



“SCOOP”

ARKANSAS FARM SERVICE AGENCY - - STATE OFFICE

November 2008

Cotton Regulations Approved for 2008 – 2012 Crop Years

OMB has approved the revised cotton regulations for the 2008 through 2012 cotton crops. These regulations became effective and will be implemented beginning October 30, 2008.

This effective date will precede the filing and publication of the regulations in the Federal Register. The implementation of this regulation means that the upland cotton adjusted world price announced October 30, and effective at 12:01 am October 31, 2008 will include any applicable fine count adjustments and a revised transportation adjustment. The approved regulation also provides that the maximum rates used by CCC to calculate any warehouse storage credits to upland cotton loan redemptions will be reduced 10 percent. This rate reduction does not apply to remaining 2007-crop loan redemptions or settlements. CCC is still developing the software to implement the 10 percent storage-credit rate reduction for the 2008 and subsequent crops.

Waiver of Late-File Acreage Reporting Requirement For Farms with 10.0 or Less Base Acres

Farms with 10.0 or less base acres may late-file crop acreage reports through December 1, 2008, without having to pay a late-file fee. This is being allowed because the President signed H.R. 6849 legislation that now allows payments to Direct and Counter-Cyclical (DCP) farms with 10.0 or less base acres of covered commodities, and peanuts, and have an eligible DCP contract executed by November 26, 2008. Producers on 10.0 or less base acre farms who did not previously enroll should immediately contact their local FSA office to ensure the farm is enrolled with all required signatures by November 26, 2008, and their acreage is certified by December 1, 2008.

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Dotson Collins, State Executive Director
Sharon Baker, Chief Prod Adj/Compliance
James Culpepper, Chief Farm Loans

Tony Franco, Chief Price Support/Conservation
Dianna Shook, Administrative Officer
Phone (501) 301-3000
Website: www.fsa.usda.gov/ar

2009 – 2012 Payment Eligibility, Direct Attribution, Average Adjusted Gross Income and Payment Limitation

The information below concerning the Farm Bill provisions for 2009-2012 payment eligibility, direct attribution, average adjusted gross income, and payment limitation provisions is unofficial; the regulations have not been published, are subject to change, and are based upon our understanding of the information available upon release of this newsletter. Producers and farm entities must look at each of these provisions described below as a whole to understand how the program payments will be limited. Failure of an entity, or one or more of its members to fully meet all of the provision will affect program payments. The examples below will help explain how this works.

PAYMENT ELIGIBILITY:

Actively Engaged in Farming Rule applies. An individual or entity must have:

- Significant “left-hand” contributions to the farming operation of
 - o-Capital, land, equipment, or a combination
- Significant “right-hand” contributions to the farming of
 - o- Active personal labor or active personal management or a combination
- A claimed share of the profits or losses from the farming operation that is commensurate with the contributions to the farming operation
- Contributions that are at risk

Note: Landowners are considered actively engaged on the land they own.

Cash-Rent Tenant Rule applies to any producer that rents land from another producer for cash or a crop share guaranteed as the amount of the commodity to be paid in rent. The provision also applies to tenants who rent land for 0 dollars or who farm on the land in exchange for compensation other than cash, such as controlling weeds on land not owned or barter arrangements. Any cash-rent tenant shall be ineligible to receive payment unless the cash-rent tenant makes either of the following:

- A significant contribution of active personal labor to the farming operation
- A significant contribution of both active personal management and equipment to farming operation

Permitted Entities Rule – The permitted entity rule **does not apply**. There is no restriction on the number of entities.

Husband and Wife Rule – Husband and wife are eligible for separate attributed limits, and are no longer considered automatically combined as one for payment limitation. Another new provision is if one spouse, or the estate of a deceased spouse, is determined actively engaged in farming, the other spouse is considered to have a significant contribution of active personal labor, active personal management or a combination therefore to the same farming operation. The remaining rules such as but not limited to left-hand contributions, cash-rent tenant, and other apply.

