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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

[Docket ID CCC-2019-0007]

RIN 0560-AI49

Payment Limitation and Payment Eligibility

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the mandatory changes required by the Agriculture Improvement Act of 2018 (2018 Farm Bill) and other changes made by the Farm Service Agency (FSA) on behalf of CCC. Specifically, the mandatory changes update program applicability and payment limitations; and specify that the Secretary may approve a waiver of the average adjusted gross income (AGI) limitation for participants of certain conservation contracts administered by FSA and the Natural Resources Conservation Service (NRCS) on environmentally sensitive land. Also, the mandatory changes expand the definition of “family member” to include first cousins, nieces, and nephews. This rule also includes changes that make minor clarifications and updates throughout part 1400.

DATES: *Effective:* August 20, 2020.

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means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

This rule amends 7 CFR part 1400 to implement changes made by the 2018 Farm Bill; (Pub. L. 115–334) as well as makes certain changes, as explained below. This rule updates the applicable programs and payment limitations in 7 CFR 1400.1 to reflect current policy and changes made by the 2018 Farm Bill. FSA administers the regulations in 7 CFR part 1400 on behalf of CCC.

Payment Limitations

The 2018 Farm Bill and this rule create two separate payment limitations for the Noninsured Crop Disaster Assistance Program (NAP). Previously, a person or legal entity was subject to a \$125,000 payment limitation regardless of the level of NAP coverage obtained. For 2019 and subsequent years, the 2018 Farm Bill provides a separate per crop year maximum per person and legal entity limitation of either \$125,000 for payments to those who purchased basic 50/55 NAP coverage or \$300,000 for payments to those who purchased buy-up coverage. The 2018 Farm Bill increased the payment limitation for the Emergency Conservation Program (ECP) to \$500,000 per program per disaster event.

The 2018 Farm Bill officially removed LDPs and MLGs from the combined payment limit. This rule removes the payment limits for Marketing Loan Gains (MLG), Loan Deficiency Payments (LDP), and the Emergency Assistance for Livestock,

Honeybees and Farm Raised Fish Program (ELAP) as mandated by the 2018 Farm Bill (section 1703(a)(2) and section 1501(e) respectively).

Waiver of AGI Limitation for Environmentally Sensitive Land of Special Significance

The 2018 Farm Bill does not change the AGI limitation of \$900,000 for certain programs; however, it does authorize the Secretary to waive the AGI limitation for participants of certain conservation contracts administered by FSA or NRCS when the Secretary determines that environmentally sensitive land of special significance will be protected because of the waiver. The waiver authority allows FSA and NRCS the discretion, on a case-by-case basis, to provide benefits to producers who may not otherwise meet the AGI requirements on environmentally sensitive land of special significance. This rule defines “environmentally sensitive land of special significance” in § 1400.3. FSA and the NRCS identified specific critical resources warranting protection through enrollment in its definition. This rule also adds provisions in § 1400.500(f) to specify how a request for a waiver must be submitted and what it must include.

Definition of Family Member

FSA is expanding the definition of “family member” as mandated by the 2018 Farm Bill to include first cousin, niece, and nephew. This change expands the definition to allow farming operations to qualify for additional payment limitations for an existing farming operation under the rules for a substantive change, which are specified in § 1400.104. Furthermore, joint operations that included a first cousin, niece, or nephew were previously determined to be farming operations comprised of non-family members. With this change, a joint operation comprised of the newly expanded

definition of family members would no longer be subject to the limitation of members qualifying on a management contribution alone, which increases the number of additional individuals eligible for payment within joint operations comprised solely of family members.

Other Changes

This rule makes several changes to the definitions in 7 CFR 1400.3. This rule amends the definitions of “active personal management,” and “significant contribution” as it relates to management in 7 CFR 1400.3 and removes the definitions of “active personal management,” “significant contribution of active personal management,” and “significant contribution of the combination of active personal labor and active personal management” previously in subpart G so that consistent definitions of the terms are used throughout part 1400. This rule also makes minor clarifications to the terms “interest in the farming operation” and “lawful alien.”

It adds a new definition of “livestock” for the purposes of part 1400, for which “livestock” includes animals that are considered eligible livestock under the Livestock Indemnity Program (LIP). This change is intended to clarify which species qualify as livestock and ensure that the animals considered to be “livestock” under part 1400 is consistent with the administration of other FSA programs.

