

Payment Eligibility & Payment Limitation

DCP & ACRE

General Provisions



Payment Eligibility & Payment Limitation

The Food, Conservation, and Energy Act of 2008

- Implements changes beginning with 2009
- First major changes since the 1987 amendments were added to the 1985 Act.

- Pub. L. 110-246 Sec. 1603 and 1604

Payment Eligibility & Payment Limitation

Other details & requirements:

- 7 CFR Part 1400
 - published 12/29/08
 - comments through 1/28/09
- Interim rule for 2009
- Final rule published for 2010

Payment Eligibility & Payment Limitation

Other details & requirements:

- Actively engaged in farming
- Cash rent tenant
- Commensurate share and risk
- Substantive change

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

Person:

- an individual, natural person
- does not include a legal entity.

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Changes effective for 2009 and subsequent years-

• Legal entity:

- created under Federal or State law
- owns land, produces agricultural commodities, products, livestock.

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Changes effective for 2009 and subsequent years-

- **Permitted Entity rule repealed**
 - No restrictions on the number of entities
 - No permitted entity designations

Payment Eligibility & Payment Limitation

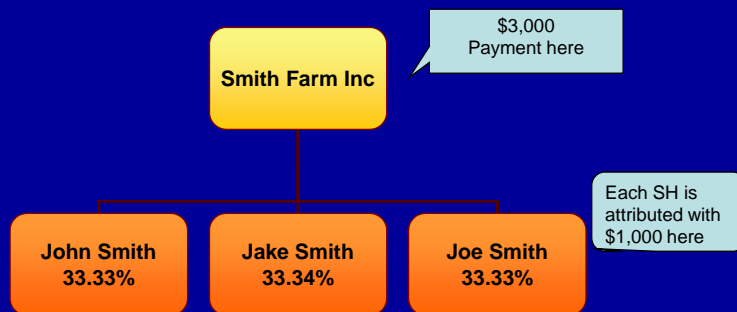
Changes effective for 2009 and subsequent years-

- **Payments limited by direct attribution to persons and legal entities**
 - payments to a person are combined with the pro rata share of payments issued to an entity the person holds an ownership interest in
 - payments tracked through 4 level of ownership in legal entities

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

- **Payments limited by direct attribution to persons and legal entities**



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Changes effective for 2009 and subsequent years-

- **Husbands and Wives:**
 - are eligible for separate attributed limits
 - no longer considered automatically combined as one for payment limitation.

** Requirements for actively engaged in farming and commensurate shares still apply.

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Changes effective for 2009 and subsequent years-

- **Corporations, LLC's, LLP's and similar entities:**

- **each** partner, stockholder, or member with an ownership interest must make a contributions of active personal labor and/or active personal management to the farming operation;

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Changes effective for 2009 and subsequent years-

- **Corporations, LLC's, LLP's and similar entities (cont'd):**

Such contributions must be -

- Performed on a regular basis;
- Identifiable and documentable;
- Separate and distinct from the contributions of any other partner, stockholder, or member of the farming operation.

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Changes effective for 2009 and subsequent years-

- **Corporations, LLC's, LLP's and similar entities (cont'd):**

- If any partner, stockholder or member fails to meet this requirement, payments to the entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder or member.

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Changes effective for 2009 and subsequent years-

- **States, local governments, political subdivisions, and agencies thereof:**

- are not eligible for program payments, unless

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

- **States, local governments, cont.:**
 - payments are earned on State-owned land
 - used solely for the support of public schools
 - limited to \$500,000 annually except for those States with population of less than 1.5 million

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

- **States, local governments, cont.:**
 - currently 12 States with less than 1.5 million
 - AK, DE, HI, ID, ME, MT, ND, NH, RI, SD, VT and WY

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Changes effective for 2009 and subsequent years-

- **Denial of program benefits:**
 - 1 year for non-compliance
 - 2 years for scheme or device
 - up to 5 years for fraud or other equally serious actions

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Changes effective for 2009 and subsequent years-

Changes in farming operations that increase persons or legal entities for payment limitation purposes must be bona fide and substantive.

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Changes effective for 2009 and subsequent years-

Examples of substantive change:

- addition of a family member
- an increase of 20 percent or more of base acres in the farming operation
- change in ownership by sale or gift of land or equipment from a person or legal entity previously involved to a new person or legal entity now involved in the farming operation

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Changes effective for 2009 and subsequent years-

Examples of substantive change:

- the addition of equipment not previously involved in the farming operation if the rental value of the additional equipment is commensurate with the new person's or legal entity's share of the farming operation
- for landowners only, a change from a cash-rent lease to a share lease arrangement.

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

- **Average AGI is the average of:**
 - AGI or comparable measure
 - 3 taxable years preceding the most immediately preceding complete taxable year.

