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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]

PART 14—DETERMINING THE PRIMARY PURPOSE OF CERTAIN PAYMENTS FOR FEDERAL TAX PURPOSES

Sec.
14.1 Purpose.
14.2 Applicability.
14.3 Objective.
14.4 Policy.
14.5 Procedure.
14.6 Criteria for determining the primary purpose of payments with respect to potential exclusion from gross income.
14.7 Non-Federal programs and payments.

AUTHORITY: Sec. 543, Pub. L. 95–600; as amended by sec. 105, Pub. L. 96–222; 26 U.S.C. 126, 1255 and 5 U.S.C. 301.

SOURCE: 45 FR 58507, Sept. 4, 1980, unless otherwise noted.

§ 14.1 Purpose.

(a) Part 14 sets forth criteria to be used by the Secretary of Agriculture in determining the primary purpose of certain payments received by persons under applicable programs. Determining the primary purpose for which applicable payments are made is one step toward the exclusion of all or part of the payments from gross income for Federal income tax purposes.

(b) The criteria set forth in part 14 apply only to the determinations to be made by the Secretary of Agriculture.

§ 14.2 Applicability.

(a) Part 14 applies only to payments received under the programs listed in paragraphs (a)(1) through (10) of this section. Payments received under programs not listed in paragraphs (a)(1) through (10) of this section, are not

considered eligible for exclusion from gross income under this part.

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*).

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The Great Plains conservation program authorized by section 16 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a *et seq.)*.

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture that is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (a)(1) through (8) of this section.

(10) Any program of a State, a possession of the United States, a political subdivision of a State or a possession of the United States, the District of Columbia, or a combination of any of the foregoing under which payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) The criteria set forth in § 14.5 for determining the primary purpose of payments with respect to their eligibility for exclusion from gross income shall also be used to determine the applicability of this part to payments received under non-Federal programs as provided in § 14.2(a)(10).

§ 14.3 Objective.

The objective of the determinations made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs.

§ 14.4 Policy.

Federal tax, conservation, natural resource, and environmental policies should complement rather than conflict with one another. Therefore, the Federal income tax liability on applicable payments should be reduced or eliminated to the extent that the payments yield conservation, environmental, forestry improvement, or wildlife benefits to the general public beyond the benefits that accrue to those who receive the payments.

§ 14.5 Procedure.

(a) The portion of an applicable payment that may be excluded from gross income under part 14 shall be that portion or all, as appropriate, that—

(1) Is determined to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing wildlife habitat; and

(2) Is determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property associated with the payment.

(b) *Primary purpose* means the principal, fundamental, predominant, or independent objective for which a payment is made. The following shall be considered in determining the primary purpose of a payment:

(1) *Single-purpose* payments shall be considered as having that purpose as their primary purpose.

(2) *Multiple-purpose payments.* If a payment is made for several purposes, it may be considered as having soil and water conservation, environmental protection or restoration, forestry improvement, or providing wildlife habitat as its primary purpose to the extent of the portion of the payment that

is made for one or more of such purposes.

(3) Where a purpose of a payment, or portion thereof, is in doubt, the following sources should be considered—

(i) Authorizing legislation, legislative history, administrative regulation, administrative history, interpretive case law, and the administrative policies and procedures under which the applicable program operates and the payment is made; and

(ii) Agreements or other documentation accompanying the transfer of the payment;

(iii) Use made of the payment by the recipient.

§ 14.6 Criteria for determining the primary purpose of payments with respect to potential exclusion from gross income.

(a) *Soil conservation.* (1) Payments shall be considered to be made primarily for the purpose of soil conservation if they are intended to finance activities, measures, or practices to reduce soil deterioration.

(2) Soil deterioration refers to impairments of the physical or chemical properties of soil that are largely irreversible and that can be expected to result in a long-term or permanent reduction in the productive capacity of the resource regardless of the level of technology available or applied. Erosion by water and wind and the associated changes that result in permanent or long-term reductions in the productive capacity of the soil are forms of soil deterioration.

