

For: State and County Offices

Substantive Change Rule Clarifications

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

The Food Security Act of 1985, as amended, requires that the Secretary not approve any change in a farming operation that will increase the number of persons to which payment limitations apply unless the Secretary determines that the change is bona fide and substantive. The 2008 Farm Bill revised the definition of the term “person”, as it applies to payment limitation, to mean “natural person” and does not include a legal entity.

Although there have been no statutory or regulatory changes to the substantive change rule since the revised definition of “person” and implementation of payment attribution in the 2008 Farm Bill, correct application of the rule has been a continuing source of confusion for State and county FSA offices.

Substantive Change provisions apply to **all** FSA/CCC programs subject to Payment Limitation.

B Purpose

This notice provides additional clarifications on the application of the substantive change rule.

Note: The clarifications will be incorporated into handbook procedure.

| | |
|----------------------|--|
| Disposal Date | Distribution |
| December 1, 2019 | State Offices; State Offices relay to County Offices |

2 Application of Substantive Change Rule

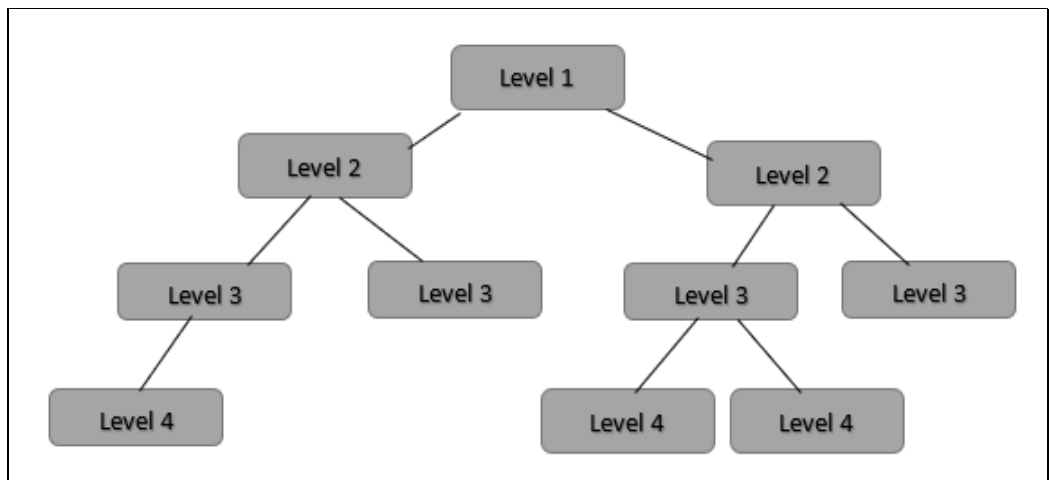
A Factors Requiring the Application of Substantive Change Rule

The Substantive Change Rule applies when **both** of the following elements are present.

- There are changes in a farming operation from a prior year that result in “commonality” between the farming operation in the current year and a farming operation in a prior year; in other words, there is the ability to link a person (directly or indirectly) **and** land to a farming operation in a prior year.
- There is an increase in the number of persons that have not participated in a program subject to payment limitation at or above, the 4th level of ownership in a legal entity or joint operation.

Note: Members added below the 4th level of ownership in a legal entity or joint operation are not considered an increase in persons to which payment limitation applies. Ownership interests below the 4th level of ownership are ineligible for payment.

The following diagram illustrates the 4 levels of ownership of a legal entity or joint operation.



2 Application of Substantive Change Rule (Continued)

B When Substantive Change is Required

The following table illustrates that substantive change is **required** for the current year’s farming operation when both elements of commonality exist (some of the same persons, legal entities or joint operations farming some of the same land in a prior year’s farming operation) and there is an overall increase in persons to which payment limitation applies.

| IF the farming operation is conducted by... | THEN substantive change is required when... |
|--|---|
| a new joint operation | any of the persons in the new joint operation did not participate (directly or indirectly) in a program subject to limitation in a prior year. |
| an existing joint operation | <p>1 or more persons are added to the existing joint operation that did not participate (directly or indirectly) in a program subject to limitation in a prior year - resulting in an overall increase in the number persons to which payment limitation applies.</p> <p>Note: Even if there is no overall increase in persons within the joint operation, substantive change is still required if both apply:</p> <ul style="list-style-type: none"> • any of the departing persons continue to participate in a program subject to limitation on the same land farmed by the joint operation in a prior year; and • a new person is added to the farming operation that has not participated in programs subject to limitation in a prior year. <p>If there is addition of more than one person and the farming operation does not have a substantive change, a representative of the farming operation must identify which person(s) will not be recognized.</p> |
| a new legal entity | some, but not all, of the persons who are stockholders or partners in the new legal entity participated directly or indirectly in a program subject to limitation in a prior year; and any of the stockholders have other farming interests. |
| an existing legal entity | any of the persons who are stockholders, including stockholders in an embedded entity have ownership interest in any other farming operation. |

2 Application of Substantive Change Rule (Continued)

C When Substantive Change is Not Required

The following table illustrates when the substantive change rule does **not** apply even though there may be commonality between the current year’s farming operation and a prior year’s farming operation.

| IF the farming operation is conducted by... | Then substantive change is not required when... |
|--|---|
| an individual | the farming operation is that of the individual. |
| a new joint operation | none of the persons who are members (including persons who are members of an embedded legal entity or joint operation) participated in programs subject to payment limitation or were associated with any farming operation that participated, directly or indirectly, in programs subject to limitation in a prior year. or; All the persons (including persons who are members of an embedded legal entity or joint operation) participated in programs (directly or indirectly) subject to limitation in a prior year. |
| a new legal entity | none of the persons who are shareholders (including persons who are members of an embedded legal entity or joint operation) participated, directly or indirectly, in programs subject to limitation in a prior year. |
| an existing legal entity | 1 or more persons are added to the legal entity and none of the persons who are stockholders have interest in any other farming operation. Note: The legal entity remains restricted to 1 limitation regardless of the number of shareholders. |

D Changes Made by June 1

Ownership interest that a person holds in a legal entity or joint operation that receives payment subject to limitation for the program year will be determined according to the following table.

| If the legal entity or joint operation... | THEN the date for the determination of ownership interest is.... |
|---|---|
| existed on June 1 of the year for which program benefits were requested | June 1. |
| did not exist on June 1 of the year for which program benefits are requested | the date the legal entity or joint operation was formed. |

2 Application of Substantive Change Rule (Continued)

E Changes Not Made by June 1

COC may determine a change in ownership interest after June 1 is effective for the current year if:

- change of ownership interest is because of death of an interest holder
- the legal entity or joint operation did not exist on June 1 of the applicable year.

