

To: James R. Little, Administrator, Farm Service Agency

From: Elanor

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Re: Implementation of S. 667, Strengthening Limitations for Commodity Payments and Benefits

Background

On March 1, 2005, Congress passed S. 667, which sets more stringent limitations on commodity payments to farmers. Current law limits farm subsidies to \$180,000 for a single farmer; because an individual can receive half-payments on two additional farms, the annual cap on total combined payments is \$360,000 per person. S. 667 reduces the cap on counter-cyclical payments from \$65,000 to \$30,000 per crop year, and on direct payments from \$40,000 to \$20,000 per crop year. The cap on loan deficiency payments and marketing loan gains, currently set at \$75,000 per crop year, is increased to \$87,500; however, the new law includes gains realized from the use of Commodity Credit Corporation certificates and marketing loan gains from loan settlement by forfeiture under this cap. The annual cap on total combined payments is now \$275,000 per person.

The Secretary of Agriculture is charged with promulgating regulations to ensure that total payments through joint operations or multiple entities controlled by a person, in combination with payments received directly by that person, do not exceed \$275,000. There have been persistent concerns within the FSA and in Congress that some farmers utilize loopholes to get around the cap on commodity payments. While S. 667 attempts to close these loopholes, operationalizing the new law will undoubtedly present a number of challenges for our agency.

Timeframe for the Rulemaking Process

S. 667 stipulates that the Act be promulgated without regard to the Paperwork Reduction Act; therefore, information collected from farmers to implement the law, and the burden that the provision of this information will cost the farmer, does not have to be approved by OMB or be subject to a 60-day comment period. The Act also disregards the notice and comment provisions of U.S. Code Section 553, title 5, and the Statement of Policy of the Secretary of Agriculture regarding notices of proposed rulemaking and public participation. The USDA is thus not required to publish notice of rulemaking procedures in the Federal Register, designate a public comment period, or publish the final rule at least 30 days prior to the date the rule takes effect. Under section 808, title 5 of the U.S. Code, the rule will take effect at a time determined by the agency promulgating the rule.

The law requires the Secretary to establish regulations governing the payment limitation changes no later than July 1. Given the delayed passage of the bill, this date may need to be pushed back until August 1; an interim final rule should be issued in the next 2 months to ensure that the final rule is in place in time for the Secretary to meet this deadline. Due to the major impact that the rule will have on some producers, it should become effective on the day it is filed for public inspection in the Federal Register.

The lack of public input on the rule may present a challenge for implementation, given that the law will have a major impact on some producers who are denied a say in the rulemaking process. A number of powerful farm interests, including the American Farm Bureau Federation, strongly opposed passage of the law, but the FSA will be largely dependent on groups like the AFBF for the distribution of information on the new regulations. Due to the sensitive nature of the law and the need for public support to ensure successful implementation, the USDA should consider other ways to encourage public participation in either the rulemaking process itself or in implementation of the rule. One option available to incorporate affected parties into the rulemaking process in lieu of a public comment period is the establishment of a negotiated rulemaking committee, in accordance with U.S. Code title 5, section 561. However, a negotiated rulemaking process will be longer, more arduous, and more likely to lead to deadlock than an informal process, an issue which becomes problematic given the rapid timeline laid out in the bill for the establishment of regulations. Given the circumstances, a negotiated rulemaking process is not recommended, and the USDA should consider devoting significant resources to a public relations campaign that involves groups like the AFBF to the greatest extent possible.

Timeframe for Implementation

Because the law simply alters the criteria for commodity payment eligibility, implementation can be carried out using existing channels already involved in reviewing and assessing farmers' applications for assistance.

However, because the law pulls gains from commodity certificates under the cap, closer collaboration will be required between the FSA Deputy Administrators of Farm Programs, Farm Loan Programs, and Commodity Operations in the Washington headquarters. In addition, information on commodity certificate gains, which is already collected by the FSA, will need to be included in FSA county offices' eligibility assessments.

In an attempt to close a loophole that has allowed some farmers to receive payments in excess of the limits, the law also requires the Secretary to establish regulations to track payments and gains made to renters or custom farm service contractors or others considered to have a business relationship with the farm owner/operator that is not an arm's length relationship (generally considered to be a relationship in which the individuals are not related or in business together, or where one individual does not exert control over the business decisions of the other). Payments made to these persons must be counted toward the limit of the main farm owner/operator. These regulations can be carried out using existing channels and offices, but the time and paperwork burden of FSA county and state offices will likely increase and should be included in implementation costs.

The bill's implementation will affect fewer than one percent of the nation's producers. While this number is relatively small, it is incumbent upon the USDA to provide these producers with adequate time and assistance to adjust to the new eligibility criteria. A reasonable timeframe for implementation would be one crop year from the time of enactment of the rule. The final rule should be published in the Federal Register by June 1; regulations should be issued by the Secretary by August 1; and a concerted public relations campaign, outlined below, should begin immediately following publication. Farmers will thus have until June 1 of the following year—the deadline for contracts to be signed to receive commodity payments—to make appropriate adjustments, and will receive payments at previously established levels in the interim.

Interest Group Involvement

Because there is no public comment period, input by interest groups will not be considered during the rulemaking process. However, the assistance of state Farm Bureaus and other groups will be needed to transmit information on the new law to affected farmers. The AFBF, along with major commodity groups such as the American Corn Growers' Association, opposed the bill while it was before Congress for debate. The bill received moderate support from small farm groups such as the National Family Farm Coalition, but many of these groups felt that supply control mechanisms, not simply stricter payment limitations, were needed to boost farmgate prices. However, despite the lukewarm reception to the bill among farm interest groups in general, a 2001 survey found that 61 percent of farmers with annual incomes over \$100,000 supported reductions in commodity payments, suggesting that overall, public reception to the new law will likely be positive. Notices should be issued to state and county FSA offices as soon as the rule is finalized, alerting the offices to the forthcoming regulations and allowing them to prepare for implementation of the law. The USDA should hold meetings with state Farm Bureau representatives immediately following publication of the rule, reviewing the implications of the law and requesting assistance with the distribution of information. Following the establishment of regulations, USDA should begin a public relations campaign carried out through local newspaper, TV, and radio channels, emphasizing the small number of farms to be affected by the changes; it should also conduct outreach to individual affected farms through FSA county offices, drawing on information from existing payment databases, to ensure the minimum amount of public opposition. Assistance should be offered to help the affected farms make appropriate budgetary adjustments under the new law.

Budgetary Implications

S. 667 has been scored by the CBO, and the estimated savings is projected at \$1.39 billion over ten years. A study by the Food and Agricultural Policy Research Institute using a different (stochastic) method of analysis estimates that payment limitations would reduce government farm program outlays by \$3.1 billion over the same period, and net farm income by \$2.2 billion. The limitation would result in slightly lower production levels and higher prices for cotton and rice; average effects on production and prices of other crops are estimated at less than one percent. Thus, it is reasonable to expect little to no consumer impact following implementation of the law. It is recommended that a portion of the savings be devoted to increasing staff in FSA field offices in the areas with the greatest concentration of affected farmers; additional time will be needed to review eligibility, assist farmers with adjustments following payment reductions, and educate them on the implications of the law.