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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1400

RIN 0560–AH85

Payment Eligibility and Payment Limitation; Miscellaneous Technical Corrections

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulations that specify payment eligibility and payment limitation requirements for participants in CCC-funded programs. The amendments made in this rule address comments received on the interim rule and make minor technical corrections. This rule will apply to 2010 and subsequent crop, program, or fiscal year payments for participants in CCC-funded programs.

DATES: *Effective Date:* This rule is effective January 7, 2010.

FOR FURTHER INFORMATION CONTACT: James Baxa, Production, Emergencies and Compliance Division, FSA, USDA, telephone: (202) 720–3463. 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).

SUPPLEMENTARY INFORMATION:

Background

CCC published an interim rule on December 29, 2008 (73 FR 79267–79284) implementing the payment eligibility and payment limitation provisions from the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, the 2008 Farm Bill) that are applicable to most CCC and FSA commodity, price support, and conservation programs. The rule included specific payment limits for affected programs, provisions for how payments are attributed to individuals, average Adjusted Gross Income (AGI) limitation requirements for payment recipients, and other eligibility criteria that included actively engaged in farming requirements and provisions for minors. It included provisions that certain CCC farm program payments will be made only to persons and legal entities actively engaged in farming, as evidenced by contribution of land, capital, or equipment and labor or management to the farming operation. The majority of the provisions in the rule were requirements of the 2008 Farm Bill for which USDA had little or no discretion.

The comment period for the rule closed on January 28, 2009. CCC received comments requesting that the comment period be reopened. CCC reopened the comment period until April 6, 2009 (74 FR 6117). In response to the interim rule, CCC received 5,060 comments, including comments from producers, commodity groups, cooperatives, producer associations, lenders, crop consultants, certified public accountants, attorneys, members of Congress (both House and Senate), State agricultural officials, crop insurance agents, dairy farmers, cotton processors, organic and sustainable crop producers, commodity brokers, the USDA Office of the Inspector General, USDA agencies and employees, teachers, animal scientists, farm implement dealers, taxpayers, and a restaurant chef. The majority of comments raised questions or concerns about specific parts of the rule. The rest of the comments either supported parts of the rule or raised general policy issues about farm programs. Seventy-three percent of the comments stated that the payment eligibility rules need to be made more restrictive, particularly in the area of the requirements of active personal management; two percent asked for an exception for smaller farming operations.

This rule specifies that for most types of legal entities, the requirement that all partners, stockholders, or members must provide active labor or management does not apply if: (1) Interest holders who collectively hold at least 50 percent interest in the legal entity are providing personal labor or active personal management; and (2) they all are receiving, directly or indirectly, total payments less than one payment limitation. This was added to address the comments that the restrictions intended to end abusive practices by passive investors should not negatively impact smaller family farming operations where older members may not be active contributors. It is a change from the interim rule that required all partners, stockholders, and members in a legal entity to provide active personal labor or management for the legal entity to be eligible for 100 percent of the payment otherwise due the legal entity.

Also, in response to comments, this rule makes minor clarifications to ensure that the rule is clear and consistent with our handbook and with our current practice. This rule clarifies that "actively engaged in farming" provisions do not apply to Conservation Reserve Program contracts and extensions to such contracts made effective on or after October 1, 2008. It clarifies that determinations for joint operations with six or more members will be made by the FSA State office. It clarifies that certain "actively engaged in farming" requirements for a person can be met if the spouse of that person meets the requirements. It clarifies that for a change to a farming operation to be considered bona fide, one rather than all of the items in the list of bona fide changes must be met. It changes the April 1 date in the minor child provisions to the same June 1 date used for attribution of payments. This is for consistency since the manner in which payments will be attributed for payment limitation purposes depends in part on whether or not a participant is a minor. It clarifies the provisions for trusts and estates to make them consistent with the other sections regarding requirements for contributions. These changes to the rule are expected to have no substantive impact.

This rule also implements minor technical corrections, such as correcting internal paragraph references and inconsistent terminology, which are expected to have no substantive impact. Some of these changes were made in response to comments received; others were the result of our own review of the regulation for clarity and consistency. This rule amends 7 CFR part 1400 to implement these changes.

Discussion of Comments

The following provides a summary of the comments received that were related to each specific subpart or section and the agency's response, including changes we are making to the regulations.

Subpart A—General Provisions

The following discussion addresses the comments received on Subpart A identified by section.

Sec. 1400.1 Applicability

Comment: Wealthy farmers do not need payments. Put a cap of $25,000 for total payments.

Response: The limitations on payments per person or legal entity for the applicable period for the various CCC and FSA programs are specified in the 2008 Farm Bill. Therefore, we did not make any changes to the rule in response to the comment suggesting a $25,000 cap.

Regarding payments to wealthy farmers, as provided in the 2008 Farm Bill and in § 1400.500 of the regulations, persons and legal entities who exceed certain average AGI limits are not eligible for any payments or benefits for the programs specified in this section; and the average AGI limits in the current regulations are lower than under the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill). Therefore, we did not make any changes to the rule in response to the comment.

Comment: The elimination of a limitation for the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) payments is consistent with the statute, but opens a potential loophole.

Response: A limitation is applied to a Marketing Loan Gain (MLG) and LDP, not MAL. In any case, as noted in the comment, the elimination of the cap on payments per person or legal entity for the applicable period for MLGs and LDPs is specified in the 2008 Farm Bill. Although there is now no limitation on MLGs and LDPs, persons receiving MLGs and LDPs are subject to other requirements in this part, including average AGI limitation provisions, so there are practical limits to how much a person or legal entity can qualify for while still having to meet the other requirements, particularly average AGI provisions. The regulations comply with the requirements in the 2008 Farm Bill; therefore, we did not make any changes to the rule in response to the comment.

Comment: How will this apply to the Conservation Reserve Program (CRP)? Will FSA release these contracts if over half the ownership fails to qualify (due to AGI or actively engaged)? If so, what incentive is there to follow the conservation practices? The provisions in both §§ 1400.1 and 1400.201 appear to require that a person be actively engaged in farming to be eligible to receive conservation benefits, which was not in the 2008 Farm Bill and therefore should not be in the rule.

Response: We will make a technical correction to this section to clarify that "actively engaged in farming" provisions in the current regulations do not apply to CRP contracts and extensions to such contracts beginning October 1, 2008. CRP contracts are subject to the regulations in place at the time the contract was executed, so the payment limitation, "actively engaged in farming," and average AGI limits in the current regulation do not apply to contracts executed prior to October 1, 2008. For contracts executed before that date, the regulations in the January 1, 2008 edition of the *Code of Federal Regulations* apply.

The average AGI limitations in effect when the contract was signed apply to CRP, but those limitations apply only when the initial contract is made; if the person or legal entity's average AGI exceeds the limit in later years, they are still eligible for annual rental payments for the duration of that contract.

Comment: The table that identifies payment limits identifies the Wetland Reserve Program (WRP) limit of $50,000. That is correct, but it needs a footnote that the payment limit does not apply to payments for perpetual or 30 year easements or under 30 year contracts.

Response: We added that footnote in this rule.

Sec. 1400.2 Administration

Comment: The interim rule should state specifically who will determine payment limitations and payment eligibility for a joint operation with six or more members.

Response: The determination will be made by the FSA State office, as it has been made in the past. We clarified that in this rule.

Comment: If people need to provide additional paperwork to FSA, allow them to withdraw their application for payment and resubmit; "stop" the 60 day determination clock as specified in § 1400.2(f). This has been done sometimes in the past, but it would be appropriate to specify it in the rule.

Response: This is and will continue to be our practice, and is specified in our handbook. Applicants have the option to withdraw or change their farm operating plan at any time. The 60 day determination provision in the rule requires the FSA county office to make a timely determination; it does not require the producer to submit documentation within 60 days. If an unfavorable determination is made, based on the documentation provided, a revised farm operating plan can be provided to the county office. No changes were made to the rule in response to this comment.

Sec. 1400.3 Definitions

Some commenters support the changes to the definition of capital, and the provisions that require funding provided to a farming operation to be independent and separate from funding provided to all other farming operations, and requiring that a person or entity's contribution of capital be independent from others. They also support the clarification that advance program payments are not considered capital contributions, all the changes and recommend they stay in the final rule, and the definitions of contribution and joint operation.

Comment: The definition of "capital" is fine, but it is not used consistently in §§ 1400.202, 1400.203, and 1400.204, which appear to disqualify any land, equipment, or capital acquired with a loan.