If COC determines the change is **not** effective for the current year, the change will be effective the subsequent year.

3 Substantive Change Requirements When an Increase in Limitations Occurs

A Meeting Substantive Change

When there is an increase in persons to which payment limitation applies and commonality is determined, the farming operation must have a substantive change for the determining authority to approve the increase in persons for payment limitations. If bona fide, any one of the following is considered a substantive change.

| Change | Requirement |
|---------------|--|
| Family Member | Adding 1 or more family members to a farming operation (at any ownership level), according to the adult family member provision as specified in 5-PL paragraph 213, allows recognizing the added family member(s). |
| Land Rental | For a landowner only , a change from cash-rent to share-rent. |
| Base Acres | <p>An increase through acquiring base acres not previously involved in the farming operation. The increase in base acres:</p> <ul style="list-style-type: none"> • must be at least 20 percent or more of the total base acres involved in the farming operation • will be applicable for the increase of only 1 person to the farming operation. <p>A State Office specialist may approve additional persons based on the magnitude and complexity of the change in the farming operation represented and if the increase in base acres supports additional persons or legal entities to the farming operation. See subparagraph B.</p> |

3 Substantive Change Requirements When an Increase in Limitations Occurs (Continued)

A Meeting Substantive Change (Continued)

| Change | Requirement |
|-----------|--|
| Ownership | <p>A change in ownership by sale or gift of equipment or land from a person or legal entity previously engaged in the farming operation to a person or legal entity who has not been engaged in this operation is considered substantive, only if:</p> <ul style="list-style-type: none"> • the transferred amount is commensurate with the new person’s share of the farming operation • the sale or gift of land or equipment was based on fair market value of the land, or equipment • the former owner has no control over the sold or gifted land or equipment • the transaction was not financed by the former owner • preference was not given to the former owner to re-purchase the land, or equipment at a later date. |
| Equipment | <p>The addition of equipment not previously involved in the farming operation may be considered substantive, if the rental value of the additional equipment contributed is commensurate with the new person’s (direct or indirect) share of the rental value of all equipment used in the farming operation.</p> |

Note: Substantive changes **must** be “arm’s length” business transactions. Documents **must** be provided to support any of the changes in this subparagraph.

B Increases of More Than 1 Person for Payment Limitation Purposes

If base acres are increased more than 20 percent and the farming operation is requesting to add more than 1 member for payment limitation, the:

- authorized representative of the farming operation **must**:
 - submit written request for recognizing more than 1 additional member
 - include the reasons why additional members for payment limitation purposes are to be recognized
 - provide any other relevant documentation to support the request

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3 Substantive Change Requirements When an Increase in Limitations Occurs (Continued)

B Increases of More Than 1 Person for Payment Limitation Purposes (Continued)

- COC **must**:
 - document the request in the COC minutes
 - forward the request with comments or recommendations to the State Office
 - include all documentation provided by the producer
- State Office specialist designated to act on these requests **must**:
 - timely review requests and all supporting documentation
 - obtain STC comments, if determined necessary, on the request
 - approve or disapprove the requests
 - record all requests and determinations in the STC minutes
 - notify COC/County Office, in writing, of the determination
 - instruct COC/County Office to provide written notification of the determination to the producer and include appeal rights if considered adverse.

4 Determinations When Substantive Change is Not Met

A If Substantive Change Is Not Met

If there is an increase in the number of persons subject to payment limitation in a farming operation that results in applying the substantive change provisions, and substantive change is **not** met by the farming operation:

- continue to recognize the persons for payment limitation purposes (that were recognized in the previous year) for the current and future years
- consider the new persons in the farming operation ineligible for payment when the farming operation did **not** meet the substantive change until substantive change is met.

Note: The eligible person's shares **cannot** be adjusted to circumvent the ineligibility of the new person.

4 Determinations When Substantive Change is Not Met (Continued)

B Duration of Ineligibility

Determinations that result in disapproving the increase in persons to which payment limitation applies shall be perpetual until the farming operation realizes a bona-fide substantive change according to Paragraph 3.

Users shall ensure the substantive change determination is recorded in Business File according to 3-PL for the current determination and any subsequent determination that may be required, until it is determined the farming operation has met the substantive change requirements.

5 Examples for Applying Substantive Change

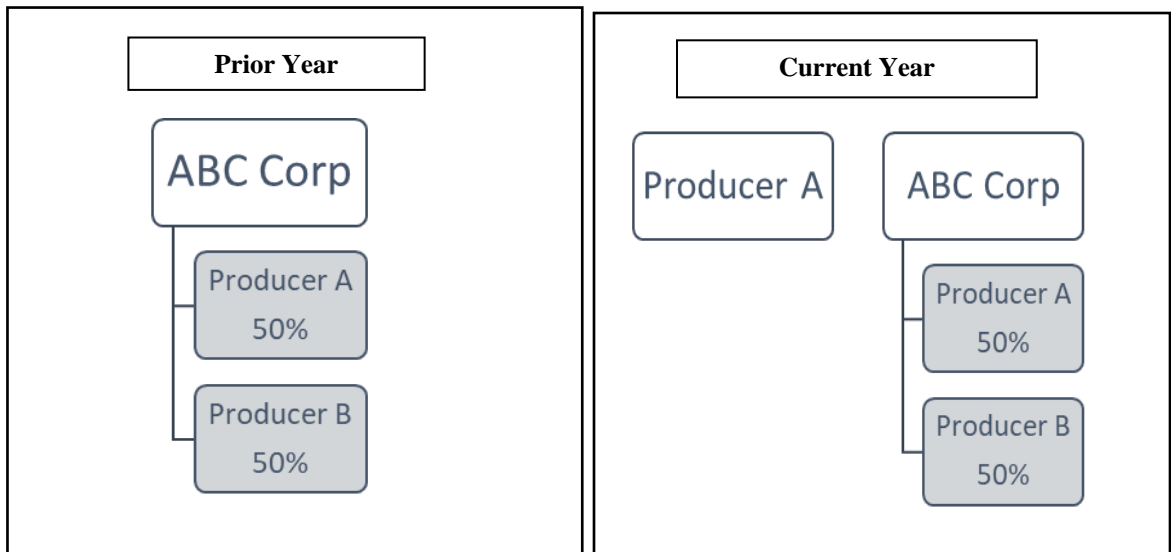
A Individual Beginning to Farm

Example 1 - Individual Beginning to Farm

Situation:

ABC Corp. operated farmland in the prior year and participated in programs subject to payment limitation provisions. Producer A and Producer B are equal share stockholders in the corporation. Neither Producer A nor Producer B had other farming interests.

In the current year, Producer A begins to farm some of the same land previously farmed by ABC Corp. Producer A will also retain his equal share in ABC Corp for the current year, that will continue to farm the rest of the acreage from the prior year's farming operation



Analysis:

Is there commonality in the two farming operations? Yes, the same member of ABC Corp (Producer A) is farming some of the same land previously farmed by ABC Corp.

Is there an increase in persons to which payment limitation applies from ABC Corp in the prior year? No. Payment limits are controlled by attribution of amounts received both directly and indirectly; therefore, the earnings of Producer A will be summed with Producer A's indirect earnings from ABC Corp. There is no increase in persons for payment limitation purposes.

Determination: Substantive Change requirements do not apply. Although there is commonality (same land and same persons) between the two farming operations, there is no overall increase in persons for payment limitation.

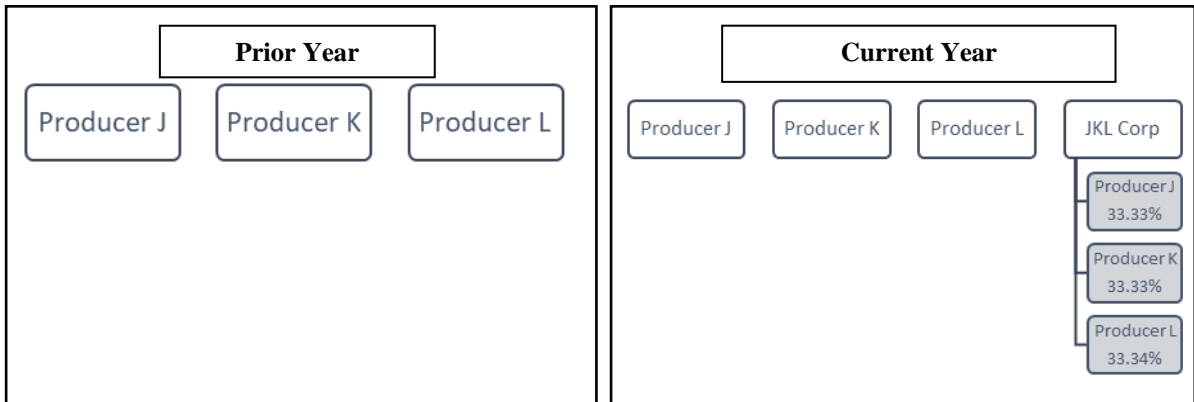
5 Examples for Applying Substantive Change (Continued)

B New Legal Entity Beginning to Farm

Example 2 - New Legal Entity Beginning to Farm

Situation:

Producer J, Producer K, and Producer L each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producer J, K, and L propose a new farming operation by forming a corporation, JKL Corp, in which each person is an equal stockholder. The entity would cash lease a portion of the cropland previously operated by each of the producers J, K, and L.



Analysis:

Is there commonality in the two farming operations? Yes. The new entity, JKL Corp, is comprised of the same persons J, K, and L, who participated in programs subject to limitation in the prior year **and** will be farming some of the same land previously farmed by one or more of the three persons.

Is there an increase in limitations from the 3 persons in the prior year? No. Payment limits are controlled by attribution, therefore the earnings of the three persons and their indirect earnings through JKL Corp will not result in an overall increase in persons for payment limitation in the current year.

Determination: Substantive change requirements do not apply. There is no overall increase in persons for payment limitation considering payment attribution.

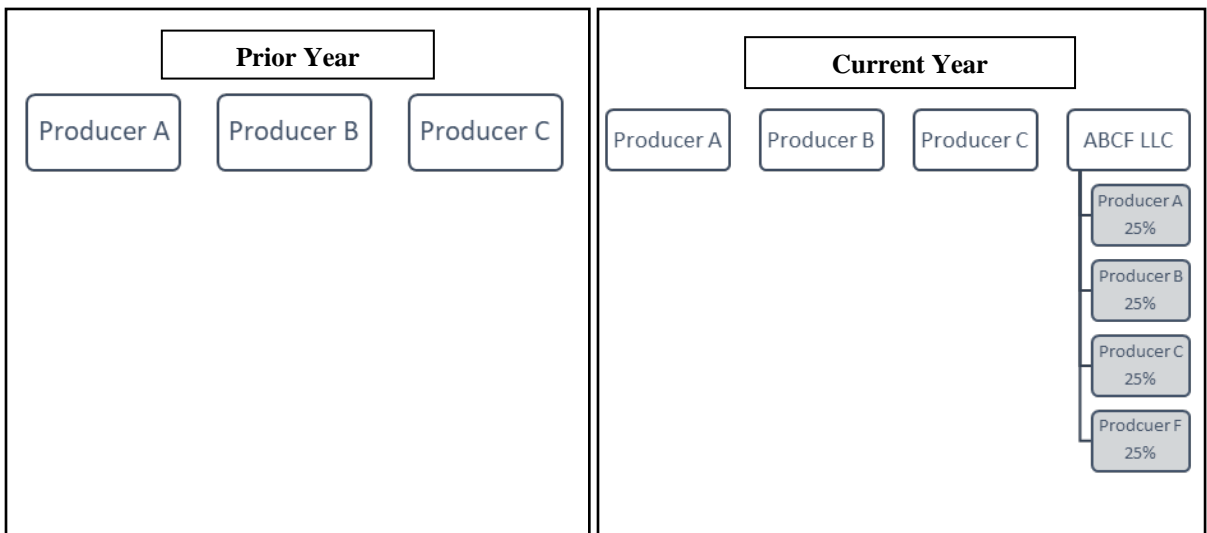
5 Examples for Applying Substantive Change (Continued)

B New Legal Entity Beginning to Farm (Continued)

Example 3 – New Legal Entity Beginning to Farm

Situation:

Producer A, Producer B, and Producer C each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producer A, B, and C propose a new farming operation, in addition to their individual operations, by forming a limited liability corporation, ABCF LLC. ABCF LLC adds an additional member, Producer F who has not participated in programs subject to limitation in a prior year. The four members are equal stockholders in the entity. The entity is **not** farming any of the land previously farmed by the three persons in the prior year.



