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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560-A131

Payment Limitation and Payment Eligibility; Actively Engaged in Farming

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the requirements for a person to be considered actively engaged in farming for the purpose of payment eligibility for certain Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) programs. Specifically, this rule amends and clarifies the requirements for a significant contribution of active personal management to a farming operation. These changes are required by the Agricultural Act of 2014 (the 2014 Farm Bill). The provisions of this rule do not apply to persons or entities comprised entirely of family members. The rule does not change the existing regulations as they relate to contributions of land, capital, equipment, or labor, or the existing regulations related to landowners with a risk in the crop or to spouses. This rule will apply to eligibility for payments earned for the 2016 crop or program year for farming operations with only 2016 spring planted crops, and to eligibility for payments for the 2017 and subsequent crop or program years for all farming operations (those with either spring or fall planted crops).

DATES: This rule is effective December 16, 2015.

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SUPPLEMENTARY INFORMATION:

Overview

CCC programs managed by FSA, specifically the Market Loan Gains (MLG) and Loan Deficiency Payments (LDP) associated with the Marketing Assistance Loan (MAL) Program, the Agriculture Risk Coverage (ARC) Program, and the Price Loss Coverage (PLC) Program, require that a person or legal entity be “actively engaged in farming” as a condition of eligibility for payments. As specified in 7 CFR part 1400, a person or legal entity must contribute: (1) Land, capital, or equipment; and (2) active personal labor, active personal management, or a combination of active personal labor and active personal management to be considered “actively engaged in farming” for the purposes of payment eligibility.

Section 1604 of the 2014 Farm Bill (Pub. L. 113-79) requires the Secretary of Agriculture to define in regulations what constitutes a “significant contribution of active personal management” for the purpose of payment eligibility. CCC published a proposed rule in the **Federal Register** on March 26, 2015, (80 FR 15916-15921) to implement the changes required by the 2014 Farm Bill. CCC received 95 comments on the proposed rule. The comments and responses are discussed later in this document. No major changes are being made in response to comments, because FSA has determined that the comments support the definitions and requirements for “actively engaged in farming” specified in the proposed rule and support limiting eligibility for farm payments. Also, there was no consensus amongst the comments for any alternative payment eligibility provisions that would address the 2014 Farm Bill requirements. FSA has made minor changes from the proposed rule in this final rule to respond to commenters’ requests for clarifications of certain provisions.

As specified in the proposed rule, this final rule amends 7 CFR part 1400 to define what constitutes a significant contribution of active personal management and to revise the requirements for active personal management contributions. The 2014

Farm Bill also directed the Secretary to consider the establishment of limits on the number of persons per farming operation who may be considered actively engaged in farming based on a significant contribution of active personal management. Based on this directive, a limit was established in the proposed rule and this final rule therefore amends 7 CFR part 1400 to set a limit on the number of persons per farming operation who may qualify as actively engaged in farming based on a significant contribution of active personal management, or a combination of active personal management and active personal labor. The new requirements and definitions are specified in a new subpart G to 7 CFR part 1400.

Exceptions for Entities Comprised Solely of Family Members

As required by the 2014 Farm Bill, the provisions of this rule do not apply to farming operations comprised solely of family members. This rule does not revise the definition of “family member.” As specified in 7 CFR 1400.3, a family member is “a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.” This definition is consistent with 7 U.S.C. 1308, which is the authority for the definition. FSA handbooks further clarify that eligible family members include: Great grandparent, grandparent, parent, child, including legally adopted children and stepchildren, grandchild, great grandchild, or a spouse or sibling of family members.

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

Existing Provisions and Exceptions for Actively Engaged Requirements That Are Not Changed

As specified in the current regulations, there are exceptions to the requirement that a person must contribute labor or management to be considered actively engaged in farming.

These exceptions for certain landowners and for spouses are not changed with this rule. Specifically, a person or legal entity that is a landowner who makes a significant contribution of owned land to the farming operation and receives rent or income for such use of the land based on the land's production or the operation's operating results, and who therefore shares a financial risk in the crop (profit or loss is based on value of crop and not from a fixed rent amount) is considered to be actively engaged. A landowner who meets that requirement of sharing financial risk in the crop is not required to contribute labor or management to be considered actively engaged in farming. If one spouse, or an estate of a deceased spouse, is considered to be actively engaged in farming the other spouse is considered to be actively engaged without making a separate, additional contribution of management or labor. The spouse exemption as specified in the current regulations applies regardless of whether the other spouse has qualified as actively engaged through a contribution of management or labor or as a landowner sharing risk in the crop.

The final rule specifies how persons and legal entities comprised of nonfamily members may be determined eligible for payments, based on a contribution of active personal management made by persons with a direct or indirect interest in the farming operation. Payments made to persons or legal entities are attributed to persons as specified in 7 CFR 1400.105 and the methods for attribution remain unchanged with this rule.

