

## § 785.12

State mediation program or administering entity under part 3017 of this title following a withdrawal of certification of the State mediation program.

### § 785.12 Nondiscrimination.

The provisions of parts 15, 15b and 1901, subpart E, of this title and part 90 of title 45 apply to activities financed by grants made under this part.

### § 785.13 OMB Control Number.

The information collection requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0560-0165.

## PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM (DDAP—III)

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AUTHORITY: Sec. 9007, Pub. L. 110-28, 121 Stat. 112; and Sec. 743, Pub. L. 110-161.

SOURCE: 73 FR 11522, Mar. 4, 2008, unless otherwise noted.

### § 786.100 Applicability.

(a) Subject to the availability of funds, this part specifies the terms and conditions applicable to the Dairy Disaster Assistance Payment Program (DDAP—III) authorized by section 9007 of Public Law 110-28 (extended by Pub. L. 110-161). Benefits are available to eligible United States producers who have suffered dairy production losses in eligible counties as a result of a natural disaster declared during the period between January 1, 2005, and December

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31, 2007, (that is, after January 1, 2005, and before December 31, 2007).

(b) To be eligible for this program, a producer must have been a milk producer anytime during the period of January 2, 2005, through December 30, 2007, in a county declared a natural disaster by the Secretary of Agriculture, declared a major disaster or emergency designated by the President of the United States. For a county for which there was a timely Presidential declaration, but the declaration did not cover the loss, the county may still be eligible if the county is one for which an appropriate determination of a Farm Service Agency (FSA) Administrator's Physical Loss Notice applies. Counties contiguous to a county that is directly eligible by way of a natural disaster declaration are also eligible. Only losses occurring in eligible counties are eligible for payment in this program.

(c) Subject to the availability of funds, FSA will provide benefits to eligible dairy producers. Additional terms and conditions may be specified in the payment application that must be completed and submitted by producers to receive a disaster assistance payment for dairy production losses.

(d) To be eligible for payments, producers must meet the provisions of, and their losses must meet the conditions of, this part and any other conditions imposed by FSA.

### § 786.101 Administration.

(a) DDAP—III will be administered under the general supervision of the Administrator, FSA, or a designee, and be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

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

(c) The State committee will take any action required by the regulations of this part that has not been taken by the county committee. The State committee will also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not

in accordance with the regulations of this part; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision of delegation in this part to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the DDAP-III and does not violate statutory limitations of the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP-III is voluntary, program benefits will not be provided unless the producer furnishes all requested data.

#### § 786.102 Definitions.

The definitions in 7 CFR part 718 apply to this part except to the extent they are inconsistent with the provisions of this part. In addition, for the purpose of this part, the following definitions apply.

*Administrator* means the FSA Administrator, or a designee.

*Application* means DDAP-III application.

*Application period* means the time period established by the Deputy Administrator for producers to apply for program benefits.

*Base annual production* means the pounds of production determined by multiplying the average annual production per cow calculated from base period information times the average number of cows in the dairy herd during each applicable disaster year.

*County committee* means the FSA county committee.

*County office* means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

*Dairy operation* means any person or group of persons who, as a single unit, as determined by FSA, produces and markets milk commercially from cows and whose production facilities are located in the United States.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

*Disaster claim period* means the calendar year(s) applicable to the disaster declaration during the eligible period in which the production losses occurred.

*Disaster county* means a county included in the geographic area covered by a natural disaster declaration, and any county contiguous to a county that qualifies by a natural disaster declaration.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Hundredweight or cwt.* means 100 pounds.

*Milk handler or cooperative* means the marketing agency to, or through, which the producer commercially markets whole milk.

*Milk marketings* means a marketing of milk for which there is a verifiable sale or delivery record of milk marketed for commercial use.

*Natural disaster declaration* means a natural disaster declaration issued by the Secretary of Agriculture after January 1, 2005, but before December 31, 2007, under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), a major disaster or emergency designation by the President of the United States in that period under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a determination of a Farm Service Agency Administrator's Physical Loss Notice for a county covered in an otherwise eligible Presidential declaration.

*Payment pounds* means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this part.

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*Producer* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or a legal resident alien in, the United States, and who directly or indirectly, as determined by the Secretary, have a share entitlement or ownership interest in a commercial dairy's milk production and who share in the risk of producing milk, and make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

*Reliable production evidence* means records provided by the producer subject to a determination of acceptability by the county committee that are used to substantiate the amount of production reported when verifiable records are not available; the records may include copies of receipts, ledgers of income, income statements of deposit slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries.

