

For: State and County Offices

**Average Adjusted Gross Income (AGI) Provisions for 2008**

Approved by: Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) implemented the \$2.5 million average AGI limitation. The effective period of the \$2.5 million AGI limitation was for crop years 2003 through 2007. The President signed several short-term extensions that continued certain 2002 Farm Bill provisions through May 21, 2008, that would have otherwise expired on September 30, 2007. With each extension of the 2002 Farm Bill, County Offices were instructed to:

- use CCC-526 (10-15-03), as necessary
- accept AGI certifications, as necessary, for crop years 2003 through 2007, and update in the applicable year’s eligibility record
- obtain AGI certifications for 2008, as needed for emergency, disaster, conservation, and authorized price support program authorities
- update the 2008 web eligibility records for AGI.

The Food, Conservation, and Energy Act of 2008, enacted on May 22, 2008, continued the administration of the \$2.5 million average AGI limitation for 2008 crop, program, or FY commodity and conservation programs.

<b>Disposal Date</b>	<b>Distribution</b>
January 1, 2009	State Offices; State Offices relay to County Offices

## Notice PL-175

### 1 Overview (Continued)

#### B Purpose

This notice:

- obsoletes Notice PL-174
- provides:
  - clarification of average AGI certification requirements
  - a copy of revised CCC-526 (06-12-08) (Exhibit 1).

### 2 Average AGI Certifications for 2008 Programs

#### A Background

CCC-526 (10-15-03) applied to eligibility for 2003 through 2007 commodity and conservation programs, and as needed for AGI certifications for 2008 emergency, disaster, conservation, and authorized price support program authorities during the 2002 Farm Bill extension periods. CCC-509 Appendix (06-20-08), subparagraph 3 I provides that, by signing CCC-509, the producer is certifying that **unless** a new CCC-526 (06-12-08) or statement by certified public accountant or an attorney is filed reflecting that there has been a change, **all** assertions made on the previously filed CCC-526 (10-15-03) for the producer (including all interest holders in an entity, general partnership, or joint venture) are accurate and would also be accurate if applied to the 2005 through 2007 tax years.

#### B CCC-526 Requirements

For 2008 program benefits applied for:

- **before** May 22, 2008, CCC-526 (10-15-03) **must** be on file for a producer  
**Note:** If not on file, CCC-526 (10-15-03) **must** be completed by the producer.
- **after** May 21, 2008, CCC-526 (06-12-08) **must** be completed by a producer.

**Exception:** A producer participating in 2008 DCP, by acknowledging receipt of CCC-509 Appendix (06-20-08), certifies that there has **not** been a material change in the producer's AGI that would affect eligibility. Therefore, if a producer has CCC-509 on file for 2008, CCC-509 may be used instead of CCC-526 for **all** 2008 programs, including price support and conservation.

Example of CCC-526 (06-12-08)

