

2008 Farm Bill Commodity Programs and Payment Limit Rules

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Overview

H.R. 2419, the Food, Conservation and Energy Security Act of 2008, better known as the 2008 Farm Bill, was passed by the House on May 14, the Senate on May 15, and vetoed by the President on May 21. On May 21, the House overrode the President's veto, and the Senate did the same on May 22. But, the version of the Farm Bill that was sent to the President and which he vetoed on May 21 did not contain Title III – the trade title. Thus, the President vetoed a Bill that the Congress had not passed. Thus, under the Constitution, the Bill never became law.

To remedy the constitutional defect, the House passed a substantively identical Farm Bill - H.R. 6124 on May 22. The Senate passed H.R. 6124 (with the same title as H.R. 2419) on June 5. H.R. 6124 repeals H.R. 2419 in its entirety. The President vetoed H.R. 6124 on June 18, and both the House and Senate voted to override the veto later that same day.

Note on Effective Date: H.R. 6124 states that it is effective upon the earlier of enactment or the date of enactment of H.R. 2419. While that generally leads one to the conclusion that May 22 will be the effective date of the Farm Bill provisions that are "effective upon enactment" or "effective for tax years beginning after date of enactment," that may not be correct (this is primarily an issue with respect to the tax provisions in the Bill). There still remains uncertainty as to the effective date of H.R. 2419. Because H.R. 2419 as vetoed by the President was not the Bill that Congress passed (and on which the Congress subsequently voted to override the President's veto) H.R. 2419 never became law. Thus, the Farm Bill's effective date is the date of enactment of H.R. 6124 - June 18.

Congress could have easily avoided this confusion by providing a specific date for the date of enactment of H.R. 6124 - such as May 22. That way, there wouldn't be any disadvantage to someone who takes action or fails to take action between May 22 and the date the entire bill becomes law. Again, the effective date issue is primarily an issue with respect to the tax provisions in the Bill. The commodity provisions are largely unaffected by the problem.

Commodity Programs

Eligible commodities. The Bill continues the Direct and Counter-Cyclical Program (DCP) payments for the 2008-2012 crop years (with slight modification concerning covered crops), and authorizes an Average Crop Revenue Election (ACRE) program for the 2009-2012 crop years. As for the DCP, the following table shows the commodities that are DCP-eligible for the 2008-2012 crop years:

2008 Through 2012 Covered Commodities Eligible for DCP Under the Act
Barley
Corn
Grain Sorghum
Oats
Other Oilseeds (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Sesame Seed, or Sunflower Seed)
Peanuts
Pulse Crops
Long Grain Rice
Medium Grain Rice
Soybeans
Upland Cotton
Wheat

Base acres. In general, base acres that were in effect on September 20, 2007, are deemed to be in effect for the 2008 DCP. But, the base acres for long grain and medium grain rice will be recalculated. “Pulse” crops will be added as a covered commodity beginning with the 2009 crop year.

Note: “Pulse crops” are defined as both large and small chickpeas, dry peas and lentils.

There are certain situations in which base acres will be adjusted. The Act specifies that the following situations will require adjustments to base acres:

- When a CRP contract expires or is voluntarily terminated;
- When cropland is released from the CRP by the Ag Secretary;
- As for pulse crops, crop acreage is to be established in a manner similar to the establishment of oilseed acreage under the 2002 Farm Bill;
- When additional oilseed acreage is established;
- When the sum of the base acres on the farm plus the following exceeds the DCP cropland on the farm:
 - Acreage enrolled in the CRP or the WRP;

- Any acreage enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage;
- The addition of any pulse crop acreage;
- The addition of any new oilseed acreage

Payment yields. Under the 2008 Farm Bill, payment yields must be established in order for USDA to make direct and counter-cyclical payments for each farm for any designated oilseed or pulse crop for which a payment yield was not established under the 2002 Farm Bill.

