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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

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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.

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780.3-780.5 [Reserved]

780.6 Mediation.

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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.

§ 780.1 Definitions.

For purposes of this part:

1994 Act means the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Public Law 103-354).

Agency means FSA and its county and State committees and their personnel, CCC, NRCS, FCIC, and any other agency or office of the Department which the Secretary may designate, or any successor agency.

Appeal means a written request by a participant asking the next level reviewing authority to review a decision.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within the U.S. Department of Agriculture.

County committee means an FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government corporation within the U.S. Department of Agriculture.

Final decision means the program decision rendered by the county or State committee or the FCIC Regional Service Office upon written request of the participant. A decision that is otherwise final shall remain final unless the decision is timely appealed to the State committee or NAD. A decision of FSA or FCIC made by personnel subordinate to the county committee is considered "final" for the purpose of appeal to NAD only after that decision has been appealed to the county committee under the provisions of this part.

FSA means the Farm Service Agency.

NAD means the National Appeals Division, established pursuant to the 1994 Act.

NAD regulations means the National Appeals Division (NAD) rules of procedure published by the Secretary at 7 CFR part 11 implementing title II, subtitle H of the 1994 Act.

NRCS means the Natural Resource Conservation Service of the United States Department of Agriculture, formerly the Soil Conservation Service.

Reconsideration is a subsequent consideration of a prior decision by the same reviewing authority.

Regional Service Office means the regional offices established by FSA and FCIC for the purpose of making determinations for private insurance companies reinsured by FCIC under the Federal Crop Insurance Act and for FSA for insurance contracts delivered through county FSA offices (including underwriting decisions), the applicability of provisions under chapter IV of 7 CFR, and decisions as to insurability and rating of acreage.

Reviewing authority means a person or committee assigned the responsibility of making a decision on the appeal filed by the participant in accordance with this part.

State committee means an FSA State committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) including, where appropriate, the Director of the Caribbean Area FSA office for Puerto Rico and the Virgin Islands.

Technical determination of NRCS means a decision by NRCS concerning the status and condition of the natural resources based on science and on the best professional judgment of natural resource professionals within NRCS.

§ 780.2 Applicability.

(a)(1) Except as provided in other regulations, this part applies to decisions made under programs and by agencies, as set forth herein:

(i) Decisions in those domestic programs administered by the Farm Service Agency (FSA), and programs administered by FSA on behalf of the Commodity Credit Corporation (CCC) through State and county committees, which are generally set forth in chapters VII and XIV of this title;

(ii) Technical decisions made by the Natural Resources Conservation Service (NRCS) under title XII of the Food Security Act of 1985, as amended;

(iii) Decisions made by personnel of the Federal Crop Insurance Corporation ("FCIC") or FSA with respect to contracts of insurance insured by FCIC and the noninsured crop disaster assistance program;

(iv) Decisions made by personnel of FCIC or FSA with respect to contracts of insurance provided by private insurance carriers and reinsured by FCIC

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under the provisions of the Federal Crop Insurance Act; and

(v) Other programs to which this part is made applicable by individual program regulations.

(2) For covered programs, this part is applicable to any decision made by FSA and its State and county committees, CCC, FCIC, the personnel and agents of FSA, FCIC, or CCC, and by the officials of NRCS (to the extent provided in § 780.9), except as otherwise may be provided in individual program requirements or by the Secretary.

(3) This part is not applicable to any decision:

(i) Made by FSA or FCIC with respect to any matter arising under the terms of the Standard Reinsurance Agreement between FCIC and any private insurance company reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended; or

(ii) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. Those insurance contracts are subject to dispute resolution through arbitration or mediation in accordance with the contract terms.

(b) With respect to matters identified in paragraph (a) of this section, participants may request reconsideration or appeal, under the provisions of this part, of decisions by an agency made with respect to:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program;

(4) Making payments or other benefits to an individual or entity who is not a participant in a program; or

(5) Technical determinations by NRCS.

(c) No reconsideration or appeal may be sought under this part of any general program provision or program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants.

(d) Mathematical formulas established under a statute or program regu-

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lations, and decisions based solely on the application of those formulas, are not appealable under this part.

(e) Only a participant may seek reconsideration or appeal under this part.

§§ 780.3-780.5 [Reserved]

§ 780.6 Mediation.

Participants have the right to seek mediation involving any decision appealed under this part in accordance with the provisions of section 282 of the 1994 Act, if the mediation program of the State where the participant's farming operation giving rise to the decision is located has been certified by the Secretary for the program involved in the agency decision. Any time limitation for review contained in this part will be stayed pending timely pursuit and completion of the mediation process.

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

(a) A participant may appeal a decision of personnel subordinate to the county committee by filing with the county committee a written request for appeal that states the basis upon which the participant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program policies; or

(2) All material facts were not properly considered in such decision.

(b) A participant may seek reconsideration of a final decision by a county committee or the Regional Service Office by filing a written request for reconsideration with the county committee or the Regional Service Office that states the basis upon which the participant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations; or

(2) All material facts were not properly considered in such decision.

(c) A participant may appeal a final decision by a county committee or the Regional Service Office to the State committee and request an informal

hearing in connection therewith, by filing a written appeal with the State committee.

(d) A participant may seek reconsideration of a decision by a State committee, and request an informal hearing in connection therewith, by filing a written request for reconsideration with the State committee that states the basis upon which the participant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations; or

(2) All material facts were not properly considered in such decision.

(e) Nothing in this part prohibits a participant from filing an appeal of a final decision of the county committee or the Regional Service Office with NAD in accordance with the NAD regulations.

(f) This section does not apply to a technical determination by NRCS. Procedures regarding the appeal of a technical determination by NRCS are contained in § 780.9.

§ 780.8 Time limitations for filing requests for reconsideration or appeal.

(a) A request for reconsideration or an appeal of a decision shall be filed within 30 days after written notice of the decision which is the subject of the request is mailed or otherwise made available to the participant. A request for reconsideration or appeal shall be considered to have been "filed" when personally delivered in writing to the appropriate reviewing authority or when the properly addressed request, postage paid, is postmarked. A decision shall become final and non-reviewable unless reconsideration is timely sought or the decision is timely appealed.

(b) A request for reconsideration or appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) of this section if, in the judgment of the reviewing authority with whom such request is filed, the circumstances warrant such action.

§ 780.9 Appeals of NRCS technical determinations.

(a) Notwithstanding any other provision of this part, a technical deter-

mination of NRCS issued to a participant pursuant to Title XII of the Food Security Act of 1985, as amended, including wetland determinations, may be appealed to a county committee in accordance with the procedures in this part.

(b) If the county committee hears the appeal and agrees with the participant's appeal, the county committee shall refer the case with its findings to the NRCS State Conservationist to review the matter and review the technical determination. The County or State committee decision shall incorporate, and be based upon, the NRCS State Conservationist's technical determination.

§ 780.10 Other finality provisions.

The finality provisions contained in section 281 of the 1994 Act shall be applied to appeals under this part to the extent provided for in that section of the 1994 Act.

§ 780.11 Reservations of authority.

(a) Representatives of FSA, FCIC, and CCC may correct all errors in entering data on program contracts, loan agreements, and other program documents and the results of the computations or calculations made pursuant to the contract or agreement.

(b) Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Manager of FCIC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by FSA or its county and State committees, FCIC, or CCC.

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

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- 781.1 General.
- 781.2 Definitions.
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- 781.4 Assessment of penalties.
- 781.5 Penalty review procedure.
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