Response: The use of the term "capital" in sections §§ 1400.202, 1400.203, and 1400.204 is consistent with the way it is defined, including the provision that capital can include borrowed (loaned) funding. Sections 1400.202, 1400.203, and 1400.204 do further clarify appropriate loan terms, including guarantees and co-signers, for loans used for eligible "actively engaged" contributions of capital, land, and equipment. Those sections do not automatically disqualify all land, equipment, or capital acquired with a loan. No changes were made to the rule based on this comment.

Comment: The rule is not consistent on using the term "joint operation" as defined. Sections 1400.6(a) and 1400.106(b), for example, use slightly different terms. Change the references to general partnerships or joint ventures in those sections to "joint operation."

Response: We agree that the term "joint operation" should be used consistently. We will change §§ 1400.6 and 1400.106 to use the term "joint operation."

Comment: Change the definition of "family member" to include nieces and nephews. The definition will not allow some family members to be eligible, for example, a farmer will not be eligible for a direct payment if the farming partner

is the spouse's uncle; the farmer is not a direct descendent.

Response: The definition of family member in the rule is the definition that is required by the 2008 Farm Bill. The definition in the 2008 Farm Bill was clear and complete as written. Therefore, we did not make any changes to the rule in response to the comment.

Comments: A more rigorous definition of active personal management is needed; too many people per legal entity are qualifying for payment eligibility based on only active personal management. Change the definition of "active personal management" to be a measurable, quantifiable standard. That term as it is further used in the definitions of "contribution" and "significant contribution" represents a potential loophole. Set a specific monetary or time requirement; ideally, 1000 hours or 50 percent of the total hours necessary to conduct a farming operation of comparable size.

Add the words, "on a regular, substantial, and continuing basis" to the definition of "active personal management," including "day to day" supervision and "services including but not limited to significant on-site services."

Response: The definition of what constitutes a significant contribution is provided by regulation, not by statute and could be changed. We recognize the difficulty in determining the significance of a management contribution under the current definition and the desirability of a measurable, quantifiable standard. However, unlike labor, the significance of a management contribution is not appropriately measured by the amount of time a person spends doing the claimed contribution. The current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years; Congress has not mandated a more restrictive definition during that time, including in the 2008 Farm Bill. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. At this time, no changes were made as the result of this comment and other related comments.

Comment: Do not allow a combined contribution of labor and management to be counted as a "significant contribution" in the definition. Define both with a quantifiable standard.

Response: A strict division of responsibilities between labor and management is not a realistic expectation for many smaller farming operations, where actively engaged members of the operation typically do a combination of both. A significant contribution by an actively engaged farmer often does include a combination of labor and management. No changes were made as a result of this comment.

Comment: "Commensurate" is used throughout, but never defined. Since it is crucial to payment eligibility, need to define it.

Response: "Commensurate" is not defined in this rule, because it is utilized based upon its common dictionary definition and is not used in a special way in the rule. When making a determination regarding commensurate contributions, we have not required and will not require that the contribution be exactly proportional to the ownership share. No changes were made to the rule as a result of this comment.

Sec. 1400.5 Denial of Program Benefits

Comment: It is unfair to consider fallow land or land with no production as an example of a scheme or device. Sometimes producers make mistakes providing information. The current test for scheme or device in the regulation is too difficult to meet and is arbitrary and capricious.

Response: Land where no crops are grown or commodities produced is provided as a factor in an example of a scheme or device in the rule. Also, it is listed as one indicator of a possible scheme or device; it has not and will not be used as the only proof that a scheme or device has occurred. The term "fallow" land did not appear in the previous rule or the preamble.

The requirement to deny program benefits to persons who have participated in a scheme or device is in the 2008 Farm Bill, and the statute also gives the Secretary discretionary authority to decide what other serious actions merit denial of benefits. The expanded provisions on denial of benefits are consistent with the general policy of the 2008 Farm Bill to tighten payment limits and payment eligibility. We agree with Congress that it is important to prevent taxpayer money being used to reward fraud, and particularly to prevent schemes such as "creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive." Therefore, we did not make any change to the rule in response to this comment.

Comment: The section on submitting false information should include the words "knowingly" and "intentionally," to make it clear that accidentally submitting wrong information will not be considered fraud.

Response: The rule does refer to "knowingly" engaging in the creation of a fraudulent document. By dictionary definition, fraudulent means intentionally false. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.7 Commensurate Contributions and Risk

Comment: Changing "at risk" to "at risk for a loss" is not supported by statute; it is unclear how a person's risk could be measured to determine whether it is commensurate to the claimed share of profits and losses. All members of a partnership are 100 percent liable for a loss. One partner may have substantially greater personal assets at risk outside the partnership than another partner.

Response: This change was intended only to clarify that persons who share no risk in the crop are not eligible for payment; no one should be made eligible or ineligible by this wording change. Also, the dictionary definition of risk includes exposure to the chance of loss. Therefore, we did not make any changes to the rule in response to the comment.

Subpart B—Payment Limitation

The following discussion addresses the comments received on Subpart B identified by section.

Sec. 1400.100 Revocable Trust

Comments: What about revocable living trusts? The IRS does not recognize this as an entity with independent tax status, but USDA does, so a person can not qualify as actively engaged because land is leased through the trust, and a family member is the trustee.

This rule can be read to require a living trust to be treated as an entity subject to its own payment limitation. There should be an exception for living trusts created by a husband and wife, where they are the sole beneficiaries, the trust uses one of their social security numbers, and the trust income is reported on their individual returns. It looks like this rule requires that with a trust, two people who would normally qualify for two payments would be eligible for only one payment, or be forced to apply as cash rent tenants on their own land.

Response: The 2008 Farm Bill clearly specifies that "a revocable trust shall be considered to be the same person as the grantor of the trust," which is reflected in the rule. The tax status of such trust is irrelevant for the purposes of payment eligibility. We cannot attribute two payment limitations to one Social Security number. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.101 Minor Children

Comment: The provision attributing payments received by a minor to the parent who receives the greater amount of farm payments exceeds the authority. The payments must be attributed equally to the parents, not to the one receiving the greater payments.

Response: The 2008 Farm Bill requires that payments received by a child under the age of 18 be attributed to the parents of the child. It also authorizes the Secretary to "issue regulations specifying the conditions under which the payments received by a child under the age of 18 will not be attributed to the parents of the child." The 2008 Farm Bill does not require that the payments be attributed equally, and it gives the authority to set exceptions, so the regulation is within the authority. This provision prevents actions to evade the payment limitation provisions through manipulation of the attribution of payments received by minor children. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.102 States, Political Subdivisions, and Agencies Thereof

Some commenters support the requirement that payments to States be used to support public schools.

Comment: The 2008 Farm Bill allowed an exception to the payment limits for States with a population of less than 1,500,000. The rule should specify that.

Response: We will add a provision to the rule specifying that the population will be determined using the most recent U.S. Census Bureau data, and specifying the 1,500,000 threshold. Using 2008 data, the list of States that meet the criteria are: Alaska, Delaware, Hawaii, Maine, Montana, North Dakota, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming.

Comment: States with populations greater than 1,500,000 should still be eligible for full benefits.

Response: The 2008 Farm Bill states that States may receive direct, counter-cyclical, or Average Crop Revenue Election (ACRE) payments not to exceed $500,000, and that the payments may only be used to maintain a public school; there is an exception for States with a population less than 1,500,000. We do not have the authority to expand that exception to all States. Therefore, we did not make any changes to the rule in response to the comment.

Comment: State lands should still be eligible for CRP.

Response: CRP contracts are administered under the regulations in place when the contract was established. Any State lands already under a CRP contract approved prior to October 1, 2008 will remain subject to the rules in 7 CFR part 1400 in effect when the contract was approved. However, new contracts will be established under the current rules, and State lands will not be eligible for new CRP enrollments or extensions. We did not make any changes to the rule in response to the comment.

Sec. 1400.104 Changes in Farming Operations

Comment: For a farming operation of economically viable size, the requirement to add twenty percent base acres in order to qualify another family member will require adding hundreds of acres to the farm. This is an unreasonable hardship.

Response: As stated in the preamble to the previous publication of the payment eligibility and limitation rule, additional persons or legal entities beyond one for payment limitation purposes may be recognized if an FSA State office specialist determines that the increase in base acres was of a magnitude that would support further additions to the farming operation of persons or legal entities for payment limitation purposes. Also, the "substantive change" provisions were announced well in advance of the 2009 crop year, so that operations would have time to adjust. As specified, the addition of a family member to a farming operation will be considered a bona fide and substantive change if they also meet the "actively engaged in farming" requirements of § 1400.208. One, not all, of the bona fide changes listed in the rule must occur for the change to be considered bona fide; we changed the rule to make it clearer that the list of changes considered bona fide is an "or" list, not an "and" list.

