



DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

[Docket ID FSA-2026-0100]

RIN 0560-AI86

Payment Limitation and Payment Eligibility

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule revises the payment limitation and payment eligibility regulations to conform with provisions of the One Big Beautiful Bill Act (OBBBA).

This rule also makes additional changes to those regulations to improve program administration and clarify and update existing provisions.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rebecca Csutoras; telephone: (717) 893-0963; or email: Rebecca.Csutoras@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

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I. Background

On July 4, 2025, President Trump signed into law H.R. 1 (Pub. L. 119-21), also known as the One Big Beautiful Bill Act (OBBBA). This rule amends 7 CFR part 1400 to implement payment limitation changes made by OBBBA regarding equitable treatment of certain entities and an exception to the average adjusted gross income (AGI) limitation for certain programs. In addition to the payment limitation changes addressed in this rule, OBBBA increased the payment limitations for the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs and mandated annual increases to those limits based on the Consumer Price Index for All Urban Consumers. Those changes were implemented through a final rule published on January 12, 2026 (91 FR 1043). This rule also makes discretionary changes to the payment limitation and payment eligibility regulations to improve program administration and clarify and update existing provisions.

II. Qualified Pass-Through Entities

Section 10306 of OBBBA amended Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) to provide equitable treatment of certain entities under the provisions for payment limitations. Payment limitations are the maximum amount that a person or legal entity can receive for any crop year, directly or indirectly, under certain CCC, FSA, and NRCS programs, and payments to legal entities are tracked (“attributed”) through four levels of ownership (7 U.S.C. § 1308(e)(3)). Attribution of payments

through four levels of ownership of legal entities is applied according to 7 U.S.C. 1308(e) and 7 CFR § 1400.105. When a legal entity is a payment applicant, then the entity itself (the “payment entity”) is attributed the full payment amount and all owners in the first three member levels are attributed an amount equal to their indirect ownership share in the payment entity. In this way, payments are limited to eligible participants comprising the payment entity and owners through the fourth level of ownership. Owners at the member level may be persons or other legal entities, including qualified pass-through entities.

Prior to the changes discussed below, only joint ventures and general partnerships (“joint operations”) were allowed to receive payments up to the amount determined by multiplying the applicable payment limitation for a program by the number of persons or legal entities that comprise the ownership of that joint venture or general partnership. Other types of legal entities were allowed to receive payments up to the amount of a single payment limitation, regardless of the number of persons or legal entities that comprised the ownership.

Section 10306(a)(1)(B) of OBBBA, which amends section 1001(a) of the Food Security Act of 1985 , added the new defined term “Qualified pass-through entity.” Section 10306(b) of OBBBA also amended requirements relating to the attribution of payments by removing references to “Joint Ventures and General Partnerships” and replacing it with the newly defined term “Qualified pass-through entity.” (7 U.S.C. 1308(e)(3)(B)(ii)). Qualified pass-through entities, as amended by and defined under OBBBA, include joint ventures and general partnerships. However, the term also includes: (A) a partnership (within the meaning of subchapter K of chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 701 et seq.]); (B) an S corporation (as defined in section 1361 of that Code); and (C) a limited liability company that does not affirmatively elect to be treated as a corporation. Sections 10306 and 10307 of OBBBA

then updated the language regarding requirements for attribution of payments and payment limitations to include “Qualified-pass through entities.” Thus, the interpretation that previously applied only to joint ventures and general partnerships now applies to qualified pass-through entities as amended and defined by OBBBA.

In alignment with OBBBA, this rule defines “qualified pass-through entity” in § 1400.3 to mean:

(1) A partnership within the meaning of subchapter K of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 701 et seq.). Partnership is defined in 26 U.S.C. §761 to include a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, a corporation or a trust or estate. In simplified terms, this means a business entity with two or more members that is recognized as a separate entity for federal tax purposes and is not classified as a corporation, trust, or estate under the Internal Revenue Code;

(2) An S corporation as defined in 26 U.S.C. 1361(a);

(3) A limited liability company (LLC) that does not affirmatively elect to be treated as a corporation for federal tax purposes; and

(4) A joint venture or general partnership.

