UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice PL-131

For: State and County Offices

Questions & Answers (Q&A's) from Eligibility/Payment Limitation Training Session

Approved by: Acting Deputy Administrator, Farm Programs

1 Overview

A Background

Many issues were discussed during the National eligibility/payment limitation training session held in Nashville, Tennessee, September 2004. Questions were received verbally during the presentations and in writing after the session.

B Purpose

Exhibit 1 provides:

- a compilation of the major issues and questions
- responses to these issues and questions
- procedural references for the responses.

Disposal Date	Distribution
May 1, 2006	State Offices; State Offices relay to County Offices

Q&A's From the Training Session

A list has been made of the questions asked during the eligibility/payment limitation training session.

General Provisions

1. Please clarify the limitations applicable to Loan Deficiency Payments (LDP's) and Market Loan Gains (MLG's). Are there 2 limits or is wool, mohair, and honey part of the $75,000 for peanuts?

   There is one limitation of $75,000 that includes peanuts, wool, mohair, and honey LDP's and MLG's. See 1-PL, paragraph 22.

2. What information does the reviewing authority need to support a determination that an interest of less than 10 percent is considered a substantial beneficial interest in a farming operation?

   The reviewing authority is allowed on a case by case basis to determine that an interest of less than 10 percent is a substantial beneficial interest. All information (CCC-502's and CCC-501-A's) submitted should be reviewed with attention to the number of operations in which this individual or entity holds less than 10 percent interest. The total value of the farming operations should also be considered to determine whether an interest of less than 10 percent could be considered as substantial. The reviewing authority may determine that the establishment of these multiple interests of less than 10 percent is for the purposes of circumventing the payment limitation provisions. See 1-PL, paragraph 184.

"Person" and Actively Engaged in Farming Provisions

3. Does the phrase "previous crop year" in exception 1 of the "person" rules for spouses mean the previous crop year to their marriage, or just the previous crop year?

   It means that both spouses had to conduct separate farming operations for at least the crop year immediately before their marriage. The requirement under exception 1 for conducting separate farming operations in at least the previous crop year was included because of specific cases where farming operations represented to be separate and distinct were actually established shortly before marriage. See 1-PL, subparagraph 253 B and Exhibit 2.

Q & A's From the Training Session (Continued)

"Person" and Actively Engaged in Farming Provisions (Continued)

4. A husband and wife were determined as separate persons and earned benefits under the Agricultural Marketing Transitional Act (AMTA) and/or Direct Counter-Cyclical Payment Program (DCP). Disaster benefits were received by an entity in which each holds a minority interest. This resulted in the husband and wife being combined as one person. Do the husband and wife have to request to be separate "persons" again, or does the "person" determination revert to the previous determination of separate "persons?"

   The determinations for the prior year remain in effect until a new CCC-502 is submitted with a request for separate "person" status. The last determination of record was that the spouses were combined as one "person." If a new CCC-502 is filed and the requirements to be considered separate "persons" are met, they can be determined separate "persons" for the current year.

5. What documentation is required to make a determination of general partnership or joint venture for payment limitation purposes?

   State laws may vary on what constitutes a general partnership and written agreements may not be necessary. However for payment limitation purposes, general partnerships and joint ventures are treated basically the same. The number of "persons" is determined at the member level and each member is held jointly and severally liable for the obligations of the general partnership or joint venture. The COC may request whatever information is necessary to make the applicable determinations. See 1-PL, paragraph 52.

6. If an individual or entity must make a significant left-hand contribution (land, capital, and/or equipment) as a requirement to be considered actively engaged in farming, can the contribution of capital in such an amount equivalent to at least the rental value of the land or the rental value of the equipment, alternatively be considered a contribution of land or equipment?

   No. The contribution of 100 percent of the capital does not mean and cannot be considered a land or equipment contribution. The cash equivalent of either land or equipment rental is not acceptable as substitutions are not allowed. See 1-PL, paragraph 131.

7. If a significant contribution is 50 percent of a members commensurate share, and this member throws in the cash equivalent of 50 percent of the members commensurate share of equipment, isn't this the same as contributing the equipment?

   No. The actual inputs must be provided and no cash equivalents or substitutions are allowed. See question 6.

