"SCOOP"

ARKANSAS FARM SERVICE AGENCY - - STATE OFFICE

January **2009**

2009 DIRECT AND COUNTER-CYCLICAL (DCP) SIGNUP BEGINS

2009 Direct and Counter-Cyclical (DCP) signup began December 22, 2008, and will end June 1, 2009. All producers who want to participate and receive a payment in the 2009 Direct and Counter-Cyclical Program Contract must sign the CCC-509, DCP Contract by June 1, 2009. ***Regulations no longer provide for a "late-file" signup period.*** The 2009 DCP contract period is from October 1, 2008 through September 30, 2009. Producers signing the DCP contract agree that they will comply with the terms and conditions of the CCC-509 Appendix and Federal Regulations for the entire contract period. Producers may terminate the contract before the end of the contract period. Termination and non-compliance of the contract will require repayments of any advance payments with possible penalty interest. Revisions to a DCP contract will be allowed by September 30, 2009. Changes shall immediately be reported and a revised contract initiated. Changes could include but are not limited to ownership changes, producer changes, changes in the crop share arrangements on the farm. Failure to timely report changes and file a revised CCC-509 may result in the loss of payments for ALL producers on the contract. To participate in the 2009 DCP program, producers will be required to initiate some new forms and ensure others are still correct. Since the 2009 DCP signup is being shorter than previous years, it is vital that producers begin all necessary paperwork as quickly as possible. Producers will be required to file:

- 2009 DCP contract (The 2009 DCP contract can be filed at any County Office or by your home computer provided proper security has been met.)
- CCC-902 (The new payment limitation and eligibility Farm Operating Plan formally known as CCC-502)
- CCC-926 (The new Adjusted Gross Income certification formerly known as the CCC-526. A properly signed statement by a CPA or attorney is allowed.)
- an accurate AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC)
- FSA-578 acreage reports for all cropland (May 15, 2009, is the deadline to report fall seeded crops, and July 15, 2009 is the deadline to report all spring seeded acreage reports.)

2009 ADVANCE PAYMENTS

Advance Direct Payment - Producers on 2009 DCP contracts may request a 22 percent advance direct payment. Payments will be issued once all required documentation is submitted and the County Committee has approved the documents for payments.

Advance Counter-Cyclical Payment – CCC may authorize a partial 2009 advance counter-cyclical payment if the Secretary determines that market conditions warrant advance payments. A decision has not been made at the current time.

10.0 Or LESS BASE ACRES

For 2009, DCP farms with 10.0 or less base acres will not be eligible for payments unless the farm is wholly owned by a socially disadvantaged or limited resource farmer or rancher. If the farm is owned by an entity such as but not limited to a corporation, then each individual or entity with an interest in the entity must be socially disadvantaged or limited resource famer or rancher. FSA will allow farms with 10.0 or less base acres to be reconstituted provided reconstitution rules are met. For more information contact your local FSA office.

USES OF DCP BASE ACRES

Producers on participating DCP farms must ensure base acres are devoted to agriculture or conserving use, and not used for a nonagricultural commercial, industrial or residential use. If the base acres are devoted to an agricultural or conserving use through no cultivation, the producers on the contract must control noxious weeds and implement other maintenance measures through sound agricultural practices.

PLANTING FLEXIBILITY AND LIMITATIONS FOR DIRECT AND COUNTER-CYCLICAL (DCP)

Any commodity may be planted on the following:

- Any land, including base acres, on a farm NOT enrolled in DCP
- Non-base acres of a farm enrolled in a DCP contract
- Base acres of a farm enrolled in a DCP contract, except for fruits, vegetables (FAV) and wild rice unless an FAV exception is met. See below for more information on FAV’s.

