

§ 12.10

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or renter from implementing certain practices that are a part of the approved conservation plan; and

(iii) FSA determines that the lack of compliance is not a part of a scheme or device as described in § 12.10.

(2) If relief is granted under paragraph (b)(1) of this section, the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

§ 12.10 Scheme or device.

All or any part of the benefits listed in § 12.4 otherwise due a person from USDA 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 USDA any information having a bearing on the application of the provisions of this part or submitting false information to USDA 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. Such acts shall also include acquiescence in, approval of, or assistance to acts which have the effect of, or the purpose of, circumventing these regulations.

§ 12.11 Action based upon advice or action of USDA.

The provisions of part 718 of this Title, as amended, relating to performance based upon the action or advice of a County Committee (COC) or State FSA Committee shall be applicable to the provisions of this part. In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good-faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 718.

7 CFR Subtitle A (1-1-03 Edition)

§ 12.12 Appeals.

Any person who has been or who 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 appeals procedures of the agency which rendered such determination. Agency appeal procedures are contained in the Code of Federal Regulations as follows: FSA, part 780 of this title; NRCS, part 614 of this title; Rural Utilities Service, part 1900, subpart B of this title.

Subpart B—Highly Erodible Land Conservation

§ 12.20 NRCS responsibilities regarding highly erodible land.

In implementing the provisions of this part, NRCS 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 approve conservation plans and systems, in consultation with local county FSA committees, for the purposes of this part.

§ 12.21 Identification of highly erodible lands criteria.

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

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of