USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY

2014 Farm Bill
FACT SHEET

March 2015

Actively Engaged in Farming and Payment Limits

Note: On March 26, 2015, the U.S. Department of Agriculture published proposed changes to the definition of "actively engaged in farming." ***Until those changes take effect, the following information in this fact sheet is applicable.***

To learn more about the proposed changes to the definition, to or comment on those changes, please visit www.regulations.gov and provide Regulation Identifier Number (RIN 0560-AI31). Or, you may submit written comments by mail to: James Baxa, Production, Emergencies, and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Stop 0501, 1400 Independence Ave. SW, Washington, DC, 20250-0501. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

The deadline to submit comments on the proposed changes to the definition is ***May 26, 2015****.*

OVERVIEW

Congress and the U.S. Department of Agriculture (USDA) have established requirements to ensure that farm program benefits only go to farmers who are eligible. The Agricultural Act of 2014 (the 2014 Farm Bill) extends the actively engaged in farming and payment limitation requirements for the 2014 through 2018 program years.

To be eligible for payments and benefits, the 2014 Farm Bill requires program participants to meet specific requirements as follows.

ACTIVELY ENGAGED IN FARMING

All program participants, whether an individual or a legal entity (partnerships, corporations, etc.), must provide significant contributions to the farming operation to be considered "actively engaged in farming." Contributions can consist of capital, land, and/or equipment, as well as active personal labor and/or active personal management.

The management contribution must be critical to the profitability of the farming operation and the contributions must be at risk.

ADDITIONAL PAYMENT ELIGIBILITY REQUIREMENTS

Each partner, stockholder or member with an ownership interest must contribute active personal labor and/or active personal management to the farming operation on a regular basis. The contribution must be identifiable and documentable, as well as separate and distinct from the contributions made by any other partner, stockholder or member. If any partner, stockholder or member with an ownership interest fails to meet this requirement, program payments will be reduced by the corresponding share held by that partner, stockholder or member.

There is an exception allowed for legal entities, such as corporations, if total direct payments received both directly and indirectly, by the legal entity and its members do not exceed $125,000.

EXCEPTIONS TO THE GENERAL REQUIREMENTS

Landowners may be considered "actively engaged in farming" if they contribute the owned land to the farming operation and in return, receive rent or income for the use of the land. The landowner's share of the profits or losses from the farming operation must also be commensurate with the landowner's contributions to the farming operation and the contributions must be at risk.

If one spouse has been determined "actively engaged in farming," the other spouse will be considered to have made a significant contribution of active personal labor or active personal management toward meeting the requirements to be considered "actively engaged in farming."

Sharecroppers may be considered "actively engaged in farming" if the sharecropper makes a significant contribution of active personal labor to the farming operation and in return receives a specified share of the crop(s) produced on the farm. The sharecropper's share of the profits or losses from the farming operation must be commensurate with the sharecropper's contributions and the contributions must be at risk.

A cash-rent tenant will be ineligible to receive payments on the cash-rented land unless the tenant makes a significant contribution of active personal labor. If the cash-rent tenant does not provide labor, he or she must make a significant contribution of both active personal management and equipment to the farming operation. All other "actively engaged in farming" requirements apply as well.

FOREIGN PERSONS

Foreign persons, other than registered aliens, are not eligible to receive any program benefits including commodity loans, unless that person provides a significant contribution of capital, land and active personal labor to the farming operation.

NOTIFICATION REQUIREMENTS

Every legal entity earning payment subject to these rules must report to their local Farm Service Agency (FSA) committee the name and social security number of each person who owns, either directly or indirectly, any interest in such legal entity. The legal entity is also required to inform all members of the rules regarding payment eligibility and payment limitation.

DIRECT ATTRIBUTION

The 2014 Farm Bill establishes a maximum dollar amount for each program that can be received annually, directly or indirectly, by each person or legal entity. Such limitations on payments are controlled by direct attribution. Program payments made directly or indirectly to a person are combined with the pro rata interest held in any legal entity that received payment, unless the payments to the legal entity have been reduced by the pro rata share of the person.

Program payments made directly to a legal entity are attributed to those persons that have a direct and indirect interest in the legal entity, unless the payments to the legal entity have been reduced by the pro rata share of the person. Payment attribution to a legal entity is tracked through four levels of ownership. If any part to the ownership interest at the fourth level is owned by another legal entity, a reduction in payment will be applied to the payment entity in the amount that represents the indirect interest of the fourth level entity in the payment entity.

COMMON ATTRIBUTION

Common attribution means crediting payments made to a person or legal entity collectively to one limitation due to a unique or specific relationship between the persons or legal entities. Common attribution applies to a minor child and a parent or legal guardian; and a parent organization over a secondary organization when the parent organization exercises control over the secondary organization.