Additional Requirements for Certain Nonfamily General Partnerships and Joint Ventures

The revised definition of what constitutes a significant contribution of active personal management in this rule apply only to certain nonfamily farming operations seeking to have more than one person qualify as actively engaged in farming by providing a significant contribution of active personal management. Such person is referred to as a "farm manager" for the purposes of this rule. This rule only applies to farming operations structured as general partnerships or joint ventures that seek to qualify more than one farm manager. The existing requirements that farming operations supply information to FSA county committees (COC) on each member's contribution or expected contribution of labor or management related to actively engaged determinations remain unchanged and continue to apply. However, each of the members of farming operations subject

to this final rule that are determined to be actively engaged in farming by their contribution of active personal management, or the contribution of the combination of active personal labor and active personal management, will also be required to keep and provide a management log.

For most farming operations that are legal entities, such as corporations and limited liability companies, adding an additional member to the entity does not affect the number of payment limits available; it simply increases the number of members that can share a single \$125,000 payment limit, should such a limit be reached. But for general partnerships and joint ventures, adding another member to the operation can provide the availability of an additional \$125,000 payment limit if the new member meets the other eligibility requirements, including being determined as actively engaged in farming. This potential for a farming operation being able to qualify for multiple payment limits provides an opportunity to add members and to have those members claim actively engaged in farming status, each with an additional and separate payment limitation, especially for farming operations earning annual program payments in an amount close to or in excess of the payment limitation.

For this reason, several additional requirements now apply to nonfamily farming operations seeking to qualify more than one farm manager. Specifically, in addition to the existing requirements that farming operations must provide information to FSA on how each of their members qualify as actively engaged based on a contribution of labor, management, land, capital, and equipment, a limit is placed on the number of members of a farming operation that can be qualified as a farm manager. Also, an additional recordkeeping requirement now applies for each member of such farming operations contributing any active personal management. These additional requirements also apply to individuals requesting to qualify with a combination of labor and management if their farming operation is seeking to have more than one farm manager (combinations of labor and management can qualify as actively engaged in farming).

Number of Farm Managers That May Qualify As Actively Engaged

This rule restricts the number of farm managers to one person per farming operation, with exceptions. Nonfamily farming operations seeking only one member to qualify as actively engaged

in farming with only a significant contribution of management or a combination of labor and management (one farm manager) are not subject to the new requirements of 7 CFR part 1400 subpart G. They are still, however, subject to the existing requirements of being actively engaged, as they were prior to this rule. In other words, such operations will continue to be subject to the existing regulations in subparts A and C of 7 CFR part 1400 that specify the requirements to be considered actively engaged in farming.

Any farming operation seeking two or three farm managers must meet the requirements of subpart G for all farm managers in the farming operation, including documenting that each of the two (or three) individuals are actively engaged in farming by their contribution of active personal management (or a combination of labor and management) by the maintenance of the records or logs discussed below for all the members in the farming operation. If one person of the farming operation meets the requirements for being actively engaged in farming by making a contribution of active personal management, and that farming operation seeks to qualify an additional farm manager, the farming operation must meet the requirements that it is a large operation or a complex operation as specified in this rule. To qualify a total of three farm managers, the operation is required to meet the requirements specified in this rule for both size and complexity. In other words, a very large farm operation that is not complex (for example, one growing a single crop) may only qualify for two farm managers, not three. Under no circumstances is a farming operation allowed to qualify more than a total of three persons as farm managers.

The default standard for what constitutes a large farming operation is an operation with crops on more than 2,500 acres (planted or prevented planted) or honey or wool with more than 10,000 hives or 3,500 ewes, respectively. The acreage standard is based on an analysis of responses to the Agricultural Resource Management Survey (ARMS) conducted by the USDA Economic Research Service and National Agricultural Statistics Service. The results of that survey indicate that on average, farms producing eligible commodities that required more than one full time manager equivalent (2,040 hours of management) had a size of 2,527 acres. (See <http://www.ers.usda.gov/data-products/arms-farm-financial-and-crop-production-practices.aspx> for more information on the survey.) The size standards for

honey and wool did not have comparable survey information available. The honey standard for the number of hives is based on the beekeepers participating in 2011 through 2012 Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish that met or exceeded the payment limit. These large operations averaged 10,323 hives. The standard established for sheep was based on industry analysis that showed that operations with 1,500 through 2,000 ewes could be full time. The 3,500 ewes standard is approximately double that threshold. Each State FSA committee (STC) has authority to modify these size standards for their state based on the STC's determination of the relative size of farming operations in the state by up to 15 percent (that is plus or minus 375 acres, 1,500 hives, or 525 ewes). In other words, the standard in a particular state may range from 2,125 acres to 2,875 acres; 8,500 to 11,500 hives; or 2,975 to 4,025 ewes. Any deviation from the State level standards may only be granted on a case by case basis by the FSA Deputy Administrator for Farm Programs (DAFP).