Q & A's From the Training Session (Continued)

"Person" and Actively Engaged in Farming Provisions (Continued)

8. Do commensurate share provisions apply to an individual seeking to be recognized as a separate "person" for programs that do not require actively engaged in farming determinations?

   Yes. If an individual is claiming 100 percent of the profits/losses, the individual must provide 100 percent of all inputs to the farming operation. See 1-PL, paragraph 156.

9. If a member of a joint operation fails to make the required commensurate contributions to the farming operation, is the member considered ineligible for payment, or just a reduced share?

   The contributions to the farming operation must be at least commensurate with the claimed share of the operation. If the contributions are not commensurate, then the individual or entity is considered not actively engaged in farming and thus, ineligible for payment. See 1-PL, paragraph 157.

10. Is "communal management" (that is members hold monthly meetings and represent that they jointly make decisions) adequate to be considered significant contributions of active personal management?

    This type of arrangement would be highly questionable and suspect; however, each situation stands on its own merits. See 1-PL, paragraphs 154 and 155.

11. Is voting considered a contribution of active personal management?

    This action would be questionable as to whether it was critical to the profitability of the farming operation. See 1-PL, Exhibit 2, Definitions.

12. Is cross-collateralization (the same assets are pledged by multiple producers as the security for multiple loans) a violation of the separate and distinct provisions for the determination of separate person status?

    This could be an indication that the farming operations are not separate and distinct farming operations. Other aspects of the operations, such as distribution of crop proceeds, the payment of accounts, and responsibility of accounts payable, would be areas to review to determine whether each is a separate economic interest and each at risk for a loss. Furthermore, borrowed capital contributed to the farming operation cannot be secured or guaranteed by any individual or entity with an interest in the farming operation. See 1-PL, paragraphs 110 and 151.

Q & A's From the Training Session (Continued)

"Person" and Actively Engaged in Farming Provisions (Continued)

13. Seven farming operations are all represented to FSA as separate and unrelated. All have operating loans from the same source, all growing crops, government payments, crop insurance and crop proceeds collectively from all seven operations are the security for each and every operating loan. As operational proceeds come in, whether they are from crop sales or government payments, the proceeds are applied to each individual loan until all are paid, or the income stops. If one of the seven operation's loan is satisfied, any further income from crop sales or whatever are applied to the loans of the other operations. With the type of borrowing arrangement, can any of the operations meet the requirements to be considered a separate "person" for payment limitation purposes, particularly when everything in the operations are solely dependent on capital?

    Note: All land is cash rented and all equipment is leased.

    The lending arrangement described essentially negates all of the required items for separate "person" status. Each operation is no longer a stand-alone and independent operation. The operations do not meet requirements to be considered separate "persons." There is only one farming operation. See 1-PL, subparagraph 110 B.

14. A six-member partnership is comprised of individuals and all have equal shares. The inputs to the farming operation are all equal except labor. The partnership hired 30 percent of the labor required, 40 percent was provided by one partner and the other partners supplied 6 percent each. This is a cash grain operation. Can the shares be considered commensurate or at least within reason?

    Total contributions that are within reason of being equal to the claimed share of the profits and losses shall be considered commensurate. The reviewing authority must determine the value and percentages for each contribution. However, the reviewing authority shall not establish a specific tolerance. See 1-PL, paragraph 157.

15. Should FSA be concerned with capital accounts for members of general partnerships?

    Capital accounts record each partner's share of any capital transactions of the partnership in accordance with the specified Internal Revenue Service code and Treasury regulation. If the members of a partnership are making no efforts to maintain the capital accounts in a manner that corresponds to the shares represented to FSA as their respective shares in the farming operation, then there may be a reason to question whether contributions to a farming operation are commensurate with the share of the farming operation, and whether the farming operation is being conducted as represented to FSA.

Q & A's From the Training Session (Continued)

"Person" and Actively Engaged in Farming Provisions (Continued)

16. Can the advance direct payments from DCP be considered the contribution of capital in meeting the requirement of actively engaged in farming?

    If advance payments are the only means by which a participant can meet the requirements to be actively engaged in farming, it is questionable that the participant meets the requirements to be considered the producer.

