

For: State and County Offices

New Payment Eligibility and Payment Limitation Provisions

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) made changes to payment eligibility and payment limitation provisions to be implemented for the 2009 and subsequent program years.

Information has previously been provided on the majority of the changes to be implemented for 2009. However, information and details have **not** been provided on the discretionary changes for payment eligibility and payment limitation provisions. This notice provides this information as well as guidance for implementation until the new handbook, 4-PL, Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income, is released.

B Purpose

This notice provides information and instructions on the following:

- implementation of the new payment eligibility and payment limitation provisions
- application of the new requirements
- using new forms for information collection and determinations
- updating 2009 web-based eligibility.

Disposal Date	Distribution
July 1, 2009 12-19-08	State Offices; State Offices relay to County Offices

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2 Payment Eligibility and Payment Limitation Provisions for 2009

A Actively Engaged in Farming

Actively engaged in farming still requires the following:

- significant contribution of capital, land, equipment, or combination thereof
- significant contribution of active person 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.

Note: 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.

B Legal Entities and Contributions of Active Personal Labor and/or Active Personal Management

The following is a comparison of the previous and new requirements for the contributions of active personal labor and/or active personal management by the partners, stockholders, and members of a legal entity in the determination of actively engaged in farming.

Requirements for 2008	Requirements and Revisions for 2009 Through 2012
The partners, stockholders, or members who make contributions of active personal labor and/or active personal management necessary to qualify the entity must collectively hold at least 50 percent interest in the entity.	<p>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:</p> <ul style="list-style-type: none">• 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. <p>The contribution of the partners, stockholders and members must be significant and commensurate. The legal entity will make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the claimed share of the farming operation.</p> <p>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 that interest holder.</p>

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2 Payment Eligibility and Payment Limitation Provisions for 2009 (Continued)

C Date for Determination of Ownership Interest

Payment limitation by direct attribution includes the pro-ration of payments to the members, stockholders, and shareholders according to the ownership interest held.

Beginning in 2009, the date for the determination of ownership interest will be June 1, 2009. Ownership interest in a legal entity as of this date will be used for direct attribution purposes for the entire program year.

D Substantive Change

Any change to a farming operation that results in the increase in the number of persons or legal entities for payment limitation purposes must be bona fide and substantive. The following is a comparison of the requirements and the revisions to the requirements.

Requirements for 2008	Requirements and Revisions for 2009 Through 2012
An increase in cropland acres in the farming operation of at least 20 percent from the previous year qualified an unlimited increase in the number of “persons” for payment limitation purposes.	An increase in base acres in the farming operation of at least 20 percent 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 must be commensurate with the new member’s claimed share in the farming operation.	<p>Transfer of land or equipment by sale or gift from a present member to a new member must be at least commensurate with the new member’s claimed share of the farming operation.</p> <ul style="list-style-type: none"> • 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 is no agreement to repurchase the land or equipment at a later date. • Complete documentation of the transaction will be required.
If the requirements of substantive change were not met for increase in the number of “persons”, and the operation was conducted as represented with the additional members for the current year, the increase in “persons” was recognized for the following program year.	No similar provision.

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3 New Forms

A CCC-901, Member's Information

CCC-901 is to be used to collect information on the interest holders of all legal entities. The disclosure of this information is a requirement of all legal entities for payment eligibility.

B CCC-902E, Farm Operating Plan for an Entity

CCC-902E is to be used to collect information on farming operations of any legal entity. This includes corporations, estates, both revocable and irrevocable trusts, both general and limited partnerships, limited liability companies, joint ventures, churches and charitable organizations, and public schools.

C CCC-902I, Farm Operating Plan for an Individual

CCC-902I is to be used to collect information on an individual's farming operation.

D CCC-902 Continuation, Continuation Sheet for Leased or Owned Land

CCC-902 Continuation is to be used for additional space for listing all farms and land interests in a farming operation. CCC-902 Continuation is to be attached to CCC-902I or CCC-902E.

E CCC-903, Worksheet for Payment Eligibility and Payment Limitation Determinations

CCC-903 is to be used by the reviewing authority in making all payment eligibility and payment limitation determinations. This will be the source document for issuance of the written notice of determinations.

F Updating 2009 Web-Based Eligibility

With the release of this notice, CCC-901, CCC-902's, and CCC-903 authorize State and County Offices to update 2009 eligibility according to instructions in 3-PL after all applicable payment eligibility and payment limitation determinations have been made.

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4 Action

A State Office Action

State Offices shall ensure that County Offices follow the contents of this notice.

B County Office Action

County Offices shall review and follow the contents of this notice.