This rule moves the provisions for revocable trusts from § 1400.100 (subpart B, Payment Limitation) to § 1400.7 (subpart A, General Provisions) because they are general provisions applicable to all of part 1400 and not just to the payment limitation provisions.

This rule amends the provisions in § 1400.102 to clarify that the policy that a state or political subdivision or one of its agencies is not eligible for payments or benefits under the programs in § 1400.1. This rule also clarifies that the exception in § 1400.102(b) applies only to payments or benefits under the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs.

This rule amends § 1400.104(a) to remove the reference to “legal entities.” This change aligns the regulation with current language in the 2018 Farm Bill.

This rule amends § 1400.104(a)(3) to remove “base acres” and add “land used for agricultural production.” The addition of 20 percent or more land used for agricultural production will be recognized as a substantive change in the farming operation and will take into consideration land used for annual crop production as well as grazing lands.

This rule is making a change in amending § 1400.104(a)(5) to specify that a change in ownership by sale or gift of livestock can be recognized as a substantive change in the farming operation, in addition to a sale or gift of land, which already exists in the rule, such that the sale or gift of livestock can result in the application of additional payment limits under 7 CFR part 1400. The addition of livestock as an element for consideration used in determining whether a substantive change has occurred takes into consideration all of the aspects of a farming operation including but not limited to land but also livestock and the value of the land or livestock to a farming operation. Further, this change is appropriate as substantive change rules apply to all programs subject to payment limitation, including Livestock Forage Disaster Program (LFP).

This rule amends § 1400.106 to specify that payment limitations apply to both direct and indirect payments, subject to the attribution provisions in § 1400.105. This

change is a clarification of and therefore codification of current policy and does not alter the way FSA applies payment limitations.

This rule moves the cash rent tenant provisions of subpart D to subpart C, in § 1400.214, which contains the payment eligibility requirements.

This rule makes a technical correction to the provision in the regulation that indicated a legal entity's or joint operation's eligible capital, land, or equipment could not be acquired as a result of a loan made to, guaranteed by, cosigned by, or secured by any person, legal entity or joint operation that has an interest in the farming operation, including the legal entity's or joint operation's members. The technical correction removes the legal entity's or joint operation's members from the provision and relies on "interest in the farming operation" to define the qualifying contribution.

This rule makes minor changes to update the regulatory language throughout part 1400. These changes are intended to make the regulation easier to understand and do not affect program implementation.

Effective Date, Notice and Comment, and Paperwork Reduction Act

As specified in 7 U.S.C. 9091, the regulations to implement the provisions of Title I and the administration of Title I of the 2018 Farm Bill are exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553) and the Paperwork Reduction Act (in 44 U.S.C. chapter 35). Section 9091 further directs the Secretary to use the authority in 5 U.S.C. 808 related to congressional review and delay in the effective date.

The Administrative Procedure Act (5 U.S.C.553) provides that the 30-day delay in the effective date provision does not apply when the rule involves specified actions,

including matters relating to benefits. This rule governs the eligibility provisions for programs providing benefits to farmers and ranchers and therefore that exemption applies to this rule.

Therefore, this rule is effective upon publication in the *Federal Register*.

Executive Orders 12866, 13563, 13771 and 13777

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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and therefore, OMB reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](http://www.regulations.gov).

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued,

the new costs must be offset by savings from deregulatory actions. OMB guidance in M-17-21, dated April 5, 2017, specifies that “transfers” are not covered by Executive Order 13771.

Cost Benefit Analysis Summary

The cost benefit analysis evaluated changes to payment limits and payment eligibility mandated by the 2018 Farm Bill along with two other changes the rule is making in the regulation. This rule implements those changes by amending the regulations in 7 CFR part 1400. We estimate that the changes will increase Farm Program outlays by about \$21.2 million per year. The largest increases are from elimination of the payment limit for ELAP and a new separate payment limit for those producers who choose buy-up coverage under NAP.