Analysis:

Is there commonality in the two farming operations? No. Although the new entity includes Producer A, B, and C who participated in programs subject to limitation in a prior year, the new entity is not farming any land previously farmed by Producers A, B and C. There is no change in the prior year’s farming operation(s).

Is there an increase in limitations from the 3 persons in the prior year? No. ABCF LLC is a new legal entity that is not farming any of the land previously farmed by Producer A, Producer B or Producer C. There is no change in Producer A’s, Producer B’s or Producer C’s farming operation from the prior year.

Determination: Substantive Change requirements do not apply to the new legal entity. There is not commonality between the farming operations from the prior year, and the farming operation of the new legal entity. The new legal entity is not farming any of the same land previously farmed by Producers A, B and C. Therefore, there is no change in Producer A’, B’s and C’s individual farming operations from the prior year.

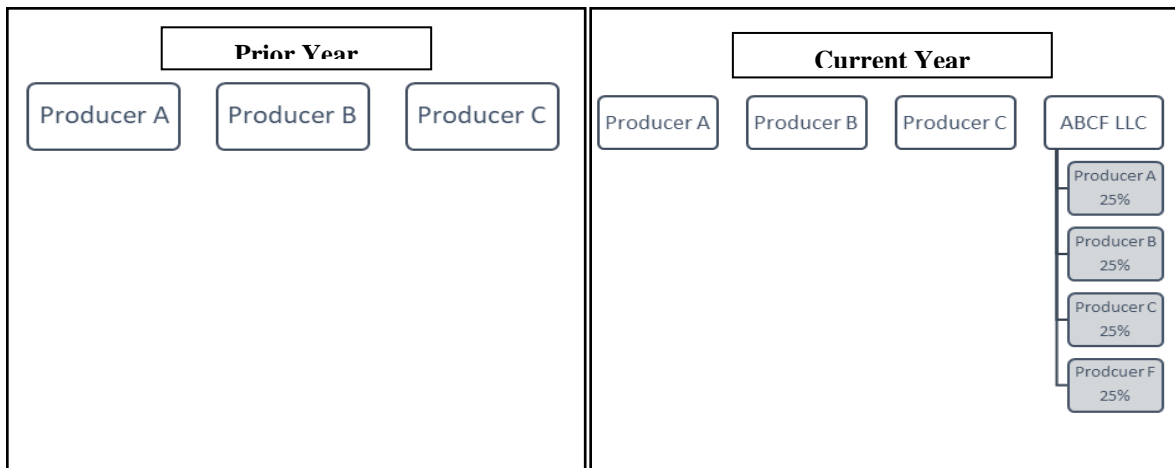
5 Examples for Applying Substantive Change (Continued)

B New Legal Entity Beginning to Farm (Continued)

Example 4 – New Legal Entity Beginning to Farm

Situation:

Producer A, Producer B, and Producer C each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producer A, B, and C propose a new farming operation, in addition to their individual operations, by forming a limited liability corporation, ABCF LLC. ABCF LLC adds an additional member, Producer F who has not participated in programs subject to limitation. The four members are equal stockholders in the entity. The new legal entity is farming some of the land previously farmed by the three persons in the prior year.



Analysis:

Is there commonality in the two farming operations? Yes. The new legal entity includes persons A, B, and C who participated in programs subject to limitation in a prior year; AND the new legal entity is farming some of the same land previously farmed by persons A, B and C.

Is there an increase in limitations from the 3 persons in the prior year? Yes. Some, but not all, of the persons who are members of the new legal entity, ABCF LLC, participated in programs subject to limitation in a prior year. The addition of Producer F to the new legal entity results in an increase in persons for payment limitation.

Determination: Substantive Change requirements apply to the new legal entity to recognize Producer F’s share. There is commonality between the farming operations from the prior year and the new legal entity’s farming operation. There is also an increase in persons to which payment limitation applies. The new legal entity must provide acceptable documentation supporting a bona fide change in the farming operation occurred.

5 Examples for Applying Substantive Change (Continued)

B New Legal Entity Beginning to Farm (Continued)

Result:

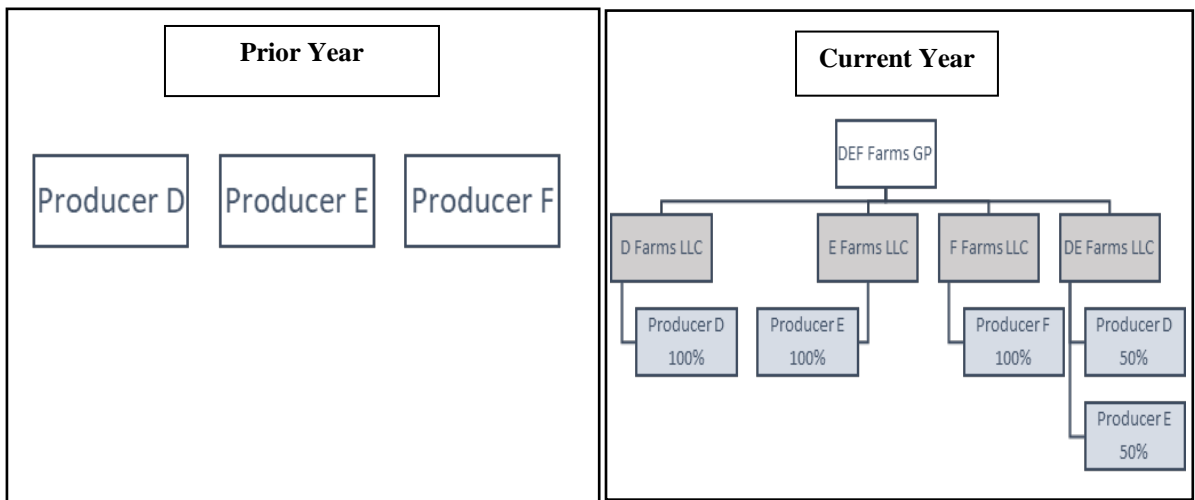
Depending on the determination whether the new legal entity met Substantive Change, the substantive change determination for Producer F shall be recorded in Business File as “Eligible” or “Not Eligible” according to 3-PL. Producers A, B and C will be set to “Eligible” to continue recognizing they are not an increase in persons for Payment Limitation from the prior year.