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

Three AGI amounts are considered:

- 1) Average Adjusted Gross Income
- 2) Average Adjusted Gross Farm Income
- 3) Average Adjusted Gross Nonfarm Income

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

Average Adjusted Gross Income
Minus the
Average Adjusted Gross Farm Income
Equals the
Average Adjusted Gross Nonfarm Income

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

Three AGI limitations:

- \$500,000 adjusted gross nonfarm income
- \$750,000 adjusted gross farm income
- \$1 million adjusted gross nonfarm income

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

\$500,000 Limitation

If a person or legal entity has average adjusted gross nonfarm income that exceeds \$500,000, the person or legal entity is ineligible for all commodity program payments and benefits

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

\$750,000 Limitation

If a person or legal entity has average adjusted gross farm income that exceeds \$750,000, the person or legal entity is ineligible for direct payments only.

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

\$1,000,000 Limitation

If a person or legal entity has average adjusted gross nonfarm income that exceeds \$1,000,000, the person or legal entity is ineligible for all conservation program benefits,

UNLESS

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

\$1,000,000 Limitation (cont.)

- at least 66.66 percent of total AGI is average adjusted gross farm income.

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Changes effective for 2009 and subsequent years-

Adjusted Gross Income (AGI)

\$1,000,000 Limitation (cont.)

Secretary may waive AGI limitation for the protection of environmentally sensitive land of special significance.

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- production of crops, specialty crops, and unfinished raw forestry products
- sale of land used for agriculture

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- 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

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- the rental or lease of land, or equipment used for farming, ranching, or forestry operations, including water or hunting rights

Payment Eligibility & Payment Limitation

Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- the processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities
- production of farm-based renewable energy, including wind energy

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- any program payment or benefit authorized by statute or regulation, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income includes:

- 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 equipment and from production inputs (generally considered nonfarm income) if average adjusted gross farm income is at least 66.66% of the average adjusted gross income

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Changes effective for 2009 and subsequent years-

Adjusted Gross Farm Income:

- AGI will be tracked through 4 levels of ownership in a legal entity
- Commensurate reduction will be applied to payment entity if the fourth level is not held by a natural person

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Changes effective for 2009 and subsequent years-

Programs and Applicable AGI Provisions

PROGRAM	\$500K NONFARM	\$750K FARM	\$1M - 66.66% AGI - FARM AGI
DCP/ACRE	<input checked="" type="checkbox"/>		
Direct payments	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
SURE, ELAP, LFP, LIP, TAP, NAP	<input checked="" type="checkbox"/>		

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Changes effective for 2009 and subsequent years-

Programs & Applicable AGI Provisions (cont.)

PROGRAM	\$500K NONFARM	\$750K FARM	\$1M - 66.66% AGI - FARM AGI
All Price Support Programs	<input checked="" type="checkbox"/>		
All Conservation Programs			<input checked="" type="checkbox"/>
All other programs	As determined by the regulation for each program		

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Changes effective for 2009 and subsequent years-

Limitations by direct attribution to each person or legal entity include:

PROGRAM	LIMIT	PROGRAM	LIMIT
DCP Direct	\$40,000	SURE, LIP, LFP, ELAP	\$100,000
CC & ACRE	\$65,000		
NAP	\$100,000	CRP – annual rent	\$50,000
TAP	\$100,000	LDP & Mkt Gain	unlimited

Payment Eligibility & Payment Limitation

Other noticeable changes:

- Forms to complete have been consolidated to three main forms:
 - CCC-902 I for individuals
 - CCC-902 E for entities and joint ops
 - CCC-926 AGI Certification (one page)

Direct and Counter Cyclical Program (DCP) & Average Crop Revenue Election Program (ACRE)

- 7 CFR Part 1412
 - Final Rule for public inspection on December 22, 2008
 - Final Rule published on December 29, 2008
- 2009 DCP Signup
 - December 22, 2008 to June 1, 2009
- 2009 ACRE (Irrevocable Offer)
 - Enrollment period in Spring 2009 and ending June 1, 2009
 - Producers may first enroll in 2009 DCP and later modify to enroll in 2009 ACRE
 - Two year national price for each eligible commodity will be based on the 2007 and 2008 crop years

Direct and Counter Cyclical Program (DCP) & Average Crop Revenue Election Program (ACRE)

- **Reducing or terminating base acreage for 2009 and subsequent years**
 - Base acres on a farm converted to nonagricultural commercial or industrial use
 - Land has been subdivided and developed for multiple residential units or other nonfarming uses
 - Federally-owned land
 - Will not apply if lease agreement entered into prior to December 23, 2008, during the length of the lease agreement
 - Upon termination of lease agreement, all crop acreage bases terminated
 - Transfers of ownership of land will not re-establish the terminated base acreage

Cash Lease/Share Lease – Flexible Leases

- For 2008, a lease that provides for the greater of a guaranteed amount or share of the crop or crop proceeds, shall be considered a share lease if the lease provides for a guaranteed amount and a share of the crop.
- For 2009 through 2012, a lease that provides for the greater of the guaranteed amount or share of the crop or crop proceeds, shall be considered a cash lease if the lease provides for a guaranteed amount and a share of the crop.