Comment: Is "amount" of equipment or land transferred a dollar value or the number of pieces of equipment or acres of land? Specify which it is in the rule.

Response: The regulation also refers to fair market value, so the regulation is already clear that dollar value is meant. Therefore, we did not make any changes to the rule in response to the comment.

Comments: Several comments address the issue of substantive change, and seller financing, when the buyer or new partner is a non-family member. Prohibiting seller financing of land or equipment is unduly burdensome. The use of seller financing is a key component of succession planning and is critical in attracting young and beginning farmers. In many cases, this provision will eliminate the ability of beginning farmers an opportunity to enter farming.

For example, if a 67-year-old farmer tries to get a new farmer started to take over the farm, the new farmer is likely to be young and have little capital. If they start as partners, this will be a problem under the substantive change rule. If the farmer is only getting one-third of the maximum payment, why is there a problem adding a new person? The rules should be waived for persons who are not near the payment limit.

Another example is a farmer planning to retire who wants to add a niece's husband to the farm. He is not a direct descendent. Why must the farmer lose half the farm payment, which is only a third of the maximum payment anyhow, for helping a new farmer?

This prevents a farmer from buying out his neighbor if there is any kind of seller financing. This is unduly restrictive.

Response: The previous rule did not change the provisions about seller financing when the buyer or new partner is a non-family member; the provisions have been substantially similar for the past twenty years. FSA is not prohibiting seller financing; it is merely setting the regulations for the changes to the farming operation that will justify payment eligibility for another person or legal entity. We did not make any changes to the rule in response to the comments.

Comment: Add a clause in § 1400.104(a)(3)(ii) that the FSA State office makes the substantive determination that the change supports additional persons or entities to the farming operation "based solely on the expectation to benefit from the commercial success of the farming operation." In other words, the change should be obviously to increase the profits of the farming operation, not just to maximize government payments.

Response: The purpose of § 1400.104 is to specify that substantive changes to the farming operation must in fact be bona fide and substantive to change the payment eligibility for the operation. The 2008 Farm Bill requires these provisions. It does not specify that the change must also be financially prudent; that change would exceed our

discretionary authority. The payment limitations regulations are intended to limit farm program payments to persons and legal entities actively engaged in farming and with average AGI below certain thresholds, rather than to limit payments to financially prudent persons and legal entities. Therefore, we did not make any changes to the rule in response to the comment.

Comment: We strongly support the changes in § 1400.104(a)(4) and (a)(5), which end some abusive sales and gifts practices formerly used to dodge the payment limits. To further strengthen these paragraphs, add that the former owner has "no direct or indirect control."

Response: We will make this change to the rule.

Sec. 1400.105 Attribution of Payments

Comment: Under IRS tax law, a C corporation is taxed as a separate entity, and tax liability does not extend to stockholders. How can USDA legally attribute payments to a corporation to the stockholders? C corporations are not "pass through" entities.

Response: The 2008 Farm Bill specifically requires that "attribution of payments made to legal entities be traced through four levels of ownership in legal entities." The tax status of an entity is irrelevant for the purposes of attribution of payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: Charitable organizations do not necessarily have members or owners. Add a new paragraph saying that if the charity does not have members or owners, the payment will be attributed as if it had one member, itself.

Response: That is how payments to a charitable organization will be attributed under the current regulations. Therefore, we did not make any changes to the rule in response to this comment.

Subpart C—Payment Eligibility

The following discussion addresses the comments received on Subpart C by section.

Sec. 1400.201 General Provisions for Determining Whether a Person or Legal Entity Is Actively Engaged in Farming

Some commenters support the addition of "and separately," and similar language, as well as the requirement that the risk be commensurate with the share of the operation.

Comment: Remove the "actively engaged in farming" provisions. Farming operations members that have outside jobs cannot work on the farm, but the money from FSA programs helps hire farm hands and buy new equipment, helping the local economy.

Response: The 2008 Farm Bill requires that actively engaged in farming is an eligibility requirement for certain payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: The requirements in §§ 1400.105 and 1400.204 requiring separate, distinct, identifiable, and documentable contributions, and similar provisions, are not realistic given the ways farms really operate and discriminate against spouses. Decisions and workloads are typically shared by family members on a family farm, and it is hard to separate one person's contribution. The "independently and separately," "separate and distinct," *etc.* requirements for contributions in this section are confusing, possibly redundant, and likely to be inconsistently applied at the local level. Also, it appears to be more restrictive than was required by the 2008 Farm Bill.

Response: The 2008 Farm Bill requires us to determine whether someone is actively engaged in farming based on their contributions to the farming operation and their share of the profits or losses, "commensurate with the contributions of the person to the farming operation." To determine whether a person's contributions and share of the profits and losses are commensurate with their contributions, we need to know what their separate, distinct, identifiable, and documentable contributions are. In other words, we need to know what specific contributions they made in order to verify that they are actively engaged in farming, and the specific contributions must be documentable. With regards to spouses, as specified in § 1400.202, if one spouse is actively engaged in farming, the other is considered to have made a contribution of labor or management to that farming operation. The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement for certain payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: Require a person to actually work on a farm to be an "active farmer." Do not let insurance policyholders and corporate staff receive payments. A conference call is not farming.

Response: The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement for certain payments. Personal labor contributed to a farming operation would, by its nature, require that the person actually work on the farm. However, in lieu of a significant contribution of personal labor, the statute also allows a significant contribution of active personal management. Management encompasses more than on-site supervision; therefore, it would be overly restrictive and not supported by statute to make the change suggested by the comment. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, we did not make a change to the rule in response to this comment and other related comments.

Comment: Except for the spouse provisions, the changes to the actively engaged provisions are not required by the 2008 Farm Bill. Withdraw them, or at least delay implementation. Implement the 2008 Farm Bill that reflects the intent of Congress, no more, no less. Congress could have directed USDA to change the definition of actively engaged, but they did not. They had every opportunity, but chose not to, so it is clear the congressional intent was not to change the actively engaged provisions. So, withdraw the entire actively engaged changes.

Response: The provisions in this rule do not exceed our discretionary authority and are within the provisions set by the 2008 Farm Bill, which does in fact amend the provisions for what constitutes "actively engaged in farming." We did comply with the requirements of the 2008 Farm Bill; as discussed in further detail in a response to a comment on § 1400.204, we did provide an exception to the requirement that all stockholders or members in a legal entity such as a corporation must contribute personal labor or active personal management.

Comment: Payments should only go to people who are resident farmer operators; people who perform on a regular basis the day-to-day work of that farm unit, or someone who previously farmed that unit and is now renting it out on a crop share basis. Off-farm owners should not be eligible, even if they provide off-site management or supervision.

Response: The suggested change is beyond our statutory authority. As indicated previously, we are exploring whether the current definition of a significant contribution of active personal management could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, we did not make a

change to the rule in response to this comment and other related comments.

Comment: If one spouse is actively engaged, the other should automatically qualify, whether the land is owned or rented.

Response: Section 1400.202 specifies that if one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming, the other spouse is considered to have made a significant contribution of active personal labor or management, only to the same farming operation. This is not to say that the spouse will automatically meet the other requirements of being actively engaged in farming; contributions of land, capital, or equipment are generally also required to qualify as actively engaged in farming. There is no difference if the land is owned or rented with respect to spousal eligibility. The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.202 Persons

Some commenters strongly support the "independently and separately" language.

Comments: Under the old "3 entity" rule, many farms set up complex corporate structures to maintain eligibility. Now, they are being penalized and spouses will not be eligible. Delay the rule so that people have time to meet the new rules. For example, some farmers organized their family business around the 3 entity rule. More time is needed to adjust to the new rules. Also, a "farm wife" should be automatically considered to have made a separate and distinct contribution. Equal spousal qualification rules should apply regardless of the operation's legal structure.

The provision for spouses discriminates against spouses who operate as part of an entity or corporation. All spouses of actively engaged producers should be considered actively engaged.