Payment acres. Under the 2002 Farm Bill, payment acres were 85 percent of the applicable base acres. The 2008 Farm Bill modifies the payment acre calculation for direct payments and counter-cyclical payments as follows:

Year	Percentage of Base Acres used to Calculate Direct Payments
2008	85%
2009	83.3%
2010	83.3%
2011	83.3%
2012	85%

Note: The payment amount for a producer is the applicable payment rate multiplied by the applicable payment acres multiplied by the payment yield.
Act. §1103(c).

Payments prohibited. The Bill prohibits direct, counter-cyclical or ACRE payments to a producer on a farm unless there are more than 10 base acres. But, this prohibition doesn't apply if the farmer is a socially disadvantaged or limited resource farmer or rancher.

Base acre reduction. Base acreage for covered commodities and peanuts must be reduced for land that has been subdivided and developed for multiple residential lots or other non-farming uses if the size of the tracts and the density of the subdivision is such that the land is unlikely to return to agricultural use.

Direct payments. The following are the direct payment rates from crop years 2008-2012

Crop	2008 Through 2012 Payment Rate
Barley	\$0.24/bu
Corn	\$0.28/bu
Grain Sorghum	\$0.35/bu
Oats	\$0.024/bu
Other Oilseeds	\$0.80/cwt
Peanuts	\$36/ton
Rice, Long Grain Rice	\$2.35/cwt
Rice, Medium Grain Rice	\$2.35/cwt

Soybeans	\$0.44/bu
Upland Cotton	\$0.0667/lb
Wheat	\$0.52/bu

Note: The Bill authorizes advance direct payments (i.e., before Oct. 1 of the year in which the covered commodity is harvested), by election, for the 2008-2011 crop years. The advance direct payment percentage is 22 percent, and payments are to be made as soon as practical after a producer makes an election. The advance payments are taxable in the year of receipt. *Act, Sec. 1601(e), amending 7 U.S.C. §7991(d).*

The applicable payment limitation on direct payments for crop years 2008-2012 for a person or entity (whether received directly or indirectly) is \$40,000. The payment limit will be adjusted for participation in the ACRE program in years 2009-2012. *Act, Sec. 1603(b), amending 7 U.S.C. §1308.*

Counter-cyclical payments. Counter-cyclical payments will be issued for each of the 2008-2012 crop years of each covered commodity if the effective price for the covered commodity is less than the target price for the covered commodity. In addition, counter-cyclical payments will be made after October 1 or as soon as is possible after the end of the marketing year for the covered commodity. Counter-cyclical payments are available to eligible producers if the “effective price” for the commodity is less than the commodity’s target price. The payment rate is the difference between the target price and the “effective price.” *Act, Sec. 1104(d).* “Effective price” for a covered commodity is the greater of the national average market price over the marketing year for the commodity or the national average loan rate for the commodity that is in effect, plus the payment rate in effect for direct payments. But, the computation for rice is based on the type or class of rice involved. *Act, Sec. 1104(a),(b).* Counter-cyclical payments, if applicable, equal the payment rate multiplied by the payment acres multiplied by the payment yield. *Act, Sec. 1104(e).*

Note: Advance counter-cyclical payments are available for crop years 2008-2010 if the advance payment is requested within 60 calendar days before the end of the marketing year for the commodity involved. The advance payment is limited to a maximum of 40 percent of the estimated counter-cyclical payment for the commodity for the crop year. The advance payment will be made after completion of 180 calendar days of the marketing year for the covered commodity. The final counter-cyclical payment will be made as soon as possible, but not before October 1 after the end of the applicable marketing year for the commodity. Advance payments are taxable in the year of receipt. *Act, Sec. 1601(e), amending 7 U.S.C. §7991(d).*

The counter-cyclical payment limit amount is \$65,000 for crop years 2008-2012, and will be adjusted if the recipient participates in the ACRE program in years 2009-2012. *Act, Sec. 1601(e), amending 7 U.S.C. §7991(d).* The payments, if applicable, will be made after the end of the marketing year for the covered commodity, but producers can receive partial payments on a projected basis. *Act, Sec. 1104(f).*

