DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AI31

Payment Limitation and Payment Eligibility; Actively Engaged in Farming

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to revise regulations on behalf of the Commodity Credit Corporation (CCC) to specify the requirements for a person to be considered actively engaged in farming for the purpose of payment eligibility for certain FSA and CCC programs. Specifically, this rulemaking proposes to revise and clarify the requirements for a significant contribution of active personal management to a farming operation. These changes are required by the Agricultural Act of 2014 (the 2014 Farm Bill). The provisions of this rule would not apply to persons or entities comprised solely of family members. The rule would not change the existing regulations as they relate to contributions of land, capital, equipment, or labor, or the existing regulations related to landowners with a risk in the crop or to spouses.

DATES: *Comment Date:* Comments must be received by May 26, 2015.

ADDRESSES: We invite you to submit comments on this rule. In your comment, please include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* James Baxa, Production, Emergencies, and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Stop 0501, 1400 Independence Ave. SW., Washington, DC 20250–0501.

Comments will be available online at *www.regulations.gov.* Comments may also be inspected at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the FSA homepage at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: James Baxa; Telephone: (202) 720–7641. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Overview

Several CCC programs managed by FSA, specifically the Market Loan Gains (MLG) and Loan Deficiency Payments (LDP) associated with the Marketing Assistance Loan (MAL), Program the Agriculture Risk Coverage (ARC) Program, and the Price Loss Coverage (PLC) Program, require that a person be ''actively engaged in farming'' as a condition of eligibility for payments. As specified in 7 CFR part 1400, a person must contribute: (1) Land, capital, or equipment; and (2) personal labor, active personal management, or a combination of personal labor and active personal management to be considered ''actively engaged in farming'' for the purposes of payment eligibility. Section 1604 of the 2014 Farm Bill (Pub. L. 113–79) requires the Secretary of Agriculture to define in regulations what constitutes a ''significant contribution of active personal management'' for the purpose of payment eligibility. Therefore, this rule proposes to amend 7 CFR part 1400 to define that term and to revise the requirements for active personal management contributions. The 2014 Farm Bill also requires the Secretary to consider establishing limits on the number of persons per farming operation who may be considered actively engaged in farming based on a significant contribution of active personal management. This rule proposes to amend 7 CFR part 1400 to set a limit of one person per farming operation who may qualify based on a contribution of active personal management and not on a contribution of personal labor, with exceptions for up to three persons for large and complex farming operations if additional requirements are met. The new requirements and definitions would be specified in a new subpart G to 7 CFR part 1400.

Exceptions for Entities Comprised Solely of Family Members

As required by the 2014 Farm Bill, the provisions of this proposed rule would not apply to farming operations comprised of persons or entities comprised solely of family members. The definition of ''family member'' is not changing with this rule. As specified in 7 CFR 1400.3, a family member is ''a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.'' FSA handbooks further clarify that eligible family members include: Great grandparent, grandparent, parent, child, including legally adopted children and stepchildren, grandchild, great grandchild, or a spouse or sibling of family members.

In 7 CFR 1400.208, there are existing provisions for family members to be considered actively engaged in farming by making a significant contribution of active personal labor, or active personal management, or a combination thereof, to a farming operation comprised of a majority of family members, without making a contribution of land, equipment, or capital. The new subpart G would not change these provisions.

Existing Provisions and Exceptions for Actively Engaged Requirements That Would Not Change

As specified in the current regulations, there are exceptions to the requirement that a person be actively engaged in farming by contributing labor or management to be eligible for payments. These exceptions for certain landowners and for spouses would not be changed with this rule. Specifically, landowners who share a risk in the crop (profit or loss based on value of crop and not fixed rent amount) are considered to be actively engaged just by contributing land and being at risk; they do not have to contribute management or labor. If one spouse is considered to be actively engaged by contributing management or labor, the other spouse may be considered to be actively engaged without making a separate, additional contribution of management or labor.