Response: Equal spousal qualification rules do apply regardless of the operation's legal structure, as specified in further detail in our handbooks. We cannot delay implementation of the rule. We do not agree that the rule penalizes spouses in a farming operation. The previous rule included a provision by which if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making significant contributions of active personal labor or active personal management to the farming operation. While each spouse may now have their own respective limitation, each must also meet applicable program and payment eligibility requirements to receive program benefits. This is not to be construed as meaning if one spouse qualifies for payment, the other automatically qualifies as well. As previously mentioned, both spouses must make significant and requisite contributions to the farming operation that are commensurate with their claimed shares to be considered actively engaged in farming and eligible for program benefits. We did not make a change to the rule in response to this comment; we have further clarified in our handbooks that spouse qualification rules apply regardless of the operation's legal structure.

Comment: The provision for spouses discriminates against single people.

Response: The provisions for spouses are as required by the 2008 Farm Bill. Therefore, we did not make any changes to the rule in response to the comment

Comment: To preserve the long term viability of the soil, eligible persons should be owners of the property that they farm and for which they are receiving payments.

Response: The 2008 Farm Bill does not restrict eligibility to landowners although specific provisions for landowners are provided. Therefore, we did not make any changes to the rule in response to the comment.

Comment: If a spouse has arthritis and can not perform labor or management, does that impact eligibility under CRP? It appears that the rule discriminatory towards people with health issues.

Response: Under the provisions of this rule, if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making significant contributions of personal labor or active personal management to the farming operation. In any case, actively engaged in farming provisions do not apply to CRP contracts approved on or after October 1, 2008. We did not make any changes to the rule in response to the comment.

Comment: The exemption for minor children for actively engaged should also apply to retired parents.

Response: There is no exemption for minor children for actively engaged in farming in 7 CFR part 1400. This rule changes § 1400.203 to clarify that at least 50 percent, rather than all, of the members, partners, or stockholders in an entity must make a contribution for the members, partners, or stockholders of the joint operation to be considered actively engaged. That provision may help retired parents in a family entity qualify for payment.

Comment: The spouse provision should make it clear that the spouse's active engagement will be considered to be "commensurate" with their interest. Also, it should apply in the context of the cash rent tenant rule.

Response: It does apply, and we believe that it is clear. We have clarified this in our handbooks.

Comment: If an adult child is trying to start a farm and is renting land from their parents, it is unreasonable that the parents cannot cosign or guarantee a loan in order for their adult child to obtain the operating money? If farmers change an operation's structure FSA is now telling them that they are told they will be out of compliance with USDA's Risk Management Agency.

Why is a parent prohibited from co-signing a loan for an adult child that is renting land from them?

Response: The rule does not prevent co-signing a loan; it only determines payment eligibility and payment limitations. A person who is renting land from someone who also co-signed a loan may not meet the requirements for "actively engaged in farming." We did not change the rule in response to these comments.

Comment: Why does FSA care about interest rates and repayment schedules? Why are you dictating the terms of financial agreements?

Response: The 2008 Farm Bill requires us to determine whether someone is actively engaged in farming based on their contributions to the farming operation and their share of the profits or losses, "commensurate with the contributions of the person to the farming operation." To determine that the contribution of land, capital, or equipment is in fact from that person, we need this information. If the contribution is funded with a loan, we need this information to ensure that there are not improperly favorable "sweetheart" funding agreements between members of a farming operation set up for the purposes of evading payment eligibility provisions. We did not make any changes to the rule in response to this comment.

Sec. 1400.203 Joint Operations

Comments: A more rigorous definition or measurable standard for active personal management is needed; too many people per entity are qualifying for payment eligibility based on only active personal management. However, the comments did not represent a consensus on what that standard should be. Use a 1000 hour eligibility (test) for an active

contribution of management and labor combined. Require each actively engaged partner to work at least 1000 hours in proving labor or management, or engage in labor or management for hours equal to at least half those required by the share of the operation.

Define active management to include marketing, securing financing, supervising employees, and scheduling field activities.

Close the potential loopholes and end unlimited payments to the nation's largest farms. Require a person to either work half time on a farm or provide half the labor or management to qualify as an active farmer. The "actively engaged" issue is the biggest potential loophole of all. Megafarms with investor partners use this potential loophole to collect unlimited payments.

The excess payments gained from the actively engaged potential loopholes allow megafarms to outbid smaller farmers and beginning farmers for land, leading to the demise of family farming. This potential loophole is strangling the economic future of rural communities and choking off farm entry for the next generation.

Require a person to either work half to three quarters of their time on the farm, or provide half the labor or all the management on the share of the operation to qualify as an active farmer.

To qualify for eligibility based on active personal management and no labor, the rule should require that person to personally provide at least 75 percent of the total management required to run the farm or 90 percent of the total management that would be necessary to conduct a farming operation commensurate in size with their requisite share of the operation.

To clarify separate and distinct contributions of active personal management, add language in § 1400.203(a)(1) specifying that merely participating in meetings and voting is not sufficient. Add similar language in § 1400.204(a)(1).

Response: As indicated previously, the definition of what constitutes a significant contribution is provided by regulation, not by statute and, therefore, could be changed. We recognize the difficulty in determining the significance of a management contribution under the current definition and the appeal of a measurable, quantifiable standard. However, unlike labor, the significance of a management contribution is not appropriately measured by the amount of time a person spends doing the claimed contribution. The current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years; Congress has not mandated a more restrictive definition during that time, including in the 2008 Farm Bill. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, no changes were made at this time as the result of this comment and other related comments.

Comment: The "separate and distinct" requirement is not in the 2008 Farm Bill. The 2008 Farm Bill requires that the stockholders or members collectively make a significant contribution of labor or management. The examples in the preamble are unrealistic and reflect a division of labor that does not happen in the context of family farming. The rule should require that all the members together collectively make a contribution.

Response: As indicated in the comment, the 2008 Farm Bill requires that the stockholders or members in a legal entity that is a corporation or similar entity collectively make a significant contribution of personal labor or active personal management. It does not, however, indicate what percentage of stockholders or members in the legal entity must collectively make that significant contribution. However, if the legal entity is general partnership, joint venture, or similar entity, the statute requires that each partner or member must make a significant contribution of personal labor or active personal management. Therefore, we did not make any changes to the rule in response to the comment.

Comment: The provisions on joint and several liability appear to prohibit owner financing and situations where a third party lender requires secondary liability or other credit enhancements from interested persons where a loan is made to acquire an interest in a farming operation. Sound underwriting principles compel Farm Credit associations to require the very sort of credit enhancements that this rule appears to prohibit. Clarify why CCC is doing this. Why does the rule specify the interest rate and repayment schedule for the activities it appears to prevent?

Provisions in §§ 1400.203 and 1400.204 appear to say that if the capital, land, or equipment of an entity is acquired through a loan that is made to, guaranteed by, or co-signed by a person or entity that owns the farming entity, then that farming entity is not eligible for program payments. The rule does not appear to distinguish between loans made between financial entities and the farming entity, and loans made between persons or entities that may own the farming entity. Many commercial loans to farming entities use these very structures, and therefore this could make it difficult for farmers to both obtain credit and maintain payment eligibility. Similarly, the provisions about "prevailing interest rates" are vague. Rewrite this section so as not to infringe upon the lending relationships of farm entities and their financial institutions.

Response: This rule does not prohibit any owner financing methods; it merely specifies the requirements for payment eligibility. The eligibility requirements include a requirement that contributions by a person or entity be made by that person or entity, which means that in the case of a financed contribution, that the eligible person or entity be responsible for the loan. The provisions on interest rates and repayment schedules are intended to ensure that there are not improperly favorable "sweetheart" funding agreements between members of a farming operation set up for the purposes of evading payment eligibility provisions. We made minor technical corrections to the rule to clarify that the requirements for commensurate contributions are slightly different from those for significant contributions.

Comment: FSA told a farmer that he is not eligible because someone had cosigned his loan. He owns a lot of equipment and rents his house, so he does have risk in the farming operation. How do you expect beginning farmers to get started without a little help?

Response: If the person in question is not actively engaged in farming because they have not made the required contributions, then they are not eligible for payment. A person who is renting land from someone who also co-signed a loan may not meet the requirements for "actively engaged in farming." We did not make a change to the rule in response to this comment.

Comment: The current language appears to prohibit common joint financing arrangements currently in use. To fix that, replace the words "interest, and" in §§ 1400.203(b)(1)(iii) and 1400.204(c)(1)(iii) with "interest, or."

The provisions in § 1400.203(b)(1) and (b)(2) appear to contradict each other, as do the provisions of § 1400.204(c)(1) and (c)(2), concerning financing arrangements. If the second paragraph is in each case intended to be the exception to the first, then the words "must not" should be replaced with "should not" and the "and" connecting the two paragraphs should be replaced with an "or."

