II

110TH CONGRESS
1ST SESSION

S. 1486

To amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Mr. DORGAN (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rural America Preservation Act of 2007''.

SEC. 2. PAYMENT LIMITATIONS.

Section 1001 of the Food Security of 1985 (7 U.S.C. 1308) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) ENTITY.—

"(A) IN GENERAL.—The term 'entity' means—

"(i) an organization that (subject to the requirements of this section and section 1001A) is eligible to receive a payment under a provision of law referred to in subsection (b) or (c);

"(ii) a corporation, joint stock company, association, limited partnership, limited liability company, limited liability partnership, charitable organization, grantor of a revocable trust, or other similar entity (as determined by the Secretary); and

"(iii) an organization that is participating in a farming operation as a partner in a general partnership or as a participant in a joint venture.

"(B) EXCLUSION.—The term 'entity' does not include a general partnership or joint venture.

"(2) INDIVIDUAL.—The term 'individual' means—

"(A) a natural person, and any minor child of the natural person (as determined by the Secretary), who, subject to the requirements of this section and section 1001A, is eligible to receive a payment under a provision of law referred to in subsection (b), (c), or (d); and

"(B) a natural person participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary).";

(2) by striking subsection (b) and inserting the following:

"(b) LIMITATION ON DIRECT PAYMENTS.—The total amount of direct payments that an individual or entity may receive, directly or indirectly, during any crop year under subtitle A or C of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911 et seq.) for 1 or more covered commodities or peanuts shall not exceed $20,000.";

(3) by striking subsection (c) and inserting the following:

"(c) LIMITATION ON COUNTER-CYCLICAL PAYMENTS.—The total amount of counter-cyclical payments that an individual or entity may receive, directly or indirectly, during any crop year under subtitle A or C of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911 et seq.) for 1 or more covered commodities or peanuts shall not exceed $30,000.'';

(4) by striking subsection (d) and inserting the following:

''(d) LIMITATIONS ON MARKETING LOAN GAINS, LOAN DEFICIENCY PAYMENTS, AND COMMODITY CERTIFICATE TRANSACTIONS.—The total amount of the following gains and payments that an individual or entity may receive during any crop year may not exceed $75,000:

''(1)(A) Any gain realized by a producer from repaying a marketing assistance loan for 1 or more loan commodities under subtitle B of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7931 et seq.) at a lower level than the original loan rate established for the loan commodity under that subtitle.

''(B) In the case of settlement of a marketing assistance loan for 1 or more loan commodities under that subtitle by forfeiture, the amount by which the loan amount exceeds the repayment amount for the loan if the loan had been settled by repayment instead of forfeiture.

"(2) Any loan deficiency payments received for 1 or more loan commodities under that subtitle.

"(3) Any gain realized from the use of a commodity certificate issued by the Commodity Credit Corporation for 1 or more loan commodities, as determined by the Secretary, including the use of a certificate for the settlement of a marketing assistance loan made under that subtitle or section 1307 of that Act (7 U.S.C. 7957).";

(5) by striking subsection (e);

(6) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively; and

(7) by inserting after subsection (d) the following:

"(e) PAYMENTS TO INDIVIDUALS AND ENTITIES.—

"(1) INTERESTS WITHIN SAME ENTITY.—Any individual or entity that is an owner of an entity, including a shareholder, may not collectively receive payments, directly or indirectly, that are attributable to the ownership interest in the entity for a crop year that exceed an amount equal to twice the applicable dollar amounts specified in subsections (b), (c), and (d).

"(2) ALL INTERESTS.—An individual or entity may not receive, directly or indirectly, through all ownership interests of the individual or entity, from all sources, payments for a crop year that exceed an amount equal to the twice the applicable dollar amounts specified in subsections (b), (c), and (d).

"(f) SINGLE FARMING OPERATION.—

"(1) IN GENERAL.—Notwithstanding subsections (b) through (d), subject to paragraph (2), if an individual or entity participates only in a single farming operation and receives, directly or indirectly, any payment or gain covered by this section through the farming operation, the total amount of payments or gains (as applicable) covered by this section that the individual or entity may receive during any crop year shall not exceed an amount equal to twice the applicable dollar amounts specified in subsections (b), (c), and (d).