C New Joint Operation Beginning to Farm

Example 5 – New Joint Operation Beginning to Farm

Situation:

Producer D, Producer E, and Producer F each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producers D, E, and F each individually create an LLC and form a new General Partnership, DEF Farms, with each individual LLC as shareholders. A 4th LLC member, DE Farms LLC, with Producer D and Producer E as equal shareholders, is added to the General Partnership. The four LLC’s are equal members in DEF Farms, and the general partnership is farming all the land previously farmed by Producer D, Producer E, and Producer F in the prior year.



5 Examples for Applying Substantive Change (Continued)

C New Joint Operation Beginning to Farm (Continued)

Analysis:

Is there commonality in the two farming operations? Yes. DEF Farms GP is farming land previously farmed by Producers D, E, and F from the prior year and the members of each of the LLC's is Producer D, E and F.

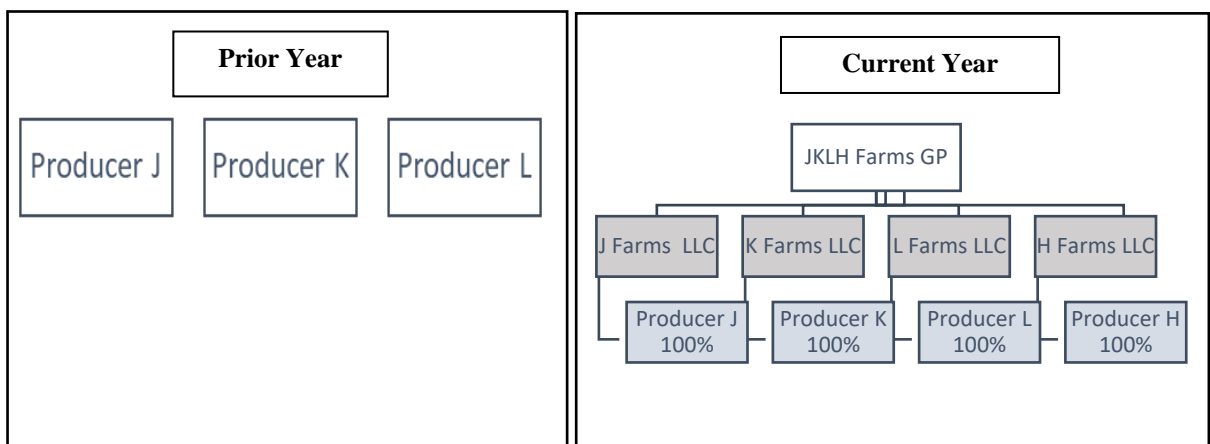
Is there an increase in persons for payment limitation from the 3 producers in the prior year? No. Payments are limited by attribution, therefore the earnings of the three producers as individuals and their indirect earnings through DE Farms LLC will not result in an overall increase in persons for payment limitation in the current year.

Determination: Substantive change requirements do not apply. There is no overall increase in persons for payment limitation through attribution.

Example 6 – New Joint Operation Beginning to Farm

Situation:

Producer J, Producer K, and Producer L each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producers J, K, and L each individually create an LLC and form a new General Partnership, JKLH Farms, with each individual LLC as members. A 4th LLC member, H Farms LLC, with Producer H as the sole member, is added to the General Partnership. Neither H Farms LLC, nor Producer H have ever participated in programs subject to limitation. The four LLC's are equal members in, JKLH Farms, and the general partnership is farming all the land previously farmed by Producer J, Producer K, and Producer L in the prior year.



5 Examples for Applying Substantive Change (Continued)

C New Joint Operation Beginning to Farm (Continued)

Analysis:

Is there commonality in the two farming operations? Yes. JKLH Farms GP is farming land previously farmed by Producers J, K, and L who are also shareholders of the LLC's that are members of JKLH Farms GP.

Is there an increase in limitations from the 3 persons in the prior year? Yes. In this case, there are 3 new LLC's that include persons that participated in programs subject to limitation in a prior year. Producer H, through H Farms LLC is a new person that has not participated in programs subject to limitation in a prior year. Producer H, through H Farms LLC, is an additional person to which payment limitation applies.

Determination: Substantive change requirements apply. There is commonality between the 3 persons who participated in programs subject to limitation in a prior year and a 4th payment limitation was added in the current year to the new General Partnership.

Result:

Substantive change determinations shall be recorded in Business File according to 3-PL. Depending on the determination whether the farming operation of JKLH General Partnership met Substantive Change, the determinations for Producer H (within H Farms LLC) shall be recorded in Business File as "Eligible" or "Not Eligible" according to 3-PL.