If a farming operation seeks an additional farm manager based on the complexity of the operation, such operation must make a request to the FSA state committee that demonstrates complexity by addressing the factors established in this rule. The complexity factors specified in this rule take into account the diversity of the operation including the number of agricultural commodities produced; whether irrigation is used; the types of agricultural crops produced such as field, vegetable, or orchard crops; the geographical area in which an operation farms and produces agricultural commodities; alternative marketing channels (that is, fresh, wholesale, farmers market, or organic); and other aspects about the farming operation such as the production of livestock, types of livestock, and the various livestock products produced and marketed annually. The addition of a second or third farm manager to be considered actively engaged in farming must be approved by the STC, and is subject to review by DAFP. The final review and concurrence by DAFP is intended to ensure consistency and fairness on a national level.

Records on the Performance of Management Activities

As specified in this final rule, if a farming operation seeks to qualify more than one farm manager as actively engaged in farming, then all persons that provide any management to the

farming operation are required to maintain contemporaneous records or activity logs of their management activities, including the management activities that may not qualify as active personal management under this rule. Specifically, activity logs must include information about the hours of management performed for the farming operation. While the recordkeeping requirements under this rule are similar to the current provisions at 7 CFR 1400.203 and 1400.204 in which contributions must be identifiable and documentable, and separate and distinct from the contributions of other members, these additional records or logs must also include the location of where the management activity was performed (either on-site or remote) and the time expended or duration of the management activity performed. These records and logs must be made available if requested by the appropriate FSA reviewing authority. If a person or member initially determined as actively engaged in farming by a represented contribution of active personal management to the farming operation fails to provide these management activity records within a reasonable amount on time, usually 30 days, the represented contribution of active personal management will be disregarded and the person's eligibility for payments will be re-determined.

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

New Definition of Significant Contribution of Active Personal Management

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

This final rule specifies a new definition of "significant contribution of active personal management" that applies only to non-family farming operations that seek to qualify more

than one person as a farm manager. Similar to the existing requirements in 7 CFR 1400.3 for a substantial amount of active personal labor, the new definition for a significant contribution of active personal management requires an annual contribution of 500 hours of management, or at least 25 percent of the total management required for that operation. This final rule also adds a new, more specific definition for "active personal management" that includes a list of critical management activities that qualify as a significant contribution if such activities are annually performed to either of the minimum levels established (500 hours or 25 percent of the total management hours required for the operation on an annual basis).

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

- Capital, land, and safety-net programs: Arrange financing, manage capital, acquire equipment, negotiate land acquisition and leases, and manage insurance or USDA program participation;
- Labor: Hire and manage labor; and
- Agronomics and Marketing: Decide which crop(s) to plant, purchase inputs, manage crops, price crops, and market crops or futures.

The management activities described place emphasis on actions taken or performed by the person directly for the benefit and success of the farming operation. Passive management activities such as attendance of board meetings or conference calls, or watching commodity markets or input markets (without making trades), are not considered as making a significant contribution of active personal management. Only critical actions as specified in the new definition of "active personal management" are counted towards the required hourly threshold for a significant contribution of active personal management.

As required by the 2014 Farm Bill, the new definition and requirements in the final rule take into account the size and complexity of farming operations across all parts of the country. The final rule also takes into consideration all of the actions of the farming operation associated with the financing; crop selection and planting decisions; land acquisitions and retention of the land assets for an extended period of time; risk management and crop insurance

decisions; purchases of inputs and services; utilization of the most efficient field practices; and prudent marketing decisions. Furthermore, this new definition takes into account advancements in farming, communication, and marketing technologies that producers must avail themselves to remain competitive and economically viable operations in today's farming world.

Eligible management activities include the activities required for the farming operation as a whole, not just activities for the programs to which the "actively engaged in farming" requirement applies. For example, if a farming operation is participating in ARC or PLC and using grain produced under those programs to feed dairy cattle, those management activities with respect to the dairy component of the operation can be considered for eligibility purposes to qualify a farm manager. Similarly, if a farming operation receives MLG or LDPs on some crops, but not on others, all the management activities for all the crops are considered for eligibility purposes.

The final rule clarifies that the significant contribution of a person's active management may be used only to qualify one person or legal entity in a farming operation as meeting the requirements of being actively engaged in farming. For example, if members of a joint operation are entities, one person's contribution will only count toward qualifying one of the entities (and not any other entity to which the person belongs), as actively engaged in farming.

Summary of Comments Received and FSA Responses

The 60 day comment period on the proposed rule ended May 26, 2015. CCC received 95 comments on the proposed rule. Comments were received from individual farmers, members of the public, slow food and sustainable agriculture groups, environmental groups, rural advocacy groups, the USDA Office of the Inspector General, an FSA employee, and groups representing farmers and growers. Most of the comments supported the idea of restricting eligibility for farm payments, but many of those supportive comments also suggested additional restrictions on eligibility. The rest of the comments, primarily from groups representing farmers and growers, did not support restricting eligibility for farm payments based on active contribution of management, or suggested that additional persons be made eligible for payment.

Many of the suggestions to further restrict farm program payments were out of scope or exceed FSA's authority. For example, some commenters objected to the family member operation exemption that is required by the 2014 Farm Bill. The suggestion of one payment limit per farm, no exceptions, would eliminate the spouse exemption for actively engaged in farming, which FSA does not have authority to change. Other suggestions were good ideas that are already addressed by existing regulations. For example, the attribution rules already specified in 7 CFR part 1400 prevent one person from earning multiple payment limitations based on their participation in multiple farming enterprises.