<p>This form is available electronically.</p> <p><b>CCC-526</b> (06-12-08)</p> <p><b>U.S. DEPARTMENT OF AGRICULTURE</b> Commodity Credit Corporation</p> <p style="text-align: center;"><b>2008 PAYMENT ELIGIBILITY</b> <b>AVERAGE ADJUSTED GROSS INCOME CERTIFICATION</b></p>		<p>1. County FSA Office or Service Center Address (Include Zip Code)</p>
<p>The authority to collect the following information is Food, Conservation, and Energy Act of 2008. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.</p> <p><b>NOTE:</b> The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a), as amended. The Food, Conservation and Energy Act of 2008 and the regulations at 7 CFR Part 1400, as it applied to 2007 crops, authorize the collection of the information required by this certification. The information will be used to establish payment eligibility in accordance with the requirements of the law for applicants who are requesting program benefits subject to these provisions. Providing this information is voluntary; however, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information may be used by and provided to other agencies, IRS, Department of Justice, other State or Federal law enforcement agencies, and in response to orders of a court magistrate, or administrative tribunal. All information provided herein is subject to verification by the Commodity Credit Corporation. As provided in various statutes, failure to provide true and correct information may result in civil suit or criminal prosecution and the assessment of penalties or pursuit of other remedies. <b>PLEASE RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OR SERVICE CENTER OFFICE.</b></p>		
<p>2. Individual or Entity's Name and Address (Include Zip Code)</p>	<p>3. Program Year</p> <p style="text-align: center;"><b>2008</b></p>	<p>4. Identification Number (SSN or Tax ID No. last 4 digits)</p>
<p><b>CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME:</b> Each individual or entity that requests program benefits directly or indirectly must complete a certification of average adjusted gross income.</p> <p>By signing this form, I acknowledge that:</p> <ul style="list-style-type: none"> <li>• all definitions, requirements, and examples on Page 3 of this form were reviewed;</li> <li>• the average adjusted gross income is the average of the three years immediately preceding the year specified in Item 3 above;</li> <li>• this certification of average adjusted gross income is true and correct unless changes or revisions are submitted;</li> <li>• it is my responsibility to timely notify FSA in writing of any changes in the farming, ranching or forestry operation, or financial status that may affect this certification;</li> <li>• evidence such as tax records, certified public accountant's certification, or other documentation may be required to validate this certification.</li> </ul>		
<p>5. Type of Operation (Check One)</p> <p><input type="checkbox"/> Individual (Complete Item 6)</p> <p><input type="checkbox"/> Trust or Estate (Complete Item 7)</p> <p><input type="checkbox"/> Corporation (Complete Item 8)</p> <p><input type="checkbox"/> Limited Partnership, Limited Liability Company, Limited Liability Partnership or Similar Entity (Complete Item 9)</p> <p><input type="checkbox"/> Tax-Exempt Organization (Complete Item 10)</p>		
<p>6. <b>Individual</b> For individuals that file the IRS Form 1040, specific lines on the form represent the adjusted gross income and the income from farming, ranching or forestry operations. The income from farming, ranching or forestry is derived from the schedule F, IRS form 4835 or comparable form.</p> <p>A. The average of the adjusted gross income, as specified on the IRS Form 1040 (or similar item on IRS Forms for individuals) for the applicable 3 years, was \$2.5 million or less. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If "NO", proceed to Item 6B.</p> <p>B. The average of the amount reported to be from farming, ranching, or forestry operations on the IRS Form 1040 (or similar on Form 1040A or 1040EZ) for the applicable years, was at least 75 percent of the amount represented as adjusted gross income on the Form 1040 (or comparable amount on Form 1040A or 1040EZ). YES <input type="checkbox"/> NO <input type="checkbox"/></p>		
<p>C. Signature</p>	<p>Date (MM-DD-YYYY)</p>	
<p><small>The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.</small></p>		

Example of CCC-526 (06-12-08) (Continued)

<b>CCC-526 (Page 2 of 3) (06-12-08)</b>	
<b>CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME (Continuation)</b>	
<p><b>7. Trust or Estate</b> For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS on the IRS Form 1041, or comparable forms. The income for farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.</p> <p>A. The average of the adjusted gross income as defined above, and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p style="margin-left: 20px;">If "NO", proceed to Item 7B.</p> <p>B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 7A above. YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
C. Signature	Date (MM-DD-YYYY)
<p><b>8. Corporation</b> For a corporation, the adjusted gross income is the total of the final taxable income and any charitable contributions reported to the IRS on Form 1120, or comparable forms. The income from farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.</p> <p>A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p style="margin-left: 20px;">If "NO", proceed to Item 8B.</p> <p>B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 8A above. YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
C. Signature	Date (MM-DD-YYYY)
<p><b>9. Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity</b> For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS. The income from farming, ranching and forestry is derived from the Schedule F, IRS form 4835 or comparable form.</p> <p>A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p style="margin-left: 20px;">If "NO", proceed to Item 9B.</p> <p>B. The average of the amount represented to be from farming, ranching, or forestry operations as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 9A above. YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
C. Signature	Date (MM-DD-YYYY)
<p><b>10. Tax-exempt Organization</b> For a tax-exempt organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS. The income from farming, ranching and forestry would be derived from the schedule F, or IRS form 4835 or comparable form.</p> <p>A. The average of the adjusted gross income as defined above and reported to the IRS for the applicable 3 years, was \$2.5 million or less. YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p style="margin-left: 20px;">If "NO", proceed to Item 10B.</p> <p>B. The average of the amount represented to be from farming, ranching or forestry interests as reported to the IRS for the applicable years, was at least 75 percent of the amount used for Item 10A above. YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
C. Signature	Date (MM-DD-YYYY)