"(2) INDIVIDUALS.—The total amount of payments or gains (as applicable) covered by this section that an individual may receive during any crop year may not exceed $250,000.

"(g) SPOUSAL EQUITY.—

"(1) IN GENERAL.—Notwithstanding subsections (b) through (d), except as provided in paragraph (2), if an individual and the spouse of the individual are covered by paragraph (2) and receive, directly or indirectly, any payment or gain covered by this section, the total amount of payments or gains (as applicable) covered by this section that the individual and spouse may jointly receive during any crop year may not exceed an amount equal to twice the applicable dollar amounts specified in subsections (b), (c), and (d).

"(2) EXCEPTIONS.—

"(A) SEPARATE FARMING OPERATIONS.—In the case of a married couple in which each spouse, before the marriage, was separately engaged in an unrelated farming operation, each spouse shall be treated as a separate individual with respect to a farming operation brought into the marriage by a spouse, subject to the condition that the farming operation shall remain a separate farming operation, as determined by the Secretary.

"(B) ELECTION TO RECEIVE SEPARATE PAYMENTS.—A married couple may elect to receive payments separately in the name of each spouse if the total amount of payments and benefits described in subsections (b), (c), and (d) that the married couple receives, directly or indirectly, does not exceed an amount equal to twice the applicable dollar amounts specified in those subsections.''.

SEC. 3. SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO ACTIVE FARMERS.

Section 1001A of the Food Security Act of 1985 (7 U.S.C. 1308–1) is amended—

(1) by striking the section designation and heading and all that follows through the end of subsection (a) and inserting the following:

"SEC. 1001A. SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO ACTIVE FARMERS.

''(a) SUBSTANTIVE CHANGE.—

''(1) IN GENERAL.—For purposes of the application of limitations under this section, the Secretary shall not approve any change in a farming operation that otherwise would increase the number of individuals or entities (as defined in section 1001(a)) to which the limitations under this section apply, unless the Secretary determines that the change is bona fide and substantive.

''(2) FAMILY MEMBERS.—For the purpose of paragraph (1), the addition of a family member (as defined in subsection (b)(2)(A)) to a farming operation under the criteria established under subsection (b)(3)(B) shall be considered to be a bona fide and substantive change in the farming operation.

"(3) PRIMARY CONTROL.—To prevent a farm from reorganizing in a manner that is inconsistent with the purposes of this Act, the Secretary shall promulgate such regulations as the Secretary determines to be necessary to attribute payments for a farming operation to the individual or entity that exercises primary control over the farming operation, including to respond to—

"(A)(i) any instance in which ownership of a farming operation is transferred to an individual or entity under an arrangement that provides for the sale or exchange of any asset or ownership interest in 1 or more entities at less than fair market value; and

"(ii) the transferor is provided preferential rights to repurchase the asset or interest at less than fair market value; or

"(B) a sale or exchange of any asset or ownership interest in 1 or more entities under a financing arrangement under which—

"(i) financing is provided by the transferor; and "(ii) the right to exercise control over the asset or interest is conveyed, directly or indirectly.";

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—To be eligible to receive, directly or indirectly, payments or benefits described as being subject to limitation in subsection (b) or (c) of section 1001 with respect to a particular farming operation, an individual or entity (as defined in section 1001(a)) shall be actively engaged in farming with respect to the farming operation, in accordance with paragraphs (2), (3), and (4).";

(B) in paragraph (2)—

(i) by striking subparagraphs (A) and (B) and inserting the following:

"(A) DEFINITIONS.—In this paragraph:

"(i) ACTIVE PERSONAL MANAGEMENT.—The term 'active personal management' means, with respect to an individual, administrative duties carried out by the individual for a farming operation—

“(I) that are personally provided by the individual on a regular, substantial, and continuing basis; and

“(II) relating to the supervision and direction of—

“(aa) activities and labor involved in the farming operation; and

“(bb) onsite services directly related and necessary to the farming operation.

“(ii) FAMILY MEMBER.—The term ‘family member’, with respect to an individual participating in a farming operation, means an individual who is related to the individual as a lineal ancestor, a lineal descendant, or a sibling (including a spouse of such an individual).