The following discussion summarizes the issues raised by commenters, and FSA's responses to those comments as reflected in this rule:

Family Members and Family Farm Exemptions

Comment: The new requirements on the contribution of active personal management should be applied to all farming operations including family operations as a matter of clarity and equity.

Response: Section 1604(c) of the 2014 Farm Bill specifically states that any revisions to the actively engaged in farming provisions will not apply to farming operations comprised entirely of family members. Therefore, no change to the rule is made in response to this comment.

Comment: The definition of family member should be extended an additional generation to great great grandchildren.

Response: If such a familial relationship of great great grandparent and great great grandchild is represented between members in the same farming operation, who are both currently members at the same time of such farming operation, this would fall under the existing definition of family member because the great great grandchild is a lineal descendant of the great great grandparent and would therefore be recognized as such by the FSA reviewing authority. No revision to the rule or handbooks is needed to accommodate five generations within the same farming operation in the application of this rule.

Comment: FSA should interpret the definition of family member to include cousins, nieces, nephews, aunts, and uncles. While not lineal descendants, an extended family relationship exists between such individuals that many times are involved in the same farming operations.

Response: The existing definition of family member in 7 U.S.C. 1308 is centered on the term lineal descendant. FSA does not have authority to revise the current definition of family member in 7 CFR part 1400 and therefore, cousin, niece, nephew, aunt, and uncle will not be included or considered to be included as a family member under the current definition. No change is made to the definition of "family member."

Comment: The changing legal landscape regarding definitions of marriage, and the effect, if any, it has on the related definitions within the rule, should be considered for this rule.

Response: The text in 7 CFR part 1400 refers only to "spouse" and has no reference to husbands or wives. No revisions to the regulations are necessary to address the issue of marriage equality.

Comment: Given the importance now placed on family members for operations to meet specific payment eligibility requirements, clarification is needed regarding the continuity of a farming operation's eligibility and the immediate consequences of unplanned events such as death, incapacitation, or forced retirement of a family member that otherwise negates this family relationship amongst all members. (For example, a grandparent retires from the operation, and one of the grandchildren remaining is a cousin but not a lineal descendant or sibling of any other remaining members.) Furthermore, FSA should consider a "grandfather clause" for existing members of a family farming operation (non-lineal descendants) that have succeeded former members due to death or retirement of a parent or grandparent.

Response: Current regulation and FSA policy as specified in the handbooks provide that if an individual is determined to be actively engaged in farming and is otherwise eligible to receive program benefits subsequently dies or becomes incapacitated and is no longer able to make contributions to the farming operation, that person is considered to be actively engaged in farming and eligible for the duration of the program year. Consistent with this policy, eligibility determinations for a farming operation and its members for a specific program year, and that are dependent upon the family member exemption, will remain effective for the entire program year regardless of when the death, disability, or incapacitation of a family member occurred during the same program year. Then, for the following program year, new determinations for payment eligibility and payment limitation purposes will be made by FSA based on the

representations made by the farming operation, and its members, and applicable rules in effect at that time.

Regarding “grandfathering” existing members of a farming operation, as noted above, the eligibility of a particular person or operation is effective for a program year. No other accommodations for additional years will be adopted or allowed based on the historical relationship of an operation’s former members, because we do not have the authority to do so. The definition of “family member” as specified in 7 U.S.C. 1308 specifies that a family member is one to whom “a member in the farming operation is related as lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.” The plain language meaning of the authority is that a family member is one who is currently related to another member of the farming operation, and does not include a historical relationship for one who was related to someone who was formerly in the farming operation. Therefore, no change to the rule is made in response to this comment.

Implementation Timing

Comment: If the rule is making the changes in requirements for certain producers’ eligibility effective for the 2016 crop year, we will have only a few months to potentially reorganize a farm operation to come into compliance. The effective date for the implementation of all changes to the actively engaged in farming provisions should be postponed until at least the 2017 crop year.

Response: There is no requirement that a farm operation needs to be reorganized to come into compliance with the rule changes; the rule changes how many payment limitations the farming operation may qualify for based on managers’ activities and the size and complexity of the farming operation. We have considered the implementation timing and made a change in the in response to this comment and will make the rule effective for the 2016 crop year for producers who only have spring planted covered crops and loan commodity crops and effective for the 2017 crop year for producers who have both spring and fall planted covered crops and loan commodity crops.

Definitions

Comment: Although we are in agreement to FSA’s new definition of active person management and the categories of management activities, FSA should include all of the management activities found in the Joint Explanatory Statement of the Committee of Conference (commonly referred to as

the Managers’ Report) on the 2014 Farm Bill.

Response: FSA handbook instructions will be revised to include a list of all eligible management activities. The rule specifies the categories, and the handbook provides more details, so the categories are applied consistently. Therefore, no change to the rule is made in response to this comment.

