

## Gruzlovic, Hope

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**Cc:** Payne, Susan; Smith, Brian; Andrejko, Judith; Kimmel, David; Gruzlovic, Hope; Winzinger, Heidi; Bruder, Steven; Miller, Stefanie; Brill, Timothy  
**Subject:** On-farm direct marketing webinar questions

Good afternoon everyone.

A few questions were emailed during the OFDM-AMP webinar but, due to time constraints, they could not be answered. Here are the questions (in blue) and agency responses (in red):

I am interested in the 5-acre minimum requirement. The RTF rules talk about a farm “operated as a single enterprise.” If a farmer owns a parcel and leases a contiguous parcel, is that “operated as a single enterprise” within the definition of a Farm Management Unit? **The agency cannot answer that question without more information about the owner/operator and business(es) being conducted. However, in the Sipos case, the SADC’s Final Decision provided some guidance as to what factors (although not an exclusive list) bear upon the “single enterprise” concept. Those considerations included the LLC certificates of formation and operating agreements; property tax records; business tax returns; integrated business resources; centralized accounting; a showing of allocation of profits and losses; whether or not the entities have separate bank accounts; and how the entities cover their expenses. The Sipos decision is reported at: <http://www.state.nj.us/agriculture/sadc/rtfprogram/conflictres/formal/sipos3.pdf>**

The speaker said that the two parcels had to be assessed as one unit under Farmland Assessment to qualify for RTF protection.

However, the two parcels would not qualify for Farmland Assessment as one unit if they have two owners, even if they are operated as a single enterprise. **You are correct. If each contiguous parcel exceeds 5 acres, then each parcel is eligible for farmland assessment on its own. The analysis would then become whether the 2 parcels comprise a farm management unit, which implicates the “single enterprise” factors.**

Can the farmer ask for an SSAMP ruling on this in order to qualify for RTF protection? **No, a farmer cannot employ the SSAMP process to seek an advisory opinion. In a related context, a Right to Farm complaint sought a determination from a CADB whether a proposed farm market was a site specific agricultural management practice. The board dismissed the case because the complainant did not allege any harm and was merely asking for advice. The SADC upheld the board’s decision. The SADC resolution is reported at: <http://www.state.nj.us/agriculture/sadc/rtfprogram/conflictres/formal/rtfdecbailey.pdf>**

During that section of the presentation re: events; Susan mentioned concerts – I was thinking if a farmer is in trouble financially, would a fundraiser be acceptable under these new RTF proposals? (Imagine a mini-Farm Aid.) Of course, taking into consideration I suppose, the need to have some marketing of ag-related products sold in addition to the sale of tickets for such an event. **A fundraising concert of the scale described in the question is not entitled to RTF protection**

because it does not fit the elements required for permitted “farm based recreation” or “ancillary farm-based entertainment” activities. The important standards are that the activities must be accessory (secondary, subordinate) and related to the marketing of the agricultural production of the farm. Here, the fact pattern is that the farmer is staging the concert to raise money due to financial hardship, not to sell farm products. The agency deems entertainment on a commercial farm to be a purely “background” event, not the primary activity, even though some ag-related products are sold. For on-farm direct marketing, RTF protection cannot be provided if the nonagricultural activity “tail” is wagging the on-farm agricultural production “dog”.

Obviously the agency’s responses above are limited to the hypothetical questions that were posed. Actual cases vary, and the SADC will address each case based on the agency’s statutes and regulations, precedent, and the facts before it.

If any webinar participants have follow-up questions, then please send them to [Brian.Smith@ag.state.nj.us](mailto:Brian.Smith@ag.state.nj.us).

Thank you for participating this morning.