This rule amends the payment limitation provisions of subpart B and the payment eligibility provisions of subpart C as described below. This rule also updates references that apply to joint operations throughout part 1400 to specify that those references are now applicable to qualified pass-through entities. For example, CCC is updating the definitions of “attribution” and “farming operation” to replace references to “joint operations” with “qualified pass-through entities” to align with OBBBA.

A. Payment Limitation

As required by Section 10307 of OBBBA (7 U.S.C. 1308), maximum payment limitation amounts for qualified pass-through entities will be determined in a manner consistent with the limitation applied to joint ventures and general partnerships prior to this rule. Specifically, a qualified pass-through entity's maximum payment limitation will be equal to the applicable announced payment limitation times the number of persons or entities, other than qualified pass-through entities, that comprise the ownership of the qualified pass-through entity (7 U.S.C. 1308(e)(3)(B)(ii)).

For example, if the program payment limitation is \$125,000 and an S corporation has two individual owners (shareholders), the program payment limitation is multiplied by two, resulting in a maximum payment limitation for the S corporation of \$250,000. Prior to the change required by OBBBA, the S corporation would have been capped at one maximum payment limitation, which was \$125,000. To illustrate further, if a qualified pass-through entity, such as an LLC that has not affirmatively elected to be taxed as a corporation, has two general partnership owners (partners) and each general partnership has two individual owners (partners), the embedded general partnerships are bypassed and the maximum payment limitation for the LLC will be multiplied by four, resulting in a maximum payment limitation of \$500,000. Prior to this change, the LLC would have been subject to one payment limitation of \$125,000.

Accordingly, this final rule amends § 1400.106(b) to implement this change to the payment limitation calculation for all qualified pass-through entities beginning with program year 2026.

B. Payment Eligibility

To be eligible for payments, a person or legal entity shall be “actively engaged in farming” (7 U.S.C. 1308-1(b)(2)). This requirement is currently implemented in USDA regulations at 7 CFR Part 1400, Subpart C.

Section 10306(c)(1) of OBBBA extended this requirement to a qualified pass-through entity. A qualified pass-through entity shall be considered as “actively engaged in farming” if it separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment and land, the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation, the share of the profits or losses from the farming operation is commensurate with the contributions to the farming operation and the contributions are at risk (7 U.S.C. 1308-1(b)(2)). Section 10306(c)(2) of OBBBA also provides that the partners or members of the qualified pass-through entity who make a significant contribution of personal labor or active personal management shall be considered actively engaged in farming if the qualified pass-through entity “separately makes a significant contribution (based on the total value of the farming operation involved) of capital, equipment, or land” and the contribution is determined commensurate and at risk.

Accordingly, this rule amends the “actively engaged in farming” provisions to provide consistent requirements for all qualified pass-through entities. To be determined “actively engaged in farming,” members of qualified pass-through entities will be required to meet applicable payment eligibility requirements including contributions of capital, equipment, land, active personal labor, and active personal management as provided in this rule (§ 1400.203). To meet this requirement, contributions must be significant, commensurate with the members’ share of the farming operation, and must be at risk of loss. The definition of a “contribution” refers to the provision of capital, equipment, land, active personal labor, or active personal management made with the expectation of receiving a benefit that depends solely on the success of the farming operation. This rule updates §§ 1400.201 and 1400.203 to allow members of qualified pass-through entities to include compensated labor or management contributions towards meeting the actively engaged in farming requirement. Previously, contributions

associated with guaranteed payments, such as salaries, were not credited when determining whether a member is actively engaged in farming. This update provides consistent treatment of member contributions across all entity types.