    Therefore, 1-PL, paragraph 151 will be revised to reflect **that effective for the 2006 crop year**, advance program payments cannot be used to meet the requirement for a significant contribution of capital to be considered actively engaged in farming.

17. If a producer who is a cash-rent tenant uses borrowed money (guaranteed by the landowner) to put in the crop, that borrowed money cannot be used to meet the significant contribution requirement. Can the crop proceeds from the current year's farming operation be used toward the payment of the equipment lease, and thereby, making a significant left-hand contribution of equipment for actively engaged in farming purposes?

    There is no regulatory basis to disregard the current year crop proceeds in the making of contributions toward meeting the requirements of actively engaged in farming. The crop production and proceeds are the results of the farming operation and can be used or disbursed at the discretion and control of the producer.

Substantive Change Provisions

18. In 2003, a general partnership was comprised of Brothers A and B, and each held a 50 percent interest in the farming operation. For 2004, the general partnership was increased to six members with equal shares as follows: Brother A, Brother B, Adult Sister C, Limited Partnership Y (A&B), Limited Partnership W (A&C), Limited Partnership Z (B&C). Is the substantive change requirement met by the use of the adult family member provision in order to recognize the additional "persons?"

    No. In this case, the majority of the members are not family members, only half are family members. Even though the limited partnerships are made up of family members, the entities themselves are not considered family members. Therefore, the family member provision does not apply. See 1-PL, paragraphs 93 through 97.

Q & A's From the Training Session (Continued)

Substantive Change Provisions (Continued)

19. Doesn't a farming operation have to existed previously (last year) for the substantive change provisions to apply? Keep in mind the definition of a farming operation, a business enterprise engaged in the production of agricultural products that is operated by an individual, entity, or joint operation and is eligible to receive payments directly or indirectly.

    If there is a commonality of members between the "old" farming operation and the "new" farming operation, the requirements of substantive change rule may apply. See 1-PL, paragraphs 93 through 97.

20. If a new "person" exists only as an individual member of a joint operation, does the "person" have to exist as a member of the joint operation as of April 1? Furthermore, does the joint operation have to exist as of April 1?

    The individual member is not required to be member of the joint operation as of the April 1 status date for the determination of persons, nor does the joint operation have to be in existence by April 1. However, the substantive change provisions may apply. See 1-PL, paragraphs 74 and 93.

21. A change occurred in 2004 when a joint operation increased the number of members from 2 to 3. Substantive change was not met for the recognition of the additional "person." Also upon the completion of an end-of-year review, it was determined that the farm operating plan was not followed as initially represented. What happens for 2005? Is the operation required to meet substantive change for 2005 payment limitation purposes?

    The operation is required to meet substantive change provisions for 2005 if they are trying to achieve the number of "persons" initially requested for 2004. See 1-PL, paragraph 93.

Cash Rent Tenant Rule

22. A tenant that rents land for cash shall be ineligible for program payments on such cash rented land unless the tenant makes a significant contribution of active personal labor, **or** significant contributions of both active personal management and equipment to the farming operation. If the tenant in this situation only makes a contribution of cash that is in excess of the total rental value of the equipment, would this be considered as making a contribution of equipment, and thus meeting the provisions?

    No. A contribution of capital to a farming operation is not the same as a contribution of land or equipment. See 1-PL, paragraph 172.

Q & A's From the Training Session (Continued)

Cash Rent Tenant Rule (Continued)

23. Operator B cash rents land from Owner A, and hires Producer C to plant, harvest, and market the grain production from this land. The only known activity of Operator B is the request for program benefits. Is Operator B eligible for payments?

    If the land cash rented from Owner A is the only land involved in the farming operation of Operator B, the answer is no. Operator B failed to provide a significant contribution of active personal labor, or the combination of significant contributions of active personal management and equipment. While the activities of hiring Producer C and the actions in the FSA office may be considered active personal management, the custom services obtained from Producer C cannot be considered a significant contribution of equipment by Operator B. Operator B did not maintain complete control over the use of this equipment for the entire crop year. See 1-PL, paragraph 172.

24. According to the training material, each member of a joint operation must meet the cash rent tenant rule. If using the adult family member exception and the member only provides active personal management to the farming operation, would this family member meet the cash rent tenant provision if there is land in the operation that is rented for cash?

