PART 1941—OPERATING LOANS

8. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

9. Section 1941.11 is amended by revising paragraph (a) to read as follows:

§ 1941.11 Applications.

(a) Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

10. Section 1941.17 is amended by revising paragraph (a) to read as follows:

§ 1941.17 Loan limitations.

(a) The total outstanding insured OL principal balance may not exceed \$200,000 at loan closing. Loans may not be made for the purchase of real estate, making principal payments on real estate, or refinancing any debts incurred for the purchase of real estate. Loans also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. In addition, loans may not be made to pay land lease costs under any program other than cash rent. The total outstanding youth loan principal balance may not exceed \$10,000 at loan closing except for youth loan applicants whose loan was approved on or before November 23, 1981.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

11. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

12. Section 1943.11 is amended by revising paragraph (a) to read as follows:

§ 1943.11 Receiving and processing applications.

(a) Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

13. Section 1943.17 is amended by adding a new paragraph (e) to read as follows:

§ 1943.17 Loan limitations.

(e) Loans also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

14. Section 1943.61 is amended by revising paragraph (a) to read as follows:

§ 1943.61 Receiving and processing applications.

(a) Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

15. Section 1943.67 is amended by adding a new paragraph (d) to read as follows:

§ 1943.67 Loan limitations.

(d) Loans also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

PART 1945—EMERGENCY

16. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

17. Section 1945.161 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1945.161 Receiving and processing applications.

(a) *Applications.* Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

18. Section 1945.167 is amended by adding a new paragraph (i) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(i) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

PART 1980—GENERAL

19. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmer Program Loans

20. Section 1980.108 is amended by adding a new paragraph (a)(3)(v) to read as follows:

§ 1980.108 General provisions.

(a) * * *
(3) * * *

(v) The requirements found in Exhibit M of Subpart G of Part 1940 of this chapter are met.

21. Section 1980.114 is amended by transferring the Administrative paragraphs to the end of the section and by revising administrative paragraph B to read as follows:

§ 1980.114 FmHA evaluation of applications.

Administrative

B. Determine that the requirements of §§ 1980.40 through 1980.45 of Subpart A of this part and those found in Exhibit M of Subpart G of Part 1940 of this chapter are met.

22. Section 1980.115 is amended by revising Administrative paragraph B.2. to read as follows:

§ 1980.115 County Committee review.

Administrative

B. * * *
2. Set forth in the space provided on Form FmHA 449-14 (A.1. above) or Form FmHA 1980-15 (A.1. above) any special conditions of approval, including requirements for security, improved management practices, relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart G of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be

used, if necessary. Return Forms FmHA 449-14 or FmHA 1980-15 to the County Supervisor for execution and proper distribution.

* * * * *
23. Section 1980.175 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 1980.175 Operating loans.

* * * * *
(d) * * *
(3) Loan also may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

24. Section 1980.180 is amended by adding a new paragraph (e)(3) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *
(e) * * *
(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

25. Section 1980.185 is amended by adding a new paragraph (e)(3) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(e) * * *

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter.

* * * * *
Signed at Washington, DC, on June 23, 1986.

Peter C. Myers,
Acting Secretary.
[FR Doc. 86-14499 Filed 6-24-86; 10:47 am]
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