C. Certification of Average AGI

Certification of compliance with the average AGI limitations applies to a person or legal entity. (7 U.S.C. 1308-3a(c)). Historically, joint operations do not certify compliance at the entity level due to the pass-through nature of income for those entities. Instead, the certification requirement for joint operations was met by requiring certification at the member level.

When Section 10306(a)(1)(B) of OBBBA added the new term “Qualified pass-through entity,” it included “a joint venture or general partnership” in the meaning of the term. Consistent with the historical interpretation discussed above, for program year 2026 and subsequent years, qualified pass-through entities are not required to certify compliance with the average AGI limitation at the entity level (§ 1400.502(a)). Members, through the fourth level of ownership, other than qualified pass-through entities embedded in the ownership structure of other legal entities, remain required to certify compliance. For example, if an S corporation has two individual owners, only the two individual owners must certify compliance. Prior to this change, the S corporation was required to certify compliance at the entity level in addition to the two individual members. To illustrate further, if a qualified pass-through entity Limited Liability Company (LLC) has two general partnership owners and each general partnership has two individual owners, the four individual owners at the third level of ownership must certify compliance (but not the two general partnerships). Prior to this change, the LLC and the four individual owners were required to certify compliance, and the two general partnerships were exempt (as is the case under OBBBA).

D. Implementation

The changes for qualified pass-through entities will be effective beginning with the 2026 program year. For the purpose of administering the direct attribution provisions of § 1400.105, the applicable date for determining ownership interest for qualified pass-through entities for the 2026 program year will be September 15, 2026.

OBBBA was passed on July 4, 2025, and funding for some 2025 and prior year programs has been expended. Applying this change retroactively to 2025 or earlier program years would result in an added administrative and participant burden and inconsistency between programs. Current program participants that are LLCs or corporations must file updated farm operating plans with FSA for program year 2026, or later, to declare their operation type as one of the existing types or one of the new qualified pass-through entity types (§ 1400.100). The updated certifications will be effective for the program year for which the certification is made and subsequent program years and will not be retroactive. To implement this change, CCC is defining “program year” to mean the program year as defined by the applicable program. For the purpose of implementing payment limitation and payment eligibility absent a specific program requirement, the program year aligns with the fiscal year.

III. Exception to the Average AGI Limitation

In general, as discussed above, a person or legal entity is not eligible to receive, directly or indirectly, certain program payments or benefits described in § 1400.1 if the average AGI of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year. Section 10308 of OBBBA (7 U.S.C. 1308-3a(b)) creates an exception to this limitation for an “excepted payment or benefit,” which includes payments or benefits for:

- Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP),
- Livestock Forage Assistance Program (LFP),

- Livestock Indemnity Program (LIP),
- Tree Assistance Program (TAP),
- Noninsurable Crop Disaster Assistance Program (NAP), and
- Conservation benefits under Title II of the Agricultural Improvement Act of 2018, Title II of the Agricultural Act of 2014, Title II of the Farm Security and Rural Investment Act of 2002, Title II of the Food, Conservation, and Energy Act of 2008, or Title XII of the Food Security Act of 1985 received on, or after, October 1, 2024.

The exception can be requested by participants who provide an acceptable certification, discussed below, that at least 75 percent of the participants' average gross income was derived from farming, ranching, or silviculture activities. For both the average AGI and the average gross income calculations, participants must use income as reported to the Internal Revenue Service (IRS), or as would have been reported had a Federal tax return been required, for the 3 taxable years preceding the most immediately preceding complete taxable year. For example, to certify for 2026, a participant would use information from tax years 2022, 2023, and 2024. Acceptable certifications must be accompanied by a verification statement signed by a licensed certified public accountant (CPA) duly qualified to practice as a CPA in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia; an attorney who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth or the District of Columbia; or an individual who has been authorized to practice before the IRS in accordance with 31 CFR part 10. Individuals enrolled as agents pursuant to 31 CFR part 10 (enrolled agents), who are not currently under suspension or disbarment from practice before the IRS may practice before the IRS. . CCC is adding enrolled agents as an acceptable third-party to complete certifications of income from farming, ranching, or silviculture