Response: We will make a technical correction in the rule to make it more clear which requirements apply to commensurate contributions and which apply to significant contributions.

Comment: In § 1400.203(c), add a requirement that no one person can provide the active labor, active management, or combination of labor and management for multiple farming operations collectively receiving more than one maximum payment.

Response: "Actively engaged in farming" determinations are made based on contributions to a farming operation. A person or legal entity can be legitimately involved in multiple farming operations. We do not believe there is authority for the suggested change. Therefore, we did not make a change to the rule in response to this comment.

Sec. 1400.204 Limited Partnerships, Limited Liability Partnerships, Limited Liability Companies, Corporations, and Other Similar Legal Entities

Comment: The requirement that each member make a contribution of labor or management does not make sense in this situation where only one payment is being received (for multiple people in the family farm). For example, unless an elderly family member is providing active labor or management, the family will lose that percentage of program payments.

Response: We agree that does not make sense. The intent of the provisions requiring that each member contribute active management or labor was to prevent the share of persons who were strictly passive investors in a legal entity from being eligible for payments. The intent was not to penalize smaller operations that have multiple members sharing payments less than or equal to the payment limit for one person or legal entity. Therefore, we added an exception if at least 50 percent of the stock is held by partners, stockholders, or members that are providing active personal labor or active personal management and the partners, stockholders, or members providing active personal labor or active personal management are collectively receiving total payments equal to or less than one limitation.

Comments: The legal entity should be eligible if some of the members work off the farm because they have to; for example, an operation that is only a few hundred acres.

All of the members should be eligible if the legal entity is solely owned by relatives, especially if they are siblings.

The rule should add an exemption for small operations if 51 percent of the members are actively engaged.

Not all the members in the family farm have the time, ambition, or skills to participate fully. Passive members of the entity may be doing the farm a favor by remaining passive. For farms with family members only, the actively engaged requirement should be either management and labor or land, capital, and equipment.

In a family entity where all the members are a family and no-one is getting payments through another entity, all family members should be considered to be actively engaged.

This section disincentivizes outside investment and distributing shares of a family corporation to family members who are not actively engaged in the operation. Many family farms have non-actively-engaged family members and outside investors as shareholders so that the operation can continue to the next generation. The decision to dilute ownership should not be deterred by the government.

Response: In response to these comments, this rule adds an exemption if members who collectively hold at least 50 percent interest in the entity make a significant contribution, as described above.

Comment: Allow the county committee to grant exceptions for family farms that are bona fide operations, but where some of the members do not provide commensurate contributions due to their age.

Response: This rule adds an exemption if members who collectively hold at least 50 percent interest in the entity make a contribution, as described above. There will not be an additional provision for exceptions by the FSA county committee.

Comment: Drop the requirement that each stockholder in a corporation be actively engaged in labor or management. Corporations can only get one payment; it is partnerships that are the problem.

Response: The rule does not require that each stockholder be actively engaged; it requires that they make a contribution. This rule makes a change to require that stockholders who collectively hold at least 50 percent interest in the entity, rather than all of the stockholders, contribute.

Comment: Allow members of an entity to make a "combined" contribution to qualify as actively engaged, and collectively share one payment limitation through direct attribution.

Response: The changes in this rule to §§ 1400.203 and 1400.204 should permit this to occur in most situations.

Comment: Section 1400.204(c)(1)(ii) has a "such joint operation" with no antecedent. Should this be "such legal entity?"

Response: We corrected that in this rule.

Comment: The 2008 Farm Bill requires that a person's or entity's share of the profits or losses be commensurate to their contribution and at risk, but it does not require that the risk of loss be commensurate with the claimed share of the operation. That is not realistic. There are good business reasons why risk is different, such as preferred stock.

Response: In the case of a legal entity, such as a corporation, the risk of loss pertains to the legal entity, not the stockholders of the legal entity. Therefore, no changes were made in response to this comment.

Comment: Change the definition of actively engaged to exclude corporate partners whose farming is solely to reap government benefits. An investor is not a farmer.

Response: There is no statutory authority to make this specific change. However, if a scheme or device has been adopted, the provisions in § 1400.5 would apply. Additionally, as indicated in response to a related comment, we are exploring whether the current definition of a significant contribution of active personal management could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, no changes were made at this time as the result of this comment and other related comments.

Comment: Active managers should be required to live within 20 miles of the farm they claim to manage.

Response: This comment's particular change was not made because it is very specific and might not apply to operations in different locations. It would not be unusual in a rural area for an active manager who works on the farm every day but does not live there to have a daily commute of more than 20 miles to the farm. We made no change to the rule in response to this comment.

Comment: To clarify spousal eligibility, add the words "or their spouses" after the words "ownership interest" in § 1400.204(a)(2).

Response: We made that change in this rule.

Sec. 1400.207 Landowners

Comment: No landowner should get a subsidy if the land is rented by a real farmer and not owner-operated.

Absentee landowners should not get payments unless they are actively engaged.

Response: As specified in the 2008 Farm Bill, the regulation allows landowners to be eligible for payment only if they have a share in the risks and profits of the farming operation. In other words, landowners who receive a fixed rental payment regardless of the success of the farming operation are not "producers," are not considered to be "actively engaged in farming" and are not eligible for payment. The previous rule added more specific language to clarify that absentee landowners will not be eligible to receive payment unless they have a share in the risks and profits of the farming operation. Therefore, we did not change the rule in response to these comments.

Comment: Are members of a limited liability corporation (LLC) that rents land out on a share crop basis determined to be actively engaged under the landowner exemption? If so, clarify that in the rule.

Response: If an LLC rents land, the LLC, rather than the members, would or would not be eligible for payment based upon a determination of the LLC's eligibility. We did not change the rule in response to this comment.

Comment: Add a paragraph (a)(4) to this section to read "rents the land at a rate that is usual and customary." This is needed to avoid cut rate leases that are used to evade payment limits.

Response: This language is not in the 2008 Farm Bill, and we do not have the discretionary authority to add such additional requirements. Therefore, we did not change the rule in response to this comment.

Sec. 1400.209 Sharecroppers

Some commenters support all the changes to § 1400.209.

Comment: The AGI limits will force landlords to change from crop share renting to cash basis, which will greatly increase the risk to the (crop share) farmer. The shift of farm payment from the landlord, who probably pays a 40 percent income tax rate on the benefit, to the farmer, who probably pays a 20 percent income tax rate, will reduce income tax revenue for the government. Taxpayers will lose.

The paperwork burden is encouraging landowners to move from share rent to cash rent, which increases the risk for (renting) farmers.

Response: The paperwork burden is necessary to implement payment limitation, payment eligibility, and average AGI provisions. The average AGI provisions are as specified in the 2008 Farm Bill and we must implement them. The argument that the landlord pays a higher tax rate than the cash rent farmer on a farm program payment is not a sufficient justification to change the rule, since the government would spend even less if no payment were made at all due to ineligibility. The rule reflects the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comment.

Comment: Some renters have a landlord and also a separate owner or "waterlord" who owns the water rights to the property. Waterlords are not allowed the same landlord exemption from actively engaged. They should be. If they do not get the exemption, they will shift from share rent to cash rent, which again increases the risk to (renter) farmers.

Response: The 2008 Farm Bill does not mention waterlords; we have no authority to set separate eligibility requirements for them or to apply landowner provisions if, in fact, they are not the owner of the land being farmed. The rule reflects the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comment.

Sec. 1400.210 Deceased and Incapacitated Persons

Comment: Explicitly state that if an individual member of a farming operation dies, all the surviving members should continue to receive timely payments for their share of the operation.

Response: The regulation does not prevent payments to surviving persons if a deceased person was a member of the farming operation. The regulation also already specifically allows such payments to the estate of a deceased person, provided that a representative of the person's estate provides the determining authority the requisite documentation that the person was, or intended to be, actively engaged in farming. If this comment is about direct and counter-cyclical payment program (DCP) enrollments, it is outside the scope of this rule; the DCP regulations are in 7 CFR part 1412. If the comment is about payments on behalf of the estate of a deceased person, the rule already addresses this situation; therefore, no change was made as a result of this comment.

Subpart D—Cash Rent Tenants

The following discussion addresses the comments received on Subpart D by section.

Sec. 1400.301 Eligibility

Comment: It is unreasonable to require the tenant to exercise complete control over the leased equipment for an entire crop year, when that equipment is leased from a landlord or from the same source as the hired labor. It is wasteful to leave equipment idle when it could otherwise be put to efficient use.