The proposed rule would clarify how persons and legal entities comprised of nonfamily members may be eligible for payments, based on a contribution of active personal management made by persons with a direct or indirect interest in the farming operation. Payments made to persons or legal entities are attributed to persons as specified in 7 CFR 1400.105, and the methods for attribution would not change with this rule.

Additional Requirements for Certain Nonfamily General Partnerships and Joint Ventures

The proposed definition and standard for evaluating what constitutes a significant contribution of active personal management would apply to all nonfamily farming operations seeking to have more than one person qualify as actively engaged in farming by providing a significant contribution of active personal management and not personal labor (''farm manager''). Therefore, the proposed rule would only apply to farming operations structured as a general partnership or joint venture comprised of persons, corporations, limited liability companies (LLCs), estates, trusts, or other similar entities seeking more than one farm manager. Similarly, the existing requirement that farming operations supply information to FSA county committees (COC) on each member's contribution or expected contribution related to actively engaged determinations would be unchanged and would continue to apply to all entities. However, farming operations that would be subject to this proposed rule would be required to provide a management log.

For most farming operations that are entities, such as corporations and LLCs, adding an additional member to the entity does nothing to change the number of payment limits available and it simply increases the number of members that share a single $125,000 payment limit. But for general partnerships and joint ventures, adding another member to the operation can provide an additional $125,000 payment limit if the new member meets the other eligibility requirements, including being actively engaged in farming. This potential for a farming operation being able to qualify for multiple payment limits provides an opportunity to add members and to have those members claim actively engaged status, especially for farming operations close to or in excess of the payment limit.

For this reason, several additional requirements are being proposed for nonfamily farming operations seeking to qualify more than one farm manager. Specifically, in addition to providing information to FSA regarding the elements related to an actively engaged determination, there would be a restriction on the number of members of a farming operation that can be qualified as a farm manager and there would be an additional recordkeeping requirement for such farming operations.

Number of Farm Managers That May Qualify as Actively Engaged

This rule would restrict the number of farm managers to one person, with exceptions. Nonfamily member farming operations only seeking one farm manager would not be subject to the proposed rule. Such operations would continue to be subject to the existing regulations in subparts A and C of 7 CFR part 1400 governing actively engaged in farming.

Any farming operation seeking two or three farm managers would be required to meet the requirements of subpart G for all farm managers in the farming operation including the maintenance of the records or logs discussed below for all the managers in the farming operation. The farming operation may qualify for up to one additional farm manager as a large operation, and up to one additional farm manager as a complex operation. To qualify for three farm managers, the operation would have to meet the standards specified in this rule for both size and complexity. In other words, a very large farm operation that is not complex (for example, one growing a single crop) could only qualify for two managers, not three. Under no circumstances would a farming operation be allowed to qualify more than three farm managers.

The default standard for what constitutes a large farming operation would be an operation with crops on more than 2,500 acres (planted or prevented planted) or honey or wool with more than 10,000 hives or 3,500 ewes, respectively. The acreage standard is based on an analysis of responses to the Agricultural Resource Management Survey that indicate that on average farms producing eligible commodities that required more than one full time manager equivalent (2,040 hours of management) had 2,527 acres. The size standards for honey and wool did not have comparable survey information available. The honey standard of number of hives is based on the beekeepers participating in 2011 through 2012 Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish that met or exceeded the payment limit. These large operations averaged 10,323 hives. The sheep standard was based on industry analysis that showed that operations with 1,500 through 2,000 ewes could be full time. The 3,500 standard is approximately double that threshold. Given the limited information available especially for the honey and wool size standards, we are specifically seeking comment on this issue in this proposed rule. State FSA committees (STCs) would have authority to modify these standards for their state based on the STC's determination of the relative size of farming operations in the state by up to 15 percent (that is plus or minus 375 acres, 1,500 hives or 525 ewes). In other words, the standard in a particular state may range from 2,125 acres to 2,875 acres; 8,500 to 11,500 hives; or 2,975 to 4,025 ewes. Relief from the State level standard would only be granted on a case by case basis by DAFP.