Death and Succession – if the ownership interest in land or commodity is transferred upon the death of a program participant, and the new owner succeeds to the contract of the prior owner the successor, if eligible, may receive total program payments in excess of the limitation applicable to that program. This is applicable only for the year of death.

PAYMENT ELIGIBILITY CONTINUED:

Minor Child Rule – payments issued to a minor child are attributed to the parent receiving the greater amount of payments, unless the minor child otherwise meets requirements to be considered separate.

Status Date – is used to determine if a person is a minor. A person who is not 18 on April 1 of the applicable crop, program or fiscal year will be considered a minor. Status date no longer applies to marital status as it did in the previous farm bill. However, FSA must determine that the contributions are commensurate to the payment share being requested.

State, Local Government, Political Subdivisions, and Agencies – are not eligible for program payments unless payments are earned on State-owned land and used solely for the support of public schools, and the payment is limited to \$500,000 annually for Arkansas.

Substantive Rules apply – Increasing the number of persons or legal entities to which the payment eligibility and payment limitation provisions apply requires a change in the farming operation that is both bona fide and substantive. Any increase in the number of persons and/or legal entities for payment during the crop, program or fiscal year will not be recognized to increase equity in existing program contracts, or if determined to be a means of circumventing any payment eligible or payment limitation rule.

Denial of Benefits: FSA will deny program benefits as follows:

1 year for non-compliance

2 years for scheme or device

Up to 5 years for fraud or other equally serious actions

Producers should check with their local office to see more information on each category.

DIRECT ATTRIBUTION:

Payments are limited by direct attribution to persons and legal entities. Payments to a person are combined with the prorated share of payments issued to an entity the person holds an ownership interest in. The payments are tracked through the 4th level of ownership in legal entities. Once reaching the 4th level if no real person exists, the entity's payment is reduced by that prorated share. General Partnerships *are* considered legal entities for direct attribution. The original payment entity is considered to first level.

DCP Example: ABC Corporation is eligible for \$3,000.00 and has three individual (real persons) members with equal shares. Each member will be allocated \$1,000.00 each toward the total program payment limitation they can receive. Two levels were involved in this example, the first is ABC Corporation, and the second is the members. Other factors directly impact direct attribution and they are program payment limitation, and Average Adjusted Gross Income (AGI). See below for more details and examples.

AVERAGE ADJUSTED GROSS INCOME (AGI)

Beginning in year 2009 FSA program payments will be subject to 3 possible AGI limits as described below.

If Average Adjusted Gross Exceeds	Type of Income	Ineligible to Receive the following Programs Payments
\$500,000	Non-farm	any commodity program benefit such as DCP, ACRE, SURE, ELAP, LFP, LIP, NAP, TAP LDP, MAL, MILC
\$750,000	Farm	DCP Direct Payments
\$1,000,000	Farm	Conservation program, unless 66.66% or more of AGI is average adjusted gross farm income.

AGI is determined by looking at the 3 taxable years preceding the most immediately preceding complete taxable year. Example: Program benefits are requested for 2009, then use 2005, 2006, and 2007.

Producer, entities, and members of entities through the fourth level of ownership in an entity must complete a CCC-926, AGI Certification Statement or an acceptable statement from a CPA or attorney the year they initially request benefits and every three years following. A commensurate reduction of payment will be applied to the payment entity if the fourth level is not held by a natural (real) person.

Farm income – (do not rely on the Schedule F) Farm Income includes: production of crops, specialty crops, and unfinished raw forestry products; sale of land used for agriculture; production of livestock including cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry, fish, aquaculture production for food, honeybees, and products produced by, or derived from livestock; the sale of easements and development rights of farm, ranch, forestry land, water or hunting rights, or environmental benefits; the feeding, rearing and finishing of livestock; rental or lease of land, or equipment used for farming, ranching, or forestry operations, including water or hunting rights; the processing, packing, storing, shedding, or transporting of farm, ranch, and forestry commodities; production of farm-based renewable energy, including wind energy, any program payments or benefits authorized by statute or regulations, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans, any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator, income from farming, ranching and forestry operations reported to the IRS on schedule F or any other schedule, the sale of farm, ranch and forestry equipment, the provision of production inputs and services to farmers, ranchers, and foresters.