(b) *Water conservation.* (1) Water conservation includes actions that, for a given level of water supply, reduce the demand for or use of water by—

(i) Improving efficiency in use;

(ii) Reducing loss and waste;

(iii) Increasing the recycling or reuse of water, thereby making existing supplies available for other current or future uses; or

(iv) Improving land management practices for the purpose of reducing water use, loss, waste, increasing the efficiency of water use, or increasing the recycling or reuse of water.

(2) Payments shall be considered to be made primarily for the purpose of water conservation if they are intended to finance actions, measures, or practices that can be expected to result in water conservation as defined in paragraph b(1) of this section.

(c) *Protecting the environment.* (1) Payments shall be considered to be made primarily for the purpose of protecting the environment if they are intended to finance actions, measures, or practices undertaken to prevent man-caused or man-induced reductions or degradations in the quantity or quality of the natural external or extrinsic conditions directly or indirectly affecting people.

(2) External or extrinsic conditions refer to the complex of natural conditions or circumstances, including but not limited to those affecting public health and safety, in which people reside or otherwise carry out their lives.

(d) *Restoring the environment.* (1) Payments shall be considered to be made primarily for the purpose of restoring the environment if they are intended to finance actions, measures, or practices undertaken to reestablish, return, or enhance the quantity or quality of the natural external or extrinsic conditions directly or indirectly affecting people that existed before the man-caused or man-induced degradation.

(2) External or extrinsic conditions have the same meaning with respect to restoring the environment as they do for protecting the environment.

(e) *Improving forests.* (1) Payments shall be considered to be made primarily for the purpose of improving forests if they are intended to finance actions, measures, or practices undertaken for the direct or indirect conservation or enhancement of the quantity or quality of timber resources.

(2) Improving forests includes the generation and regeneration of timber stands as well as the silvicultural improvement of such timber stands but excludes harvest cuttings not undertaken primarily for silvicultural improvement.

(f) *Providing habitat for wildlife.* (1) Payments shall be considered to be made primarily for the purpose of providing habitat for wildlife if they are intended to finance actions, measures, or practices leading directly to the establishment of those physical and biological conditions or resources that can

be expected to support primarily noncultivated and nondomesticated animal and plant life. The animal and plant life must be of value to the public in their natural state apart from any value that may be realized from them as private economic gain.

(2) Wildlife includes but is not limited to species of terrestrial or aquatic animals and plants.

(3) Habitat includes, but is not limited to, the food supply, water supply, and nesting and escape cover necessary to support populations of wildlife species. Included in the definition of wildlife habitat are domestic crops raised for the primary purpose of providing food supply or cover for specific wildlife species.

§ 14.7 Non-Federal programs and payments.

(a) *Definition of non-Federal programs.* Non-Federal program means any program of a State, a possession of the United States, a political subdivision of any State or possession of the United States, the District of Columbia, or a combination of any of the foregoing.

(b) *Applicability.* Payments received through non-Federal programs under which payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife may be considered for exclusion from gross income under part 14.

(c) *Determining the primary purpose of non-Federal payments.* The determination of the primary purpose for which non-Federal payments are made with respect to their potential for exclusion from gross income shall be made by using the criteria set forth in part 14 for determining the primary purpose of Federal payments.

(d) *Procedure for determining the primary purpose of payments made under non-Federal programs.* (1) To initiate the process of determining the applicability of this part to payments received through non-Federal programs and the primary purpose of the payments for potential exclusion from gross income, the non-Federal official responsible for the program through which the payments are made should provide six copies of the following materials relating to the program to the Secretary of Agriculture—

(i) Authorizing legislation;

(ii) Rules or regulations;

(iii) Current policies and procedures under which payments are made and used;

(iv) A description of all practices or measures for which payments are made and used; and

(v) Any other information that may be helpful in determining the purpose for which payments, or portions thereof, are made and used.

(2) Any changes in the supporting documentation listed in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, should be reported to the Secretary within 30 days of the date they become final.

PART 15—NONDISCRIMINATION

Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

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15.3 Discrimination prohibited.
15.4 Assurances required.
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15.6 Complaints.
15.7 Intimidatory or retaliatory acts prohibited.
15.8 Procedure for effecting compliance.
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15.10 Decisions and notices.
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APPENDIX TO SUBPART A—LIST OF FEDERAL FINANCIAL ASSISTANCE FROM USDA

Subpart B [Reserved]

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