

Farm Service Agency, USDA

§ 777.1

credit may be participated prior to being fully advanced.

(5) The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's sale or assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan purchased.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The guarantee or assignment of guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

(1) The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

(2) Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

(d) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

[64 FR 7358, Feb. 12, 1999; 64 FR 38298, July 16, 1999]

PART 777—DISASTER PAYMENT PROGRAM FOR 1990 CROP OF SUGARCANE, SUGAR BEETS, SOYBEANS AND PEANUTS

Sec.

777.1 General statement.

777.2 Administration.

777.3 Definitions.

777.4 Availability of disaster payments.

777.5 Disaster benefits.

777.6 Filing application for payment.

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

777.8 Availability of funds.

777.9 Misrepresentation, scheme and device, and fraud.

777.10 Refunds to CCC.

777.11 Cumulative liability.

777.12 Appeals.

777.13 Liens.

777.14 Other regulations.

777.15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 7 U.S.C. 1446.

SOURCE: 56 FR 25346, June 4, 1991, unless otherwise noted.

§ 777.1 General statement.

This part implements a Disaster Payment Program for the 1990 crop year as provided by section 201(k) of the Agricultural Act of 1949, as amended, and Dire Emergency Supplemental Appropriations Act for Fiscal year 1990. The purpose of the program is to make disaster payments to eligible producers of sugarcane, sugar beets, peanuts and soybeans who have suffered a loss of

§ 777.2

production of their 1990 crop as the result of a natural disaster in 1989.

§ 777.2 Administration.

(a) The program will be administered under the general supervision of the Administrator, Farm Service Agency (FSA), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees.

(b) State and county ASC committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State ASC committee shall take any action required by this part which has not been taken by a county ASC committee. The State ASC committee shall also:

(1) Correct or require a county ASC committee to correct, any action taken by such county ASC committee which is not in accordance with this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with this part.

(d) FSA shall determine all yields and prices under this part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, FSA will use data provided by the National Agricultural Statistical Service (NASS). Any reference in this part to NASS shall not restrict FSA from using data from other sources.

(e) No delegation herein to a State or county ASC committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county ASC committee.

§ 777.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present.

7 CFR Ch. VII (1-1-00 Edition)

The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this chapter.

Actual production means the quantity of soybeans and peanuts actually harvested and in the case of sugar beets and sugarcane the quantity of sugar produced from such crop, or which could have been harvested or produced as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator), (FSA). Such quantity 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.

Farm Service Agency, USDA

§ 777.9

§ 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.

(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

§ 777.10

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 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

7 CFR Ch. VII (1-1-00 Edition)

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.

(e) 7 CFR part 780, Appeal Regulations.

(f) 7 CFR part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary.

(g) 7 CFR part 796, Denial of Program Eligibility for Controlled Substance Violation.

§ 777.15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

PART 780—APPEAL REGULATIONS

Sec.

780.1 Definitions.

780.2 Applicability.

780.3-780.5 [Reserved]

780.6 Mediation.

780.7 Reconsideration and appeals with the county and State committees and reconsideration with the regional service offices.

780.8 Time limitations for filing requests for reconsideration or appeal.

780.9 Appeals of NRCS technical determinations.

780.10 Other finality provisions.

780.11 Reservation of authority.

AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

SOURCE: 60 FR 67316, Dec. 29, 1995, unless otherwise noted.