The United States Department of Agriculture announced changes to both Adjusted Gross Income (AGI) qualifications, program payment limitations, and direct attribution for Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) programs, which became effective in accordance with the 2008 Farm Bill.

Public comments on this interim final rule must be submitted to the Department within 30 days of the date of publication.

“Changes to program participation rules and qualifying income requirements will make farm program payments more defendable to America’s taxpayers,” Agriculture Secretary Ed Schafer said. “This is a step in the right direction to ensuring that program benefits are targeted to active qualifying farmers and ranchers.”

For commodity and disaster programs, the AGI limitation was reduced from $2.5 million AGI from all sources to a three-year average non-farm AGI of $500,000 such that a person or entity shall not be eligible for such programs if the non-farm AGI exceeds $500,000. Also, under the new regulations, an individual or entity must have a 3-year average AGI less than or equal to $750,000 per year from farm income in order to qualify for direct payments issued under the Direct and Counter-cyclical Program.

The definition of income derived from farming, ranching and forestry operations was expanded to include, among other items, such items as the packing, storing and transporting of agricultural commodities; production of livestock products; farm-based production of renewable bio-energy; and in some instances, the providing of operational inputs to farmers, ranchers and foresters.

For conservation programs, the average nonfarm AGI limitation is $1 million or less for eligibility. However, an individual or entity who has non-farm AGI in excess of $1 million remains eligible for conservation programs only if 66.66 percent or more of the total AGI is derived from farming, ranching and forestry operations. In addition, the AGI limitation for conservation programs may be waived on a case-by-case basis if it is determined that environmentally sensitive land of special significance would be protected.

Program payments are limited by direct attribution to individuals or entities. A legal entity is defined as an entity created under Federal or State law that owns land or an agricultural commodity, product or livestock. Through direct attribution, payment limitation is based on the total payments received by the individual, both directly and indirectly. Qualifying spouses are eligible to be considered separate persons for payment limitation purposes, rather than being automatically combined under one limitation.

States, local governments, political subdivisions, and other agencies were eligible for payments prior to enactment of the 2008 Act. The 2008 Act and this rule make such jurisdictions ineligible for payments unless such payments are earned on State-owned land and are used to support public schools. Payments under this exception are limited to $500,000 annually; the limitation is waived for a State that has a population of less than 1.5 million.

Individuals and entities must be “actively engaged in farming” with respect to a farming operation in order to be eligible for specified payments and benefits. To be “actively engaged in farming,” the individual or entity must make significant contributions to the farming operation of: (1) capital, equipment, land, or a combination; and (2) personal labor or active personal management, or a combination.

Under rules in effect since 1988, not every member of an entity had to contribute active personal labor or management. The interim final rule requires each partner, stockholder, or member with an ownership interest to make a contribution of active personal labor or active personal management. The contribution must be regular and substantial, and documented as well as separate and distinct from any other member's contribution. The rule limits the ability of passive stockholders to continue to realize benefits from the entity.

Under the interim final rule, the addition of individuals or entities to an existing operation to qualify for additional payments is more restrictive than under previous regulations. The prior rule in effect since 1988 said the acquisition of new cropland to the farming operation of at least 20 percent qualifies for the increase of an unlimited number of new persons and/or legal entities as eligible for payment.

The rule changes the 20-percent increase requirement from cropland to base acres and only allows for the addition of one new person to the operation. However, based on the magnitude and complexity of the change in the farming operation, the State FSA Office may approve additional persons or legal entities for payment in the farming operation. The change eliminates the loophole that previously allowed an unlimited increase in the number of limitations that could accompany a 20 percent increase in eligible land area that meets the definition of cropland.