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, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act 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 rule is not subject to the Regulatory Flexibility Act because USDA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final 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). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of the programs, as defined in the 2018 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. As this rule presents administrative clarifications only, it is categorically excluded under § 799.31(3)(i) issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them; 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 to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless

they represent an irreconcilable conflict with this rule. The changes mandated by the 2018 Farm Bill were effective for the 2019 crop year. Other changes in this rule will 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 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do 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 does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This 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.

The USDA Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule does have significant Tribal implications.

OTR has determined that further Tribal consultation under Executive Order 13175 is not required at this time.

Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1-2, 2019, at the National Museum of American Indian, in Washington, DC, and on June 26-27, 2019, in Sparks, NV. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title I session. No comments regarding this rule were raised.

If a Tribe requests additional consultation, FSA and CCC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

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 rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

E-Government Act Compliance

FSA and CCC are 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.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Programs found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.051 – Commodity Loans and Loan Deficiency Payments

10.069 – Conservation Reserve Program

10.088 – Livestock Indemnity Program

10.089 – Livestock Forage Disaster Program

10.091 – Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

10.092 – Tree Assistance Program

10.113 – Agriculture Risk Coverage

10.112 – Price Loss Coverage

10.451 – Noninsured Assistance

10.912 – Environmental Quality Incentives Program

10.917 – Agricultural Management Assistance

List of Subjects in 7 CFR Part 1400

Agriculture, Grant programs-agriculture, Loan programs-agriculture, Natural resources, Price support programs.

For the reasons discussed above, CCC amends 7 CFR part 1400 as follows:

PART 1400 -- PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1308, 1308-1, 1308-2, 1308-3, 1308-3a, 1308-4, and 1308-5;
and Title I, Pub. L. 115-123.

Subpart A—General Provisions

2. Amend § 1400.1 as follows:

a. Revise paragraph (a)(1);

b. In paragraph (a)(6), remove the word “and”;

c. In paragraph (a)(7), remove the period and add “; and” in its place;

d. Redesignate paragraph (a)(8) as paragraph (a)(9);

e. Add new paragraph (a)(8);

f. In newly redesignated paragraph (a)(9), remove the reference “Subparts C, D, and G” and add “Subparts C and G” in its place and remove “through (7)” and add “through (8)” in its place;

g. In paragraph (b)(1), remove “(5),”;

h. In paragraph (b)(3), remove the reference “Paragraph (a)(6)” and add the references “Paragraphs (a)(5) and (6)” in its place and remove the word “and” at the end of the paragraph;

i. In paragraph (b)(4), remove the period and add “; and” in its place;

j. Add paragraph (b)(5); and

k. Revise paragraph (f).

The additions and revisions read as follows.

§ 1400.1 Applicability.

(a) * * *

(1) The Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs, part 1412 of this chapter;

* * * * *

(8) The Emergency Conservation Program (ECP) and Emergency Forest Restoration Program (EFRP) in part 701 of this title.

* * * * *

(b) * * *

(5) Paragraph (a)(8) of this section on a per disaster event basis.

* * * * *

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Table 1 to paragraph (f)

Payment or Benefit	Limitation per Person or Legal Entity (\$)
(1) Price Loss Coverage, Agriculture Risk Coverage payments (other than Peanuts)	\$125,000 per program year
(2) Price Loss Coverage and Agriculture Risk Coverage payments for Peanuts	125,000 per program year
(3) CRP annual rental payments	50,000 per program year
(4) NAP payments	
(i) basic 50/55 NAP coverage	125,000 per crop year
(ii) Buy-up NAP coverage	300,000 per crop year
(5) LFP	125,000 per program year
(6) CSP ¹	200,000
(7) EQIP ²	450,000
(8) AMA program	50,000 per fiscal year

Payment or Benefit	Limitation per Person or Legal Entity (\$)
(9) ECP	500,000 per disaster event
(10) EFRP	500,000 per disaster event

¹ The \$200,000 limitation is the total amount a person or legal entity can receive directly or indirectly in the aggregate under all CSP contracts entered into during fiscal years 2019 through 2023.

² The \$450,000 limitation is the total amount of cost share and incentive payments a person or legal entity can receive directly or indirectly, under all EQIP contracts (excluding Conservation Incentive Contracts) in the aggregate entered into during the period of either: fiscal years 2014 through 2018, or fiscal years 2019 through 2023.