Response: The section on cash rent tenants did not change significantly with the previous rule, so the requirement of a contribution of equipment and the complete control requirement are not new. The change made in the previous rule was to specify that "complete control" means "exclusive access and use by the tenant."

To clarify further, the current regulations do not require that a tenant lease equipment for an entire crop year; the regulation only states that if a tenant is eligible for payment based on a contribution of equipment that such equipment be leased for the entire crop year. A cash rent tenant can be eligible for payment by contributing either labor or management and equipment. In other words, no contribution of equipment is required for a cash rent tenant to be eligible for payment if they make a significant contribution of labor to the farming operation instead. We did not change the rule based on this comment.

Comment: The provisions about leased equipment are not feasible for custom farm work. For example, if a farmer hires someone to combine corn for a flat rate, it is impossible to separate into equipment lease and labor for the purposes of the regulation or the 902 forms. With a custom flat rate, there is no risk to the farmer, like there would be if the farmer leases the equipment and breaks a belt, so it is in no way the same thing as a lease or separable into a lease and labor. Clarify in the rule, so it is applied consistently and correctly.

Response: To be "actively engaged" as a cash rent tenant based on a contribution of equipment, the equipment must be leased and other requirements must be met. A custom farming contract is not a lease. The rule is consistent in the sense that it makes no mention of custom farming as qualifying a cash rent tenant as actively engaged. This is consistent with the 2008 Farm Bill, which allows a recipient of custom farming services to be eligible if the person or legal entity is a landowner, adult family member of a family farming operation, sharecropper, or grower of hybrid seed. The 2008 Farm Bill explicitly prohibits us from making any other rules with

respect to custom farming in terms of being "actively engaged." Therefore, we did not make any changes in response to the comment.

Comment: To clarify spousal eligibility, add the words "or their spouses" after the words "each member" in § 1400.301(d).

Response: We made that change in this rule.

Subpart E—Foreign Persons

The following discussion addresses the comment received on Subpart E by section.

Sec. 1400.402 Notification

Comment: Section 1400.402, which sets forth notification requirements for both foreign and domestic legal entities, should be combined with section § 1400.107, "Notification of Interests."

Response: Section 1400.402 is currently located in the subpart on Foreign Persons, because it specifically requires foreign and domestic legal entities to notify the county committee of foreign interests in that entity. We did not change the rule in response to this comment.

Subpart F—Average Adjusted Gross Income Limitation

The following discussion addresses the comments received on Subpart F by section.

Sec. 1400.500 Applicability

Comment: We support payment limits that deny payments to anyone whose average nonfarm AGI exceeds $500,000, and denying direct payments to anyone whose average farm AGI exceeds $750,000.

Response: These requirements, as specified in the 2008 Farm Bill, were implemented in the previous rule and require no additional changes.

Comment: We support the $1 million AGI cap for conservation program benefits, providing that the 75 percent farm income exemption remains intact.

Response: The $1 million AGI cap for conservation program benefits, as specified in the 2008 Farm Bill, was implemented in the previous rule. There is an exception if not less than 66.66 percent of that income is farm income. That 66.66 percent threshold was specified in the 2008 Farm Bill; there is no authority to change the threshold to 75 percent, as suggested. Therefore, we did not make any changes in response to the comment.

Comment: Consider alternatives to the AGI limits and provisions set in the 2008 Farm Bill. Corporations making more than $250,000 in profit or where the shareholders are not at least 50 percent immediate family members should be excluded.

Reducing the AGI limit to $250,000 might slow down the trend towards bigger and bigger farms driving the small ones out of business.

The subsidy cap should be gross sales over $1 million.

Farm income should exceed all other forms of income to be eligible for any payment.

Farm income should be at least 25 percent of total income to be eligible for any payment.

The current AGI limits in the 2008 Farm Bill would be devastating to America's farmers, and any further reduction could lead us to rely on imported food as we do with oil today. Can you change the limits?

Payment limits should be done by number of acres rather than income, because the big operators will always find a way to get around the AGI limits with shadow partners or big machinery purposes. The coverage should be for a certain number of acres, not a certain AGI.

Use net income instead of gross, so that we can also collect social security.

If there is going to be a gross income limit, it should be at least a million and probably two million, but there does need to be an upper income. Gross income is harder to manipulate than net, so it should probably be gross.

Response: The 2008 Farm Bill was specific on the AGI provisions. The $500,000 limit on nonfarm AGI and the $750,000 limit on farm income were specified in the 2008 Farm Bill, as well as the general categories of what will be considered farm income. Therefore, we did not make any changes in response to the comments.

Comment: Remove or delay implementation of the AGI limits. With no time to plan for these changes we will be forced to lay off farm hands, grow fewer crops and livestock, and increase food prices.

Response: We must implement the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comments.

Comment: Waive the AGI limit for conservation programs for cost-share forestry activities in priority areas identified by States per section 8002 of the 2008 Farm Bill.

Response: The Secretary has the authority, as specified in the 2008 Farm Bill and in § 1400.500, to waive the AGI limit on a case-by-case basis for the protection of environmentally sensitive land of special significance. Forest stewardship activities in priority areas could meet that criteria, but such activities will be reviewed on a case-by-case basis. That is already specified in the rule, so we did not make any changes to the rule in response to this comment.

Comment: Are the "previous 3 tax years" based on the crop year or the time of signup? For example, if one person signs up for 2011 DCP in October 2010, do they have the same 3 years for AGI calculation as someone who signs up for 2011 DCP in January 2011?

Response: For the purposes of determining the 3 applicable tax years, it does not matter when during a crop, fiscal, or program year a person signs up for the program. In this example, the 3 applicable tax years would be 2007 through 2009. We did not make any changes to the rule in response to this comment.

Sec. 1400.501 Determination of Adjusted Gross Income

Comments: Make it clear that wages from a farming operation or other entity is considered farm income for AGI purposes.

Specifically reference IRS Schedule T for forest activities.

Take into account that the IRS limits losses that can be claimed if a producer receives benefits, which could understate a producer's losses while exaggerating AGI, unfairly resulting in program ineligibility.

Are dividends from the activities listed here considered farm income?

Include farm income, wages, and dividends as farm income for the purpose of the AGI rule.

Are profits and losses from LLCs involved in the activities listed here considered farm income?

If entities are involved in the list in § 1400.501 and other activities, how are the dividends or profits allocated between farm and non-farm income?

What about income derived or received from interests held in ethanol plants and processing facilities?

Response: The provisions in the previous rule relating the determination of average adjusted gross farm income are based on the provisions in the 2008 Farm Bill. The rule also indicated that the determination of average adjusted gross farm income would include any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator. Accordingly, the issue on wages and related issues in these comments will be addressed in handbook procedure.

Comment: If a farmer sold some land, there could be a very large income in that year. Use at least a 5 year average AGI instead of a 3 year average AGI to

avoid penalizing people in that example.

Response: The 3 year average AGI provision was specified in the 2008 Farm Bill, as were the general categories of what will be considered farm income. Therefore, we did not make any changes to the rule in response to the comments.

Sec. 1400.502 Compliance and Enforcement

Comment: A farmer should not have to certify my AGI every year, nor should the FSA office be reviewing tax returns. Farmers generally do not employ certified tax accountants for preparation of tax returns and that AGI certification would create undue hardship; third party verifiers (CPAs & lawyers) may be reluctant to assume liability for providing certifications.

Response: The requirement to certify average AGI as required by CCC is not new and does not represent an unreasonable requirement. CCC believes that such certification is necessary to ensure that payments are made to persons and legal entities that qualify under the AGI limits set by Congress, and that payments are not made based on fraudulent AGI statements. We did not make any changes to the rule in response to the comment.

Comments: Handle AGI verification in house, by sharing data with IRS. County offices should not be storing AGI records locally for everyone; have county offices verify only those records that do not pass the first screen against IRS data.

Do not let the USDA have access to our IRS files. That is a clear violation of privacy, and the information will somehow, inevitably end up publicly available. Personal IRS data should not end up on an interest group Web site.

Information obtained by USDA from the IRS should not be subject to FOIA.

Investigation of IRS "red flagged" files should be done at a central FSA office, not at the county level, for reasons of expertise and confidentiality.

Response: We are currently working with the Treasury Department to improve our methods for AGI verification while maintaining full privacy and confidentiality of this sensitive information. As in the previous rule, any information gathered for average AGI verification and compliance purposes is not subject to disclosure under FOIA.

Comments: Let farmers use IRS enrolled agents to certify.