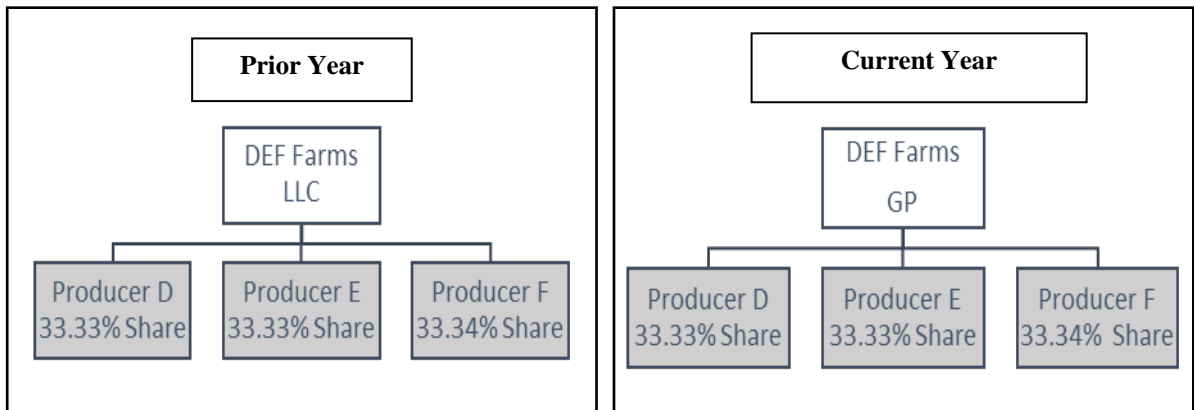
5 Examples for Applying Substantive Change (Continued)

C New Joint Operation Beginning to Farm (Continued)

Example 7 – New Joint Operation Beginning to Farm

Situation:

DEF LLC is comprised of three shareholders; Producer D, Producer E, and Producer F all with equal shares of the LLC. The LLC participated in programs subject to payment limitations in the previous year and was eligible for 1 payment limit. In the current year, the producers decide to restructure DEF LLC and create DEF Farms General Partnership. The General Partnership will contain Producers D, Producer E, and Producer F as members with equal shares, and will farm all the land previously farmed by DEF LLC.



Analysis:

Is there commonality in the two farming operations? Yes. DEF Farms GP will operate all the land that was previously farmed by DEF LLC, and all the members of DEF Farms were shareholders of DEF LLC in the previous year.

Is there an increase in limitations from the prior year? No. The members of DEF Farms GP participated in programs subject to payment limitation in a prior year indirectly through DEF Farms LLC.

Determination: Substantive change requirements do not apply.

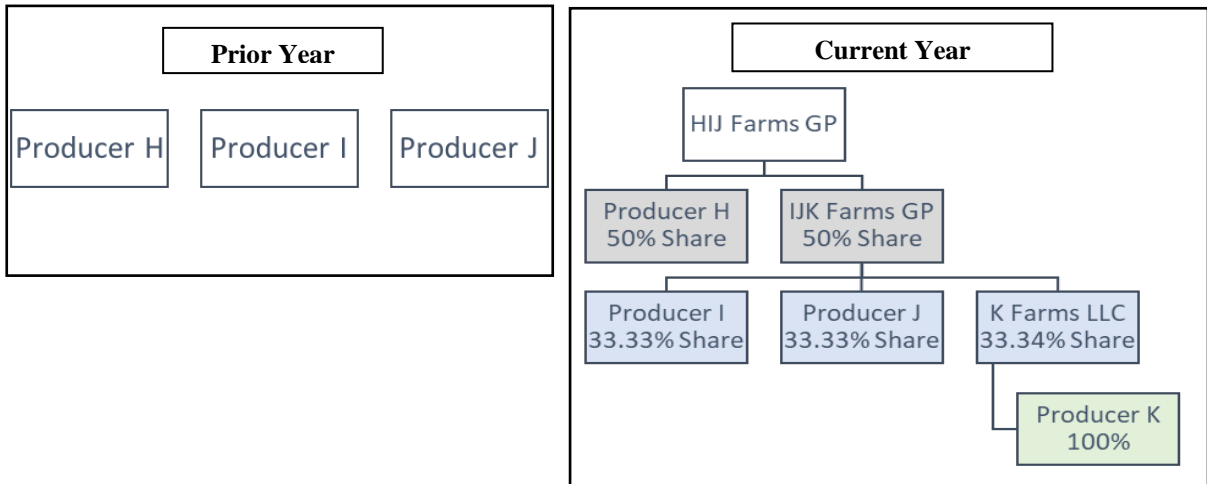
5 Examples for Applying Substantive Change (Continued)

C New Joint Operation Beginning to Farm (Continued)

Example 8 – New Joint Operation Beginning to Farm

Situation:

Producer H, Producer I, and Producer J each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 separate payment limitations. Producers H, I, and J form a new General Partnership, HIJ Farms GP, with Producer H and another new general partnership (IJK Farms GP) as members. IJK Farms GP consists of Producer I, Producer J, and K Farms LLC. Producer K (through K Farms LLC) has never participated in programs subject to payment limitation. HIJ Farms GP, is farming all the land previously farmed by Producer H, Producer I, and Producer J in the prior year.



Analysis:

Is there commonality in the two farming operations? Yes. HIJ Farms GP is farming land previously farmed by Producers H, I, and J who are also members of the new general partnerships HIJ Farms GP and IJK Farms GP.

Is there an increase in persons to which payment limitation applies from the 3 persons in the prior year? Yes. Some, but not all the persons who are members of the new embedded General Partnership, IJK Farms GP, participated in programs subject to payment limitation in a prior year. Producer K (through K Farms LLC) is an additional person to which payment limitation applies within the embedded GP from the prior year because Producer K (through K Farms LLC) has not participated in programs subject to limitation in a prior year.

Determination: Substantive change requirements apply. There is commonality between the 3 producers who participated in programs subject to limitation in a prior year and there is an increase in persons who has not participated in programs subject to payment limitation. Producer K (through K Farms LLC) was added in the current year to the new IJK Farms General Partnership. HIJ Farms GP must have a substantive change to recognize the increase in ‘persons’ to which payment limitation applies.