Target prices. The 2008 Farm Bill establishes the following target prices by crop year:

Crop	2008	2009	2010 Through 2012
Barley	\$2.24/bu	\$2.24/bu	\$2.63/bu
Chickpeas, Large (Garbanzo bean, Kabuli)		\$12.81/cwt	\$12.81/cwt
Chickpeas, Small (Garbanzo bean, Desi)		\$10.36/cwt	\$10.36/cwt
Corn	\$2.63/bu	\$2.63/bu	\$2.63/bu
Dry Peas		\$8.32/cwt	\$8.32/cwt
Grain Sorghum	\$2.57/bu	\$2.57/bu	\$2.63/bu
Lentils		\$12.81/cwt	\$12.81/cwt
Oats	\$1.44/bu	\$1.44/bu	\$1.79/bu
Other Oilseeds	\$10.10/cwt	\$10.10/cwt	\$12.68/cwt
Peanuts	\$495/ton	\$495/ton	\$495/ton
Rice, Long Grain	\$10.50/cw	\$10.50/cwt	\$10.50/cwt
Rice, Medium Grain	\$10.50/cw	\$10.50/cwt	\$10.50/cwt
Soybeans	\$5.80/bu	\$5.80/bu	\$6.00/bu
Upland Cotton	\$0.7125/lb	\$0.7125/lb	\$0.7125/lb
Wheat	\$3.92/bu	\$3.92/bu	\$4.17/bu

Loan deficiency payments (LDPs). A producer can receive an LDP even though eligible for a marketing assistance loan. In addition, LDPs can be made for hay, silage and unshorn pelts even though those commodities don't qualify for marketing assistance loans. *Act, Sec. 1205(a)*. The payment rate for LDPs is computed by taking the loan rate for the commodity multiplied by the amount of the commodity not placed under a marketing assistance loan. The payment rate is the excess of the loan rate over the rate at which a marketing assistance loan may be repaid. Also, the LDP amount is computed as of the date the producer requests the payment. *Act, Sec. 1205 (b)-(e)*.

Note: For the 2008-2012 crop years, producers that are eligible for an LDP on wheat, barley or oats, but elect to use their acreage for livestock grazing, a payment can be made if the producer agrees to forego any other harvesting. *Act, Sec. 1206(a)-(b)*.

Marketing assistance benefits. Non-recourse marketing assistance loans are available for specified commodities. Loan availability is subject to conservation cross-compliance rules, but are not subject to any payment limitation. The following table shows the loan rates by commodity and by crop year:

Crop	2008	2009	2010 - 2012
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Wheat	\$2.75/bu	\$2.75/bu	\$2.94/bu
Corn & Grain Sorghum	\$1.95/bu	\$1.95/bu	\$1.95/bu
Oats	\$1.33/bu	\$1.33/bu	\$1.39/bu
Upland Cotton	\$0.52/lb	\$0.52/lb	\$0.52/lb
Extra Long-Staple Cotton	\$0.7977/lb	\$0.7977/lb	\$0.7977/lb
Long and Medium Grain Rice	\$6.50/cwt	\$6.50/cwt	\$6.50/cwt
Soybeans	\$5.00/bu	\$5.00/bu	\$5.00/bu
Oilseeds	\$9.30/cwt	\$9.30/cwt	\$10.09/cwt
Dry Peas	\$6.22/cwt	\$5.40/cwt	
Lentils	\$11.72/cwt	\$11.72/cwt	\$11.28/cwt
Small Chickpeas	\$7.43/cwt	\$7.43/cwt	\$7.43/cwt
Graded Wood	\$1.00/lb	\$1.00/lb	\$1.15/lb
Non-Graded Wood	\$0.40/lb	\$0.40/lb	0.40/lb
Mohair	\$4.20/lb	\$4.20/lb	\$4.20/lb
Honey	\$0.60/cwt	\$0.60/cwt	\$0.69/cwt
Barley			\$1.95/bu
Large Chickpeas			\$11.28/cwt

The loan term is nine months beginning on the first day of the first month after the month in which the loan is made. The loan cannot be extended. *Act, Sec. 1203*. For most commodities, the loan can be repaid at a rate less than the loan rate plus interest (calculated using average market prices for the commodity during the preceding 30-day period).