*Verifiable production records* means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by FSA through an independent source.

### § 786.103 Time and method of application.

(a) Dairy producers may obtain an application, in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this part must be submitted on a completed DDAP-III application. Applications and any other supporting documentation must be submitted to the FSA county office serving the county where the dairy operation is located, but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy pro-

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ducer will not be eligible for benefits under this program.

(c) All persons who share in the milk production of the dairy operation and risk of the dairy operation's total production must certify to the information on the application before the application will be considered complete.

(d) Each dairy producer requesting benefits under this part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. Any information entered on the application will be considered information from the applicant regardless of who entered the information on the application. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided may result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines, and other penalties or sanctions.

### § 786.104 Eligibility.

(a) Producers in the United States will be eligible to receive dairy disaster benefits under this part only if they have suffered dairy production losses, previously uncompensated by disaster payments including any previous dairy disaster payment program, during the claim period applicable to a natural disaster declaration in a disaster county. To be eligible to receive payments under this part, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced anytime during the period of January 2, 2005 through December 30, 2007;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production losses were incurred as a result of a disaster for which an applicable natural disaster declaration was issued between January 1, 2005 and December 31, 2007, and limit their claims to losses that occurred in those counties, specific to conditions resulting from the

declared disaster as described in the natural disaster declaration;

(3) Provide adequate proof, to the satisfaction of the FSA county committee, of the average number of cows in the dairy herd and annual milk production commercially marketed by all persons in the eligible dairy operation during the years of the base period (2003 and 2004 calendar years) and applicable disaster year that corresponds with the issuance date of the applicable natural disaster declaration, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and satisfy the terms and conditions of this part, instructions issued by FSA, and instructions contained in the application to be eligible for benefits under this part.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the calendar year applicable to the natural disaster declaration and loss claim period, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible disaster years.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base annual production, as defined in § 786.102, that corresponds to the natural disaster declaration and must have occurred during that same period as follows:

(1) For disaster declarations for disasters during a calendar year (2005, 2006, or 2007), the disaster claim period is the full calendar year and

(2) For disaster declarations issued during one calendar year that ends in another calendar year, the producer will be eligible for both disaster years.

(h) Deductions in eligibility will be made for any disaster payments previously received for the loss including any made under a previous dairy disaster assistance payment program for 2005.

#### § 786.105 Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production losses can be computed in accordance with § 786.106.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dairy herd inventory records available for the operation, for the years of the base period (2003 and 2004 calendar years) and disaster claim period that corresponds with the issuance date of the applicable natural disaster declaration.

(1) A producer must certify and provide such proof as requested that losses were related to the disaster declaration issued and occurred in an eligible county during the eligible claim period.

(2) A producer must certify to the average number of cows in the dairy herd during the base period and applicable disaster claim period when there is insufficient documentation available for verification.

(3) Additional supporting documentation may be requested by FSA as necessary to verify production losses to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based

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on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production losses, or any other documents available to confirm or adjust the production history losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA.

(d) As specified in § 786.106, loss calculations will be based on comparing the expected base annual production consistent with this part and the actual production during the applicable disaster claim year. Such calculations are subject to adjustments as may be appropriate such as a correction for losses not due to the disaster. If adequate proof of normally marketed production and any other production for relevant periods is not presented to the satisfaction of FSA, the request for benefits will be rejected. Special adjustments for new producers may be made as determined necessary by the Administrator.

### **§ 786.106 Determination of losses incurred.**

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable disaster claim period, as provided by § 786.104(g), that corresponds with the applicable natural disaster declaration. Specifically, dairy production losses incurred by producers under this part are determined on the established history of the dairy operation's average number of cows in the dairy herd and actual commercial production marketed during the base period and applicable disaster claim period that corresponds with the applicable natural disaster declaration, as provided by the dairy operation consistent with § 786.105. Except as otherwise provided in this part, the base annual production, as defined in § 786.102 and established in § 786.104(g) is determined for each applicable disaster year based on the average annual production per cow determined according to the following:

(1) The average of annual marketed production during the base period calendar years of 2003 and 2004, divided by;

(2) The average number of cows in the dairy operation's herd during the base period calendar years of 2003 and 2004.

(b) If relevant information to calculate the average annual production per cow for one or both of the base period calendar years of 2003 and 2004, is not available, an alternative method of determining the average annual production per cow may be established by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, information from three similar farms may be obtained by FSA to estimate base annual production.

