

For: State and County Offices

New Payment Eligibility and Payment Limitation Provisions

Approved by: Deputy Administrator, Farm Programs



1 Overview

A New Farm Bill

The Food, Conservation, and Energy Act of 2008 (Act), Pub. L. 110-234, makes changes to the provisions for payment eligibility, payment limitation, and adjusted gross income (AGI). Under the Act, the actively engaged in farming requirements remain applicable, the 3-entity rule is eliminated; payments are limited through direct attribution to the individual and entity, instead of by “person” as previously defined; and the AGI limitation is changed.

The majority of these changes will be implemented for the 2009 and subsequent program years. For 2008 programs, the current rules for payment eligibility, payment limitation, and AGI remain applicable.

B Purpose

This notice provides information and instructions on:

- payment eligibility requirements for 2008 and 2009 crop, program, or fiscal years
- controlling payments by attribution
- applying the AGI limitation for 2008 and 2009 crop, program, or fiscal years
- collecting information for payment eligibility and payment limitation purposes.

Disposal Date	Distribution
December 1, 2008	State Offices; State Offices relay to County Offices

Notice PL-173

1 Overview (Continued)

C Quick Reference Guide

This is a reference guide for comparing payment eligibility and payment limitation requirements for the 2008 and 2009 crop, program, or fiscal years.

Payment Eligibility/Limitation Requirements	2008	2009 and Later Years
Actively engaged in farming.	X	X
AGI	X	X
Cash rent tenant rule.	X	X
Denying program benefits for scheme or device.	X	X
Family member rule.	X	X
Foreign person rule.	X	X
Husband/wife rules.	X	X
Minor child rule.	X	X
Payment limitation control by direct attribution.		X
Permitted entity rules.	X	
“Person” for payment limitation control.	X	
Preventing payments to deceased individuals		X
Review of estates open more than 2 years	X	X
Substantive change rule.	X	X

2 Requirements and Instructions for 2008 Programs

A Payment Eligibility and Payment Limitation for 2008 Programs

For 2008 programs, all current rules, regulations, and procedures are applicable.

B Regulations, Handbooks, and Forms for 2008 Payment Eligibility/Limitation

For the 2008 crop, program, or fiscal year:

- 7 CFR Part 1400 is the governing regulation
- 1-PL, 2-PL, and 3-PL contain all policy and automation procedures
- CCC-501's, CCC-502's, and related forms are the approved information collection
- CCC-503A is for **all** COC determinations effective for 2008
- CCC-526, revision forthcoming, will be used for 2008 AGI compliance certification.

Notice PL-173

3 Requirements and Instructions for 2009 Programs

A Payment Eligibility Requirements for 2009 Program Payments

The following requirements apply for 2009 payment eligibility:

- actively engaged in farming
- cash rent tenant rule
- family member rule
- foreign person rules
- husband/wife rule
- minor child rule
- preventing payments to deceased individuals
- review of estates of more than 2 years
- scheme or device provisions
- substantive change rule.

B Payment Limitation Controls for 2009

The following controls are for 2009 payment limitation:

- “person” rules **do not apply**
- permitted entity rules **do not apply**
- payments will be limited by direct attribution of payments.

Under attribution, the payment limitation is applied by crediting individuals and entities with both the amount of payments they receive directly and also the amount they are considered to have received indirectly by holding an interest in an entity receiving payment.

Notice PL-173

3 Requirements and Instructions for 2009 Programs (Continued)

B Payment Limitation Controls for 2009 (Continued)

For the 2009 DCP, an individual or entity is limited to receipt of \$40,000 earned through the interests held in all contracts/agreements entered into during FY 2009. There are no “person” determinations nor is there a restriction on the number of entities through which an individual may hold an interest that also receive payment.

Example: Dan Smith farms as an individual and also holds interests in Smith Farms Inc., of which he is sole stockholder, and Smith Family LLC, of which he holds 60 percent interest.

Dan Smith entered into the 2009 DCP effective FY 2009 and received \$20,000 in direct payments for corn and soybeans.

Smith Farms Inc. entered into the 2009 DCP effective FY 2009 and received \$10,000 in direct payments for wheat.

Smith Family LLC entered into the 2009 DCP effective for FY 2009 and received \$2,000 in direct payments for upland cotton.

Through attribution, Dan Smith will be credited with a total of \$31,200 toward the \$40,000 limitation applicable for direct payments under the 2009 DCP. (Dan as an individual, \$20,000; as 100% stockholder of Smith Farms Inc., \$10,000; and as 60 percent interest holder in Smith Family LLC, \$1,200.)

C Average AGI for 2009

Average AGI limitations for 2009 payment eligibility apply to both individuals and entities.

For commodity and price support programs, if the individual or entity has:

- nonfarm AGI greater than \$500,000, the individual or entity is **not** eligible for DCP or price support benefits
- farm AGI greater than \$750,000, the individual or entity is **not** eligible for direct payments under DCP.

For conservation programs, if the individual or entity has:

- total AGI greater than \$1 million, the individual or entity is **not** eligible unless 66.66 percent is derived from farming, ranching, and forestry operations, as defined
- nonfarm AGI greater than \$1million, the individual or entity is **not** eligible for conservation program benefits.

Notice PL-173

3 Requirements and Instructions for 2009 Programs (Continued)

C Average AGI for 2009 (Continued)

The definition of average AGI, derived from farming, ranching, and forestry operations, is been expanded to include income and benefits from:

- the production of all types of livestock and products produced or derived from livestock
- the production of farm-based renewable energy
- the processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities, including renewable energy
- any activity related to farming, ranching, or forestry, as determined by the Secretary.

D State or Local Government, Political Subdivision, and Agency Eligibility

A State or local government, political subdivision, or agency is **ineligible** for commodity or disaster program payments. However, payments **may** be received on land owned by the State or local government, political subdivision, or agency that is used for the support of public schools **not** to exceed \$500,000, collectively.

Exception: The State has a population of less than 1.5 million.

E Deceased Persons Eligibility for 2009 Program Benefits

Within 180 calendar days of enactment, the Secretary shall do both of the following:

- publicize regulations that describe the circumstances, such as the settlement of an estate, that allow issuing program payments in the name of a deceased individual
- at least twice each year, reconcile the Social Security numbers of individual program payees with the Social Security Administration to determine if the individuals are alive.

Notice PL-173

3 Requirements and Instructions for 2009 Programs (Continued)

F Denying Program Benefits

Any person or legal entity shall be **ineligible** for **2 years** if they do any of the following:

- fail to comply with the payment limitation provisions
- adopt or participate in adopting a scheme or device to evade the payment limitation provisions
- intentionally conceal the interest of a person or legal entity in a farming operation.

Any person or legal entity shall be **ineligible** for **up to 5 years** if they do any the following:

- knowingly engage in or assist in creating a fraudulent document
- fail to disclose material information relevant to administering payment limitation provisions
- commit other equally serious actions as identified by the Secretary.

G Regulations, Handbooks, and Forms for 2009 Payment Eligibility/Limitation

For the 2009 crop, program, or fiscal year, expect the following:

- publication of an interim rule with a comment period
- publication of a final rule effective for 2010 and subsequent years
- handbook, form, and automation process revisions.