

§ 1478.9

7 CFR Ch. XIV (1-1-01 Edition)

(3) Misrepresented any fact affecting a program determination.

(c) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (d) of this section and late-payment charges as provided for in part 1403 of this chapter.

(d) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be one percent greater than the rate of interest that the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by the producer.

(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 payment 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) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth at parts 11 and 780 of this title.

(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) Payments that are earned under this part may be assigned in accordance with the provisions of part 1404 of this chapter upon filling out the applicable assignment form.

(k) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed appropriate by the Deputy Administrator.

§ 1478.9 Matters of general applicability.

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established in accordance with part 457 of this title. For uninsured and noninsurable crops, basic units will be established for these purposes.

(b) Loss payment rates and factors shall be established by the state committee based on procedures provided by the Deputy Administrator.

(c) County average yield for loss calculations will be the simple average of the 1993 through 1997 official county yields established by FSA.

(d) County committees will assign production when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop is planted beyond the normal planting period for the crop.

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(e) The county committee shall establish a maximum loss level based on other losses in the county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, RMA, a company re-insured by FCIC, or other appraiser;

(2) The crop's loss is because of an ineligible disaster condition or circumstances other than a natural disaster;

(3) Acceptable production records for harvested acres are not available from any source; or

(4) Any other good reason for such a limit shall present itself.

(f) Assigned production for practices that result in lower yields than those for which the historic yield is based shall be established based on the acres found to have been subjected to those practices.

(g) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. If the crop is planted after the final planting date by:

(1) 1 through 10 calendar days, the assigned production reduction will be based on one percent of the payment yield for each day involved.

(2) 11 through 24 calendar days, the assigned production reduction will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each days of days 11 through 24 that are involved.

(3) 25 or more calendar days or a date from which the crop would not reasonably be expected to mature by harvest, the assigned production reduction will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(h) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by di-

viding the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment.

§ 1478.10 [Reserved]

§ 1478.11 Qualifying 1999 crop losses.

(a) To receive disaster benefits under this part, which covers single-year 1999 crop losses, the county committee must determine that because of a disaster, the producer with respect to the 1999 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop;

(3) Sustained a loss in excess of 35 percent of the value for value loss crops; or

(4) Sustained damage in excess of 20 percent of an individual stand of eligible trees.

(b) Calculation of benefits under this part shall not include losses:

(1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis;

(2) That are the result of the failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant after a loss;

(3) That are not as a result of a natural disaster;

(4) To crops not intended for harvest in crop year 1999;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;

(6) To home gardens;

(7) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

(8) To losses of trees that are a result of normal mortality or would have