Comment: The phrase “critical to the profitability of a farming operation” used in the description of a significant contribution of active person management should be defined in the final rule.

Response: The proposed rule outlined the three specific categories of management activities that will be considered as a contribution of active personal management and used in determining whether the person or member has made a significant contribution of active personal management. Although not explicitly stated, it must be understood that to be successful in farming, the timing of those management activities is critical and the failure to make a management decision or failing to take a management action, may make a difference in a farming operation remaining viable. So unless those specific management activities are timely completed by the person or member of a farming operation, the person or member will not only be considered to not meet the requirements to be determined actively engaged in farming, but also that such a failure of the person or member to timely perform the specified management activities would adversely affect the viability and continued existence of the farming operation itself. Therefore, we believe that the term critical is being used in the normal dictionary definition and an additional regulatory definition is not necessary.

Comment: Rather than 500 hours or at least 25 percent of the total management needed for the farming operation, the new measurable standard for management should be increased to 1,000 hours or 50 percent, equal to the existing labor contribution requirement.

Response: Various proposals and concepts were considered in the development of this rule, including a minimum level of interest a person must hold in a farming operation before the person could qualify as actively engaged in farming with only an active personal management contribution, a weighted ranking of critical activities performed, Internal Revenue Service tax code requirements for a person to be considered a material participant in a business to claim a percentage of profit or loss from the business for personal

income tax purposes, ARMS data of average size farming operations, and a higher hourly threshold, such the current hourly standard for active personal labor. The 500 hour or 25 percent standard was chosen because the ARMS found that generally in a farming operation, at least twice the amount of hours is devoted to labor activities as compared to the performance of actual management activities. Therefore, we are not making a change in the regulation in response to this comment.

Comment: A numerical standard is not suitable to be applied at all to the performance of management activities.

Response: The Managers’ Report on the 2014 Farm Bill specifically directed the Secretary in implementing Section 1604 to develop clear and objective standards that can easily be measured and accounted for by members of the farming operation. In the absence of a consensus on an alternative standard for measuring a management contribution, the numerical standard from the proposed rule was adopted in the final rule. A numerical standard meets the requirements for being clear and objective, as well as easily measured and accounted for. Therefore, we are not making a change in the regulation.

Comment: An equitable, measurable standard of significance should be one that combines both labor and management contributions due to the difficulty at times of deciding whether an activity or action is labor or management.

Response: We have revised the rule in response to this comment to address the issue of a combined significant contribution of management and labor for farming operations that are subject to the new Subpart G. The existing regulations in 1400.3(b)(4) specify how such a combined significant contribution can meet the requirements of actively engaged in farming for operations that are not subject to new subpart G, where the activity is primarily labor or primarily management. This rule specifies a new measurable standard for a significant contribution of the combination of active personal labor and active personal management to a farming operation that is subject to subpart G that takes into account the reality of most farming operations where a person or member contributes not just labor or just management, but contributes a combination of both.

The new standard for a contribution of the combination of active personal labor and active personal management balances these realities and establishes a minimum hourly requirement based

on the existing hourly standard for a significant contribution of active personal labor of 1,000 hours and the new hourly standard adopted for a significant contribution of active personal management of 500 hours. However, the threshold for a significant contribution of combined labor and management is based on the proportionate share of the person's or member's combined contribution of both labor and management activities performed. Accordingly, under a combination of labor and management, the labor contribution is counted towards the existing 1,000 hours threshold for labor, and the management contribution is counted towards the 500

hours threshold for management. Because the rule establishes a combined limit for the combination of both labor and management, the minimum contribution amounts for each component are less than their individual limits if such determination would be made based on their sole contribution of labor (1000 hours) or management (500 hours) alone and the contributions under the combination are weighted to the activity that is greatest. There are 5 total hourly thresholds for a significant contribution of the combination of labor and management, based on a prorated combination of each type of contribution. For example, a combined contribution where the

majority of the contribution is management is measured against a 550 total hour threshold that is weighted towards the 500 hour standard for management, whereas a combined contribution where the majority of the contribution is labor is measured against a 950 total hour threshold that is weighted toward the 1,000 hours required for a significant contribution of labor. The following table specifies the hourly thresholds for the combined contribution of active personal labor and active personal management based on the proportionate share of both labor and management activities reported.

COMBINATION OF ACTIVE PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT MINIMUM REQUIREMENT FOR A SIGNIFICANT CONTRIBUTION
[In hours]

| 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 |

Under these weighted thresholds, two contributions of the same total contributed number of hours could have a different result, as it will depend upon how many hours of such total contribution are management and how many are labor. For example, a total combined contribution of 650 hours consisting of 250 hours of management and 400 hours of labor would not qualify as a significant contribution, whereas a total combined contribution of 650 hours consisting of 400 hours of management and 250 hours of labor would qualify as a significant contribution.

This standard will apply to each person that a farming operation requests to qualify as actively engaged in farming by making a significant contribution of the combination of labor and

management, rather than only a significant contribution of management. This rule treats a combination of labor and management as a subset of the manager requirements. This new provision to clarify a combined significant contribution does not change the limit of three farm managers. As part of an entity seeking more than one payment limit for management, those farm managers qualifying because of a combination of labor and management are also covered by the new definition and recordkeeping requirements. In no case may more than three persons per farming operation qualify as actively engaged in farming based on a contribution of active personal management or a combination of labor and management activities.

