

109TH CONGRESS
1ST SESSION

H. R. 4149

To require the prompt issuance by the Secretary of Agriculture of regulations to restore integrity to the payment limitation requirements applicable to commodity payments and benefits, to reduce waste, fraud, and abuse related to the receipt of commodity payments and benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2005

Mr. FORTENBERRY (for himself and Ms. HERSETH) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To require the prompt issuance by the Secretary of Agriculture of regulations to restore integrity to the payment limitation requirements applicable to commodity payments and benefits, to reduce waste, fraud, and abuse related to the receipt of commodity payments and benefits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Payment Limitation
5 Integrity Act of 2005”.

1 **SEC. 2. ISSUANCE OF REGULATIONS TO ESTABLISH MEAS-**
2 **URABLE STANDARDS TO PREVENT USE OF**
3 **SEPARATE ENTITIES TO EXCEED PAYMENT**
4 **LIMITATIONS APPLICABLE TO COMMODITY**
5 **PAYMENTS AND TO LIMIT PAYMENTS TO AC-**
6 **TIVE FARMERS.**

7 (a) STANDARDS REGARDING ACTIVE PERSONAL
8 MANAGEMENT AND EVASION SCHEMES AND DEVICES.—
9 The Secretary of Agriculture (in this section referred to
10 as the “Secretary”) shall promulgate regulations to estab-
11 lish measurable standards of—

12 (1) what constitutes a significant contribution
13 of active personal management with respect to a
14 farm operation for purposes of applying the payment
15 limitations specified in section 1001 of the Food Se-
16 curity of 1985 (7 U.S.C. 1308); and

17 (2) what constitutes a scheme or device to ef-
18 fectively evade such payment limits or to evade sec-
19 tion 1001A or 1001C of such Act (7 U.S.C. 1308–
20 1, 1308–3).

21 (b) ENFORCEMENT OF MULTIPLE ENTITY LIMITA-
22 TIONS.—The Secretary shall promulgate regulations to en-
23 sure that total payments and gains described in section
24 1001 of the Food Security of 1985 made to or through
25 joint operations or multiple entities under the primary
26 control of a person, in combination with the payments and

1 gains received directly by the person, do not exceed twice
2 the applicable dollar amounts specified in subsections (b),
3 (c), and (d) of such section.

4 (c) ATTRIBUTION OF PAYMENTS AND GAINS DE-
5 RIVED FROM CERTAIN FARMING OPERATIONS.—In the
6 case of a person that in the aggregate owns, conducts
7 farming operations, or provides custom farming services
8 on land with respect to which the aggregate commodity
9 payments exceed the applicable dollar amounts specified
10 in subsections (b), (c), and (d) of section 1001 of the Food
11 Security of 1985, the Secretary shall promulgate regula-
12 tions to ensure that all payments and gains made on crops
13 produced on the land are attributed as follows:

14 (1) To a person that rents land as lessee or les-
15 sor through a crop share lease and receives a share
16 of the payments that is less than the usual and cus-
17 tomary share of the crop received by the lessee or
18 lessor, as determined by the Secretary.

19 (2) To a person that provides custom farming
20 services through arrangements under which—

21 (A) all or part of the compensation for the
22 services is at risk;

23 (B) farm management services are pro-
24 vided by—

25 (i) the same person;

1 (ii) an immediate family member; or

2 (iii) an entity or individual that has a
3 business relationship that is not an arm's
4 length relationship, as determined by the
5 Secretary; or

6 (C) more than 2/3 of the farming oper-
7 ations are conducted as custom farming services
8 provided by—

9 (i) the same person;

10 (ii) an immediate family member; or

11 (iii) an entity or individual that has a
12 business relationship that is not an arm's
13 length relationship, as determined by the
14 Secretary.

15 (3) To a person under such other arrangements
16 as the Secretary determines are established to trans-
17 fer payments from persons that would otherwise ex-
18 ceed the applicable dollar amounts specified in sub-
19 sections (b), (c), and (d) of such section.

20 (4) To the direct recipient of the commodity
21 payments as well as to the person to whom the pay-
22 ments are attributed under paragraph (1), (2), or
23 (3).

24 (d) PRIMARY CONTROL.—In the regulations required
25 by this section, the Secretary shall define “primary con-

1 trol” to include a joint operation or multiple entity in
2 which a person owns an interest that is equal to or greater
3 than the interest of any other one or more persons that
4 materially participate on a regular, substantial, and con-
5 tinuous basis in the management of the operation or enti-
6 ty.

7 (e) MATERIAL PARTICIPATION.—In the regulations
8 required by this section, the Secretary shall ensure that
9 the standards for active personal management require no
10 less involvement than the standard for materially partici-
11 pating on a regular, substantial, and continuous basis in
12 the management of the operation or entity as defined by
13 Treasury regulation section 1.469–5T(a)(1), as in effect
14 on the date of the enactment of this Act.

15 (f) TIME FOR ISSUANCE; PROCEDURE.—The regula-
16 tions required by this section shall be issued in final form
17 not later than 270 days after the date of the enactment
18 of this Act. To ensure compliance with this deadline, the
19 Secretary shall issue the regulations without regard to—

20 (1) the notice and comment provisions of sec-
21 tion 553 of title 5, United States Code;

22 (2) the Statement of Policy of the Secretary of
23 Agriculture effective July 24, 1971 (36 Fed. Reg.
24 13804), relating to notices of proposed rulemaking
25 and public participation in rulemaking; and

1 (3) chapter 35 of title 44, United States Code
 2 (commonly known as the “Paperwork Reduction
 3 Act”).

4 (g) CONGRESSIONAL REVIEW OF AGENCY RULE-
 5 MAKING.—In carrying out this section, the Secretary shall
 6 use the authority provided under section 808 of title 5,
 7 United States Code.

8 **SEC. 3. PREVENTION OF SCHEMES OR DEVICES TO EVADE**
 9 **PAYMENT LIMITATIONS.**

10 Section 1001B of the Food Security Act of 1985 (7
 11 U.S.C. 1308–2) is amended—

12 (1) by striking “If” and inserting “(a) BASIC
 13 PENALTY FOR EVASION OF PAYMENT LIMITA-
 14 TIONS.—Subject to subsection (b), if”; and

15 (2) by adding at the end the following new sub-
 16 section:

17 “(b) EFFECT OF FRAUD.—If the Secretary deter-
 18 mines that a person has committed fraud in connection
 19 with the adoption of a scheme or device to evade, or that
 20 has the purpose of evading, section 1001, 1001A, or
 21 1001C, the person shall be ineligible to receive farm pro-
 22 gram payments (as described in subsections (b), (c), and
 23 (d) of section 1001 as being subject to limitation) applica-

- 1 ble to the crop year for which the scheme or device was
- 2 adopted and the succeeding five crop years.”.

