

§ 1437.15

7 CFR Ch. XIV (1-1-10 Edition)

(c) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

(d) Rules set out in 7 CFR part 1400 shall apply in implementing the restrictions of this section.

§ 1437.15 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of §718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, shall apply.

(c) A person shall be ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U. S. C. 3729.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to 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, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

Subpart B—Determining Yield Coverage Using Actual Production History

§ 1437.101 Actual production history.

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this

part, as the basis for providing non-insured crop disaster assistance.

[71 FR 13744, Mar. 17, 2006]

§ 1437.102 Yield determinations.

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2005 crop year, the five consecutive crop years immediately preceding the previous crop year would be 1999 through 2003.

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(4) Will be based on the most representative available historical information, as determined by CCC, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated, non-irrigated, and organic practices; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will, for all land for those producers who have land physically lo-

cated in multiple counties and administered in one county office, be based on the administrative county's expected yield for the crop.

(7) May be reduced, on a specific APH basis, when, as determined by CCC, it does not accurately reflect the productive capability of specific crop acreage.

(8) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production history base period when the producer reports acreage for the crop but fails to certify a report of production. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with § 1437.7.

(4) May not be used if the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If CCC determines the documentation is inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from