Note: For the 2008-2011 crop years, storage costs are to be paid for cotton at the same rates as for the 2006 crop, reduced by 10 percent. In 2012, the reduction is 20 percent. *Act, Sec. 1204*.

ACRE program. In crop years 2009-2012, producers can make an irrevocable election to receive ACRE program payments. *Act, Sec. 1105(a)*. The following restrictions apply to producers making the ACRE election:

- The producer is ineligible for counter-cyclical payments;
- The producer is subject to a 20 percent reduction in direct payments for covered commodities
- The producer is subject to a 30 percent reduction in marketing assistance loan rates for all covered commodities

Note: All producers on a farm must make the election for it to be effective.

The Bill includes a complicated procedure for computing ACRE payments. *Act, Sec. 1105(b)-(f)*.

Planting flexibility. The Bill authorizes a Planting Transferability Pilot Project to permit planting of cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn and tomatoes

grown for processing on base acres during each of the 2009 through 2012 crop years. However, there are acreage and state limits that apply as follows:

State	Base Acres Eligible
Illinois	9,000
Indiana	9,000
Iowa	1,000
Michigan	9,000
Minnesota	34,000
Ohio	4,000
Wisconsin	9,000

Producer eligibility for the pilot program requires that the producer enter into a contract to produce an eligible commodity, agree to have a program of crop rotation on the farm to achieve agronomic and pest and disease management, and provide evidence of disposition.

Note: DCP base acres will be reduced on a farm by an acre-for-acre reduction. Base acres will be restored at the end of the crop year.

Overall DCP eligibility requirements. To be eligible to enroll in the DCP, a producer must:

- Comply with applicable conservation and wetland protection requirements of the 1985 Farm Bill;
- Comply with the planting flexibility requirements;
- Use at least as much of the farmland that equals the base acres for an agricultural crop or conserving use;
- Control noxious weeds and maintain the land according to sound agricultural practices if the land is not cultivated;
- File an acreage report; and
- File a production report if participating in the ACRE program

Payment Limitation Rules

The 2008 Farm Bill largely continues the 2002 Farm Bill payment limitation provisions with slight exceptions. Beginning for the 2009 crop year, however, the so-called “three entity” rule is eliminated and is replaced with a rule of direct attribution, and the rule allowing payments to deceased persons is eliminated.

Note: (1) Under the direct attribution rule, individuals and entities are credited with both the amount of payments received directly and also the amount received indirectly by holding an interest in an entity receiving payment. In general, payments to a legal entity are attributed to the persons who have a direct or indirect interest in the legal entity.

But, payments made to a joint venture or general partnership are determined by multiplying the maximum payment amount by the number of persons and entities holding ownership interests in the joint venture or general partnership. That means that joint ventures and partnerships are not subject to the attribution rules.

(2) The removal of the three-entity rule is largely symbolic insomuch as the spousal rule was not likewise repealed.

The direct attribution rule (effective beginning with the 2009 crop year) can be illustrated as follows:

Example:

Frank Farmer is a sole proprietor farmer and also is the sole shareholder in ABC Farm Corp., and holds a 75 percent interest in ABC Family Farm L.L.C. Frank enters into the 2009 DCP and receives \$20,000 in direct payments for corn and soybeans. ABC Farm Corp. enters into the 2009 DCP and receives \$10,000 in direct payments for corn. ABC Family Farm LLC enters into the 2009 DCP and receives \$2,000 in direct payments for soybeans. Under the direct attribution rule, Frank will be credited with a total of \$31,500 of direct payments under the 2009 DCP.

Additional application of direct attribution rules: (*Act, Sec. 1603(b), amending 7 U.S.C. §1308(a)(4)*).

