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Salomon Ramirez, Director
Production, Emergencies and Compliance
USDA FSA, Stop 0517, Room 4752
1400 Independence Ave., SW
Washington, DC 20250-0517

RE: Federal Register Volume 73, December 29, 2008, Page 79267 - 79284

Dear Mr. Ramirez:

We appreciate the opportunity to comment on the interim rule regarding *Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years*.

We strongly supported lower farm program payment limits and stronger eligibility requirements in the new Farm Bill. Even though we preferred lower payment limit levels, we are very pleased that progress was made through adjustments to Adjusted Gross Income (AGI) thresholds and, particularly, elimination of the "three-entity" provision. These changes will help restore the credibility of farm programs with not only the public, but also bona-fide producers.

Past experience has shown that farm program payment limits and eligibility restrictions are among the most demanding to regulate and we recognize the complexity in writing regulations to effectively suppress legal maneuvering to circumvent legislative intent.

We commend the Agency for addressing the numerous business structures, legal entities and business contribution issues that challenge the enforcement of these provisions. We also understand the additional burden that will be placed on USDA staff in applying direct attribution of payments and determining program payment eligibility. Therefore, we believe the rule should provide the regulated community with maximum detail and direction to minimize unnecessary interpretive challenges of the rule.

We support defined and measurable tests for payment eligible “contributions” to farming operations. The rule establishes measurement thresholds for significant contributions of land, capital, or equipment and for contributions of active personal labor. However, the definition for contributions of active personal management lacks a defined measurement standard.

Sec. 1400.3 Definitions (b) states in part:

“ . . . *Active personal management means personally providing and participating in:*

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation, including:

- (i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on CRP acreage and activities required in livestock operations;*
- (ii) Business-related actions, which include discretionary decision making;*
- (iii) Evaluations of the financial condition and needs of the farming operation;*
- (iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;*
- (v) Consultations in or structuring of business-related financing arrangements for the farming operation;*
- (vi) Marketing and promotion of agricultural commodities produced by the farming operation;*
- (vii) Acquiring technical information used in the farming operation would ordinarily be charged a fee.*
- (viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee. . . .”*

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

- (1) (i) For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person’s or legal entity’s commensurate share of the total:*
 - (A) Value of the capital necessary to conduct the farming operation;*
 - (B) Rental value of the land necessary to conduct the farming operation; or*
 - (C) Rental value of the equipment necessary to conduct the farming operation; or*
- (ii) If the contribution by a person or legal entity consists of any combination of land, capital, and equipment, such combined contributions must have a value at least equal to 30 percent of the person’s or legal entity’s commensurate share of the total value of the farming operation;*
- (2) For active personal labor, an amount contributed by a person to the farming operation that is described by the smaller of the following:*
 - (i) 1,000 hours per calendar year; or*
 - (ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such person’s or legal entity’s commensurate share in the farming operation; and*
- (3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the person’s or legal entity’s commensurate share in the farming operation; and*
- (4) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when make together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (2) and (3) of this definition. . . .”*

We support the definition of “active personal management” as it relates to required management services (Sec. 1400.3 (b) (2)). However, the “significant contribution” definition for active personal management (3) does not specify any monetary values or time requirements to qualify for active personal management contributions.

It is unacceptable to omit quantified monetary and/or time requirements for active personal management. Obviously, such requirements are unnecessary for sole proprietors. However, it appears legal entities with multiple members or shareholders have an open opportunity to manipulate the “management activities” of members or shareholders and qualify under this definition, particularly under “(1) *The general supervision and direction of activities and labor involved in the farming operation.*”

How will the “significant contribution” of each member/shareholder of legal entities be determined? It is certainly arguable that voting on management decisions during regular corporate meetings is “. . . *critical to the profitability of farming operation.* . . .” However, we believe the legislative intent for eligibility is targeted to bona-fide producers who contribute more to the farming operation than participation in meeting discussions and decisions.

The “significant contribution” definition for personal management also dilutes the effectiveness of the personal labor requirements by allowing a combination of both personal management and personal labor contributions to create a “. . . *critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (2) and (3) of this definition.*” Under this allowed combination, the weakness of the management criteria provides an opportunity to qualify those who cannot meet the personal labor requirement. This is counterproductive to the legislative intent of closing loopholes and restricting farm program payments to those “actively engaged in farming.”

We recommend eliminating the provision which allows combined contributions of personal labor and personal management. We further recommend implementation of defined and measurable standards based on hours devoted to and/or monetary value of contributed management activities. The standards must be comparable to those established for personal labor and capital contributions.

Again, we appreciate the opportunity to comment and understand the challenge of writing effective regulations for these difficult issues. As the rule is implemented, we urge the Agency to closely monitor its effectiveness and stand ready to amend the rule as needed to achieve the intended results. Thank you for your consideration of our comments.

Sincerely,



Roger Johnson
Commissioner

RJ:jk