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stockholder therein of the corporation, partnership, or other joint venture, except for persons who have an indirect interest through another business enterprise in such corporation, partnership, or other joint venture or persons with a 20 percent or less share in a corporation.

(d) *Limitation*. Any reduction in payments which results only from the application of the affiliation provisions of this section to a partnership, joint venture, trust, or other enterprise shall be limited to the extent of interest held in such partnership, joint venture, trust, or other enterprise by the person or business enterprise that committed the violation. However, for violations for which the business enterprise is considered directly responsible under the provisions of this part, the business enterprise shall be subject to a full loss of benefits, including those instances in which the business enterprise has an interest in the land where the violation occurred or where the business enterprise had an interest in the crops produced on the land.

(e) *Avoidance of this part*. Limitations on affiliation shall not apply as needed to correct for any action that would otherwise tend to defeat the purposes of this part.

§ 12.9 Landlords and tenants.

(a) *Landlord eligibility*. (1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for benefits (as determined under § 12.4) shall not cause a landlord to be ineligible for USDA program benefits accruing with respect to land other than those in which the tenant or sharecropper has an interest.

(2) The provisions of paragraph (a)(1) of this section 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, or if the landlord has acquiesced in such activities by the tenant or sharecropper.

(b) *Tenant or renter eligibility*. (1) The ineligibility of a tenant or renter may be limited to the program benefits listed in § 12.4(c) accruing with respect to only the farm on which the violation occurred if:

(i) The tenant or renter shows that a good-faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part; and

(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.

§ 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 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 the U.S. Department of Agriculture Handbook 537, ''Predicting Rainfall Erosion Losses.'' The WEQ is explained in the paper by Woodruff, N.P., and F. H. Siddaway, 1965, ''A Wind Erosion Equation,'' Soil Science Society of America Proceedings, Vol. 29. No. 5, pages 602–608. Values for all the factors used in these equations are contained in the NRCS field office technical guide and the references which are a part of the guide. The Universal Soil Loss Equation, the Revised Universal Soil Loss Equation, and the Wind Erosion Equation and the rules under which NRCS uses the equations are published at §§ 610.11 through 610.15 of this title.

(b) *Highly erodible.* A soil map unit shall be determined to be highly erodible if either the RKLS/T or the CI/T value for the map unit equals or exceeds 8.

(c) *Potentially highly erodible.* Whenever a soil map unit description contains a range of a 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