If a farming operation seeks a farm manager based on the complexity of the operation under the proposed rule, the farming operation would make a request that addresses the factors established in the proposed rule which would take into account the diversity of the operation including the number of agricultural commodities produced; the types of agricultural crops produced such as field, vegetable, or orchard crops; the geographical area in which an operation farms and produces agricultural commodities; alternative marketing channels (that is, fresh, wholesale, farmers market, or organic); and other aspects about the farming operation such as the production of livestock, types of livestock, and the various livestock products produced and marketed annually. All farming operations seeking to qualify one additional manager based on complexity which are approved by the STC would also have eligibility reviewed by the Deputy Administrator for Farm Programs (DAFP), to ensure consistency and fairness on a national level.

Records on the Performance of Management Activities

Under the proposed rule, if a farming operation is seeking to qualify more than one farm manager, then all persons that provide management of the operation would be required to maintain contemporaneous records or activity logs of their management activities, including management activities that would not qualify as active personal management under the proposed rule. Specifically, activity logs would include information about the hours of management provided. While the recordkeeping requirements under the proposed rule would be similar to the current provisions at 7 CFR 1400.203 and 1400.204 in which contributions must be identifiable and documentable, and separate and distinct from the contributions of other members, these additional records or logs would also include the location of where the management activity was performed and the time expended or duration of the management activity performed. These records and logs would be required to be available if requested by the appropriate FSA reviewing authority. If a person failed to meet this requirement, the represented contribution of active personal management would be disregarded and the person's eligibility for payments would be re-determined.

Section 1604 of the Farm Bill requires USDA to ensure that any additional paperwork that would be required by the proposed rule be limited only to persons in farming operations who would be subject to the proposed rule. As described above, the additional recording and recordkeeping requirements of this rule would only apply to persons in farming operations seeking to qualify more than one farm manager.

New Definition of Significant Contribution of Active Personal Management

The existing definition of a ''significant contribution'' in 7 CFR 1400.3 specifies that for active personal management, a significant contribution includes ''activities that are critical to the profitability of the farming operation,'' but that definition does not specify what specific types of activities are included, whether these activities need to be direct actions and not passive activities, and to what level or degree such activities must be performed to achieve a level of significance.

This proposed rule would apply a new definition of ''significant contribution of active personal management'' only to non-family farming operations that are seeking to qualify more than one farm manager. Similar to the existing requirements in 7 CFR 1400.3 for a substantial amount of personal labor, the new definition for a significant contribution of active personal management would require an annual contribution of 500 hours of management, or at least 25 percent of the total management required for that operation. The proposed rule would also add a new, more specific definition for ''active personal management'' that includes a list of critical management activities that may be used to qualify as a significant contribution.

The 2014 Farm Bill requires us to specify a definition in regulations; the specific definition proposed reflects a discretionary analysis of various alternatives. Various proposals and concepts were considered in the development of this proposed rule, including a minimum level of interest a person must hold in a farming operation before the person could qualify as actively engaged with only an active personal management contribution, a weighted ranking of critical activities performed, or a higher hourly threshold. The hourly requirement standard proposed here is intended to address the 2014 Farm Bill requirement for clear and objective standards.

The new definition would change what constitutes ''active personal management'' only for farm managers in nonfamily farming operations seeking to qualify two or three farm managers. The proposed requirements for such farm managers would clarify that eligible management activities are critical actions performed under one or more of the following categories:

- Capital, land, and safety-net programs: Arrange financing, manage capital, acquire equipment, negotiate land acquisition and leases, and manage insurance or USDA program participation;
- Labor: Hire and manage labor; and
- Agronomics and Marketing: Decide which crop(s) to plant, purchase inputs, manage crops (that is, whatever it takes to keep the growing crops living and healthy—soil fertility and fertilization, weed control, insect control, irrigation if applicable), price crops, and market crops or futures.