activities to improve participant ability to provide required certifications. However, for individual taxpayers filing joint tax returns, Congress limited such certifications to an attorney or CPA (7 U.S.C. 1308-3a(a)(3); § 1400.501(a)(2)). Accordingly, certifications of average AGI for joint tax return filers specifying the manner in which their income would have been declared and reported if they had filed two separate returns continue to be accepted from only a CPA or attorney. This rule amends § 1400.504 to include the exception and provide the requirements for the certification.

To implement this change, CCC is defining “income derived from farming, ranching, or silviculture activities” in § 1400.3. This definition includes the sources of income previously included in the definition of “income derived from farming, ranching, or forestry operations” used in recent programs, and adds agritourism and direct-to-consumer marketing of agricultural products to align with OBBBA. The term “income derived from farming, ranching, or forestry operations” has been used in recent *ad hoc* disaster assistance programs for the purpose of determining whether an applicant is eligible for an increased payment limitation. For example, see the Supplemental Disaster Relief Program regulation at 7 CFR 760.2202, and the Emergency Livestock Relief Program 2023 and 2024 regulation at § 760.2002. The definition no longer includes the previous limitation on inclusion of income from the sale of equipment used for agricultural purposes; therefore, a participant is not required to realize at least 66.66 percent of their income from other listed sources before being able to include income from the sale of agricultural equipment. This change is made to more closely align FSA determinations of income with current IRS requirements and to remove the burden on participants resulting from the inequity in the classification of this income. CCC is also adding income from the trade of equipment to the definition, as trading used equipment when purchasing new equipment is a common business practice.

IV. Other Changes

In addition to the changes described above, this rule makes the following discretionary changes:

- Allows State Executive Directors to designate review teams within their respective State to ensure the 60-day timeline is met for initial payment eligibility determinations for qualified pass-through entities with 6 or more members (§ 1400.2(g));
- Establishes June 1 as the date by which foreign person status is determined for the program year (§ 1400.401(b)(2)); and
- Amends the notification of interest requirements to clarify that legal entities and joint operations must provide the name, address, and ownership share of all interest holders in the legal entity, regardless of ownership level (§ 1400.10(e)).

V. Severability

The modifications to the payment limitation and eligibility provisions authorized by OBBBA are distinct and severable from one another, as well as from the minor administrative changes and updates to the payment limitation and eligibility regulations. Each provision is designed to function independently, ensuring that the rule as a whole remains effective and aligned with the agency's intent, even if certain provisions were to be invalidated.

VI. Regulatory Analyses

A. Effective Date, Notice and Comment, and Paperwork Reduction Act

As specified in 7 U.S.C. 9091(c)(2), the regulations to implement payment limitation and payment eligibility are exempt from:

- The Paperwork Reduction Act (44 U.S.C. chapter 35), and
- The notice and comment provisions of 5 U.S.C. 553.

Further, the Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the provisions requiring notice and comment and a 30-day delay in the effective date do not apply when the rule involves specified actions, including matters relating to benefits or contracts. This rule governs payments to agricultural producers and therefore falls within the benefits exemption.

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808 of the Congressional Review Act (CRA), which would ordinarily necessitate delaying its effective date for 60 days (5 U.S.C. 801(a)(3)(A)). The CRA, at 5 U.S.C. 808(2), allows an agency to make such regulations effective immediately if the agency finds there is good cause to do so. USDA has determined that such good cause exists here. This rule is implementing mandatory requirements of the OBBBA, and the regulatory changes included in this rule are necessary to administer CCC programs that help the beneficiaries of those programs sustain their normal business operations. As a result, USDA finds that notice and public procedure are contrary to the public interest. Therefore, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the Federal Register.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) because it involves matters relating to benefits. The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 or any other