- As applied to marketing cooperatives, the attribution rules apply to the producers as persons, and not to the cooperative association of producers;
- Children under age 18 are treated the same as the parents;

Note: Because the Bill does not change the spousal rule, it is assumed that if one parent has filled their payment limit, payments made to a child could be attributed to the parent that has not filled their payment limit.

- Payments made to a revocable trust are attributed to the trust's grantor;
- As applied to irrevocable trusts and estates, the Ag Secretary is directed to administer the rules so as to ensure equitable treatment of the beneficiaries

Average AGI limitation. Beginning with the 2009 crop year, a revised adjusted gross income (AGI) rule applies to both individuals and entities. For commodity and price support programs, the limit is non-farm AGI of \$500,000 or less to be eligible for DCP or price support benefits, and farm AGI of \$750,000 or less to be eligible for direct payments under the DCP. For conservation program benefits, the AGI limit is \$1 million unless two-thirds of AGI is derived

from farming, ranching and forestry operations, and non-farm AGI is \$1 million or less. *Act, Sec. 1604 (a), amending 7 U.S.C. §1308-3a(e).*

Note: (1) The bill expands the definition of average AGI derived from farming, ranching and forestry to include income and benefits from the production of all types of livestock, farm-based renewable energy, and the processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities (including renewable energy). In addition, the Bill gives the Ag Secretary the discretion to include the income from any additional activity related to farming, ranching or forestry.

(2) The calculation of “average AGI” is computed over the last three taxable years.

Governmental entities. Under the Bill, a state or local government, political subdivision, or agency is ineligible for commodity or disaster program payments. But, payments may be received on publicly-owned land that is used for the support of public schools. There is no annual payment limit if the state in which the land is located has a population of less than 1.5 million. If the population of the state is 1.5 million or more, the annual payment limit is \$500,000, per state.

Deceased persons. The Bill directs the Ag Secretary to publish regulations within 180 days of enactment that describe the circumstances that allow issuing program payments in the name of deceased persons. The Bill also directs the Ag Secretary to reconcile, twice annually, the Social Security numbers of program recipients with the Social Security Administration to determine if the recipients are alive.

Ineligibility for payments. The Bill establishes a two-year ineligibility rule for failure to comply with the payment limitation rules, adopting or participating in a scheme or device to evade the payment limitation rules, or intentionally concealing the interest of a person or legal entity in a farming operation. There is an ineligibility rule of up to five years for knowingly engaging in or assisting in creating a fraudulent document, failing to disclose material information relevant to administering the payment limitation rules, or committing any other equally serious actions as the Ag Secretary determines.

Treatment of cash-rent tenants. The cash-rent tenant rule stays essentially the same, with clarification that a tenant under a cash lease who renders personal management, but not personal labor, is eligible for payments if the tenant makes a significant contribution of equipment. *Act, Sec. 1603(b).*

“Scheme or device” rule. Changes in a farming operation that are made with the intent to evade the payment limitation rules have long been prohibited. Under the 2008 Farm Bill, as in prior Bills, changes must be bona fide and substantive. The Bill specifies that adding a family member to a farming operation is bona fide and substantive. *Act, Sec. 1603(b).*

Active engagement test. The active engagement test is retained with a specification of six classes of producers for purposes of the test:

- Landowners – contribution of owned land meets the test if the returns from the land are based on the land’s production, the shares of profits or losses are commensurate with the contributions to the farming operation, and the contributions are at risk;
- Adult family member – if a majority of the participants in a farming operation are family members, an adult family member meets the test by making a significant contribution of active personal management or personal labor, the shares of profits or losses is commensurate with the contributions to the farming operation and contributions are at-risk;
- Sharecropper – a significant contribution of personal labor meets the test if the share of profits and losses is commensurate with contributions and the contributions are at-risk;
- Hybrid seed growers – the hybrid seed contract is not taken into account;
- Persons and entities receiving custom farming services – the general rules apply; and
- Spouses – satisfy the test if the other spouse satisfies the test (or the estate of a deceased spouse satisfies the test). *Act, Sec. 1603(d), amending 7 U.S.C. §1308-1.*