The EFFECTS OF FRUITS AND VEGETABLES (FAV's) AND/OR WILD RICE PLANTED ON BASE ACRES FOR THE DIRECT AND COUNTER-CYCLICAL PROGRAM (DCP)

Producers should be aware that planting and harvesting fruits (including nuts) and vegetables (FAV's) and/or wild rice on base acres shall be a violation of the Direct and Counter-Cyclical Program (DCP) having costly penalties unless one of the allowable exceptions is met. Listed below is a summary of the allowable exceptions and the effects each has on the DCP Direct and Counter-Cyclical payments.

Exception Title	**Allows for Planting and Harvesting of FAV's of Wild Rice on Base Acres without Penalty**	**Affect of Direct and Counter-Cyclical Payments if an Exception is Met**
Double Cropping	FAV's or wild rice is planted in a double cropping practice with a covered commodity or peanuts, as determined by the COC, in any region designated by CCC in the regulations at 7 CFR Part 1412 as having a history of double-cropping FAV's or wild rice with covered commodities or peanuts. Check with your local FSA office, for the latest information, double cropping regions have not been announced at the release of this publication but are expected soon.	No contract violation or reduction in DCP payments
Farm History	The farm's history reflects the planting of any FAV's or wild rice as determined by the COC. Acres must have been previously certified in the FSA office.	No contract violation, but there is an acre-per-acre reduction for every acre of FAV's or wild rice planted on base acres.
Producer	The producer has an average planting of the ***specific*** FAV or wild rice from any farm for the years from 1991-1995 or 1998-2001. FSA will need to assist the producer in calculating the average planting. Acres must have been previously certified in the FSA office. The producer must elect either planting period 1991-1995 or 1998-2001.	No contract violation, but there is an acre-per-acre reduction for every acre of FAV's or wild rice planted on base acres.

2009-2012 AVERAGE ADJUSTED GROSS INCOME (AGI)

Beginning in 2009 FSA program payments will be subject to 3 possible AGI limits as described below:

If Average Adjusted Gross Exceeds	Type of Income	Then the person or legal entity is ineligible for
$500,000	Non-farm	Any commodity, price support and disaster assistance program benefits. Note: A person or legal entity with AGI nonfarm income that exceeds $500,000 is not eligible for marketing loan gains and LDP payments. However, the person or entity is eligible for marketing assistance loans, but the loans must be repaid at principal plus interest, or commodity certificates may be exchanged for loan collateral.
$750,000	Farm	DCP Direct Payments
$1,000,000	Non-Farm	Conservation program, unless 66.66% or more of AGI was derived from activities relating to farming, ranching, and forestry operations.

AGI is determined by looking at the 3 taxable years proceeding the most immediately preceding complete taxable year. Example: Program benefits are requested for 2009, then use 2005, 2006, and 2007. If the person or legal entity did not have taxable income in 1 or more tax years, or a legal entity that is not required to file a Federal tax return, will be averaged by the number of years for which there was taxable income.

Persons, members of joint operations or general partnerships, entities, and members of entities through the fourth level of ownership in an entity must complete a CCC-926, AGI Certification Statement or an acceptable statement from a CPA or attorney the year they initially request benefits and every three years following. A commensurate reduction of payment will be applied to the payment entity if the fourth level is not held by a natural (real) person.

The following is a quick reference guide in determining AGI:

- Person is found on a specific line on IRS Form 1040
- Trust or estate is the total income and charitable contributions reported to IRS
- Corporation is the total of the final taxable income and any charitable contribution report to IRS
- Limited liability company, limited liability partnership, or similar entity is the total income from trade or business activities plus guaranteed payments to the members as reported to IRS
- Tax-exempt organization is the unrelated business taxable income excluding any income from non-commercial activities as reported to IRS.