OWNERSHIP INTEREST FOR DIRECT ATTRIBUTION

For the purposes of the direct attribution of payments, ownership interest that a person or legal entity holds in a legal entity on June 1 of the current year is used. Direct attribution of payments is not applicable to cooperative associations of producers. The payments will instead be attributed to the members of the association that produced the commodities marketed by the association on behalf of the members.

MINOR CHILD RULES

June 1 of the current year is the date a child is considered to be a minor for payment attribution purposes. Payments received both directly and indirectly by a minor child are attributed to the parent or legal guardian.

PAYMENT LIMITS

Person - Payments made directly or indirectly to a person cannot exceed the annual amounts specified in the table on page 4.

Joint Operations and General Partnerships - Payments made directly or indirectly to a joint operation such as a general partnership, cannot exceed, for each payment specified in the table below, the amount determined by multiplying the maximum payment amount specified for a program by the number of persons and legal entities that comprise the ownership of the joint operation. Payments to the joint operation will be reduced by an amount that represents the direct or indirect ownership in the joint operation by any person or legal entity that has reached the maximum limitation.

Legal Entities - Payments made directly or indirectly to a legal entity cannot exceed the annual amounts specified in the table on page 4. Payments made to a legal entity will be reduced by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has reached the maximum limitation.

MORE INFORMATION

To find more information about FSA programs, contact your local FSA office or USDA Service Center, or visit FSA online at www.fsa.usda.gov/activelyengaged. To find your local FSA office, visit http://offices.usda.gov.

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

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This table contains the annual payment limitations for a person or legal entity for programs that are subject to the provisions of the 2014 Act.

Program Payment Type	Limitation Amount 2014 Through 2018
Commodity Programs	
Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments (other than Peanuts)	$125,000
Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments for Peanuts	$125,000
Transition Assistance for Producer of Upland Cotton	$40,000 1/
Conservation Programs	
CRP annual rental payment and incentive payment.	$50,000 2/
ECP (per disaster event)	$200,000
EFRP (per disaster event)	$500,000
CSP	$200,000 3/
EQIP	$450,000 4/
AMA	$50,000 5/
Disaster Assistance Programs	
ELAP, LFP, LIP	$125,000 6/
NAP	$125,000
TAP	$125,000
Price Support Programs	
LDP, MAL, and MLG	$125,000 1/
Other Programs	
TAAF	$10,000

1/ Transition Assistance for Producers of Upland Cotton is only available in the 2014 and 2015 program years.
2/ CRP contracts approved prior to October 1, 2008 may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.
3/ The $200,000 limitation is the total limit under all CSP contracts entered into subsequent to the enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.
4/ The $450,000 limitation is the total limit under all EQIP contracts entered into subsequent to the enactment of the 2014 Farm Bill during fiscal years 2014-2018.
5/ The $50,000 limitation is the total limit that a participant may receive under the AMA program in any fiscal year.
6/ Total payments received under LIP, LFP, and ELAP may not exceed $125,000. A separate limitation applies to TAP payments. (Note: For SURE payments for losses on or before September 30, 2011, the payment limit regulations in effect when those losses occurred apply. The SURE limit is separate from the payment limitation amount applicable to LIP, LFP, TAP, and ELAP benefits authorized under the 2014 Farm Bill).

The Proposed Definition Change for "Actively Engaged in Farming"

Frequently Asked Questions

1. **Q: What is the current definition of "actively engaged" in farming?**

   A: One must be "actively engaged" in farming to be eligible to receive certain farm program payments. That means a person must make significant contributions to the farming operation of: (1) land, capital, or equipment, and (2) personal labor, active personal management, or a combination of personal labor and active personal management. General partnerships and joint ventures sometimes supply all of the group (1) capital inputs. When that occurs, their members can become actively engaged by contributing management.

2. **Q: How long has the existing definition existed?**

   A: The existing definition was enacted by Congress in 1987 and took effect in the 1989 crop year. The planned revision will be the first substantial change made to this definition since it was established by Congress in 1987.

3. **Q: What is the purpose of this definition?**

   A: The definition was designed to ensure that only farming operations whose members were actively engaged in farming, including management of the farm, would be eligible for farm program payments.

4. **Q: Has the existing definition of "actively engaged in farming" achieved its purpose?**

   A: Concerns remain about the potential for individuals of general partnerships and joint ventures, who have minor contributions to management, to receive farm program payments.

5. **Q: Why is the U.S. Department of Agriculture proposing this rule?**

   A: The changes are consistent with the requirements Congress mandated by the 2014 Farm Bill. The proposed rule will apply exclusively to non-family farm general partnerships and joint ventures, and will limit them to a maximum of three members who can qualify for payments solely by their contribution of *management*.