§ 1400.2 [Amended]

3. Amend § 1400.2 as follows:

a. In paragraph (c) introductory text, remove the word “such” and add the words “the county” in its place;

b. In paragraph (c)(1), remove the word “such” and add the word “the” in its place;

c. In paragraph (f), remove the words “such determinations” and add the words “the determinations” in their place and remove the words “such year” and add the words “the applicable year” in their place; and

d. In paragraph (h), remove the words “such reviews” and add “the reviews” in their place.

4. Amend § 1400.3(b) as follows:

a. Revise the definitions of “Active personal management” and “Capital”;

b. Add the definition of “Environmentally sensitive land of special significance” in alphabetical order;

c. In the definition of “Equipment”, remove the words “Such equipment” and add the words “The equipment” in their place and remove the words “such equipment” each time they appear and add the words “the equipment” in their place;

d. In the definition of “Family member”, remove the words “spouse, or” and add the words “first cousin, niece, nephew, spouse, or” in their place;

e. In the definition of “Farming operation”, remove the words “such person” and add the words “the person” in their place;

g. Remove the definition of “Interest in a farming operation”;

h. Add the definition of “Interest in the farming operation” in alphabetical order;

i. In the definition of “Land”, remove the word “Such” and add the word “The” in its place, remove the words “If such” and add the words “If the” in their place, and remove the words “crop or crop proceeds, such” and add “farming operation, the” in their place;

j. In the definition of “Lawful alien”, remove the words “a valid Alien Registration Receipt Card” and add the words “appropriate valid credentials” in their place;

k. Add the definition of “Livestock” in alphabetical order;

l. In the definition of “Sharecropper”, remove the words “such crop” and add the words “the crop” in their place and remove the words “the provision of such labor” and add the word “work” in their place; and

m. Revise the definition of “Significant contribution”.

The additions and revisions read as follows:

§ 1400.3 Definitions.

* * * * *

(b) * * *

Active personal management means personally providing and participating in 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 or 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 managerial decisions are needed with respect to keeping 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.

* * * * *

Capital means the funding provided by a person or legal entity to the farming operation for the operation to conduct farming activities. In determining whether a

person or legal entity has independently contributed capital, in the form of funding, to the farming operation, the capital must have been derived from a fund or account separate and distinct from that of any other person or legal entity with an interest in the farming operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution must be a direct out-of-pocket input of a specified sum or an amount borrowed by the person or legal entity and does not include advance program payments.

* * * * *

Environmentally sensitive land of special significance means land offered for enrollment or adjacent to the land offered for enrollment that contains, or through enrollment will address, critical resources including, but not limited to:

- (1) Habitat for threatened, endangered, or at-risk species;
- (2) Historical or cultural resources;
- (3) Native grasslands;
- (4) Unique wetlands;
- (5) Rare, unique, or related soils; and
- (6) Critical groundwater recharge areas.

* * * * *

Interest in the farming operation means any of the following:

- (1) Owner, lessor, or lessee of the land in the farming operation;
- (2) An interest in the agricultural products, commodities, or livestock produced by the farming operation; or

(3) A member of a joint operation that is an owner, lessor, or lessee of the land in the farming operation or has an interest in the agricultural products, commodities, or livestock produced by the farming operation.

* * * * *

Livestock means those animals included in § 1416.304(a) of this chapter.

* * * * *

Significant contribution means the provision of the following to a farming operation:

(1) Land, capital, or equipment:

(i) For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person's or legal entity's commensurate share of the total:

(A) Value of the capital necessary to conduct the farming operation;

(B) Rental value of the land necessary to conduct the farming operation; or

(C) Rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by a person or legal entity consists of any combination of land, capital, and equipment, the combined contribution must have a value at least equal to 30 percent of the person's or legal entity's commensurate share of the total value of the farming operation.

(2) For active personal labor, an amount contributed by a person or members, stockholders, or partners of a legal entity to the farming operation that is described by the smaller of the following:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to the person's or legal entity's commensurate share in the farming operation.