Comment: Section 1604 of the 2014 Farm Bill prohibits FSA from making

changes or revisions to any of the existing regulations other than for the contribution of active personal management. Response: That is correct, and this rule does not change the measurable standard for the significant contribution of active personal labor, which remains at 1,000 hours or 50 percent of the labor required for the operation. The statute is clear and this rule changes the regulations only for a contribution of active personal management, including for a significant contribution of combined labor and management. The regulations that apply solely to a contribution of labor have not changed.

Restrictions on Active Personal Management Contributions

Comment: No restriction should be placed on the number of persons that a farming operation is allowed to qualify

as actively engaged in farming with the significant contribution of management and no labor.

Response: Section 1604 of the 2014 Farm Bill directs the Secretary to consider placing limits on the number of persons in a farming operation that may qualify as actively engaged in farming by only contributing management. Having no restriction would not address Section 1604. We considered various options while developing the proposed rule. As explained in the proposed rule, one option considered was a strict limit of one farm manager; however, we determined that it was reasonable to provide an option for a second and third farm manager in specific circumstances. The adoption of this restriction or limit addresses the 2014 Farm Bill provision while providing flexibility for large or complex operations. Therefore, no change to the rule is made in response to this comment.

Comment: There should be only one additional manager, period, the same as included in the House and Senate farm bills. The total payment limit for a farm should be decoupled from the number of managers by setting a strict limit of one manager.

Related comment: A non-family farm operation should not be allowed to exceed two eligible managers under any scenario.

Response: Consideration was given to allowing only one manager, or two managers, per non-family farming operation for all circumstances. However, the 2014 Farm Bill contained requirements that consideration be given to other factors such as operation size and operation complexity. The decision was made to allow up to a total of three managers, but only with documentation of the need for the additional managers, based on both operation size and complexity. Therefore, no change to the rule is made in response to these comments.

Comment: Restricting the number of managers completely negates the new definition of active personal management, and the removal of this restriction would provide flexibility for operations to adjust to the new management requirements and lessen the impact of implementation.

Response: The new limit of one farm manager with exceptions for up to three farm managers is flexible and recognizes that many diverse farming operations and farming practices are in existence today and may require multiple persons in farm management roles. Therefore, no change to the rule is made in response to this comment.

Comment: The standards for the allowance of additional managing members based in the operation's size and complexity are a recipe for abuse, permissiveness, and inconsistent application by COCs and STCs.

Response: All COC and STC recommendations for variances to the established standards for operation size and complexity, and all approvals of requests for additional managing members in a farming operation, are subject to approval and concurrence by DAFP before implementation. In addition, there will be no instances in which more than three farm managers per operation will be allowed by DAFP. Therefore, no change to the rule is made in response to this comment.

Comment: The new restriction of one contribution qualifies only one person or member in the farming operation is unreasonable because for liability or other purposes, a non-family manager may need to spread his or her management contributions over more than one entity or member to make all of them eligible for payment.

Response: In this rule, one person's contribution of active personal management and labor can only qualify only one person or one legal entity as actively engaged. Aside from the spousal provision for actively engaged in farming that allows one spouse's actions to be used to qualify the other spouse as actively engaged, we have no statutory authority to permit the contributions of one person to qualify additional persons and legal entities that represent multiple payment limitations in the same farming operation. Furthermore, without this restriction, the tracking and measurement of actual contributions of labor or management being made to a farming operation would be difficult, if not elusive, to determine to any measurable level or degree of risk. Therefore, we are not making a change in the regulation.

Recordkeeping Requirements

Comment: The requirement to keep a written log of the performance of management activities should be eliminated on the premise that such records would be overly burdensome to the members, disruptive to the workflow, and too expensive for an operation to maintain.

Response: With the implementation of a measurable standard for the contribution of active personal management in hours or percentage of total hours expended in the farming operation, a written record or log of the performance of management activities is

required from all members. These records are essential to enable county and State FSA committees to determine whether or not a significant contribution of specific management activities was performed to at least the minimum level necessary to qualify as a significant contribution as defined. Furthermore, the implementation of a measurable standard is meaningless in the absence of actual documentation to verify that the minimum level of the standard established has been met by the person who represents as meeting the standard. The new recordkeeping requirements apply only to joint operations and legal entities comprised of non-family members that are seeking to qualify more than one farm manager. Therefore, we are not making a change in the regulation.

Comment: The 2014 Farm Bill had a provision that FSA develop and implement a plan to monitor compliance reviews to ensure producers' compliance to the provisions of part 1400. Why was that not specifically in the rule?

