



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: Correcting amendments.

SUMMARY: The Farm Service Agency (FSA) on behalf of the Commodity Credit Corporation (CCC) amended its regulations concerning payment limitation and eligibility through a final rule published in the *Federal Register* on August 21, 2020. This correction restores the previous definitions of “active personal management,” “significant contribution,” “significant contribution of active personal management,” and “significant contribution of the combination of active personal labor and active personal management.”

DATES: *Effective:* [Insert date of publication in the *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION: This document corrects certain sections of the regulations in 7 CFR part 1400, which were implemented in the final rule that was published in the *Federal Register* on August 24, 2020 (85 FR 52033-52041).

The final rule amended the definitions in 7 CFR 1400.3 for “active personal management” and “significant contribution,” which apply throughout part 1400. It also

removed and reserved § 1400.601, which contained 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” that applied only to Subpart G, which provides 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. The changes were intended to provide consistency in the definitions of the terms used throughout part 1400.

After publication of the rule, stakeholders notified FSA of concerns regarding potential non-intended, adverse effects to farming operations comprised solely of family members. In streamlining the definitions for consistency, these revised definitions were inadvertently made applicable to farming operations solely owned by family members. This was not the intent of this rule change, and as revised, the definitions were more restrictive than they needed to be in order to provide intended consistency in the rule. Those more restrictive definitions were not intended to apply to farm operations comprised or owned solely of family members. Therefore, this document restores § 400.601 and the previous the definitions of “active personal management” and “significant contribution” in § 1400.3 that were applicable prior to publication of the final rule on August 24, 2020. The more restrictive definitions described in § 1400.601 apply only to farming operations comprised of non-family members that are subject to a limit in the number of farm managers seeking to qualify for actively engaged in farming based on a contribution of active personal management alone.

List of Subjects in 7 CFR Part 1400

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

Accordingly, 7 CFR part 1400 is corrected by making the following correcting amendments:

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; and Title I, Pub. L. 115-123.

Subpart A—General Provisions

2. Amend § 1400.3 in paragraph (b) as follows:

a. Remove the first occurrence of the definition of “Active personal management”; and

b. Revise the definition of “Significant contribution”.

The revision reads as follows.

§ 1400.3 Definitions.

* * * * *

(b) * * *

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

(i)(A) 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:

- (1) Value of the capital necessary to conduct the farming operation;
- (2) Rental value of the land necessary to conduct the farming operation; or
- (3) Rental value of the equipment necessary to conduct the farming operation; or
- (B) If the contribution by a person or legal entity consists of any combination of

land, capital, and equipment, such 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;

(ii) For active personal labor, an amount contributed by a person to the farming operation that is described by the smaller of the following:

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

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

(iii) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the person's or legal entity's commensurate share in the farming operation; and

(iv) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (ii) and (iii) of this definition, a combination of active personal labor and active personal management that, when made together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (ii) and (iii) of this definition.

* * * * *

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

3. Add § 1400.601 to read as follows.

§ 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:

(i) Capital, which includes:

(A) Arranging financing and managing capital;

(B) Acquiring equipment;

(C) Acquiring land and negotiating leases;

(D) Managing insurance; and

(E) Managing participation in USDA programs;

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

(iii) Agronomics and marketing, which includes:

(A) Selecting crops and making planting decisions;

(B) Acquiring and purchasing crop inputs;

(C) 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

(D) 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:

(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.

Significant contribution of the combination of active personal labor and active personal management means a contribution of a combination of active personal labor and active personal management that:

- (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 (iii) of the definition of *significant contribution of the combination of active personal labor and active personal management*.

| 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 |
| 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 |

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