law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

B. Executive Orders 12866, 13563, and 14192

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. Executive Order 14192, “Unleashing Prosperity Through Deregulation,” announced the Administration policy to significantly reduce the private expenditures required to comply with Federal regulations to secure America’s economic prosperity and national security and the highest possible quality of life for each citizen and to alleviate unnecessary regulatory burdens placed on the American people. In line with the Executive Order requirements, the Agency chose this regulatory approach, which implements mandatory provisions of the OBBBA and clarifies and simplifies program requirements, to maximize benefits and minimize burden on American producers. This rule is not an Executive Order 14192 regulatory action because it does not impose any more than de minimis regulatory costs.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full CBA is available on *regulations.gov*.

C. Cost Benefit Analysis Summary

Prior to OBBBA, farms operated as LLCs or S corporations were treated as a single “person” for payment limitation purposes. As a result, a farming operation owned by multiple family members under one LLC was capped at a single (often, \$125,000) payment limit. With OBBBA, LLCs and S corporations are now treated as “pass-through entities” for the purposes of payment limits. This allows each member of the entity who is “actively engaged in farming” to qualify for their own individual payment limit. This change is projected to increase outlays by \$597 million over 10 years.

This rule also makes a discretionary change to permit members of a general partnership or joint venture to receive a salary and qualify the farming operation for a payment limit; prior, salaried members of these two entity types could not qualify for farm program payments. This provision is not expected to significantly change outlays because many general partnerships and joint ventures added an ownership layer prior to this change, allowing them to receive payment even though the members were salaried.

In general, a person or legal entity is not eligible to receive payments if the average AGI of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the immediately preceding tax year. OBBBA creates an exception for ELAP, LFP, LIP, TAP, and NAP if the producer can demonstrate that at least 75 percent of their income is from agriculture. This change is expected to increase outlays by \$267 million over 10 years.

In total, this rule is expected to increase outlays by \$864 million over 10 years (or \$86.4 million annually).

D. Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the USDA regulation for compliance with NEPA (7 CFR part 1b).

This rule implements primarily mandatory changes to payment limitation and payment eligibility provisions that are required by the OBBBA, with limited discretionary aspects that do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the FSA Categorical Exclusions specified in 7 CFR 1b.4(c)(16)(ix) that applies to safety net programs and § 1b.(c)(16)(vii) that applies to price support programs.

No Extraordinary Circumstances (§ 1b.3(f)) exist because these are administrative payment programs. As such, the implementation of the payment eligibility and payment limitation provisions do not constitute major Federal actions 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 action and, consistent with § 1b.3(g), this document serves as the programmatic finding of applicability and no extraordinary circumstance (FANEC) for this Federal action.

E. 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.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation at this time. If a Tribe requests consultation, the USDA Farm Service

Agency will work with the FSA Federal Preservation Officer, who will engage the Office of Tribal Relations as needed, to ensure meaningful consultation is provided.

F. Unfunded Mandates Reform Act

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 benefit 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.

G. E-Government Act Compliance

FSA is committed to complying with the E-Government Act of 2002, 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 titles and numbers of the Federal assistance programs, as found in the Assistance Listing, to which this document 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; and
- 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 the regulations in 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; and Title I, Pub. L. 115-123.

Subpart A—General Provisions

2. Revise § 1400.2(g) to read as follows.

§ 1400.2 Administration.

* * * * *

(g) Initial determinations concerning the provisions of this part will be made by the FSA State office or a review team designated by the FSA State Executive Director with respect to any farm operating plan that is for a qualified pass-through entity with six or more members.