The management activities described would emphasize actions taken by the person directly for the benefit and success of the farming operation. Under the proposed rule, passive management activities such as attendance of board meetings or conference calls, or watching commodity markets or input markets (without making trades) would not be considered as contributing to significant management. The proposed rule only would consider critical actions as specified in the new definition of ''active personal management'' as contributing to significant management.

The new definition and requirements in the proposed rule would take into account the size and complexity of farming operations across all parts of the country. The proposed rule takes into consideration all of the actions of the farming operation associated with the financing; crop selection and planting decisions; land acquisitions and retention of the land assets for an extended period of time; risk management and crop insurance decisions; purchases of inputs and services; utilization of the most efficient field practices; and prudent marketing decisions. Furthermore, in developing the proposed rule, FSA took into account advancements in farming, communication, and marketing technologies that producers must avail themselves of to remain competitive and economically viable operations in today's farming world.

Under the proposed rule, eligible management activities would include the activities required for the farming operation as a whole, not just activities for the programs to which the ''actively engaged in farming'' requirement applies. For example, if a farming operation is participating in ARC or PLC and using grain eligible for those programs to feed dairy cattle, activities to manage the dairy side of the operation would be considered as eligible management activities to qualify as a farm manager. Similarly, if a farming operation receives MLG or LDPs on some crops, but not on others, all the management activities for all the crops would be considered for eligibility purposes.

The proposed rule would clarify that the significant contribution of a person's active management may be used only to enable one person or entity in a farming operation to meet the requirements of being actively engaged in farming. For example, if members of a joint operation are entities, one person's contribution could only qualify one of the entities (and not any other entity to which the person belongs), as actively engaged in farming.

Comments Requested

While this rule identifies an option that would allow a maximum of three managers to qualify the farming operation for farm payments for large or complex farming operations, we remain open to analysis and views of other options of merit that have been considered throughout the development of both this rule and the 2014 Farm Bill. We encourage comments to address whether the proposed change for the number of managers is appropriate and whether our definitions of large and complex farming operations are reasonable (as discussed above). Although the 2014 Farm Bill explicitly excludes the provisions of this proposed rule from applying to farming operations comprised solely of family members, we request comments on whether farming entities owned by family members should be subject to the same limits as other farming operations.

We also encourage comments to address whether there should be a strict limit of one manager, or if another option should be implemented to reduce the risk that individuals who have little involvement in a farming operation use the active personal management provision to qualify the farming operation for farm program payments. The proposed changes would not mandate how farms are structured; that is up to the farming operation.

FSA is requesting comments from the public on the methods that should be used to determine whether a person is actively engaged in farming for the purpose of payment eligibility and the number of managers per farming operation that may be eligible. Specifically, comments on the following topics may be helpful:

1. Should other methods be used to determine which activities constitute a significant contribution of active personal management? Should other

activities be considered as active personal management?

2. Should different standards be applied for the amount of management required for eligibility, such as a different number of hours, a percentage financial interest in the entity, or other criteria?

3. Should there be a different limit to the number of farm managers in a farming operation that qualify as actively engaged? If yes, how should that limit be determined?

4. Are there certain management activities or practices that are unique to particular farming methods, crops, or regions that should be taken into consideration?

The following suggestions may be helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and data on which you based your views.
- Provide specific examples to illustrate your points.
- Offer specific alternatives to the current regulations or policies and indicate the source of necessary data, the estimated cost of obtaining the data, and how the data can be verified.
- Submit your comments to be received by FSA by the comment period deadline.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this proposed rule as significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this proposed rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Summary of Economic Impacts

About 1,400 joint operations could lose eligibility for around $50 million in total crop year 2016 to 2018 benefits from the Price Loss Coverage (PLC), Agriculture Risk Coverage (ARC), and Marketing Assistance Loan (MAL) programs (ranging from $38 million for the 2016 crop year down to approximately $4 million for the 2018 crop year). This is the expected cost to producers of this rule. This rule does not change the payment limit per person, which is a joint $125,000 for the applicable programs. As specified in the current regulations, the payment limits apply to general partnerships and joint operations based on the number of eligible partners in the operation; each partner may qualify for a separate payment limit of $125,000. In other words, each person in the partnership or joint operation who loses eligibility will lose eligibility for up to $125,000 in payments.

