

an agricultural commodity shall not be considered as altering or destroying natural wetland characteristic if such vegetation could return following cessation of the natural condition which made production of the agricultural commodity possible; or

(2) Such land is correctly identified as farmed wetland or farmed-wetland pasture.

§ 12.33 Use of wetland and converted wetland.

(a) The provisions of § 12.32(b)(2) are intended to protect remaining functions and values of the wetlands described therein. Persons may continue to farm such wetlands under natural conditions or as they did prior to December 23, 1985. However, no action can be taken to increase effects on the water regime beyond that which existed on such lands on or before December 23, 1985, unless NRCS determines the effect on losing remaining wetland values would be minimal under § 12.5(b)(1)(v). If, after December 23, 1985, changes due to human activity occurred in the watershed and resulted in an increase in the water regime on a person's land, the person may be allowed to adjust the existing drainage system to accommodate the increased water regime on the condition that the person affected by this additional water provides NRCS with appropriate documentation of the increased water regime, the causes thereof, and the planned changes in the existing drainage system. In order to maintain program eligibility, a person must provide sufficient documentation and receive approval from NRCS prior to making any changes that will have the effect of increasing the capacity of the existing drainage systems.

(b) Unless otherwise provided in this part, the production of an agricultural commodity on land determined by NRCS to be prior-converted cropland is exempted by law from these regulations for the area which was converted. Maintenance or improvement of drainage systems on prior-converted croplands are not subject to this rule so long as the prior-converted croplands are used for the production of food, forage, or fiber and as long as such actions do not alter the hydrology of

nearby wetlands or do not make possible the production of an agricultural commodity on these other wetlands. Other wetlands under this section means any natural wetland, farmed wetland, farmed-wetland pasture, or any converted wetland that is not exempt under § 12.5 of this part.

(c) Abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture. Unless the criteria for receiving an exemption under § 12.5(b)(1)(iii) are met, such land is considered to be abandoned when the land meets the wetland criteria of § 12.31. In order for documentation of site conditions to be considered adequate under § 12.5(b)(1)(iii), the affected person must provide to NRCS available information concerning the extent of hydrological manipulation, the extent of woody vegetation, and the history of use. In accordance with § 12.5(b)(1)(iii), participation in a USDA approved wetland restoration, set-aside, diverted acres, or similar programs shall not be deemed to constitute abandonment.

(d) The maintenance of the drainage capacity or any alteration or manipulation, including the maintenance of a natural waterway operated and maintained as a drainage outlet, that affects the circulation and flow of water made to a farmed wetland or farmed-wetland pasture would not cause a person to be determined to be ineligible under this part, provided that the maintenance does not exceed the scope and effect of the original alteration or manipulation, as determined by NRCS, and provided that the area is not abandoned. Any resultant conversion of wetlands is to be at the minimum extent practicable, as determined by NRCS.

§ 12.34 Paperwork Reduction Act assigned number.

The information collection requirements contained in this regulation (7 CFR part 12) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560-0004.

PART 13 [RESERVED]