* * * * *

3. Amend § 1400.3 as follows:

a. Add the definition of “Agritourism” in alphabetical order;

b. In the definition of “Attribution”, remove the words “legal entity, joint venture, or general partnership” and add “ legal entity or qualified pass-through entity” in their place;

c. Add the definition of “Enrolled agent” in alphabetical order;

d. In the definition of “Farming operation”, remove the words “joint operations” and add “qualified pass-through entities” in their place;

e. Add the definitions of “Income derived from farming, ranching, or silviculture activities”, “Program year”, and “Qualified pass-through entity” in alphabetical order.

The additions read as follows.

§ 1400.3 Definitions.

* * * * *

Agritourism means a form of commercial, recreational, or educational enterprise that links agricultural production and processing with tourism to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining and educating visitors while generating income for the farm, ranch, or business owner.

* * * * *

Enrolled agent means an individual enrolled as an agent in accordance with part 10 of Title 31 of the Code of Federal Regulations.

* * * * *

Income derived from farming, ranching, or silviculture activities means, as determined by FSA, income of an individual or legal entity derived from the following sources:

- (1) Production of crops and unfinished raw forestry products;

- (2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;
- (3) Production of farm-based renewable energy;
- (4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;
- (5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;
- (6) Processing, packing, storing, and transportation of farm, ranch, or forestry commodities including renewable energy;
- (7) Feeding, rearing, or finishing of livestock;
- (8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;
- (9) Sale of land by a person or legal entity that has a beneficial interest in the land that has been used for agricultural purposes;
- (10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules, including disaster assistance and ad-hoc programs unless otherwise specified in the individual program regulations;
- (11) Income reported on Internal Revenue Service (IRS) Schedule F, IRS Form 4835, or other schedule or form used by the person or legal entity to report income from such operations to the IRS;
- (12) Wages or dividends received from a closely held corporation, an Interest Charge Domestic International Sales Corporation (IC-DISC), or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or silviculture activities as defined in this subpart;

(13) Agritourism;

(14) Direct-to-consumer marketing of agricultural products produced as part of the farming operation including, but not limited to, farm stands, community-supported agriculture, U-pick operations, farmers' markets, and online sales;

(15) The sale or trade of agricultural equipment by a person or legal entity that owns such equipment; and

(16) Any other activity related to farming, ranching, and silviculture, as determined by FSA.

* * * * *

Program year means the fiscal year, October 1 through September 30, unless otherwise provided in individual program regulations of this chapter.

* * * * *

Qualified pass-through entity means:

(1) A partnership within the meaning of subchapter K of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 701 et seq.);

(2) An S corporation as defined in 26 U.S.C. 1361(a);

(3) A limited liability company that does not affirmatively elect to be treated as a corporation for federal tax purposes; and

(4) A joint venture or general partnership.

* * * * *

§ 1400.6 [Amended]

4. In § 1400.6(a), remove the words “joint operations” and add “qualified pass-through entities” in their place.

5. In § 1400.10, add paragraph (e) to read as follows.

§ 1400.10 Notification of interests.

* * * * *

(e) A legal entity will not be eligible to receive any payment for programs specified in § 1400.1, or any other program as provided in individual program regulations in this chapter, when the name, address, and ownership share of each person or legal entity that holds a direct or indirect ownership interest in the legal entity is not provided to USDA.

Subpart B—Payment Limitation

6. Add § 1400.100 to read as follows.

§ 1400.100 Limited Liability Companies and Corporations.

(a) For program year 2026 and subsequent years, a farming operation that is a limited liability company or corporation must provide a certification of their farm operating plan. Certifications must document the entity type as:

(1) A C corporation or S corporation; or

(2) An LLC pass-through or an LLC that affirmatively elects to be treated as a corporation for federal income tax purposes.

(b) Certifications made according to paragraph (a) of this section will be effective for the program year of the certification and future years.

(c) For program year 2026, a farming operation’s organizational structure as of September 15, 2026, will be used to determine the operation’s entity type.

(d) For program year 2027 and subsequent years, the farming operation’s organizational structure as of June 1 will be used to determine the entity type.

7. In § 1400.105, add paragraph (d)(3) to read as follows.

§ 1400.105 Attribution of payments.