Other types of entities (such as corporations and limited liability companies) that share a single payment limit of $125,000, regardless of their number of owners, would not have their payments reduced by this rule. Each owner must contribute management or labor to the operation to qualify the operation to receive the member's share of the single payment limit.

No entities comprised solely of family members will be impacted by this rule.

If commodity prices are sufficiently high that few producers are eligible for any benefits, the costs of this rule to producers (and savings to USDA) will be less, even zero. In other words, if very few producers are earning farm program payments due to high commodity prices, limiting eligibility on the basis of management contributions will not have much impact. Government costs for implementing this rule are expected to be minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant impact on a substantial number of small entities. The farming operations of small entities generally do not have to have multiple members that contribute only active personal management to meet the requirements of actively engaged in farming.

Environmental Review

The environmental impacts of this proposed rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The Agricultural Act of 2014 (the 2014 Farm Bill) requires that USDA publish a regulation to specifically define a ''significant contribution of active personal management'' for the purposes of determining payment eligibility. This proposed regulation would clarify the activities that qualify as active personal management and the recordkeeping requirements to document eligible management activities. This is a mandatory administrative clarification. As such, FSA has determined that this proposed rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This proposed rule would not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. This proposed rule would not have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this proposed rule would not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore consultation with the States is not required.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Programs in the Catalog of Federal Domestic Assistance to which this rules applies are: 10.051 Commodity Loans and Loan Deficiency Payments; 10.112 Price Loss Coverage; and 10.113 Agriculture Risk Coverage.

Paperwork Reduction Act

The regulations in this proposed rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in Section 1601(c)(2)(B) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act. Section 1604 of the Farm Bill requires us to ensure that any additional paperwork required by this rule be limited only to persons who are subject to this rule. The additional recording and recordkeeping requirements of this proposed rule would only apply to persons who are claiming eligibility for payments based on a significant contribution of active personal management to the farming operation.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1400

Agriculture, Loan programs-agriculture, Conservation, Price support programs.

For the reasons discussed above, CCC proposes to amend 7 CFR part 1400 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority citation for part 1400 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

§ 1400.1 [Amended]

■ 2. In § 1400.1(a)(8), remove the words ''C and D'' and add the words ''C, D, and G'' in their place.

■ 3. Add subpart G to read as follows:

Subpart G—Additional Payment Eligibility Provisions for Joint Operations and Legal Entities Comprised of Non-Family Members or Partners, Stockholders, or Persons With an Ownership Interest in the Farming Operation

Subpart G—Additional Payment Eligibility Provisions for Joint Operations and Legal Entities Comprised of Non-Family Members or Partners, Stockholders, or Persons With an Ownership Interest in the Farming Operation

§ 1400.600 Applicability.

(a) This subpart is applicable to all of the programs as specified in § 1400.1 and any other programs as specified in individual program regulations.

(b) The requirements of this subpart will apply to farming operations for FSA program payment eligibility and limitation purposes as specified in subparts B and C of this part.

(c) The requirements of this subpart do not apply to farming operations specified in paragraph (b) of this section if either:

(1) All persons who are partners, stockholders, or persons with an ownership interest in the farming operation or of any entity that is a member of the farming operation are family members as defined in § 1400.3; or

(2) The farming operation is seeking to qualify only one person as making a significant contribution of active personal management for the purposes

of qualifying only one person or entity as actively engaged in farming.

§ 1400.601 Definitions.