2009-2012 AVERAGE ADJUSTED GROSS INCOME (AGI) (Continued)

The following is a quick reference for determining AGI amounts:

Average AGI *minus the* **Average Adjusted Goss Farm Income** *equals the* **Average Adjusted Gross Nonfarm Income**

The definition of farm income now includes:

<table>
<tr><td colspan="2">Average adjusted gross farm income of a person or legal entity includes income or benefits derived from or related to the following.</td></tr>
<tr><th>Income Related to Livestock and Crops</th><th>Other Types of Income</th></tr>
<tr><td rowspan="2">Production of livestock, including but not limited to:
• cattle, sheep, goats, swine
• elk, reindeer, bison, deer
• horses
• poultry
• fish and other aquaculture products used for food
• honeybees</td><td>The sale of land that has been used for agriculture.</td></tr>
<tr><td>The sale of easements and development rights to:
• farmland, ranchland, or forestry land
• water or hunting
• environmental benefits</td></tr>
<tr><td>The feeding, rearing, or finishing of livestock.</td><td rowspan="2">The rental or lease of land or equipment used for farming, ranching or forestry operations, including water or hunting rights.</td></tr>
<tr><td>Products produced by or derived from livestock.</td></tr>
<tr><td>Production of crops, specialty crops, and unfinished raw forestry products.</td><td>Any payment or benefit, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans.</td></tr>
<tr><td rowspan="2">The processing, packing, storing, shedding, and transporting of farm, ranch and forestry commodities, including renewable energy.</td><td>Payments and benefits authorized under any program made applicable to payment Eligibility and payment limitation rules.</td></tr>
<tr><td>Production of farm-based renewable energy.</td></tr>
<tr><td colspan="2">Any other activity related to farming, ranching, or forestry as determined by the Deputy Administrator.</td></tr>
<tr><td colspan="2">Any income reported on IRS Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to IRS.</td></tr>
<tr><td colspan="2">The sale of equipment to conduct farm, ranch, or forestry operations and the provision of production inputs and services to farmers, ranchers, foresters, and farm operations, if the average adjusted gross farm income is at least 66.66 percent of the average AGI.</td></tr>
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FARM LEASES AFFECT DCP

For 2009 through 2012 crop leases will be looked at differently on the DCP and ACRE contracts if the lease provides for both:

- Guaranteed amount, such as fixed dollar amount or quantity
- Share of the crop or crop proceeds.

In the previous farm bill we considered these leases a share lease with all of the parties of the lease being required to share in the DCP contract if the lease covered base acres. For 2009 through 2012, FSA will consider these leases a cash lease and the landlord is not eligible for DCP or ACRE Program payments for the leased acreage. Producers are also reminded that the terms of all leases, whether they only contain a fixed dollar value or only a share of the crop, will directly impact the DCP program payments. For example: When base acres are leased on a share basis, neither the landlord nor the tenant will be eligible to receive 100 percent of the contract payment.

AVERAGE CROP REVENUE ELECTION (ACRE)

The provisions of the Average Crop Revenue Election program are still pending including the election and enrollment signup period. Election and enrollment into ACRE will be a separate from the enrollment into DCP. Continue to watch FSA publications for the latest information on ACRE.

ACTIVELY ENGAGED IN FARMING
2009 PAYMENT LIMITATION PROVISIONS

Many of 2009 FSA programs such as but not limited to DCP will require the producer or entity to be "actively engaged in farming" before program payments can be earned. The information below identifies the "actively engaged in farming" rules that have been released to date. Many of the provisions are similar to the previous farm bill however, there are significant changes producers need to be aware of that could affect farming operations.

Producers or entity must have:

- Significant contribution of capital, land, equipment, or combination thereof
- Significant contribution of active personal labor, active personal management, or combination thereof
- Contributions must be commensurate with the claimed share of the profit or loss of the farming operation
- Contributions must be at risk for a loss.
- The landowner exemption still applies. A person or legal entity who is a landowner may be considered "actively engaged in farming" under the landowner exemption.
- *Each of the partners, stockholders, or members must make a contribution of active personal labor and/or active personal management to the farming operation that 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.*

ACTIVELY ENGAGED IN FARMING
2009 PAYMENT LIMITATION PROVISIONS (Continued)