* * * * *

(d) * * *

(3) For program year 2026, the applicable date for the purpose of administering paragraphs (d), (d)(1), and (d)(2) of this section for qualified pass-through entities will be September 15, 2026.

* * * * *

8. In § 1400.106, revise paragraph (b) to read as follows.

§ 1400.106 Payment limits.

* * * * *

(b)(1) Payments made for program year 2025 and prior years to a joint operation cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than joint operations, that comprise the ownership of the joint operation.

(2) Payments made for program year 2026 and subsequent years to a qualified pass-through entity cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than qualified pass-through entities, that comprise the ownership of the qualified pass-through entity.

* * * * *

Subpart C—Payment Eligibility

§ 1400.201 [Amended]

9. In § 1400.201(d)(4), remove the word “Whether” and add “For program year 2025 and prior years, whether” in its place.

§ 1400.202 [Amended]

10. Amend § 1400.202 as follows:

a. In paragraph (c)(1), remove the words “joint operation, or legal entity” and add “qualified pass-through entity, or other legal entity” in their place; and

b. In paragraph (c)(2), remove the words “joint operations, or legal entities” and add the words “qualified pass-through entities, or other legal entities” in their place.

11. Amend § 1400.203 as follows:

a. Revise the section heading, paragraph (a) introductory text, and paragraph (b); and

b. In paragraph (c), remove the word “If” and add “For program year 2025 and prior, if” in its place; and

c. Add paragraph (d).

The revisions and addition read as follows.

§ 1400.203 Joint operations and qualified pass-through entities.

(a) For program year 2025 and prior years, a member of a joint operation, and for program year 2026 and subsequent years, a member of a qualified pass-through entity, will be considered to be actively engaged in farming with respect to a farming operation if the member:

* * * * *

(b)(1) For program year 2025 and prior years, for a farming operation conducted by a joint operation in which the capital, equipment, or land is contributed by the joint operation, the capital, equipment, or land:

(i) 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

(ii) To meet the requirements of paragraphs (a)(2) and (3) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations with an interest in the operation, the loan must:

(A) Bear the prevailing interest rate; and

(B) Have a repayment schedule considered reasonable and customary for the area.

(2) For program year 2026 and subsequent years, for a farming operation conducted by a qualified pass-through entity in which the capital, equipment, or land is contributed by the qualified pass-through entity, the capital, equipment, or land:

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

(ii) To meet the requirements of paragraphs (a)(2) and (3) of this section, and if acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or qualified pass-through entities with an interest in the operation, the loan must:

(A) Bear the prevailing interest rate; and

(B) Have a repayment schedule considered reasonable and customary for the area.

* * * * *

(d) For program year 2026 and subsequent years, if a qualified pass-through entity separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the qualified pass-through entity meets the provisions of § 1400.201(b)(2) and (3), the members of the qualified pass-through entity who make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will be considered to be actively engaged in farming with respect to the farming operation.

12. Amend § 1400.204 as follows:

a. Revise paragraph (a) introductory text;

b. In paragraph (d)(1), remove the words “joint operation” and add “qualified pass-through entity” in their place; and

c. In paragraph (d)(2), remove the words “joint operations” and add “qualified pass-through entities” in their place.

The revision reads as follows.

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

(a) For program year 2025 and prior years, a limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity; or for program year 2026 and subsequent years, a C corporation, limited liability company that affirmatively elects to be treated as a corporation for federal income tax purposes, or other similar legal entity will be considered to be actively engaged in farming with respect to a farming operation if:

* * * * *

§ 1400.205 [Amended]

13. Amend § 1400.205 as follows:

a. In paragraph (e)(1), remove the words “joint operation” and add “qualified pass-through entity” in their place; and

b. In paragraph (e)(2), remove the words “joint operations” and add “qualified pass-through entities” in their place.