## Example of CCC-526 (06-12-08) (Continued)

CCC-526 (Page 3 of 3) (06-12-08)

**AVERAGE ADJUSTED GROSS INCOME**

The Food, Conservation, and Energy Act of 2008 included average adjusted gross income as a payment eligibility requirement. Any individual or entity requesting certain program payments will be subject to this provision. Any individual or entity that is determined to have an average adjusted gross income, as defined, that is less than 75 percent from farming, ranching or forestry operations and that exceeds \$2.5 million will be ineligible for any covered benefit during the applicable year.

**DEFINITIONS AND OTHER INFORMATION**

**Average Adjusted Gross Income** means the average of the adjusted gross income or comparable measure of the individual or entity over the preceding 3 tax years. For instance, if 2008 program benefits are requested, the tax years for average adjusted gross income determination would be 2007, 2006 and 2005.

**Entity** means a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, as determined by the Secretary.

The manner in which the Adjusted Gross Income can be determined for an entity can be found in the regulations at 7 CFR Part 1400.

**Commensurate Reduction** means that any covered benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest the entity, general partnership, or joint venture of each individual who does not comply with the adjusted gross revenue requirement.

**Certification of Compliance** means that an individual or entity shall provide either a certification by a certified public accountant that the average adjusted gross income does not exceed the requirement; or provide information and documentation regarding the adjusted gross income through other procedures established by the Secretary.

**Income from farming, ranching or forestry** means income derived from producing crops, livestock, or unfinished raw forestry products.

**Special Rules for Certain Individual and Entities** are applicable to those entities that are not required to file a tax return, and individuals and entities that did not have taxable income in one or more tax years used to determine the 3-year average. Please consult with personnel at your local FSA office or service center for more information.

**EXAMPLES**

**Situation 1** - Joe Smith requests benefits from the Direct and Counter-Cyclical Payment Program and from a Conservation Reserve Program contract approved effective for 2008. Mr. Smith's average adjusted gross income for the three previous tax years exceeds \$2.5 million and was all from farming and livestock operations.

**Determination** - At least 75 percent of the average adjusted gross income was received from farming, ranching and forestry operations. Therefore, Mr. Smith complies with the adjusted gross income requirement and is eligible for the program benefits requested.

**Situation 2** - Grace Jones is a share rent landowner and requests benefits from the 2008 Direct and Counter-Cyclical Payment Program on a contract with her tenant. Ms. Jones' average adjusted gross income for the years 2007, 2006, and 2005 was less than \$2.5 million and over 75 percent was from non-agricultural interests.

**Determination** - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, but the amount was less than \$2.5 million. Therefore, Ms. Jones is eligible for the program benefits requested.

**Situation 3** - William Davis is a share rent landowner and requests benefits from the 2008 Direct and Counter-Cyclical Payment Program on a contract with his tenant. Mr. Davis' average adjusted gross income for the years 2007, 2006, 2005 was greater than \$2.5 million and over 75 percent was from non-agricultural sources.

**Determination** - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, and exceeds \$2.5 million. Therefore, Mr. Davis is ineligible for the program benefits requested.

**Situation 4** - Mark Johnson is a 25 percent stockholder in Johnson Farms, Inc. Johnson Farms requests benefits from the 2008 Direct and Counter-Cyclical Payment Program. The average adjusted gross income for the years 2007, 2006, and 2005 for Johnson Farms was all from farming and ranching. The average adjusted gross income for each of the stockholders was mostly from non-agricultural sources and the amounts averaged less than \$2.5 million with the exception of Mark.

**Determination** - Any program benefit issued to an entity, general partnership, or joint operation shall be reduced by an amount commensurate with the direct or indirect ownership interest of an individual or entity who has an average adjusted gross income in excess of \$2.5 million mark failed to comply with AGI limitation. Therefore, Johnson Farms is eligible for the benefits requested, but reduced by the 25 percent, which represents the interest held by Mark.