- *The contributions of the partners, stockholders and members must be significant and commensurate. The legal entity will make contributions to the farming operation that is at risk for a loss, with the level of risk being commensurate with the claimed share of the farming operation.*
- *The failure of any partner, stockholder, or member to meet this requirement will result in a reduction of payments to the payment entity commensurate with the ownership share held by the interest holder.*

Producers and/or entities will certify how they meet "actively engaged in farming" rules by completing form CCC-902. The certifications are subject to spot-check, where producers or the entity will be asked to submit proof of their contribution to the operation such as seed, fertilizer and chemical bills, land lease agreements, land contracts or property tax payments, equipment list, cancelled checks for paid labor or hired management, Federal and State income tax returns, financial statements, balance sheets, reports prepared for other government agencies, information prepared for private lenders, and any other item the FSA County Committee determines necessary for the spot-check.

FARMING OPERATION RESTRUCTURING AND SUBSTANTIVE CHANGE RULES

It is anticipated because of the new direct attribution and payment limitation rules, producers may consider restructuring their farming operation for 2009 and future years. *Operation changes must meet FSA substantive change rules in order to earn program benefits.* Producers are cautioned that they need to work with their FSA local office to ensure that substantive change rules are met. The following identifies how producers and entities can meet substantive change rules for 2009 through 2012.

- Increase 20 percent of BASE acres from the previous year will qualify an increase of 1 person or legal entity for payment limitation purposes, unless the State Office determines the change in the farming operation was of a magnitude and complexity that supports additional persons and/or legal entities in the farming operation for payment limitation purposes.

- Transfer of land or equipment by sale or gift from a present member to a new member. The transfer must be at least commensurate with the new member's claimed share of the farming operation. The sales transaction or gifting must be based on fair market value of the land or equipment. The sale cannot be financed by the former owner of the land or equipment. The former owner cannot keep any residual control of the land or equipment. There must not be any agreement to repurchase the land or equipment at a later date. Complete documentation of the transaction will be required.

MEMBERS AND STOCKHOLDERS OWNERSHIP INTEREST AFFECT DIRECT ATTRIBUTION

Many of 2009 FSA programs such as but not limited to DCP will pro-rate payment limitation amounts to the members, stockholders, and shareholders level according to the ownership interest held in the farming operation. This is called direct attribution which was discussed in detail including examples in the November 2008 SCOOP. Beginning in 2009, the date for the determination of ownership interest will be June 1, 2009. The ownership interest held on June 1, 2009 will be used for direct attribution purposes for the entire program year. Direct attribution is new for the 2008 Farm Bill and is extremely important. Producers should ensure that the provisions are researched and discussed with the local FSA office immediately.

POWER OF ATTORNEY (POA)

FSA has new rules concerning power-of-attorneys (POA). FSA will now accept non-FSA POA's, and durable POA's such as living wills in addition to FSA-211 POA form. With the enactment of the 2008 Farm Bill, the FSA-211 on file for the previous farm bill may be unacceptable for the new farm bill programs. Producers shall check with their local FSA office to ensure their POA's are sufficient for the 2008 Farm Bill programs. ***Producers are also cautioned to never sign using a power-of-attorney for a person who is deceased. Once a person dies the power-of-attorney is no longer valid. Any document signed with a power-of-attorney for a deceased is invalid, and usually all producers on the document are ineligible to earn payments for the year.***

2009 CATASTOPHIC RISK PROTECTION (CAT) BUY-IN ALLOWED FOR NURSERY

Arkansas producers who have nursery operations are now being allowed to Buy-In to 2009 Catastrophic Risk Protection (CAT). The sales closing date for Nursery for Federal Crop Insurance has passed, however, a special waiver has been granted to allow nursery producers to pay the applicable insurance fee which will meet a linkage requirement for losses that may be covered under the Supplemental Revenue Assistance Payments (SURE) Program, TAP, Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP). The deadline to buy-in is January 12, 2009. Interested producers should check with their local FSA office for more details.