(3) For active personal management, includes activities performed by a person, with a direct or indirect ownership interest in the farming operation or a legal entity, on a regular, continuous, and substantial basis to the farming operation and meets at least one of the following to be considered significant:

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

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

(4) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when made together:

(i) Is critical to the profitability of the farming operation;

(ii) Is performed on a regular, continuous, and substantial basis; and

(iii) Meets the following required number of hours:

**Table 1 to paragraph (4)(iii) of the definition of significant contribution
Combination of Active Personal Labor and Active Personal
Management Minimum Requirement for a Significant
Contribution**

Management contribution in hours	Labor contribution in hours	Meets the minimum threshold for significant contribution, in hours
475	75	550
450	100	550

Combination of Active Personal Labor and Active Personal Management Minimum Requirement for a Significant Contribution

Management contribution in hours	Labor contribution in hours	Meets the minimum threshold for significant contribution, in hours
425	225	650
400	250	650
375	375	750
350	400	750
325	425	750
300	550	850
275	575	850
250	600	850
225	625	850
200	650	850
175	675	850
150	800	950
125	825	950
100	850	950
75	875	950
50	900	950
25	925	950

* * * * *

5. Amend § 1400.5 as follows:

a. In paragraph (b) introductory text, remove the word “Such” and add the words “Examples of” in its place;

b. In paragraph (b)(3) introductory text, remove the words “Indicators of such business arrangement” and add the words “Examples of business arrangements or acts” in their place;

c. In paragraph (c), remove the words “such person” and add “the person” in their place, remove the words “for such” and add the word “the” in their place, and add the words “perpetrated or” after the words “device was”; and

d. Revise paragraph (d) introductory text.

The revision reads as follows:

§ 1400.5 Denial of program benefits.

* * * * *

(d) A person or legal entity that lies or perpetuates fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a 5-year denial of all program benefits.

Examples of equally serious actions include, but are not limited to:

* * * * *

5. Revise § 1400.6(a) to read as follows:

§ 1400.6 Joint and several liability.

(a) Any legal entity, including joint operations, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other equally serious actions to evade the payment limitation provisions in this part, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other examples of equally serious actions mentioned in this section or in §1400.5, including amounts necessary to recover the payments.

* * * * *

6. Add § 1400.7 to read as follows:

§ 1400.7 Revocable trust.

A revocable trust and the grantor will be considered to be the same person under this part.

§ 1400.8 [Amended]

7. In § 1400.8, remove the word “such” both times it appears and add the word “the” in its place.

§ 1400.9 [Amended]

8. In § 1400.9(a) introductory text, remove the word “such” and add the word “the” in its place.

Subpart B—Payment Limitation

§ 1400.100 [Removed and Reserved]

9. Remove and reserve § 1400.100.

§ 1400.101 [Amended]

10. Amend § 1400.101 as follows:

a. In paragraph (a), remove the words “such a” and add the words “the” in their place;

b. In paragraph (b)(2), remove the words “such minor” and add the words “the minor” in their place;

c. In paragraph (b)(3) introductory text, remove the word “such” and add the word “the” in its place; and

d. In paragraph (c), remove the word “such” and add the word “the” in its place.

§ 1400.102 [Amended]

11. Amend § 1400.102 as follows:

a. In paragraph (a), remove the reference “§1400.1(a)(1)” and add “§1400.1” in its place;

b. In paragraph (b) introductory text, remove the reference “§ 1400.1” and add the reference “§ 1400.1(a)(1)” in its place; and

c. In paragraph (c), remove the word “such” and add the word “the” in its place.

§ 1400.103 [Amended]

12. In § 1400.103(a), remove the words “such an” and add the word “the” in their place and remove the words “such organization” and add the words “the organization” in their place.

§ 1400.104 [Amended]

13. Amend § 1400.104 as follows:

a. In paragraph (a) introductory text, remove the words “or legal entities”;

b. In paragraph (a)(1), remove the words “such an” and add the word “the” in their place;

c. In paragraph (a)(3) introductory text, remove the words “base acres not” and add the words “land used for agricultural production not” in their place and remove the words “total base acres” and add the words “total land” in their place;

d. In paragraph (a)(3)(i), remove the words “such an increase in base acres” and add “the increase in agricultural land” in their place;

e. In paragraph (a)(3)(ii), remove the words “base acres” and add the words “agricultural land” in their place;

f. In paragraph (a)(4), remove “such” each time it appears and add the word “the” in its place;

g. In paragraphs (a)(4)(i) through (iv), remove the comma and add a semicolon in its place;

