

includes all harvest acreages including sugarcane harvested for seed.

Disaster payment yield means as applicable, the average of actual yields for the years 1987 through 1989 in accordance with instructions issued by the Deputy Administrator or the county average yield for the crop, established by FSA. Such county average yield shall be the average of the county average yields, including seed cane production, for the years 1985 through 1989 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest.

Eligible crop means the 1990 crop of sugarcane, sugar beets, soybeans and peanuts.

Eligible disaster means a December 1989 frost or freeze.

Eligible producer means, with respect to an eligible crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced. Such person includes the producer who was on the farm at the time of the 1989 freeze and who may or may not have been the producer who harvested the 1990 crop.

Expected production means the disaster yield times the sum of the 1990 planted acreage of the crop and the 1990 prevented planted acreage of the crop.

§ 777.4 Availability of disaster payments.

Disaster payments will be made available to eligible producers of 1990 crop of an eligible crop who suffered losses because of the occurrence of an eligible disaster in 1989.

§ 777.5 Disaster benefits.

(a) Disaster payments for low yield losses on 1990 crop of sugarcane are authorized to be made to producers who file a CCC-441SU, Application for 1990 Disaster Benefits, if:

(1) The farm operator submits an Application for Disaster Credit (Form FSA-574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a record of Production and Yield (Form FSA-658) in accordance with § 1477.7; and

(3) The county ASC committee determines that because of an eligible disaster condition, producers on a farm were able to harvest less than 60 percent of the expected production of an eligible crop in 1990.

(b) Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 777.6 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the county FSA office serving the county where the producer's farm is located for administrative purposes.

(b) An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with § 777.5(a). Applications for payment must be filed no later than June 28, 1991.

§ 777.7 Report of acreage, production disposition, and indemnity payments.

(a) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all eligible crops produced in 1990 on an acreage for which an application for a disaster payment is filed. Such production reports must be filed no later than the date established by the Deputy Administrator.

(b) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition or provide FSA the authority necessary in order to verify the information provided on the report. Such authority includes access to producers' disposition documents of warehousemen and processors. Acceptable evidence shall include, but not limited to, such items as the original or a copy of commercial receipts, CCC loan documents, settlement sheets, or records of sugar production.

§ 777.8

(c) If there has been a disposition of crop production other than through commercial channels, such as seed cane, the eligible producer must furnish such documentary evidence as the county ASC committee determines to be necessary in order to verify the information provided by the producer.

§ 777.8 Availability of funds.

In the event the total amount of all claims submitted exceeds \$11 million, each payment shall be reduced by a uniform percentage.

§ 777.9 Misrepresentation, scheme and device, and fraud.

(a) If FSA determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to FSA. The amount paid to FSA shall include any interest and other amounts as determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FSA to make a payment which FSA under this part otherwise would not make, all amounts paid by FSA to any such producer shall be refunded to FSA together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by FSA.

(c) If the county ASC committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 777.10 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be

7 CFR Ch. VII (1–1–99 Edition)

refunded to FSA, together with interest.

(b) Producers must refund to FSA any excess payments made by FSA.

(c) In the event that the loss of production was established as a result of erroneous information provided by any person to the county FSA office or was erroneously computed by such office, the loss of production shall be re-computed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such re-computation shall be remitted to FSA.

§ 777.11 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to FSA shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; and 31 U.S.C. 3729.

§ 777.12 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this chapter.

§ 777.13 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 777.14 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

- (a) 7 CFR part 3, Debt Management.
- (b) 7 CFR part 12, Highly Erodible Land and Wetland Conservation.
- (c) 7 CFR part 707, Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.
- (d) 7 CFR part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.