Let farmers use tax preparers who are not IRS enrolled agents, attorneys, or CPAs to certify.

Response: For average AGI certification purposes, both the 2002 and 2008 Farm Bill allow a statement from a certified public accountant or from a third party acceptable to the Secretary. The decision was made that only an attorney is an acceptable third party qualified to provide such a statement.

General Comments Received

Some comments received on the previous rule provided general comments not related to any specific subpart or section of the interim rule.

- Some of the general comments supported or opposed alternative proposals to the 2008 Farm Bill. In response, CCC is implementing the 2008 Farm Bill and will implement any amendments if and when those amendments become law.
- Some comments expressed general disapproval with the entire farm program, or with certain aspects of the program. In response, CCC does not have the authority to end the direct payments program, or any other program authorized by Congress.
- Some comments expressed general views, rather than making specific suggestions for changes to this rule. In response, CCC welcomes the input but cannot make specific changes to the rule based on general views.
- Some comments suggested changes to USDA programs outside the scope of CCC programs. In response, CCC does not have authority to make changes to rules for non-CCC programs. Also, we cannot change the DCP program or forms for DCP enrollment with this rule, because that is outside the scope of 7 CFR part 1400.
- Some comments and questions were about the forms used to apply for payments or verify income. While the forms were re-numbered in 2008 and have a different appearance than previously, the questions and information requested are essentially the same as for the past twenty years. We will address some of these comments by clarifying and updating our handbooks.

The following comments, which generally fit into the categories just discussed, are outside the scope of this rule:

- Bring back the CRC Plus program.
- Strongly opposed to the current administration's proposal to cap payments based on $500,000 gross farm revenue.
- Strongly support the current administration's proposal to cap payments based on $500,000 gross farm revenue.
- Strongly oppose the proposal to phase out DCP and change the crop insurance program.
- ACRE should be a one year commitment, and not require that the landlord agree.
- New farm land should be eligible for DCP.
- Farmers' health insurance is increasing 40–50 percent this year.
- Write gardening into the school curriculum.
- A guaranteed farmer bailout every year is no less wrong than two or three bailouts for banks. Allowance to fail is part of capitalism.
- Government should not be a reason that children are fat and unhealthy.
- Do something about abuse of downer cows at slaughterhouses.
- Do all you can to help factory farm animals.
- Extend subsidies to farmers who grow vegetables, particularly those grown sustainably. Favor farms that sell locally and sustainably grown vegetables over farmers who sell too much grain that ends up in the international marketplace, devastating farmers in developing nations.
- Create a simple system for vendors at farmers' markets to accept the supplemental nutrition assistance program.
- Help real farmers, not megafarms with investors.
- Support local organic farmers.
- Support community supported agriculture.
- Farmers who are entities should not be banned from receiving USDA low interest loans.
- CCC–509 does not work for Native Americans.
- A guaranteed payment regardless of crop price or profit is not a safety net. With crop insurance, disaster assistance, and price support now in place, direct payments should be phased out.
- Oppose direct payments because they distort the playing field in favor of large corporate farms. Eliminate all direct payments to farmers, and keep in place the price support programs.
- Consider ways that the farm payments program can promote an increase in the acreage of deep-rooted grassland plant cover, preferably native grassland species.
- The government should not be helping any farmer, large or small. Let the free market take place. This would allow small family farms to have a fighting chance against corporate farms.
- Offer tax breaks or subsidies for organic farming or moving away from non-edible corn and into growing fruits and vegetables.
- Re-direct subsidies to support insect, wildlife, and human communities.

Summary of Changes to the Rule

As discussed above, in response to the comments, we made changes to the rule. Also, we made a number of additional technical corrections and minor clarifications. The changes are summarized below.

We added an exception for smaller operations to the requirement that every interest holder in a legal entity must provide active personal labor or active personal management. We clarified provisions concerning CRP and other conservation programs, so that the rule is consistent with current practice.

We made the date for minor child determination consistent with the date for payment attribution.

We corrected and clarified cross-references between this part and other parts in this chapter, and corrected and clarified cross-references between sections in this part. We also fixed inconsistent terminology. We removed § 1400.7, "Commensurate Contributions and Risk," from subpart A because all of the provisions are duplicated in subpart C and to clarify that the provisions apply only to programs to which subpart C applies. We clarified the provisions for trusts and estates to make them consistent with other sections in this part regarding contributions.

On other topics on which we received comments, we did not change the rule, but we provided additional clarification in the preamble and plan to add additional detail to our handbooks. These topics include:

- Spousal eligibility for different types of joint operations,
- Substantive change rules,
- Financing of capital, land, and equipment contributions,
- Withdrawal and resubmission of farm operating plans, and
- The tax status of entities and income that is not relevant for the purposes of this part.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as significant and it was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The 2008 Farm Bill requires major revisions of payment eligibility and payment limit regulations, which were implemented with the interim rule.

The exception made by this rule to the requirement that all stockholders, partners, or members in an entity have to contribute personal labor or active personal management is expected to impact fewer than a thousand entities. The monetary impact is not substantial. Although those entities were impacted by the requirement imposed by the interim rule, they were still eligible for reduced payments based on the percentage of stockholders, partners, or members in the entity making the required contributions. The change made by this rule will allow full payment.

This rule also implements minor technical corrections, such as correcting internal paragraph references, which are expected to have no substantive cost or benefit.

There is estimated to be minimal cost to the government in implementing this regulation because the forms and procedures for determining payment eligibility are not changing.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 1601 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment, which was done.

Environmental Review

CCC received one comment on the previous rule stating an EIS is needed to comply with NEPA.

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA's regulations for compliance with NEPA (7 CFR part 799). The changes to Payment Limitation and Payment Eligibility required by the 2008 Farm Bill that are identified in this rule are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local or Tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this final rule applies are:

10.055—Direct and Counter-Cyclical Payments Program.
10.069—Conservation Reserve Program.
10.072—Wetlands Reserve Program.
10.082—Tree Assistance Program.
10.912—Environmental Quality Incentives Program.
10.914—Wildlife Habitat Incentive Program.
10.917—Agricultural Management Assistance.
10.918—Ground and Surface Water Conservation—Environmental Quality.

Incentives Program

10.920—Grassland Reserve Program.

This final rule also applies to the following Federal assistance programs that are not in the Catalog of Federal Domestic Assistance:

- ACRE,
- Emergency Assistance Program for Livestock, Honey Bees, and Farm-raised Fish (ELAP),
- Livestock Forage Disaster Program (LFP),
- Livestock Indemnity Program (LIP),
- Supplemental Revenue Assistance Program (SURE),
- Agricultural Water Enhancement Program (AWEP),
- Chesapeake Bay Watershed Program (CBWP),
- Conservation Stewardship Program (CSTP),
- Cooperative Conservation Partnership Initiative (CCPI), and
- Farm and Ranchland Protection Program (FRPP).

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in Section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

We received comments on the previous rule that the forms require disclosure of information that should not be required and the burden for AGI compliance is excessive. The requirement to certify average AGI as required by CCC is not new and does not represent an inappropriate requirement. While the forms were renumbered in 2008 and have a different appearance than previously, the questions and information requested is essentially the same as for the last 20 years. Therefore, the AGI certification is necessary to ensure that payments are made to persons and legal entities that qualify under the AGI limits set by Congress, and that payments are not made based on fraudulent AGI statements.

E-Government Act Compliance

CCC 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, Reporting and recordkeeping requirements.

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

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS

1. The authority citation continues to read as follows:

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

2. Amend § 1400.1 as follows:

a. In paragraph (a), introductory text, remove the words "parts 1421 and", and add, in their place, the words "parts 1421, 1430, and",

b. In paragraph (a)(2), add the words "with respect to contracts approved on or after October 1, 2008 " at the end, before the semicolon,

c. Add paragraph (a)(8) to read as set forth below, and

d. Revise paragraph (f) to read as set forth below.

§ 1400.1 Applicability.

(a) * * *

(8) Subparts C and D of this part do not apply to the programs listed in paragraphs (a)(2) through (a)(7) of this section.

* * * * *

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Direct Payments for covered commodities [1]	$40,000
(2) Direct Payments for peanuts [1]	40,000
(3) CRP annual rental payments [2]	50,000
(4) GRP	50,000
(5) WHIP	50,000
(6) WRP [3]	50,000
(7) Counter-Cyclical Payments for covered commodities [3]	65,000
(8) Counter-Cyclical Payments for peanuts [3]	65,000
(9) NAP payments	100,000
(10) Supplemental Agricultural Disaster Assistance [4]	100,000
(11) TAP	100,000
(12) CSTP [5]	200,000
(13) EQIP	300,000

[1] If the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.