(c) The average annual production per cow, as determined according to paragraphs (a)(1) and (a)(2) of this section, is multiplied by the average number of cows in the dairy operation's herd during the applicable disaster year (excluding cow losses resulting from the disaster occurrence), to determine base annual production for the dairy operation for each applicable disaster claim period year.

(d) The eligible dairy production losses for a dairy operation for each of the authorized disaster claim period years will be:

(1) The relevant period's base annual production for the dairy operation calculated under paragraph (c) of this section less,

(2) For each such disaster claim period for each dairy operation the actual commercially-marketed production relevant to that period.

(e) Spoiled or dumped milk, disposed of for reasons unrelated to the disaster occurrence, must be counted as production for the relevant disaster claim period. Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the disaster identified in the natural disaster declaration or is determined by FSA not to be related to the natural disaster identified in the natural disaster declaration. FSA county committees will determine production losses that are not caused by the disaster associated with the natural disaster declaration.

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The calculated production loss determined in § 786.106(d) will be adjusted to account for pounds of production losses determined by the FSA county committee to not have been associated with the declared natural disaster for an eligible disaster county. The FSA county committee may convert cow numbers to actual pounds of production used in the adjustment, by multiplying the average annual production per cow determined from base period information, by the applicable number of cows determined to be ineligible to generate claims for benefits. Other appropriate adjustments will be made on such basis as the Deputy Administrator finds to be consistent with the objectives of the program.

(f) Actual production, as adjusted, that exceeds the base annual production will mean that the dairy operation incurred no eligible production losses for the corresponding claim period as a result of the natural disaster.

(g) Eligible production losses as otherwise determined under paragraphs (a) through (f) of this section for each authorized year of the program are added together to determine total eligible losses incurred by the dairy operation under DDAP-III subject to all other eligibility requirements as may be included in this part or elsewhere, including the deduction for previous payments including those made under a previous DDAP program.

(h) Payment on eligible dairy operation losses will be calculated using

whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the dairy operation's eligible production loss among the producers of the dairy operation according to § 786.107(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, marketing cooperative, or any other private party; however, produced milk that was dumped or spoiled for reasons unrelated to the disaster occurrence will still count as production.

**§ 786.107 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production losses determined according to § 786.106 is, depending on the State, the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service during the relevant period. States not regulated under a Marketing Order will be assigned a payment rate based on contiguous or nearby State's Mailbox milk price. Maximum per pound payment rates for eligible losses for dairy operations located in specific states during the relevant period are as follows:

State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007*
Alabama	0.1596	0.1443	
Alaska	0.2040	0.2010	
Arizona	0.1388	0.1128	
Arkansas	0.1596	0.1443	
California	0.1388	0.1128	
Colorado	0.1403	0.1214	
Connecticut	0.1539	0.1344	
Delaware	0.1539	0.1344	
Florida	0.1758	0.1603	
Georgia	0.1596	0.1443	
Hawaii	0.2700	0.2600	
Idaho	0.1402	0.1215	
Illinois	0.1514	0.1283	
Indiana	0.1503	0.1294	
Iowa	0.1507	0.1285	
Kansas	0.1403	0.1214	
Kentucky	0.1527	0.1349	
Louisiana	0.1596	0.1443	
Maine	0.1539	0.1344	
Maryland	0.1539	0.1344	
Massachusetts	0.1539	0.1344	
Michigan	0.1478	0.1264	
Minnesota	0.1512	0.1277	

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State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007*
Mississippi .....	0.1596	0.1443	.....
Missouri (Northern) .....	0.1403	0.1214	.....
Missouri (Southern) .....	0.1467	0.1254	.....
Montana .....	0.1512	0.1277	.....
Nebraska .....	0.1403	0.1214	.....
Nevada .....	0.1388	0.1128	.....
New Hampshire .....	0.1539	0.1344	.....
New Jersey .....	0.1539	0.1344	.....
New Mexico .....	0.1323	0.1108	.....
New York .....	0.1539	0.1303	.....
North Carolina .....	0.1527	0.1349	.....
North Dakota .....	0.1512	0.1277	.....
Ohio .....	0.1506	0.1302	.....
Oklahoma .....	0.1596	0.1443	.....
Oregon .....	0.1402	0.1215	.....
Pennsylvania (Eastern) .....	0.1539	0.1340	.....
Pennsylvania (Western) .....	0.1539	0.1302	.....
Puerto Rico .....	0.2550	0.2570	.....
Rhode Island .....	0.1539	0.1344	.....
South Carolina .....	0.1527	0.1349	.....
South Dakota .....	0.1512	0.1277	.....
Tennessee .....	0.1527	0.1349	.....
Texas .....	0.1405	0.1194	.....
Vermont .....	0.1539	0.1344	.....
Virginia .....	0.1527	0.1349	.....
Washington .....	0.1402	0.1215	.....
West Virginia .....	0.1506	0.1302	.....
Wisconsin .....	0.1535	0.1305	.....
Wyoming .....	0.1403	0.1214	.....