DCP Example from above continued: The same ABC Corporation has one member that does not meet \$750,000.00 AGI farm income. Therefore the corporation would only be entitled to earn \$2000.00 of DCP direct payments and the two members eligible for payment would be attributed \$1,000.00 each toward their payment limitation.

PAYMENT LIMITATION:

Payment limitation applies to each person whether they are a member of a legal entity or just an individual producer or both. Entities are also limited. Payments made to a legal entity shall be reduced proportionally by an amount that represents the direct or indirect ownership by any person or legal entity that has otherwise exceeded the applicable maximum payment limitation. For payment limitation, general partnership and joint ventures are not considered a legal entity. For general partnerships and joint ventures, the limitation is controlled at the member level and then added back to the joint operation level for disbursement of the payments.

DCP Example from above continued: Assume that one member from ABC Corporation that was attributed \$1,000.00 as shown above also has a farm he owns and operates whose total DCP direct payment calculates to \$60,000.00. Because he/she was already attributed \$1,000.00 from the payment from ABC corporation he/she may only receive \$39,000.00 from his owner/operator farm.

New DCP example to show the entity is subject to the limitation and how it affects direct attribution. Assume Jones Trust's direct payments computer to \$50,000. Two members make up the trust with equal shares and they have no other farming interest. The first payment limitation that is applied is to the entity (the trust). The trust will first be limited to \$40,000.00 then each member will be attributed \$20,000.00 each assuming they meet all other rules. In this example the members did not reach their limit, but the entity left \$10,000.00 on the table that could not be issued.

Supplemental Revenue Assistance Payment (SURE) Program

The Supplemental Revenue Assistance Payment (SURE) Program information provided below is unofficial. The regulations have not been published, are subject to change, and are based upon our understanding of the information available upon release of this newsletter.

SURE is available for:

- all producers in the county if the county or contiguous county has a *Secretarial* disaster declaration
- to a single producer that has a 50% difference between "Normal Production on a Farm" and "Actual Production on the Farm"
 - "Normal Production on the Farm" is the sum of the expected revenue for each crop on the farm
 - "Actual Production on a Farm" the sum of the value of all crops on the farm
- Crops that are expected to contribute at least 10% of the farm's income with a 10% production loss on the farm

Supplemental Revenue Assistance Payment (SURE) Program – continued:

SURE is a disaster program that:

- Provides assistance for crop production and or quality losses due to natural disasters
- Covers losses for any of the crop years 2008 through 2011.
- Looks at the year the production is harvested.
- Losses must be *due to natural disasters* such as but not limited to: hail, tornado, drought, excessive wind, plant disease, excessive heat, hurricane , freeze, fire, insect infestation
- Market price losses are *not* an eligible cause of loss
- **REQUIRES THE PRODUCER AND OR ENTITY TO HAVE AT LEAST THE CAT LEVEL OF FEDERAL CROP INSURANCE FOR ALL INSURABLE CROPS IN ALL COUNTIES AND/OR NON-INSURED DISASTER ASSISTANCE PROGRAM (NAP) COVERAGE FOR ALL NON-INSURABLE BUT NAP ELIGIBLE CROPS IN ALL COUNTIES. (SALES CLOSING DATES FOR SOME CROPS ARE QUICKLY APPROACHING).**
 - Exception: Socially disadvantaged, limited resource or beginning farmers are not required to purchase the crop insurance or NAP coverage, but are encouraged to purchase the crop insurance in order to have a greater safety net.
 - Note: all producers are encouraged to purchase Buy-Up crop insurance to increase the “guarantee”.
- Determines the loss by lumping *all* planted or intended to be planted acreage in all counties which is called the “Farm” including aquaculture and honey
- Producers must also have a risk in the crop and an ownership share in the crop. The limitation is \$100,000 but payments from the Livestock Indemnity Program (LIP), Livestock Forage Program (LFP), and Emergency Assistance for Livestock, Honey Bees, and Farm Raised Fish (ELAP) Programs are included in the same limitation.
- The program is funded through the Agricultural Disaster Relief Fund
- Payments are issued to an eligible producer in the amount equal to 60% of the difference between the program Guarantee and the Total Farm Revenue
 - Guarantee is the amount of insurance coverage a producer has which “guarantees” a minimum income in the event there was a total loss.
 - Note: The guarantee cannot exceed 90% of the crop’s Expected Revenue
 - Expected Revenue is the dollar amount the farm would expect to produce if there was not a loss (a disaster event).
 - Farm Revenue is the amount of revenue a farm produced in a given year including crop insurance indemnities.
- Does not pay for losses on crops intended for grazing
- Requires all cropland and non-cropland acres to be reported at FSA
- Subject to AGI rules
- Subject to Sod/Swamp provisions
- Payments may be assigned or offset toward outstanding debts

Available on the following link is an automated calculator that allows users to load various scenarios of basic levels of insurance coverage versus buy up levels of insurance coverage with the projected farm revenue to project possible program payments.

<http://www.fsa.usda.gov/FSA/fbapp?area=home&subject=landing&topic=landing>

Average Crop Revenue Election Program (ACRE)

The information below on Average Crop Revenue Election Program (ACRE) is unofficial. The regulations have not been published, are subject to change, and are based upon our understanding of the information available upon release of this newsletter.

The **Average Crop Revenue Election Program (ACRE)** is designed to be a safety net that protects against crop revenue shortfall resulting from price and/or production declines at state and farm levels. Below are more provisions of the program:

- ACRE payments are driven by national average prices indirectly related to production to the extent that national production drives prices.
- Farms in ACRE cannot be enrolled in Direct and Counter-Cyclical (DCP)
- Only farms with a DCP base are eligible
- **ALL** producers on the farm must make an election to enroll in ACRE
- Once ALL producers make the election, if not withdrawn by the election deadline, the farm stays in ACRE through 2012 even if the farm is sold or reconstituted.
- ACRE farms cannot be combined through reconstitution with a DCP farm
- The election can be made in either year 2009, 2010, 2011, or 2012
- A producer may participate in ACRE on one farm and participate in DCP on another farm.
- Once the election is made for ACRE, then the farm must be enrolled annually in ACRE to receive payments
- Farms with 10.0 or less base acres may not receive payment unless the Socially Disadvantage and Limited Resource provisions apply
- Two types of payments are applicable for the ACRE program:
 - **ACRE Direct payments:**
 - equal to 80% of the DCP direct payments
 - allows a 22 percent advance except for 2012
 - the final payment will be issued after October 1 of the contract year.
 - Direct Rates:
 - Barley - \$.24/bu
 - UPCN - \$.0667/lb
 - Oats - \$0.024 bu
 - Rice LG - \$2.35/cwt
 - Rice MG - \$2.35/cwt
 - Soybeans - \$0.44/bu
 - Corn - \$0.28/bu
 - Grain Sorghum - \$0.35/bu
 - Wheat - \$0.52/bu
 - **The ACRE payment:**
 - Two triggers must be met before the ACRE payment is applicable:
 - 1st – the state acre guarantee must exceed the actual state revenue
 - 2nd – the farm acre benchmark revenue must exceed the actual farm revenue
 - Is a several step calculation as noted on the attached unofficial document

Average Crop Revenue Election Program (Acre), The ACRE payment – continued:

- **The ACRE payment Continued:**
 - Is similar to counter cyclical payments in DCP but is calculated based upon what a producer plants with more recent production rather than historical yields
 - Is paid after October 1 after the end of the marketing year
 - Which does not allow for an advance payment options
 - Is derived from five years of production records with a requirement to submit production records for each current year
- Producers will not be able to receive:
 - counter-cyclical payments from the DCP program
 - 30% of the Marketing Assistance Loan (MAL) rates

**2009 Non-Insured Disaster Assistance (NAP)
Sales Closing Date Approaches**

Crop	Intended Use	Application Closing Date
Aquaculture		12/01/08
Christmas Trees		12/01/08
Ginseng Root		12/01/08
Ornamental Nursery		12/01/08
Turfgrass Sod		12/01/08
Oats	Grain	12/01/08
Wheat	Grain	12/01/08
Apples	Fresh	12/01/08
Asparagus	Fresh	12/01/08
Blueberries	Fresh	12/01/08
Caneberries (blackberries and raspberries)	Fresh	12/01/08
Figs	Fresh	12/01/08
Grapes	Fresh	12/01/08
Peaches	Fresh	12/01/08
Pears	Fresh	12/01/08
Honey		12/01/08
Grasses (Alfalfa, Bahia, Bermuda Coastal, Bermuda Common, Bermuda Hybrid, Bluestem Old World, Fescue Red, Fescue Tall, Lovegrass, Mixed Forage, Native Interseeded, Orchard Grass, Rye, Annual,	Hay and Grazing	12/01/08

Small Grains/Interseeded, and Sudangrass)		
Broccoli	Fresh	01/01/09
Cabbage (S&F)*	Fresh	01/01/09
Carrots	Fresh	01/01/09
Greens (S&F)*	Fresh	01/01/09
Onions	Fresh	01/01/09
Pecans		01/01/09
Potatoes	Fresh	01/01/09

S&F = spring and fall plantings

Either multi-peril Federal Crop Insurance or Non-Insured Disaster Assistance (NAP) coverage is required on all crops in order to be eligible for benefits for the *Supplemental Revenue Assistance (SURE) Program, Tree Assistance Program (TAP), and the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (EALHF)*. NAP is required on grazing losses to be eligible for the *Livestock Forage Disaster Program (LFP)*. The coverage is required on all crops grown in all counties. If RMA insurance is available producers must timely purchase RMA coverage, if not available then the producer must purchase NAP Coverage. A full article can be found in the July Special Edition SCOOP found at

<http://www.fsa.usda.gov/FSA/stateoffapp?mystate=ar&area=home&subject=nele&topic=landing>

Waiver of Late-File Acreage Reporting Fees

Producers who have Non-insured Disaster Assistance (NAP) policies for the 2009 crops of aquaculture, Christmas trees, ginseng root, ornamental nursery, turf grass sod, oats, or wheat will not be charged a late-filed acreage reporting fee provided the acreage is certified on form FSA-578 in the applicable County Office by December 1, 2008. The December 1, 2008, extension is being granted since the NAP sales closing date was extended to December 1, 2008.

FSA Disaster Programs Require Federal Crop Insurance Coverage And Deadlines Approach

With the enactments of the Food Conservation and Energy Act of 2008 (2008 Act), Pub L. 110-246, contains NEW emergency disaster programs for which producers will be required to purchase multi-peril Federal Crop Insurance on all crops grown if available before the crops' sales closing date. ***The deadline to obtain Federal Crop Insurance Coverage is quickly approaching on some crops, and producers need to report immediately to their agent of choice to obtain coverage.*** More information on the new disaster programs and insurance requirements can be found in the July Special Edition SCOOP

<http://www.fsa.usda.gov/FSA/stateoffapp?mystate=ar&area=home&subject=nele&topic=landing>

2005-2007 Crop Disaster Assistance Program (CDP)

Producers are reminded that FSA County Offices are accepting applications for *quality and quantity* losses for the 2005-2007 CDP Program. A deadline has not been announced. Interested producers should apply in their local FSA office