[2] Limitation is applicable to annual rental payments received directly and indirectly from all CRP contracts regardless of contract approval date, except payments received directly and indirectly under 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 payment limit does not apply to payments for perpetual or 30 year easements or under 30 year contracts.

[4] Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm that is participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.

[5] Total payments received under Supplemental Agricultural Disaster Assistance through SURE, LIP, LFP, and ELAP may not exceed $100,000.

[6] The $200,000 limit is the total limit for 2009 through 2012.

Note: AMA, AWEP, CBWP, CCPI, and FRPP are all limited by available funding rather then an amount by participant.

§ 1400.2 [Amended]

3. Amend § 1400.2 in paragraph (g) by removing the words "will not be made by a county FSA office" and adding, in their place, the words "will be made by the FSA State office".

§ 1400.6 [Amended]

4. Amend § 1400.6 in paragraph (a) by removing the words "joint ventures and general partnerships" and adding, in their place, the words "joint operations".

§ 1400.7 [Removed and Reserved]

5. Remove and reserve § 1400.7.

§ 1400.101 [Amended]

6. Amend § 1400.101, paragraph (a), by removing the date "April 1" and replacing it with the date "June 1".

7. Amend § 1400.102 as follows:

a. In paragraph (a), remove the reference to "§ 1400.1" and add, in its place, a reference to "§ 1400.1(a)(1)" and

b. Revise paragraph (c) to read as set forth below.

§ 1400.102 States, political subdivisions, and agencies thereof.

* * * * *

(c) The total payments described in paragraph (b) of this section cannot exceed $500,000 annually except for States with a population less than 1,500,000, as established by the most recent U.S. Census Bureau annual estimate of such State's resident population.

§ 1400.104 [Amended]

8. Amend § 1400.104 as follows:

a. In paragraphs (a)(1) and (a)(2) add the word "or" at the end of the paragraph.

b. In paragraphs (a)(3)(ii) and (a)(4)(v), remove the period at the end of the paragraph, and add a semicolon and the word "; or" in its place.

c. In paragraphs (a)(4)(iii) and (a)(5)(iii), add the words "direct or indirect" before the word "control".

9. Amend § 1400.105 by adding paragraphs (d)(1) and (d)(2) to read as follows:

§ 1400.105 Attribution of payments.

* * * * *

(d) * * *

(1) If the change in ownership interest is due to the death of an interest holder in the legal entity or the legal entity did not exist on June 1 of the applicable year, the Deputy Administrator may determine that a change after June 1 is considered relevant or effective for the current year.

(2) Changes that occur after June 1 cannot be used to increase the amount of program payments a legal entity, or its members, is eligible to receive directly or indirectly for the applicable year.

* * * * *

§ 1400.106 [Amended]

10. Amend § 1400.106, paragraph (b), by removing the words "joint venture or general partnership" both times they appear and adding, in their place, the words "joint operation" and by removing the words "joint ventures or general partnerships" and adding, in their place, the words "joint operations".

§ 1400.202 [Amended]

11. Amend § 1400.202 as follows:

a. In paragraph (c)(1) introductory text, remove the word "Must", and add, in its place, the words "To meet the requirements of paragraph (a)(1)(i) of this section, must" at the beginning of the paragraph, and

b. In paragraph (c)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if" at the beginning of the paragraph.

§ 1400.203 [Amended]

12. Amend § 1400.203 as follows:

a. In paragraph (b)(1) introductory text, remove the words "Must be", and add, in its place, the words "To meet the requirements of paragraph (a)(1)(i) of this section, and if" at the beginning of the paragraph, and

b. In paragraph (b)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if" at the beginning of the paragraph.

13. Amend § 1400.204 as follows:

a. In paragraph (a)(2) introductory text, add the words "or their spouse with an ownership interest" after the words "ownership interest",

b. In paragraph (a)(3), add the word "collective" before the word "contribution",

c. Redesignate paragraph (c) as paragraph (d),

d. Add new paragraph (c) to read as set forth below,

e. In newly redesignated paragraph (d)(1) introductory text, remove the word "Must", and add, in its place, the words "To meet the requirements of paragraph (a)(1) of this section, must" at the beginning of the paragraph,

f. In newly redesignated paragraph (d)(1)(ii), remove the words "Such joint operation" and add, in their place, the words "Such legal entity", and

g. In newly designated paragraph (d)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(4) and (a)(5) of this section, and if" at the beginning of the paragraph.

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

* * * * *

(c) An exception to paragraph (b) of this section will apply if:

(1) At least 50 percent of the stock is held by partners, stockholders, or members that are actively providing labor or management and

(2) The partners, stockholders, or members are collectively receiving, directly or indirectly, total payments equal to or less than one payment limitation.

* * * * *

14. Amend § 1400.205 as follows:

a. Redesignate paragraphs (e) and (f) as (f) and (g) and

b. Add new paragraph (e) to read as set forth below:

§ 1400.205 Trusts.

* * * * *

(e) For a farming operation conducted by a trust in which the capital, land, or equipment is contributed by the trust, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the trust's income beneficiaries;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such trust has an interest, and

(2) To meet the requirements of paragraphs (c) and (d) of this section and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

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

* * * * *

15. Amend § 1400.206 as follows:

a. Redesignate paragraph (b) as (c) and

b. Add paragraph (b) to read as set forth below:

§ 1400.206 Estates.

* * * * *

(b) For a farming operation conducted by an estate in which the capital, land, or equipment is contributed by the estate, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the estate and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the estate's heirs;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such an estate has an interest; and

(2) To meet the requirements of paragraphs (c)(3)and (a)(4) of this section, and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

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

* * * * *

§ 1400.301 [Amended]

16. Amend § 1400.301, in paragraph (d), by adding the words "or their spouse" after the word "member".

Signed in Washington, DC, on December 30, 2009.

Chris P. Beyerhelm,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–7 Filed 1–6–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0096; Directorate Identifier 2007–NE–39–AD; Amendment 39–16141; AD 2009–26–06]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. ALF502 Series and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Honeywell International Inc. ALF502 series and LF507 series turbofan engines with certain fuel manifold assemblies installed. That AD currently requires initial and repetitive on-wing eddy current or in-shop fluorescent penetrant inspections of certain part number (P/N) fuel manifold assemblies for cracks, and replacement of cracked fuel manifolds with serviceable manifolds. This AD continues to require inspecting those fuel manifolds for cracks, adds leak checks of certain additional P/N fuel manifolds, and specifies replacement of the affected manifolds as an optional terminating action in lieu of the repetitive inspections. This AD results from reports of fire in the engine nacelle. We are issuing this AD to detect cracks in certain fuel manifolds and fuel leaks from other fuel manifolds, which could result in a fire in the engine nacelle and a hazard to the aircraft.

DATES: This AD becomes effective February 11, 2010. The Director of the Federal Register approved the incorporation by reference of AlliedSignal Service Bulletin (SB) ALF/LF 73–1002, Revision 1, dated March 24, 1997, listed in this AD as of February 11, 2010. The Director of the Federal Register previously approved the incorporation by reference of SB ALF/LF 73–1002, dated December 22, 1995, listed in this AD as of July 28, 1997 (62 FR 28994, May 29, 1997).

ADDRESSES: You can get the service information identified in this AD from Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *robert.baitoo@faa.gov;* telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 97–11–05, Amendment 39–10034 (62 FR 28994, May 29, 1997), with a proposed AD. The proposed AD applies to Honeywell International Inc. ALF502 series and LF507 series turbofan engines with certain fuel manifold assemblies installed. We published the proposed AD in the **Federal Register** on April 13, 2009 (74 FR 16803). That action proposed to continue to require inspecting those fuel manifolds for cracks, would also add leak checks of certain additional P/N fuel manifolds, and would specify replacement of the affected manifolds as an optional terminating action in lieu of the repetitive inspections.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Clarification in Optional Terminating Action Paragraph

Paragraph (i) of this AD is partially revised from, "* * * terminates the repetitive inspection requirement specified in paragraphs (f)(1)(iii), (f)(2)(iii), (g), and (h) of this AD." to "* * * terminates the inspection requirement of this AD." This change was made because replacing a fuel manifold assembly that has a P/N specified in paragraph (i) of this AD, or an FAA-approved equivalent part, terminates all inspection requirements of this AD.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 156 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $50,000 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $7,887,360.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.