Response: This requirement was already met prior to the implementation of the 2014 Farm Bill. FSA implemented an automated tracking system to record compliance review results and to monitor completion of compliance reviews in 2012. Review results and progress on the completion of compliance reviews for the 2009 through 2013 program years are currently being tracked. The United States Government Accountability Office (GAO) used FSA's tracking system in completion of the most recent audit of payment eligibility and payment limitation provisions (GAO 13-781, "Farm Programs: Changes Are Needed to Eligibility Requirements for Being Actively Involved in Farming," September 2013). The current regulations in 7 CFR 1400.2(h) already specify that compliance reviews of farming operations and corresponding documentation may be conducted at any time.

To address this comment and further clarify the compliance review process, this final rule adds a new provision to 7 CFR 1400.2 to specify that the Deputy Administrator will periodically monitor the status of completion of the assigned compliance reviews, and take any actions deemed appropriate to ensure the timely completion of the reviews for payment eligibility and payment limitation compliance purposes.

General Comments

Comment: This rule removes certain flexibilities to where many farm families will become less sustainable to the point

that they may lose their ability to participate in farm programs.

Response: It is unclear how limiting the number of persons who may qualify for payment based solely on management will in any way reduce the sustainability of family farms.

Furthermore, family farming operations are exempt from this rule. Therefore, no change to the rule is made in response to this comment.

Comment: Farm policy must seriously address the aging farmer crisis and effective payment caps are one tool USDA has to address this issue.

Response: Payment limits have been in place since the 1970s, and are not changed with this rule. The eligibility requirements for the receipt of farm program payments have been made more restrictive with each successive legislation to date. FSA does not have authority to modify the current payment limitations below what is specified in the 2014 Farm Bill. We have outreach programs that target beginning farmers, and many of our programs have special provisions, such as fee waivers, to encourage beginning farmers.

Comment: Lax payment limits allow big farms to outbid beginning farmers for land and leases. Limit or restrict the issuance of program payments to new and small farm operators only.

Response: FSA does not have authority to implement such a restriction. However, the average Adjusted Gross Income (AGI) provisions first implemented under the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, generally referred to as the 2002 Farm Bill) and that remain, as amended by subsequent legislation, do restrict the payment eligibility of recipients with incomes above the specified AGI levels. As specified in 7 CFR 1400, persons with an AGI above the limit are not eligible for payments or benefits under ARC and PLC, price support programs including MAL and LDP, the Conservation Reserve Program, the Noninsured Crop Disaster Assistance Program, most FSA disaster assistance programs, and some conservation programs operated by the Natural Resources Conservation Service. Therefore, no change to the rule is made in response to this comment.

Comment: Require any operation that reorganizes to qualify for the family farm exemption to wait 5 years following the effective date of this rule to qualify for the exemption.

Response: The 2014 Farm Bill does not authorize such a provision. The 2014 Farm Bill requires that this rule not apply to any farming operation comprised entirely of family members, and with no such waiting period.

Therefore, no change to the rule is made in response to this comment.

Comment: FSA's failure to evaluate the effects of this proposal on the environment would violate the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), current FSA regulations, and would be arbitrary, capricious, an abuse of discretion, and contrary to the law under the Administrative Procedure Act (5 U.S.C. 553).

Response: FSA has evaluated the effects of this proposal and determined that this final rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to make the changes to the actively engaged regulations in time for the new 2016 program year. Therefore, this final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

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

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, “Regulatory Planning and

Review,” and therefore, OMB has reviewed this rule. The costs and benefits of this final rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Summary of Economic Impacts

About 3,200 joint operations could lose eligibility for around \$106 million in total crop year 2016 to 2018 benefits from the PLC, ARC, and MAL Programs. The largest savings, around \$38 million, are projected for both the 2016 and 2017 crops (note that the exemption for operations with fall plantings ends with the 2016 crops). Savings are projected to decline to around \$29 million for the 2018 crop if prices improve, and in that case, producers would be eligible for lower benefits from the MAL, LDP, ARC, and PLC Programs, independent of the requirements of this rule. These savings can also be viewed as a cost of this rule for producers. This rule does not change the payment limit per person, which is a joint \$125,000 for the applicable programs. As specified in the current regulations, the payment limits apply to general partnerships and joint ventures (collectively referred to as joint operations) based on the number of eligible partners in the joint operation; each partner may qualify the joint operation for a payment of up to \$125,000. In other words, each person in the joint operation who loses eligibility due to this rule will lose eligibility for up to \$125,000 in payments for the joint operation.

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

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

If commodity prices are sufficiently high that few producers are eligible for any benefits, the costs of this rule to producers (and savings to USDA) would be less, possibly even zero. That is, if very few joint operations were to earn farm program payments due to high commodity prices, limiting eligibility on the basis of management contributions would not have much impact.

Government costs for implementing this rule are expected to be minimal (\$0.4 million). The applicable joint operations' opportunity costs associated with keeping management logs over the course of each year are expected to be about \$7 million, but that amount could

decline over time as managers standardize their recordkeeping.

Regulatory Flexibility Act

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

Environmental Review

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

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in

the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This final 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. 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 are to be exhausted.

Executive Order 13132

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

Executive Order 13175

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

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This final 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.