    If the joint operation provides the equipment for the farming operation, then the member meets the cash rent tenant provision (significant contribution of equipment made by the joint operation; the member provides a significant contribution of active personal management). However, if the equipment is only provided by the other members, then the member that provided only active personal management does not meet the cash rent tenant provision, and a cropland factor would be applicable. See 1-PL, paragraphs 134 and 172.

25. When determining the cropland factor percentage when the cash rent tenant provision is not met, should the cropland on a non-DCP farm be included?

    Yes. Include all cropland that is part of the farming operation, even though the farm may not be under a DCP contract. See 1-PL, paragraph 134.

End of Year Reviews

26. When a 2004 EYR is conducted and an adverse determination is made because the farming operation was not conducted as represented to FSA, do we need to look at the operation for 2003 and/or 2005?

    If the farming operation was represented to be the same in other years, it would be appropriate to review those years because there would be reason to question whether the farming operation was conducted as represented to FSA for program payment purposes in those years. See 1-PL, paragraphs 651 and 652.

Q & A's From the Training Session (Continued)

Permitted Entity Rule

27. What is the difference between direct and indirect interest?

    A direct interest is a first level interest in a payment entity, such as a stockholder in a corporation that receives a payment. An example of an indirect interest would a stockholder in a corporation that is a stockholder in another corporation that receives payment. See 1-PL, paragraph 185.

Scheme or Device

28. If we have a case in which fraud is suspected after the initial review, should we request the assistance of OIG at this point, or complete the review and then call for the assistance of OIG?

    In most cases, complete the review and gather as much information as possible to support, or disapprove, the suspicions. Sufficient information and adequate documentation is required to support any decision or determination issued as the result of the review. If the assistance of OIG is requested, they will want to see our work as completed to that point. If criminal activity is suspected, it may be advisable to discuss the case with the National Office before taking any action. OIG may respond in this instance and request that all actions be suspended until an investigation is completed. Follow 1-PL, Part 7, Section 2, for completion and documentation of the review.

29. How are FSA employees to report suspected illegal activities?

    FSA employees and COC's shall immediately report such activities to OIG in accordance with 9-AO, paragraph 53.

Other Issues

30. Is an individual retirement account (IRA) considered an eligible program participant and payment recipient, the same as a trust or corporation?

    An IRA may be considered an eligible recipient only if an IRA account has the function and is the legal equivalent of a trust. Consultation and approval by the Regional Attorney is required before the determination of eligibility. 1-PL, Section 6 will be revised.

31. In community property States, should the farming operation be represented as a joint operation of the husband and wife with benefits requested accordingly, or does it matter if the operation is represented to FSA as the operation of the husband with all payments issued to the husband?

    Payments may be issued to either spouse if the spouses are farming together in a joint operation and are combined as one "person" for payment limitation purposes. See 1-PL, subparagraph 253 E.

Q & A's From the Training Session (Continued)

Other Issues (Continued)

32. Individual A, who holds an undivided interest in land with five other individuals, cash leases the entire amount of land from the other five owners. Does Individual A qualify under the landowner exemption as meeting the requirements of actively engaged in farming on the entire acreage? Do cash rent tenant provisions apply?

    Individual A could qualify under the landowner exemption. The cash rent tenant provisions would not apply. See 1-PL, subparagraph 132 B.

33. Same scenario as question 32 except that after cash renting the entire acreage from the other landowners, Individual A in turn share leases the land to another producer. Is Individual A eligible for payments on the entire acreage?

    If all other eligibility requirements are met, including commensurate share, Individual A would qualify under the landowner exemption. See 1-PL, paragraph 132.

34. Farmer B places all land and assets in Farmer B Living Trust. Farmer B continues to operate the land and requests all program benefits. Is Farmer B considered actively engaged in farming and eligible for payment under the landowner exemption?

    No. The trust is the landowner. Farmer B holds no equitable interest in the property. See 1-PL, paragraph 132.

35. Farmer C holds life estate in all the land in the farming operation. Farmer C continues to operate the land and requests all program benefits. Is Farmer C considered actively engaged in farming and eligible for payments under the landowner exemption?

    Yes. Farmer C holds equitable interest in the land for a specified time, the lifetime of Farmer C. See 1-PL, paragraph 132.