2005-2007 CROP DISASTER ASSISTANCE PROGRAM (CDP)

FSA has a change concerning prevented planting losses. Previously, prevented planting of an initial crop was not eligible for payment if a subsequent crop was planted that was not a recognized double cropping pattern for the county. The change now allows for payment of the initial prevented planted crop **or** if applicable, for the subsequent crop. Producers with prevented planting losses will need to inquire at their local FSA office to see if a modification is needed to an existing application, or if a new application is needed. These changes or additions must be initiated before the program signup ends. A deadline has not been announced at the current time. Producers are also reminded this program covers quality ***and quantity*** losses for the 2005-2007.

MILK INCOME LOSS CONTRACT PROGRAM SIGNUP BEGINS DEC 22

USDA's Farm Service Agency (FSA) announced that signup for the Milk Income Loss Contract Program (MILC) begins Dec 22, 2008 and will continue through the program's expiration date, Sept 30, 2012.

The 2008 Farm Bill reauthorizes the MILC Program, which operates similarly to the counter-cyclical payment program for crops, and makes three key changes in program operations

- Under the 2008 Act, the MILC payment rate and the per-operation poundage limit are modified, depending on when the milk is produced.

- In addition, a "feed cost adjuster," is introduced over the life of the 2008 Act, which adjusts the $16.94 per hundredweight (cwt.) benchmark price upward depending on the cost of feed rations.

- When available, MILC payments are based on a payment rate percentage that is multiplied by the difference between a now-flexible target ($16.94 per cwt. or higher) and the specific month's Boston Class I price of milk.

USDA's Commodity Credit Corporation (CCC) issues MILC payments on an operation-by-operation basis up to a maximum of 2.4 million pounds of milk produced and marketed (about 120 cows) from Oct. 1, 2007, through Sept. 30, 2008. The production limit per operation increases to 2.985 million pounds (about 145 cows) for each fiscal year from Oct. 1, 2008, through Aug. 31, 2012. The production limitation reverts back to the original limit of 2.4 million pounds per fiscal year in Sept. 2012.

The 2008 Act adjusts the trigger price of $16.94 cwt., depending on the extent to which feed costs increase. The feed cost adjustment takes effect when the monthly National Average Dairy Feed Ration Cost (calculated from the "entire month" prices published by the National Agricultural Statistics Service) is greater than $7.35 per cwt. beginning Jan. 1, 2008, through Aug. 31, 2012. Calculations from Jan. 1, 2008, through Aug. 31, 2012, will be made at 45 percent of the percentage that the National Average Dairy Feed Ration Cost exceeds $7.35 per cwt.

Beginning with Fiscal Year 2009 marketing’s, which started Oct. 1, 2008, the 2008 Act made changes to the provisions for payment eligibility to add an adjusted gross income (AGI) limit. If the individual or entity has annual non-farm AGI for the relevant base period greater than $500,000, the individual or entity is not eligible for MILC benefits. The base period will be set pursuant to AGI regulations yet to be issued. That rule will also define what is considered to be non-farm income.

During the signup application period, participating dairy operations must select the month of the fiscal year to start receiving payments for eligible production. Producers submitting a contract application within 30 days of the beginning of the application period can select any preceding month as the start month. Producers submitting contract applications after Jan. 21, 2009, will not have the option of selecting an earlier month as the payment start month for the dairy operation for a fiscal year; and will be limited to applicable start month selection rules. Those general rules

MILK INCOME LOSS CONTRACT PROGRAM SIGNUP BEGINS DEC 22 (Continued)

are: The start month must either be the month the contract is submitted or some later month. Changes in the month may be made from year to year so long as the designation is made by the fourteenth of the month proceeding the new start month. Pound limits run from the start month and all pounds for which payment is received count against the limit for that fiscal year.

Eligible dairy producers are those who commercially produce milk in the United States. To receive program approval, producers must enter into a MILC contract with CCC and provide monthly milk marketing data. Dairy producers can apply for MILC at local FSA offices.

All payments in the program are subject to limits in the contract, regulations, and to changes in statutory provisions for payment.

More information on MILC is available at local FSA offices.

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