Federal Domestic Assistance Programs

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

Paperwork Reduction Act

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

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1400

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

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

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

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

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

§ 1400.1 [Amended]

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

■ 3. Amend § 1400.2 by adding paragraph (i) to read as follows:

§ 1400.2 Administration

* * * * *

(i) The Deputy Administrator will periodically monitor the status of completion of assigned compliance reviews and take any actions deemed appropriate to ensure timely completion of reviews for payment eligibility and payment limitation compliance purposes.

■ 4. Add subpart G to read as follows:

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

Sec.

- 1400.600 Applicability.
- 1400.601 Definitions.
- 1400.602 Restrictions on active personal management contributions.
- 1400.603 Recordkeeping requirements.

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

§ 1400.600 Applicability.

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

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

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

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

(2) The farming operation is seeking to qualify only one person as making a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, for the purposes of qualifying only one person or entity as actively engaged in farming.

§ 1400.601 Definitions.

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

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

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

- (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:

COMBINATION OF ACTIVE PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT MINIMUM REQUIREMENT FOR A SIGNIFICANT CONTRIBUTION

[In hours]

| 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 |

COMBINATION OF ACTIVE PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT MINIMUM REQUIREMENT FOR A SIGNIFICANT CONTRIBUTION—Continued
[In hours]

| Management contribution in hours | Labor contribution in hours | Meets the minimum threshold for significant contribution, in hours |
|----------------------------------|-----------------------------|--|
| 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 |

§ 1400.602 Restrictions on active personal management contributions.

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

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

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

- (i) Produces and markets crops on 2,500 acres or more of cropland;
- (ii) Produces honey with more than 10,000 hives; or
- (iii) Produces wool with more than 3,500 ewes; and

(3) If the farming operation seeks not more than one additional person to qualify as providing a significant contribution of active personal management, or a significant contribution of the combination of active personal labor and active personal management, because the operation is complex, then the operation may qualify for one such additional person if the farming operation is determined by the FSA state committee as complex after considering the factors described in paragraphs (a)(3)(i) and (ii) of this section. Any determination that

a farming operation is complex by an FSA state committee must be reviewed and DAFP must concur with such determination for it to be implemented. To demonstrate complexity, the farming operation will be required to provide information to the FSA state committee on the following:

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

(ii) Geographical area covered.

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

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

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

(e) A person's contribution of active personal management, or the contribution of the combination of active personal labor and active personal management, to a farming

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

§ 1400.603 Recordkeeping requirements.

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

- (1) Location where the management activity was performed; and
- (2) Time expended and duration of the management activity performed.

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

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

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

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

(1) The person's contribution of active personal management as represented to the farming operation for payment

eligibility purposes will be disregarded; and

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

Val Dolcini,

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

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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9378]

RIN 1400-AD74

Temporary Modification of Category XI of the United States Munitions List

AGENCY: Department of State.

ACTION: Final rule; notice of temporary modification.

SUMMARY: The Department of State, pursuant to its regulations and in the interest of the security of the United States, temporarily modifies Category XI of the United States Munitions List (USML).

DATES: Amendatory instructions 1 and 2 are effective December 29, 2015. Amendatory instruction No. 3 is effective August 30, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email DDTCResponseTeam@state.gov. ATTN: Temporary Modification of Category XI.

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML, 79 FR 37536, effective December 30, 2014. This final rule, consistent with the two prior proposed rules for USML Category XI (78 FR 45018, July 25, 2013 and 77 FR 70958, November 28, 2012), revised paragraph (b) of Category XI to clarify the extent of control and maintain the existing scope of control on items described in paragraph (b) and the directly related software described in paragraph (d). The Department has determined that exporters may read the revised control language to exclude certain intelligence analytics software that has been and remains controlled on the USML. Therefore, the Deputy Assistant Secretary of State for Defense Trade Controls determined that it is in the interest of the security of the United States to temporarily revise USML Category XI paragraph (b), pursuant to

the provisions of 22 CFR 126.2, while a long term solution is developed. The Department will publish any permanent revision to USML Category XI paragraph (b) addressing this issue as a proposed rule for public comment.

This temporary revision clarifies that the scope of control in existence prior to December 30, 2014 for USML paragraph (b) and directly related software in paragraph (d) remains in effect. This clarification is achieved by reinserting the words "analyze and produce information from" and by adding software to the description of items controlled.

The Department previously published a final rule on July 2, 2015 (80 FR 37974) that temporarily modified USML Category XI(b) until December 29, 2015. This rule will extend the July 2, 2015 modification to allow the U.S. government to consider the controls in USML Category XI(b). Due to the current status of the review an extension until August 30, 2017 is appropriate.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule based upon good cause, and its determination that delaying the effect of this rule during a period of public comment would be impractical, unnecessary and contrary to public interest. 5 U.S.C. 553(b)(3)(B). In addition, the Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA).

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule under the criteria of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

The Department believes that benefits of the rulemaking outweigh any costs, which are estimated to be insignificant. It is the Department's position that this rulemaking is not a significant rule under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For reasons stated in the preamble, the State Department amends 22 CFR part 121 as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.