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Washington Farm Service Agency

Various Production Agriculture Lease Agreements Impact Direct and Counter-Cyclical Program (DCP) Participation

Agriculture producers are reminded that flexible and combination leases may alter the agreement terms of the Direct and Counter-Cyclical Program (DCP). Renters and landlords must have a clear agreement, and convey their rental terms to their local FSA office.

Overview:

Although FSA rental regulations have been in effect for nearly 10 years they have recently attracted attention due to the popularity of flexible or combination leases. These rental provisions are in place to protect both landlords and tenants, as well as to ensure compliance with payment limitation rules.

In the past most producers rented land for a specified cash rent fee only. However, due to recent spikes in cash grain prices, many renters and landlords are becoming more creative in the way rental agreements are structured. While this is certainly acceptable, it is important that renters and landlords have a clear agreement, and the terms of that agreement are conveyed to their local FSA office.

Key Determinant:

FSA interprets producer lease agreements in terms of how or whether the landlord shares in the production risk of the crop. Leases which are based on a share of the crop or proceeds are considered share leases and must be reported as such by the producer when signing up for DCP payments. In addition, producers must report shares on a field-by-field basis when certifying crop acreage.

Role of County Committees:

FSA county committees must review each lease to determine that it is what it is claimed to be. If the landlord is sharing in any way the risk of producing the crop, the landlord must be listed on the DCP contract for a share.

Share Lease:

If rent in a lease agreement is based on the amount of crop produced or the income derived from that crop (whether or not the crop is actually grown), or any combination of the two, it is a share lease and the landlord must receive a share of the DCP contract payment. This is because the landlord now shares the risk in the crop. The more bushels produced or the higher price received for that crop creates a higher rent.

"If rent in a lease agreement is based on the amount of crop produced or the income derived from that crop, even if the crop is not produced, or any combination of the two, the result is a share lease, and the landlord must receive a share of the DCP contract payment."

Example Of A Share Lease:

If the rent is $100 per acre, with an additional rent of $1 per bushel for the crop yield over 150 bushels per acre, this is considered a share lease because the landlord is sharing the risk that the average yield on his farm will exceed 150 bushels.

Not Considered A Share Lease:

FSA does not consider a rental to be a share lease:

- if the lease is not based on an average yield for the farm but for the county at-large.
- if the proceeds are based on an average price to be determined in the future.
- if the rent is based on the county average yield exceeding 150 bushels per acre or the average price at "XYZ" elevator on February 1, 2008. Because the rent is determined by outside factors at a later date, FSA considers this to be a cash lease since the landlord has no risk in producing the crop and the price is not based on what is actually received by the renter.
- if a voluntary bonus is paid to the landlord and the bonus is not included in the lease agreement. However, if a bonus payment is part of the lease agreement, then it is not considered voluntary and it is considered to be a share lease agreement.

Deadline is August 3, 2007:

Signup for the 2007 DCP is currently underway at all county FSA offices and continues through August 3, 2007. Additional information is available at county FSA offices.

More Information On Line:

For more information on DCP as well as flexible and combination leases, please contact your local FSA office or visit: http://www.fsa.usda.gov.

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