**Note:** Calculations are rounded to 7 decimal places.

\* Payment rates for 2007 are currently unavailable, but will be based on the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service, consistent with payment rates provided for 2005 and 2006.

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses as adjusted pursuant to this part. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the application.

(c) If the total value of losses claimed nationwide under paragraph (b) of this section exceeds the \$16 million available for the DDAP-III, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for each full disaster claim period applicable to the disaster declaration, are greater than 20 percent of the total base annual production will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two months during

the applicable disaster claim period does not of itself qualify for the maximum per-pound payment. Rather, the priority level must be reached as an average over the whole disaster claim period for the relevant calendar year. Total eligible losses for a producer, as calculated under § 786.106, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate, not to exceed the rate allowed in paragraph (a) of this section, determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event will the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in the producer's area as defined in paragraph (a) of this section.

(e) No participant will receive disaster benefits under this part that in combination with the value of production not lost would result in an amount that exceeds 95 percent of the value of

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the expected production for the relevant period as estimated by the Secretary. Unless otherwise program funds would not be fully expended, the sum of the value of the production not lost, if any; and the disaster payment received under this part, cannot exceed 95 percent of what the production's value would have been if there had been no loss. In no case, however, may the value of production and the payment exceed the value the milk would have without the loss.

(f) A reserve may be created to handle pending or disputed claims, but claims will not be payable once the available funding is expended.

### § 786.108 Availability of funds.

The total available program funds are \$16 million as provided by section 9007 of Title IX of Public Law 110-28.

### § 786.109 Appeals.

Provisions of the appeal regulations set forth at 7 CFR parts 11 and 780 apply to this part. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 786.107 and 786.108 and other limitations that may apply.

### § 786.110 Misrepresentation, scheme, or device.

(a) In addition to other penalties, sanctions, or remedies that may apply, a dairy producer is ineligible to receive assistance under this program if the producer is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program,

(2) Made any fraudulent representation,

(3) Misrepresented any fact affecting a program determination, or

(4) Violated 7 CFR 795.17 and thus be ineligible for the year(s) of violation and the subsequent year.

(b) Any funds disbursed pursuant to this part to any person or dairy operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Interest will run from the date of the disbursement to the producer or other recipient of the payment from FSA. Any person or

dairy operation engaged in acts prohibited by this section and any person or dairy operation receiving payment under this part is jointly and severally liable with other persons or dairy operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

### § 786.111 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of an individual or entity that is eligible to receive benefits in accordance with this part, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

### § 786.112 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein and must keep such records and accounts for 3 years after the date of payment to their dairy operations under this program. Destruction of the records after such date is at the risk of the party required, by this part, to keep the records.

### § 786.113 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to meet any requirement or condition for payment under the application or this part, must be refunded to FSA.

(b) A refund required under this section is due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 792. Notwithstanding any other regulation, interest will be due from the date of the disbursement to the producer or other recipient of the funds.

(c) Persons signing a dairy operation's application as having an interest in the operation will be jointly and

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severally liable for any refund and related charges found to be due under this section.

(d) In the event FSA determines a participant owes a refund under this part, FSA will charge program interest from the date of disbursement of the erroneous payment. Such interest will accrue at the rate that the United States Department of the Treasury charges FSA for funds plus additional charges as deemed appropriate by the Administrator or provided for by regulation or statute.

(e) The debt collection provisions of part 792 of this chapter applies to this part except as is otherwise provided in this part.

**§ 786.114 Miscellaneous provisions.**

(a) Payments or any portion thereof due under this part must be made without regard to questions of title under

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State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(b) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

**§ 786.115 Termination of program.**

This program will be terminated after payment has been made to those applicants certified as eligible pursuant to the application period established in § 786.104. All eligibility determinations will be final except as otherwise determined by the Deputy Administrator. Any claim for payment may be denied once the allowed funds are expended, irrespective of any other provision of this part.