h. In paragraph (a)(5) introductory text, add the words “or livestock” after the words “gift of land” both times they appear and remove the word “such” and add the word “the” in its place;

i. In paragraph (a)(5)(i), remove the words “such land” and add the words “the land or livestock” in their place and remove the comma and add a semicolon in its place;

j. In paragraph (a)(5)(ii), add the words “or livestock” after the words “of land”, remove the words “the land’s fair” and add the words “land’s or livestock’s fair” in their place, and remove the comma and add a semicolon in its place;

k. In paragraph (a)(5)(iii), remove the words “the land” and add the words “the land or livestock” in their place and remove “such land,” and add “the land or livestock;” in its place;

l. In paragraph (a)(5)(iv), remove the comma and add a semicolon in its place;

m. In paragraph (a)(5)(v), remove the words “the land” and add the words “the land or livestock” in their place; and

n. In paragraph (b), remove the words “or legal entities”.

§ 1400.105 [Amended]

14. In § 1400.105(d) introductory text, remove the words “or legal entity’s”.

§ 1400.106 [Amended]

15. In § 1400.106(a), remove the words “Payments” and add the words “Direct or indirect payments” in its place and add the words “and will be determined in accordance with § 1400.105” at the end of the paragraph.

Subpart C—Payment Eligibility

§ 1400.201 [Amended]

16. Amend § 1400.201 as follows:

a. In paragraph (a), remove the word “such” and add the word “the” in its place;

and

b. In paragraph (d)(3), remove the words “such a” and add the word “the” in their place.

17. Amend § 1400.202 as follows:

a. In paragraph (c) introductory text, remove the words “such capital” and add the words “the capital” in their place; and

b. Revise paragraph (c)(1).

The revision reads as follows:

§ 1400.202 Persons.

* * * * *

(c) * * *

(1) To meet the requirements of paragraph (a)(1)(i) of this section, must be contributed directly by the person and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by any other person, joint operation, or legal entity that has an interest in the farming operation; and

* * * * *

18. Amend § 1400.203 as follows:

a. In paragraph (a)(1)(ii)(C), remove the word “such” and add the word “the” in its place;

b. In paragraph (b) introductory text, remove the word “such” and add the word “the” in its place both time it appears;

c. Revise paragraph (b)(1);

d. In paragraph (b)(2) introductory text, remove “(a)(3)” and add “(3)” in its place and remove the words “as defined”; and

e. In paragraph (c), remove “(b)(3)” and add “(3)” in its place and remove the word “such” to add the word “the” in its place.

The revision reads as follows:

§ 1400.203 Joint operations.

* * * * *

(b) * * *

(1) To meet the requirements of paragraph (a)(1)(i) of this section, and if contributed directly by the joint operation, must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or other joint operation that has an interest in the farming operation; and

* * * * *

19. Amend § 1400.204 as follows:

a. In paragraph (a)(2)(iii), remove the word “such” and add the word “the” in its place;

b. In paragraph (d) introductory text, remove the word “such” and add the word “the” in its place; and

c. Revise paragraph (d)(1).

The revision reads as follows:

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.

* * * * *

(d) * * *

(1) To meet the requirements of paragraph (a)(1) of this section, must be contributed directly by the legal entity and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

* * * * *

20. Amend § 1400.205 as follows:

a. In paragraph (e) introductory text, remove the word “such” and add the word “the” in its place; and

b. Revise paragraph (e)(1).

The revision reads as follows:

§ 1400.205 Trusts.

* * * * *

(e) * * *

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

* * * * *

21. Amend § 1400.206 as follows:

a. In paragraph (b) introductory text, remove the word “such” and add the word “the” in its place; and

b. Revise paragraph (b)(1).

The revision reads as follows:

§ 1400.206 Estates.

* * * * *

(b) * * *

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the estate and must not be acquired as a loan made to, guaranteed, co-signed, or secured by any person, legal entity, or joint operation that has an interest in the farming operation, as defined in this part; and

* * * * *

§§ 1400.207, 1400.208, 1400.209, 1400.210, 1400.212, and 1400.213 [Amended]

22. In §§ 1400.207 through 1400.213, remove the word “such” and add the word “the” in its place in the following places:

- a. In § 1400.207(a) introductory text, (a)(1), and (b);
- b. In § 1400.208(b)(1) and (2);
- c. In § 1400.209(a) and (b)(2) and (3);
- d. In § 1400.210;
- e. In § 1400.212; and
- f. In § 1400.213.