5 Examples for Applying Substantive Change (Continued)

C New Joint Operation Beginning to Farm (Continued)

Result:

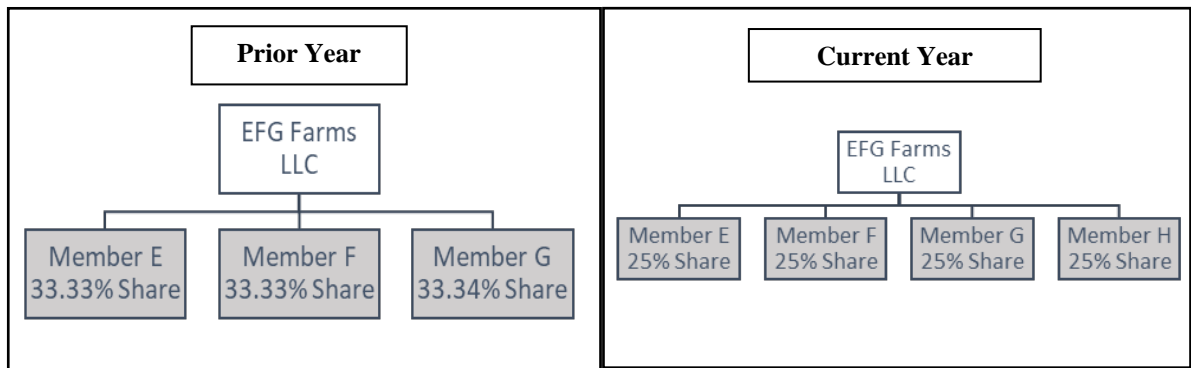
Substantive change determinations shall be recorded in Business File according to 3-PL. Depending on the determination whether the farming operation of HIJ Farms General Partnership met Substantive Change, the determinations for Producer K (within K Farms LLC) shall be recorded in Business File as “Eligible” or “Not Eligible” according to 3-PL.

D Existing Legal Entity

Example 9 – Addition of a Stockholder to an Existing Legal Entity

Situation:

EFG LLC is comprised of Member E, Member F, and Member G; all with equal shares of the LLC. The LLC participated in programs subject to payment limitation provisions in the previous year and was eligible for 1 payment limit. In the current year EFG LLC will add Member H to now include 4 members with equal shares within the LLC. Member H has not participated in programs subject to limitation in a prior year. EFG LLC will continue to operate all the farmland it operated in the previous year. None of the members of the EFG Farms LLC has any other farming interests.



Analysis:

Is there commonality in the two farming operations? Yes. EFG LLC is farming land previously farmed by the LLC from the prior year and one or more members are common to the prior year’s farming operation.

Is there an increase in payment limitations from the 1 limitation in the prior year? No. The addition of stockholder Member H to EFG LLC does not increase the overall persons for payment limitation allowed for the LLC.

Note: If any of the members do have an interest in any other farming operations, then the addition of Member H would be considered an increase in persons to which payment limitation applies.

5 Examples for Applying Substantive Change (Continued)

D Existing Legal Entity (Continued)

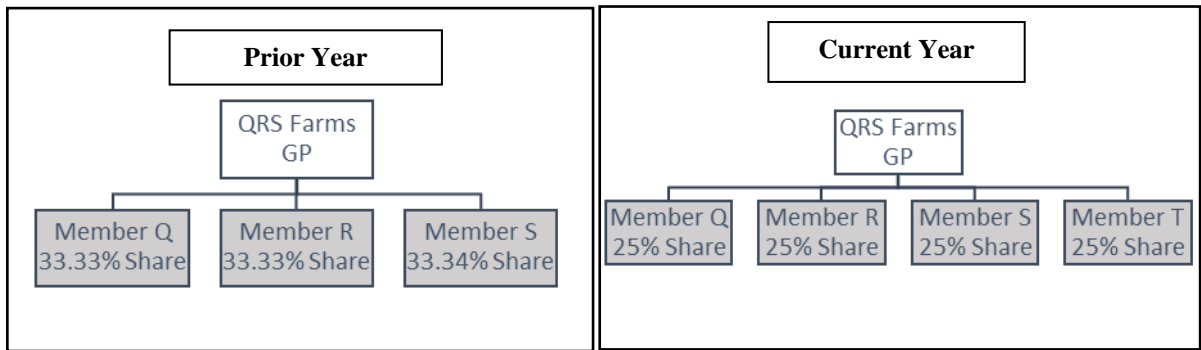
Determination: Substantive change requirements do not apply when none of the shareholders have other farming interests. Although there is commonality in the farming operations, the addition of Member H to EFG LLC does not result in an overall increase in the number of persons to which payment limitation applies from the prior year.

E Existing Joint Operation

Example 10 – Changes to an Existing Joint Operation

Situation:

QRS Farms is a general partnership comprised of three family members Producer Q, Producer R, and Producer S, all with equal shares of the general partnership. QRS Farms participated in programs subject to payment limitations provisions in a prior year and was eligible for 3 payment limits. In the current year, a 4th member (Member T) is added to the general partnership. Member T has not participated in programs subject to payment limitation in a prior year. The general partnership will contain Member Q, Member R, Member S, and Member T with equal shares, and will farm all the land previously farmed by QRS Farms.



Analysis:

Is there commonality in the two farming operations? Yes. QRS Farms is farming all land previously farmed by the general partnership from the prior year and there are members in common between the current year’s farming operation and the prior year’s farming operation.

Is there an increase in persons for payment limitation from the 3 persons in the prior year? Yes. Some, but not all the 1st level members of the new General Partnership participated in programs subject to payment limitation in a prior year. The addition of Member T is an additional person for payment limitation from the prior year.

5 Examples for Applying Substantive Change (Continued)

E Existing Joint Operation (Continued)

Determination: Substantive change requirements apply to the General Partnership. There is commonality between the prior year’s farming operation and the current year’s farming operation and there is an increase in persons to which payment limitation is applied in the current year.

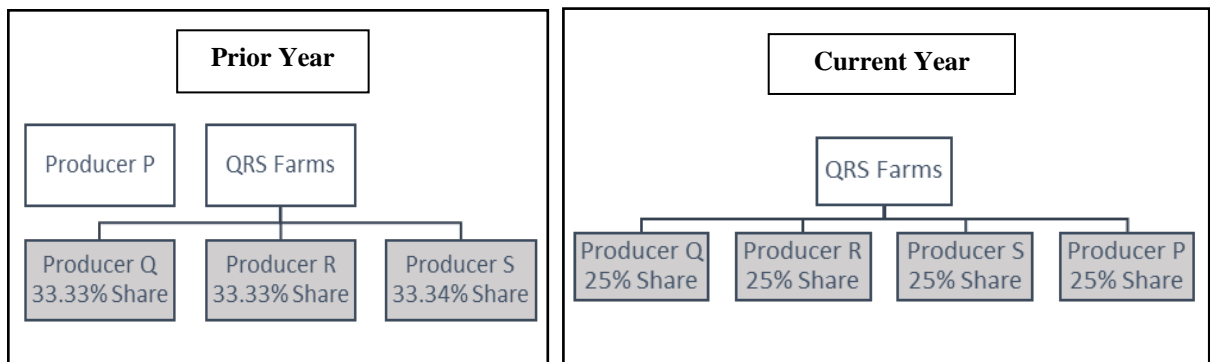
Result:

Substantive change determinations for Member T shall be recorded in Business File as “Eligible” or “Not Eligible” according to 3-PL.

