

FARM PROGRAM YIELDS ON NEWLY IRRIGATED ACRES

by Robert P. Achenbach, Jr.

For purposes of the several federal crop adjustment programs, the determination of farm program yields is based upon the average program yields of the farm for three of the past five years (the highest and lowest yields of the five years are disregarded) before the effective date of a farm bill (i.e. 1981-1985 for the 1985 farm bill and 1986-1990 for the 1990 farm bill).¹ Thus, if a producer increased production by irrigation after 1985 or after 1990,² the farm program yield may not be increased to reflect the irrigated yield.

Reconstituted and combined farms with irrigated and nonirrigated yield acres receive a weighted average yield.³ However, under the farm reconstitution regulations, an irrigated yield tract may not be combined with a non-irrigated yield tract if the tracts have different owners.⁴ When a combined farm is divided, the total irrigated yield for the resulting farms cannot exceed the irrigated yield acres of the combined farm.⁵

The regulations do not provide for adjustment of post-1985 feed grain yields based on a change of production method. However, the statute allows adjustments in cases of natural disaster or other condition beyond the control of the producer but the statute leaves the adjustment amount and method to discretionary regulations by the Secretary.⁶ The regulations⁷ allow such adjustments only for ELS cotton. There is no adjustment provision for other program crops.

The ASCS handbook, however, does provide for an increase in program yield where the acres were not irrigated from 1981-1985 but were irrigated prior to 1981.⁸ Under this provision post-1985 irrigated acres may receive an irrigated yield, if (1) a producer had an irrigated farm program yield on acres prior to 1981, (2) the acres were not planted or credited as conserving acres during 1981-1985, and (3) irrigation was prevented during 1981-1985 by circumstances beyond the producer's control. In making the exception, the ASCS noted that the farm program yield restrictions to program yields of the previous 3-5 years can be seen as unduly harsh in cases where land was once irrigated, but for reasons beyond the control of the producer, the irrigation was not done during 1981-1985.⁹

The handbook exception does not apply where irrigation was prevented by circumstances beyond the producer's control but the producer continued to plant on the acres. Without a similar exception for producers who continued to produce crops on the acres without the previous irrigation

(which was lost due to conditions beyond the producer's control, e.g., contamination of the water), the Secretary's implementation of the program yield provisions could be viewed as arbitrary in that the distinction between continued and abandoned production during the nonirrigated years violates a major purpose of the production adjustment programs, the limiting of crop production in return for program benefits. The exception allows a greater increase in post-1985 production from irrigation on poor cropland (i.e., cropland which could not produce without irrigation) than the increase in production on marginal cropland (i.e., cropland which can produce without irrigation). The focus of the exception should be only upon the harsh effect of the loss of irrigation yield because of conditions beyond the control of the producer, not the type of land involved.

Another exception is provided in the handbook for combined crop acreage bases (currently allowed only for corn and grain sorghum).¹⁰ The provision allows an irrigated program yield for a new program crop included in a combined acreage base to the extent the new crop is planted instead of the original crop if an irrigated yield has been established for the original crop. Combined crop acreage base refers to allowing the production of any of the combinable crops (such as grain sorghum on corn acres) without changing the acreage base.

FOOTNOTES

¹ 7 U.S.C. § 1466; 7 C.F.R. § 1413.6.

² This article focuses on the 1985 farm bill because implementing regulations are not yet available for this aspect of the 1990 farm bill. However, the 1990 provisions are similar and similar regulations are expected.

³ 7 C.F.R. § 1413.11(b).

⁴ 7 C.F.R. § 719.4(g).

⁵ ASCS Handbook 2-CM SCOAP, ¶ 87.5.

⁶ 7 U.S.C. § 1466(c)(2). The 1990 farm bill changed the statute by removing the natural disaster and unavoidable condition requirements but retained the language making such adjustments discretionary with the Secretary. 1990 Act, Sec. 1101, amending 7 U.S.C. § 1466(c)(2).

⁷ 7 C.F.R. § 1413.6(b)(2).

⁸ ASCS Handbook 5-PA ¶ 158(G).

⁹ See comments to Amendment 19, ASCS Handbook 5-PA ¶ 158(G).

¹⁰ ASCS Handbook 5-PA ¶ 158(E).

CASES, REGULATIONS AND STATUTES

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BANKRUPTCY

GENERAL

EXEMPTIONS. The debtors' homestead was sold by order of the bankruptcy court and the exempt proceeds were placed in the court registry. The debtors had filed for divorce and a property settlement had not been obtained by the time the bankruptcy trustee petitioned for a claim against the homestead proceeds. The trustee argued that the proceeds

were no longer exempt because the debtors have failed to reinvest the proceeds in another homestead. The court held that the proceeds were still exempt because the debtors did not have access to the proceeds because of the pending divorce litigation. *In re Huth*, 122 B.R. 724 (Bankr. E.D. Mo. 1988).

The debtor's interest in an IRA was held eligible for an exemption as a profit sharing or similar plan under Neb.