23. Add § 1400.214 to read as follows:

§ 1400.214 Cash rent tenants.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of this subpart and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to the land under a program specified in § 1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to the cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Significant contributions of both active personal management and equipment.

(b) If the equipment is leased by the tenant from:

(1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area; or

(2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.

(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop year. Complete control is defined as exclusive access and use by the tenant.

(d) If the cash rent tenant is a joint operation, then each member or their spouse must make a significant contribution of active personal labor or active personal management as specified in § 1400.203(a)(1)(ii) to be considered eligible for the member's share of the program payments received by the joint operation on the cash rented land.

(e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in §1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.

Subpart D [Removed and Reserved]

24. Remove and reserve subpart D, consisting of § 1400.301.

Subpart E—Foreign Persons

§ 1400.401 [Amended]

25. Amend § 1400.401 as follows:

a. In paragraph (a), remove the words “such person” and add the words “the person” in their place both times they appear, remove the words “such farm” and add the words “the farm” in their place, remove the words “such an” and add the word “that” in their place, and remove “these regulations” and adds “the regulations in this subpart” in its place;

b. In paragraph (b)(1), remove the words “such a legal” and add the words “the legal” in their place and remove the words “such legal” and add the words “the legal” in their place;

- c. In paragraph (b)(2) introductory text, remove the word “such” and add the word “the” in its place;
- d. In paragraph (b)(3), remove the words “in such” and add “in” in their place;
- e. In paragraph (b)(4), remove the words “in such” and add the word “in” in their place and remove the words “such payment” and add the words “the payment” in their place; and
- f. In paragraph (b)(5), remove the words “such percentage” and add the words “the percentage” in their place, remove the words “such stock” and add the words “the stock” in their place, and remove the words “such class” and add the word “class” in their place.

§ 1400.402 [Amended]

26. Amend § 1400.402 as follows:

- a. In paragraph (a)(1), remove the word “such” and add the word “the” in its place;
- b. In paragraph (a)(2), remove the word “Such” and add the word “The” in its place; and
- c. In paragraph (b), remove the words “Such written” and add the word “Written” in their place and remove “such” and add “the” in its place.

Subpart F—Average Adjusted Gross Income Limitation

27. Amend § 1400.500 as follows:

- a. In paragraph (c), remove the word “such” and add the word “the” in its place; and
- b. Add paragraph (f).

The addition reads as follows:

§ 1400.500 Applicability.

* * * * *

(f) The Administrator or NRCS Chief may waive the limitation under this section on a case-by-case basis for the protection of environmentally sensitive land of special significance. A waiver request must be in writing and:

(1) Show that use of conservation program funding on or adjacent to environmentally sensitive land of special significance is critical to the success of a project that provides conservation benefits to multiple producers or landowners in a community, watershed, or other geographic area;

(2) Demonstrate that the proposed action achieves enduring protection of environmentally sensitive land of special significance through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land; or

(3) Present evidence that otherwise demonstrates, as determined by the Administrator or the NRCS Chief, that the waiver is necessary to address the critical natural resources referenced in the definition of environmentally sensitive land of special significance.

§ 1400.501 [Amended]

28. Amend § 1400.501 as follows:

a. In paragraph (a)(2), remove the word “such” and add the word “the” in its place; and

b. In paragraph (b), remove the word “such” and add the word “this” in its place.

§ 1400.503 [Amended]

29. In § 1400.503, remove the word “such” each time it appears and add the word “the” in its place.

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

§ 1400.601 [Removed and Reserved]

30. Remove and reserve § 1400.601.

§ 1400.602 [Amended]

33. Amend § 1400.602 as follows:

a. In paragraphs (a)(1) and (2) introductory text, remove the word “such” each time it appears;

b. In paragraph (a)(3) introductory text, remove the words “one such” and add the word “one” in their place and remove the words “with such” and add the words “with that” in their place; and

c. In paragraphs (b) and (e), remove the word “such” each time it appears and add the word “the” in its place.

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