Example 11 – Changes within an existing Joint Operation

Situation:

QRS Farms is a general partnership comprised of three members; Producer Q, Producer R, and Producer S all with equal shares of the general partnership. QRS Farms participated in programs subject to payment limitations provisions in the previous year and was eligible for 3 payment limits. In the current year, a 4th member (Producer P) is added to the general partnership. Producer P participated in programs subject to payment limitation in a prior year. The general partnership will contain Producers Q, Producer R, Producer S, and Producer P with equal shares, and will farm all the land previously farmed by QRS Farms and Producer P.



Analysis:

Is there commonality in the two farming operations? Yes. QRS Farms is farming land previously farmed by Producers P, and QRS Farms from the prior year.

Is there an increase in limitations from the 3 persons in the prior year? No. The addition of Producer P in QRS Farms does not represent an increase in persons to which payment limitation applies from the prior year because ALL members participated in programs subject to limitation in a prior year.

5 Examples for Applying Substantive Change (Continued)

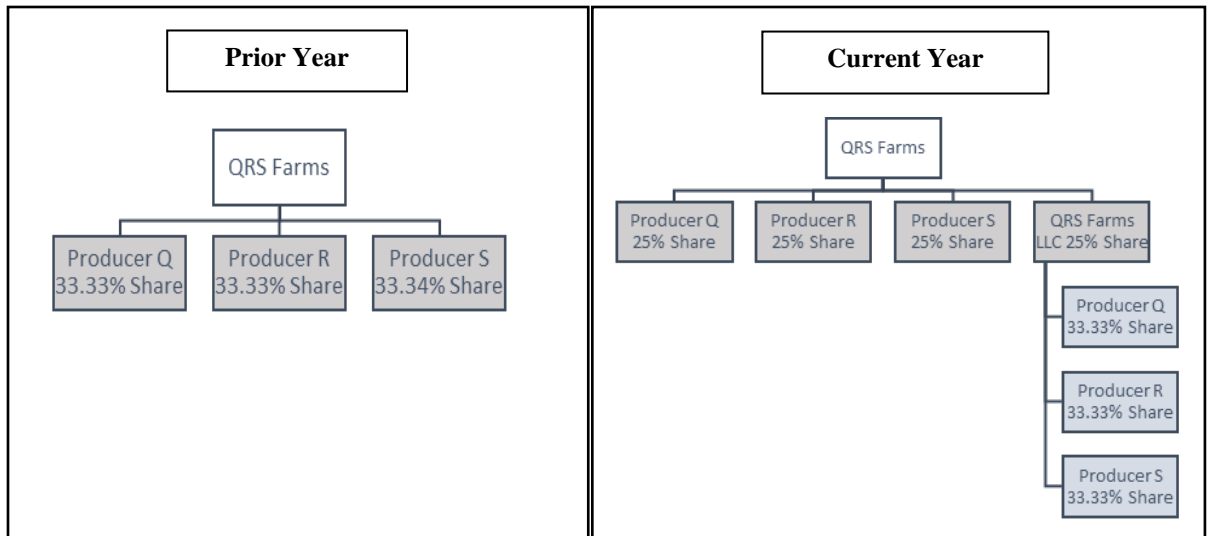
E Existing Joint Operation (Continued)

Determination: Substantive change requirements do not apply. There is no overall increase in persons to which payment limitation applies from the prior year.

Example 12 – Changes within an existing Joint Operation

Situation:

QRS Farms is a general partnership comprised of three members Producer Q, Producer R, and Producer S, all with equal shares of the general partnership. QRS Farms participated in programs subject to payment limitations provisions in the previous year and was eligible for 3 payment limits. In the current year, the producers decide to form QRS Farms LLC, and add the LLC as a member in the general partnership. Producers Q, R, and S are all equal share members of the newly formed LLC. The general partnership will contain Producers Q, Producer R, Producer S, and QRS Farms LLC with equal shares, and will farm all the land previously farmed by QRS Farms.



Analysis:

Is there commonality in the two farming operations? Yes. QRS Farms GP is farming all land previously farmed by the general partnership from the prior year.

Is there an increase in persons to which payment limitation applies from the 3 producers in the prior year? No. The creation of QRS Farms LLC is comprised of stockholders who participate in programs subject to limitation in a prior year. There is no overall increase in persons to which payment limitation applies.

Determination: Substantive change requirements do not apply. There is no overall increase in persons to which payment limitation applies.

6 Clarifications Effective for 2019

A Determinations

The clarifications provided in this notice are effective beginning in the 2019 FY, PY or CY as applicable.

COC's or STC's will use the Incorrect Determination Correction Action policy as found in 5-PL, subparagraph 329 (B) if a determination is found to be in error by any reviewing authority.

Agency decisions that are currently under reconsideration or appeal with the COC or STC, or in mediation may have the original decision rescinded and redetermined according to the clarifications provided by this notice and 1-APP (Rev.2).

Agency decisions that are currently under appeal to NAD may have the adverse decision rescinded and redetermined according to clarifications provided by this notice and 1-APP (Rev.2).

7 State and County FSA Office Action

A Action by State FSA Offices

State Offices will:

- immediately notify County Offices of the contents in this notice
- contact Program Manager, Paul Hanson in the National Office with any questions about this notice by:
 - telephone at 202-720-4189
 - e-mail at paul.hanson@usda.gov.

B Action by County FSA Offices

County Offices will:

- review the clarifications as provided in this notice
- begin issuing determinations for 2019 consistent with clarification provided in this notice
- contact the State FSA Office with any question about this notice.