

USDA Plans To Tighten Farm Program Payment Rules

Many Operations Will Need To Review Their Business Structure, Certify AGI



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When USDA officials finally issued an interim final rule on new farm program payment limitations last month, the document was hailed as a substantial tightening of the rules governing how farm program payments will be distributed.

“Changes to program participation rules and qualifying income requirements will make farm program payments more defensible to America’s taxpayers,” Agriculture Secretary Ed Schafer said in announcing the rule. “This is a step in the right direction to ensuring that program benefits are targeted to active qualifying farmers and ranchers.”

But others, such as Sen. Chuck Grassley (R-IA) were quick to disagree. The Iowa Republican said USDA did not make an effort to quantify, in terms of hours invested, how a person proves they provide “significant management” in a farming operation.

The one thing we know for sure: Unless you farm as an individual operator, you will probably need to review the changes prior to farm program signup this year.

Farm Service Agency Deputy Administrator John Johnson says the new rules, which will apply for 2009, represent a substantial change and should make it tougher for people to qualify for payments without making significant contributions to a farming operation.

“Previously, one member’s active personal management could qualify unlimited number of entities for payment. Now, every member must contribute and that contribution must be: regular, documentable, as well as separate and distinct from any other members’ contribution,” explains Johnson.

“This will severely limit the “Mississippi Christmas Trees” where many passive members hold annual breakfast meetings and agreed to plant corn, then claimed collective active personal management qualifying multiple entities.”

USDA provided an example of how the new regulation might apply at the local level:

Corporation A is held equally by stockholders B, C, D and E. Corporation A provides all of the capital, leases all of the equipment, cash rents all of the land, and hires all of the labor necessary to farm this land. The stockholders represent that they equally provide all of the active personal management necessary to successfully conduct this farming operation. Regular management meetings are held, either in person or by conference call, in which the stockholders jointly make all decisions concerning all financing, purchasing, planting, harvesting, marketing and the supervision of all hired labor in the farming operation.

Previously, the corporation just described would be considered actively engaged in farming by the entity’s contributions of capital, land and equipment, and the collective contribution of active personal management of all stockholders. The stockholders that made contributions to qualify the entity held more than 50 percent ownership interest in the entity that requested program benefits.

With this rule, each of the stockholders in this example would be required to establish that their respective contribution of active personal management was made on a regular basis, and was identifiable and documentable as separate

and distinct from the other stockholders of the entity. For example, stockholder B could represent through copies of signed purchase orders that stockholder B was individually responsible for obtaining and purchasing all inputs for the farming operation on behalf of the Corporation. Stockholder C could represent through signed contracts and delivery agreements with grain elevators and a cotton gin that stockholder C was individually responsible for the marketing of all commodities produced by the Corporation’s farming operation. Stockholder D could represent through copies of payroll records that stockholder D was individually responsible for the supervision of all hired labor utilized by the Corporation’s farming operation. However, if Stockholder E made no claim of management that is separate and distinct from the other stockholders, then as the result of Stockholder E’s failure to meet the requirements of this interim rule, the payments issued to the payment entity, that being Corporation A, would be reduced by the interest held by Stockholder E.

Johnson said the department’s regulation is consistent with proposals made by a Payment Limitation Commission in 2002, which warned against creating a “one size fits all” definition.” which might be unworkable in different parts of the country.

“With blackberries and cell phone technology, it’s hard to define how many hours might be required to make decisions on any given type of operation,” explained Johnson.

But depending on how FSA officials enforce the new rules, attorneys who work on payment limitation issues say that producers may want to keep better records in 2009, documenting their work on behalf of the farming operation.

Producers will also be required to provide annual certification of their Adjusted Gross Income (AGI). To comply with the AGI limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually the following:

(A). A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation;

(B) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(C) The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the person’s or legal entity’s income; or

(D) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.

FSA staff recently hosted a conference call with state offices to discuss these and other farm program changes, but much of the interpretation on farm program payments will be up to officials in county offices. Additional training for local officials will be held later this spring.

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