6. **Q: What would this proposed change achieve compared to the existing definition?**

   A: The proposed changes would prohibit farm program payments to individuals who cannot verify that they make a significant contribution of active management to a farming entity.

7. **Q: How does the rule propose to define "active personal management"?**

   A: "Active personal management" is proposed to mean personally providing and participating in management activities critical to the profitability of the farming operation and performed under one or more of the following categories:

   (1) Capital (which includes: arranging financing and managing capital; acquiring equipment; acquiring land and negotiating leases; managing insurance; and managing participation in USDA programs);

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

   (3) Agronomics and marketing (which includes: selecting crops and making planting decisions; acquiring and purchasing crop inputs; managing crops and making harvest decisions; and pricing and marketing of crop production.)

8. **Q: How does this rule propose to define "significant contribution of active personal management"?**

   A: "Significant contribution of active personal management" is proposed to mean 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:

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

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

9. **Q: What programs will these changes to "actively engaged" affect?**

   A: By law, the proposed rule applies to payment eligibility for the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs, loan deficiency payments (LDPs) and marketing loan gains realized via the Marketing Assistance Loan (MAL) program.

   The rule would not change the existing regulations as they relate to contributions of land, capital, equipment, or labor, or the existing regulations related to landowners with a risk in the crop, or to spouses. Farming operations operated by entities other than general partnerships or joint ventures would not be affected. Only those general partnerships and joint ventures which seek to qualify for payment eligibility in which more than one member contributes management to the farming operation would be affected.

10. **Q: Are general partnerships and joint ventures that are totally owned by family members exempt from this proposed rule?**

A: Yes. If a farming operation is operated by only one of these entity types and all members are family members, then the farming operation and corresponding entity is exempt from this proposed rule. The proposed rule would not change the definition of "family member." 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." Farm Service Agency (FSA) handbooks further clarify that 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.

11. **Q: If the farming operation is composed of two or more general partnerships or joint ventures, must all these farming entities be composed solely of members of the same family to be exempt from the proposed rule's limitations on managers?**

A: Yes. Determination regarding familial relationships would be made for the farming operation, not independently for the entities that compose the farming operation.

12. **Q: Is this new definition effective immediately? If not, when will the new definition take affect?**

A: No, these proposed definition and regulatory changes and will not be effective immediately. USDA seeks comments from the public on these proposals and only after those comments have been received and reviewed will any final determination be made. Stakeholders interested in commenting on the proposed definition and changes are encouraged to provide written comments by the deadline of May 26, 2015. USDA plans to implement a final rule that would be applicable to the 2016 and subsequent years.

13. **Q: How many people will be affected by these changes?**

A: Most people in farming would not be affected by the proposed changes. They would apply only to farming operations that are operated by non-family general partnerships or joint ventures and participate in the applicable USDA programs. USDA data indicates that there are approximately 1,500 such entities that may be affected (compared with more than 1 million persons and entities that received Commodity Credit Corporation payments in 2013.) Affected farming operations would be allowed to designate one manager that becomes actively engaged solely by making a significant contribution of active personal management Depending on the farming operation's size and complexity, up to two additional managers could be deemed to be eligible for payments. The number of people (managers) eligible to receive payments for these affected farming operations cannot exceed three.

14. **Q: What are the requirements that must be met to allow these additional managers to a farming operation?**

    A: There are two sets of requirements for the addition of managers. At least one of the sets of requirements must be met for the addition of one manager; both sets must be met for the addition of two managers. One set addresses the size of the farming operation in terms of cropland acres or number of livestock in the operation if crop production is not part of the operation. The other set addresses the complexity of the farming operation in terms of the number and various types of crops grown or livestock produced, the marketing channels utilized for sale of the production, and the geographical area covered by the farming operation. All requests are subject to FSA and FSA State Committee approval.

15. **Q: I'm not sure if this definition affects me - - how or where can I learn more?**

    A: You may read the proposed changes online at: http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-pi

    For further information, contact James Baxa at (202) 720-7641. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

16. **Q: I want to comment on these proposed changes. How may I do so?**

    A: Stakeholders interested in commenting on the proposed definition and changes are encouraged to provide written comments by the deadline of May 26, 2015. In your comments, please include the Regulation Identifier Number (specifically, RIN 0560-AI31) and the volume, date, and page number of the specific issue of the *Federal Register*. You may submit comments by any of the following methods:

    - Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.

    - Mail, hand delivery, or courier: James Baxa, Production, Emergencies, and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Stop 0501, 1400 Independence Ave. SW, Washington, DC, 20250-0501.

    Comments will be available online at www.regulations.gov. Comments may also be inspected at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available at http://go.usda.gov/3C6Kk.