§ 1400.206 [Amended]

14. Amend § 1400.206 as follows:

a. In paragraph (b)(1), remove the words “joint operation” and add “qualified pass-through entity” in their place; and

b. In paragraph (b)(2), remove the words “joint operations” and add “qualified pass-through entities” in their place.

15. Amend § 1400.207 as follows:

a. In paragraph (b), remove the words “A landowner” and add “For program year 2025 and prior years, a landowner”, and remove the words “revert to the member” and add “revert to the members” in their place; and

b. Add paragraph (c).

The addition reads as follows.

§ 1400.207 Landowners.

* * * * *

(c) For program year 2026 and subsequent years, a landowner also includes a member of a qualified pass-through entity if the qualified pass-through entity holds title to land in the name of the qualified pass-through entity and if the qualified pass-through entity or its members submit adequate documentation to determine that, upon dissolution of the qualified pass-through entity, the title to the land owned by the qualified pass-through entity will revert to the members of the qualified pass-through entity.

16. Revise § 1400.214(d) to read as follows.

§ 1400.214 Cash rent tenants.

* * * * *

(d)(1) For program year 2025 and prior years, 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.

(2) For program year 2026 and subsequent years, if the cash rent tenant is a qualified pass-through entity, 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 qualified pass-through entity on the cash rented land.

* * * * *

Subpart E—Foreign Persons

17. Revise § 1400.401(b)(2) to read as follows.

§ 1400.401 Eligibility.

* * * * *

(b) * * *

(2) In determining whether more than 10 percent of the ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will be the interest held on June 1 of each year.

* * * * *

Subpart F—Average Adjusted Gross Income Limitation

§ 1400.500 [Amended]

18. In § 1400.500(a), remove the words “joint venture or general partnership” and add “qualified pass-through entity” in their place.

19. Revise § 1400.502(a) introductory text to read as follows.

§ 1400.502 Compliance and enforcement.

(a) To comply with the average adjusted gross income limitation, for program year 2025 and prior years, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, and for program year 2026 and subsequent years, a person or legal entity other than a qualified pass-through entity, including all interest holders in a legal entity and qualified pass-through entity must provide annually the following as required by CCC:

* * * * *

§ 1400.503 [Amended]

20. Amend § 1400.503 as follows:

a. In paragraph (a), remove the words “legal entity, general partnership, or joint venture” and add “legal entity or qualified pass-through entity” both times they appear; and

b. In paragraph (b), add the words “including a qualified pass-through entity,” after “legal entity,”.

21. Add new § 1400.504 to read as follows.

§ 1400.504 Exceptions.

(a) Beginning with program year 2026 unless otherwise specified, the \$900,000 average adjusted gross income limitation of this subpart is waived for a person or legal entity when:

(1) The person or legal entity derives 75 percent or more of their average gross income from farming, ranching, or silviculture activities;

(2) The program payment or benefit is an excepted payment as provided in paragraph (b) of this section; and

(3) The person or legal entity provides a certification acceptable to FSA that is verified by a licensed certified public accountant, attorney, or an authorized enrolled agent.

(b) Beginning with program year 2026 unless otherwise specified and for the purpose of this subpart, an excepted payment or benefit means a payment or benefit issued through:

(1) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance for Livestock, Honeybees and Farm-raised Fish Program (ELAP), part 1416 of this chapter;

(2) The Tree Assistance Program (TAP), part 1416 of this chapter;

(3) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;

(4) The Conservation Reserve Program (CRP), part 1410 of this chapter received on or after October 1, 2024; and

(5) The Natural Resources Conservation Service (NRCS) conservation programs of this title including, but not limited to, the Agricultural Management Assistance (AMA) program, Conservation Stewardship Program (CSP), Environmental Quality Incentives Program (EQIP), and Agricultural Conservation Easement Program (ACEP), received on or after October 1, 2024.

William Beam,
Executive Vice President,
Commodity Credit Corporation.

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