



USDA tweaks payment limit regulations, requires data sharing with the IRS

By Sara Wyant

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Washington, Dec. 31 – The U.S. Department of Agriculture was widely expected to issue tougher farm program payment limitation rules this year, delivering on one of President Barack Obama’s campaign pledges to eliminate loopholes and focus payments on smaller farming operations. Over 3,000 people commented on the proposed rule change and many advocated tightening the definition of “active personal management.”

But as the 2009 year came to a close, the USDA announcement included no substantial changes in eligibility for larger operations and even made the rules less restrictive for smaller operations. Another procedure announced Dec. 31 might impact larger operations – if their adjusted gross income levels are triggered by an Internal Revenue Service (IRS) investigation.

Agriculture Secretary Tom Vilsack announced on New Year’s Eve that USDA is partnering with the Internal Revenue Service to reduce fraud in farm programs and streamlining payment limits for family farmers. The announcement states that the changes are “intended to strengthen the integrity and defensibility of USDA farm safety net programs and help the agricultural industry to meet requirements included in the 2008 Farm Bill.”

“Today’s announcement will ensure that the producers who depend upon the safety net of USDA programs will have future access to these programs by enhancing the overall integrity of the programs,” Vilsack explained. “It will also provide more flexibility for family farm operations across the country.”

The announcement covers two areas:

1. Family-run operations will have less restrictive rules in 2010 to meet “actively engaged in farming” requirements to qualify for farm program payments. These rules apply to eligibility for payments under the Direct and Counter-cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program administered by the USDA Farm Service Agency (FSA).
2. Beginning in January 2010, the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS) will provide producers with consent

forms they voluntarily complete and submit to IRS, authorizing IRS to disclose information to USDA for 2009 and 2010 Adjusted Gross Income (AGI) compliance purposes.

Under the new final rule for “actively engaged” requirements, spouses in the same corporation do not both have to contribute active personal labor or active personal management if one of the spouses contributes active personal labor or active personal management. This clarifies an existing interpretation.

The rule also makes it possible for most family-run farming operations conducted as a legal entity, such as a corporation, to meet actively engaged in farming requirements. Every member of a legal entity, such as a corporation, does not have to contribute labor or management if:

- 1) Total direct payments received both directly and indirectly by the farming operation and each of the members collectively do not exceed \$40,000, and
- 2) At least half of the interest in the legal entity is held by stockholders or members who are providing active personal labor or active personal management that altogether qualifies as a significant contribution to the farming operation.

For example: A retired farmer owns 40 percent of a corporation that rents land; his two sons each own 30 percent of the corporation. The two sons collectively provide significant contributions of active personal labor and active personal management. Neither the father nor his sons have any other farming interests. The corporation is eligible to receive full payment even though the retired farmer does not contribute any active personal labor or management to the farming operation.

IRS information exchange on AGI

Building on an announcement made earlier this year, USDA finalized a Memorandum of Understanding with the Internal Revenue Service for verifying compliance with the adjusted gross income provisions for programs administered by USDA’s FSA and Natural Resources Conservation Service. This agreement is designed to ensure that payments are not issued to producers whose adjusted gross income (AGI) exceeds limits set in the 2008 Farm Bill. These are:

- \$500,000 nonfarm average AGI for commodity and disaster programs
- \$750,000 farm average AGI for direct payments; and
- \$1 million nonfarm average AGI for conservation programs.

Beginning in January 2010, the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS) will provide producers with consent forms and will ask them to voluntarily complete and submit to the IRS. The forms authorize IRS to disclose information to USDA for 2009 and 2010 AGI compliance purposes. USDA Service Center employees will not accept any tax information for this purpose.

The deadline for producers to submit the consent forms to IRS is June 15, 2010. After that date, a reconciliation process will be initiated to identify producers who did not file a consent form.

Average AGI calculations for 2009 are computed based on the 2005, 2006, and 2007 tax years, and the average AGI calculations for 2010 are computed based on the 2006, 2007, and 2008 tax

years. Producers whose average AGI appears to be in excess of the statutory AGI limitations will be notified in writing of the results, and be allowed to give local FSA officials a third party verification from a certified public accountant or attorney that demonstrates AGI limits have not been exceeded. Producers determined not in compliance with AGI limitation will be offered appeal rights to either the FSA State Committee or the National Appeals Division.

For more information about the IRS process or the change in payment limitation rules, please visit your FSA county office or www.fsa.usda.gov.

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