Direct and Counter-Cyclical Program and Average Crop Revenue Election for 2009 and Subsequent Crop Years

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

1-DCP
(Revision 3)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250
Eligibility to Receive Payments and Determining Cash or Share Leases (Continued)

B Review of Leases

[7 CFR 1412.54] For the 2009 through 2012 crop years:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for a guaranteed amount and share of the crop or crop proceeds, such agreement will be considered a cash lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

(4) If the lease is a cash lease, the landlord is not eligible for direct, counter-cyclical, or ACRE Program payments. The leasing of grazing or haying privileges is not considered cash leasing.

Notes: Lease terms and CCC’s view about whether a lease is cash or share impact a decision about who must sign CCC-509. They also could impact claimed shares on CCC-509, or for the ACRE Program, shares of covered commodities reflected on FSA-578.

There are no requirements in DCP or the ACRE Program that specify that leases comport with any sort of reasonableness test. These matters could impact other decisions, such as payment limitation or eligibility provisions.

Important: FSA-578 shares are used to determine shares of ACRE payments. Offices should not enter acreage certifications using defaulted shares from CCC-509 if those share interests do not reflect the actual producer crop share of the covered commodity or peanuts on the farm.
Eligibility to Receive Payments and Determining Cash or Share Leases (Continued)

C Current Regulations About Division of Payment Shares

7 CFR 1412.54 regulations provide the following provisions about lease types applicable for DCP or ACRE Program purposes.

<table>
<thead>
<tr>
<th>Type of Lease</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>A cash lease provides for only a guaranteed sum, certain cash payment, or a fixed quantity of the crop.</td>
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<td></td>
<td><strong>Example:</strong> Cash, pounds, or bushels per acre.</td>
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<td>A fixed or standing commodity payment is the payment a tenant or operator provides a landlord for using the land and the landlord's reduced risk on the crop, including the following:</td>
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<tr>
<td></td>
<td>• a fixed amount of production, such as 10,000 bushels or pounds</td>
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<tr>
<td></td>
<td>• an amount of production per acre, such as 40 bushels or pounds per acre</td>
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<td></td>
<td>• a guaranteed amount and share of the crop or crop proceeds</td>
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<td></td>
<td>• both a:</td>
</tr>
<tr>
<td></td>
<td>• guaranteed amount, such as a fixed dollar amount of quantity</td>
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<td></td>
<td>• share of the crop proceeds.</td>
</tr>
<tr>
<td>Share</td>
<td>A share lease contains provisions that require any of the following:</td>
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<tr>
<td></td>
<td>• payment of rent based on the amount of crop produced</td>
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<td>• proceeds derived from the crop</td>
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<td>• interest the producer would have had, if the crop had been produced.</td>
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</tbody>
</table>

D Example 1

In this example, the lease agreement specifies that the rent is based on a share of the gross revenue of the crop proceeds. The rental amount is equal to $142.80 per acre based on the following variables:

- rent equal to 40 percent of the gross crop value
- guaranteed minimum yield of 170 bushels per acre
- actual price of $2.10 per bushel.

While the landowner does not actually receive 40 percent of the crop produced, this lease shall be considered a cash lease because other rental amount is based on a guaranteed sum or minimum amount.
E  Example 2

In this example, the lease agreement specifies that there is a base, or minimum, cash rent amount that must be paid, but the landowner receives a share of the gross revenue in excess of the base value. The rental amount is based on the following variables:

- base, or minimum, cash rent is $100 per acre
- additional rent is 50 percent of the gross revenue in excess of $250 per acre
- yield of 52 bushels per acre
- price of $6.50 per bushel.

While the landowner does not actually receive 50 percent of the crop produced, this lease shall be considered a “combination” lease or cash lease because the lease agreement includes a guaranteed amount and an additional amount based on a share of the crop proceeds.

F  Example 3

In this example, the lease agreement specifies that the cash rent is based on a fixed number of bushels; however, the price is based on the value that will be set on a future date, but it is not based on the actual price received by the producer. The rental amount is based on the following variables:

- fixed number of bushels is 55 bushels per acre
- actual price is the price at the local elevator on December 1.

This lease shall be considered a cash lease.

G  Payment of Cash Bonuses

Questions have been raised about how payment of cash “bonuses” to landowners impacts program eligibility. Tenants entering into agreements with landowners for the contract period may be considering paying landowners a “bonus” payment because of higher than expected yields or increased market prices. The payment of a bonus to a landowner, in itself, is not a violation of DCP or ACRE Program regulations.