Foreign Landowners must report land transactions with 90 days of the date of the sale. Report forms FSA-153 (agricultural Foreign Investment Disclosure Act Report) are available at all FSA offices and may be downloaded from the agency's web site.

This requirement has been on the books since 1978. Failure to file an accurate or timely report can result in a penalty with fines up to 25 percent of the fair market value of the agricultural land.

The act requires reports to be filed by individuals who are not: U.S. Citizens, lawfully admitted to the United States for permanent residence or who are not paroled into the United States under the Immigration & Nationality Act; any organization created under the laws of a foreign government or which has located its principal place of business outside the United States; any U. S. organization in which a significant interest or substantial control is directly or indirectly held by foreign individuals, organizations, or governments; and any foreign governments.

Average Adjusted

Gross Income (AGI)

Verification Process

Why is it necessary to verify average AGI?

The Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) provides that individuals and legal entities with average AGI in excess of a specified average AGI limitation are ineligible for payments subject to that limitation

In general, the limitations are: $500,000 average nonfarm AGI for commodity programs;

$750,000 average farm AGI for direct payments under the Direct and Counter-cyclical Program or ACRE program; and $1 million average nonfarm AGI for conservation programs.

All direct and indirect recipients of commodity or conservation program payments are required to complete the CCC-926, Average Adjusted Gross Income (AGI) Statement.

The U.S. Government Accountability Office (GAO) concluded in a recent report that, without an adequate verification process, USDA could not ensure payments were only being made to eligible recipients.

What process has been developed to verify average AGI?

USDA has worked with the Internal Revenue Service to develop electronic information exchange process strictly for the purposes of average AGI verification.

This process electronically looks at certain line items on tax returns filed for the applicable three-year period; performs a series of calculations to arrive at the average amounts; and then compares these values to the average AGI limitations.

USDA receives the results of these comparisons with indicators of whether the participant appears to exceed or not exceed the average AGI limitation amounts. No actual tax data will be included.

USDA county office personnel will not view tax return information at any time during this process.

What is required for USDA to verify average AGI?

IRS requires written consent from the individual or legal entity to provide USDA verification of the average AGI for that individual or legal entity.

This written consent is provided by using the forms CCC-927, Consent to Disclosure of Tax Information–Individual; or if a legal entity, the CCC-928, Consent to Disclosure of Tax Information–Legal Entity. The CCC-927 and CCC-928 forms allow the selection of 2009, 2010, or both years.

Selection of “2009” on the form authorizes IRS to perform the average AGI calculations for the 2005, 2006 and 2007 tax years. Selection of “2010” on the form authorizes IRS to perform the average AGI calculations for the 2006, 2007 and 2008 tax years.

The CCC-927or CCC-928, as applicable, must be completed by an individual or legal entity was required to complete the CCC-926, Average Adjusted Gross Income (AGI).

When must the applicable consent form be completed and where does it go?

Timeliness is essential in order to avoid any delays in the issuance of 2010 program payments and the possibility of refunding 2009 program payments **.** *The consent forms should be mailed directly to IRS at the address given on the form*
no later than June 15, 2010
.
Do not return the completed and signed forms to the FSA office.

What if the consent form is not completed and mailed to IRS?

Failure to provide the written consent may require refund of applicable payments received from

FSA and NRCS for the years 2009 and 2010.

Why can't the completed consent forms be provided to the local FSA office like any other program related documents?

The consent forms are for IRS, not FSA, and contain Personally Identifiable Information (PII). To

afford maximum protection of PII, the completed forms must be sent directly to the IRS.

Will IRS be able to utilize the information for any other purposes and can it be disclosed to any persons or organizations outside of the government?

IRS will only use this information and data for this specified purpose. The data and information utilized for AGI compliance and verification purposes is not subject to disclosure under the Freedom of Information Act (FOIA).

2010 Payment Eligibility

Requirements

Numerous comments were received on the interim rule for 7 CFR Part 1400 published in December 2008.

In response to these comments and other technical corrections, revisions were made in the final rule scheduled for publication on/or about Jan. 7, 2010.

This final rule provides notice to the public on provisions in effect for 2010.

Effective for 2010, the following changes are being implemented. Exception for contributions of members of legal entities if at least 50 percent of the interest is held by members that are providing active personal labor or active personal management, and the total direct payments received both directly and indirectly by all members does not exceed the amount of 1 limitation.

The date of June 1 will be used for the determination of a minor child for application of the minor child rules.

Current Provisions for 2010 Payment Eligibility

Actively Engaged in Farming

The determination of actively engaged in farming requires significant contributions to a farming operation of: capital, land, or equipment; and active personal labor or active personal management, unless an exception, such as for landowners, applies.

Other Requirements

The payment eligibility and limitation provisions that remain applicable for 2010 include: cash rent tenant, minor child rules, spousal provisions, requirement for each stockholder, partner, or member of a legal entity to contribute active personal labor and/or active personal management, substantive change provisions for the increase of persons or legal entities eligible for payment in a farming operation.

Changes for 2010 Payment Eligibility Determinations

Exception for Contributions of Member of Legal Entities

All partners, stockholders, or members with an ownership interest in the legal entity must make contributions of active personal labor and/or active personal management to the farming operations that meet all of the following: performed on a regular basis, identifiable and documentable separate and distinct from contributions of any other partner, stockholder, or member.

A payment reduction will be applied to the payment entity if any of the partners, stockholders, or members, fail to meet this requirement.

Effective for 2010, an exception may apply if: at least 50 percent of the interest is held by members that are providing active personal labor or active personal management; and the members are collectively receiving, directly and indirectly, total payments that are less than or equal to 1 limitation.

Determination of Minor Child The date of April 1 of the current crop, program, or FY has been used for the determination of a minor child for direct attribution for payment limitation.

Effective for 2010, and subsequent crop, program, or FY's, June 1 will be used for determination of a minor child for direct attribution for payment limitation purposes.