(a) The terms defined in § 1400.3 are applicable to this subpart and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this subpart:

Active personal management means personally providing and participating in management activities considered critical to the profitability of the farming operation and performed under one or more of the following categories:

(1) Capital, which includes:

(i) Arranging financing and managing capital;

(ii) Acquiring equipment;

(iii) Acquiring land and negotiating leases;

(iv) Managing insurance; and

(v) Managing participation in USDA programs;

(2) Labor, which includes hiring and managing of hired labor; and

(3) Agronomics and marketing, which includes:

(i) Selecting crops and making planting decisions;

(ii) Acquiring and purchasing crop inputs;

(iii) Managing crops (that is, whatever it takes to keep the growing crops living and healthy—soil fertility and fertilization, weed control, insect control, irrigation if applicable) and making harvest decisions; and

(iv) Pricing and marketing of crop production.

Significant contribution of active personal management means active personal management activities performed by a person, with a direct or indirect ownership interest in the farming operation, on a regular, continuous, and substantial basis to the farming operation, and meets at least one of the following to be considered significant:

(1) Performs at least 25 percent of the total management hours required for the farming operation on an annual basis; or

(2) Performs at least 500 hours of management annually for the farming operation.

§ 1400.602 Restrictions on active personal management contributions.

(a) If a farming operation includes any nonfamily members as specified under the provisions of § 1400.201(b)(2) and (3) and the farming operation is seeking to qualify more than one person as providing a significant contribution of active personal management then:

(1) Each such person must maintain contemporaneous records or logs as specified in § 1400.603; and

(2) Subject to paragraph (b) of this section, if the farming operation seeks not more than one additional person to qualify as providing a significant contribution of active personal management because the operation is large, then the operation may qualify for one such additional person if the farming operation:

(i) Produces and markets crops on 2,500 acres or more of cropland; or

(ii) For farming operations that produce honey with more than 10,000 hives; or

(iii) For farming operations that produce wool with more than 3,500 ewes; and

(3) If the farming operation seeks not more than one additional person to qualify as providing a significant contribution of active personal management because the operation is complex, then the operation may qualify for one such additional person if the farming operation is determined by the FSA state committee as complex after considering the factors described in paragraphs (a)(3)(i) and (ii) of this section. Any determination that a farming operation is complex by an FSA state committee must be reviewed and the determination must be concurred by DAFP to be applied. To demonstrate complexity, the farming operation will be required to provide information to the FSA state committee on the following:

(i) Number and type of livestock, crops, or other agricultural products produced and marketing channels used; and

(ii) Geographical area covered.

(b) FSA state committees may adjust the limitations described in paragraph (a)(2) of this section up or down by not more than 15 percent if the FSA state committee determines that the relative size of farming operations in the state requires a modification of either or both of these limitations. If the FSA state committee seeks to make a larger adjustment, then DAFP will review and may approve such request.

(c) If a farming operation seeks to qualify a total of three persons as providing a significant contribution of active personal management, then the farming operation must demonstrate both size and complexity as specified in paragraph (a) of this section.

(d) In no case may more than three persons in the same farming operation qualify as providing a significant contribution of active personal management, as defined by this subpart.

(e) A person's contribution of active personal management to a farming operation specified in § 1400.601(b) will only qualify one member of that farming operation as actively engaged in farming as defined in this part. Other individual persons in the same farming operation are not precluded from making management contributions, except that such contributions will not be recognized to meet the requirements of being a significant contribution of active personal management.

§ 1400.603 Recordkeeping requirements.

(a) Any farming operation requesting that more than one person qualify as making a significant contribution of active personal management must maintain contemporaneous records or activity logs for all persons that make any contribution of any management to a farming operation under this subpart that must include, but are not limited to, the following:

(1) Location where the management activity was performed; and

(2) Time expended and duration of the management activity performed.

(b) To qualify as providing a significant contribution of active personal management each person covered by this subpart must:

(1) Maintain these records and supporting business documentation; and

(2) If requested, timely make these records available for review by the appropriate FSA reviewing authority.

(c) If a person fails to meet the requirement of paragraphs (a) and (b) of this section, then both of the following will apply:

(1) The person's contribution of active personal management as represented to the farming operation for payment eligibility purposes will be disregarded; and

(2) The person's payment eligibility will be re-determined for the applicable program year.

Dated: March 20, 2015.

Val Dolcini,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

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