“(B) ACTIVE ENGAGEMENT.—Except as provided in paragraph (3), for purposes of paragraph (1), the following shall apply:

“(i) An individual shall be considered to be actively engaged in farming with respect to a farming operation if—

"(I) the individual makes a significant contribution, as determined under subparagraph (E) (based on the total value of the farming operation), to the farming operation of—

"(aa) capital, equipment, or land; and

"(bb) personal labor and active personal management;

"(II) the share of the individual of the profits or losses from the farming operation is commensurate with the contributions of the individual to the operation; and

"(III) a contribution of the individual is at risk.

"(ii) An entity shall shall be considered to be actively engaged in farming with respect to a farming operation if—

"(I) the entity makes a significant contribution, as determined under subparagraph (E) (based on the total value of the farming operation), to the farming operation of capital, equipment, or land;

“(II)(aa) the stockholders or members that collectively own at least 50 percent of the combined beneficial interest in the entity each make a significant contribution of personal labor and active personal management to the operation; or

“(bb) in the case of an entity in which all of the beneficial interests are held by family members, any stockholder or member (or household comprised of a stockholder or member and the spouse of the stockholder or member) who owns at least 10 percent of the beneficial interest in the entity makes a significant contribution of personal labor or active personal management; and

“(III) the entity meets the requirements of subclauses (II) and (III) of clause (i).”;

(ii) in subparagraph (C), by striking “clauses (ii) and (iii) of paragraph (A)” and inserting “subclauses (II) and (III) of subparagraph (B)(i)”; and

(iii) by adding at the end the following:

"(E) SIGNIFICANT CONTRIBUTION OF PERSONAL LABOR OR ACTIVE PERSONAL MANAGEMENT.—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (B), an individual shall be considered to be providing, on behalf of the individual or an entity, a significant contribution of personal labor or active personal management, if the total contribution of personal labor and active personal management is at least equal to the lesser of—

"(I) 1,000 hours; and

"(II) a period of time equal to—

"(aa) 50 percent of the commensurate share of the total number of hours of personal labor and active personal management required to conduct the farming operation; or

"(bb) in the case of a stockholder or member (or household comprised of a stockholder or member and the spouse of the stockholder or member) that owns at least 10 percent of the beneficial interest in an entity in which all of the beneficial interests are held by family members, 50 percent of the commensurate share of hours of the personal labor and active personal management of all family members required to conduct the farming operation.

"(ii) MINIMUM LABOR HOURS.—For the purpose of clause (i), the minimum number of labor hours required to produce a commodity shall be equal to the number of hours that would be necessary to conduct a farming operation for the production of each commodity that is comparable in size to the commensurate share of an individual or entity in the farming operation for the production of the commodity, based on the minimum number of hours per acre required to produce the commodity in the State in which the farming operation is located, as determined by the Secretary.'';

(C) in paragraph (3)—

(i) by striking subparagraph (A) and inserting the following:

''(A) LANDOWNERS.—An individual or entity that is a landowner contributing owned land, and that meets the requirements of subclauses (II) and (III) of paragraph (2)(B)(i), if, as determined by the Secretary—

''(i) the landowner share-rents the land at a rate that is usual and customary; and

''(ii) the share received by the landowner is commensurate with the share of the crop or income received as rent.'';

(ii) in subparagraph (B)—

(I) in the first sentence—

(aa) by striking ''persons'' and inserting ''an individual or entity''; and

(bb) by striking ''standards provided in clauses (ii) and (iii) of paragraph (2)(A)'' and inserting ''requirements of subclauses

(II) and (III) of paragraph (2)(B)(i)''; and

(II) by striking the second sentence; and

(iii) in subparagraph (C), by striking ''standards provided in clauses (ii) and (iii) of paragraph (2)(A)'' and inserting ''requirements of subclauses (II) and (III) of paragraph (2)(B)(i)'';

(D) in paragraph (4)—

(i) in the paragraph heading, by striking ''PERSONS'' and inserting ''INDIVIDUALS AND ENTITIES'';

(ii) in the matter preceding subparagraph (A), by striking ''persons'' and inserting ''individuals and entities''; and

(iii) by striking subparagraph (B) and inserting the following:

''(B) OTHER INDIVIDUALS AND ENTITIES.—Any other individual or entity, or class of individuals or entities, that fails to meet the requirements of paragraphs (2) and (3), as determined by the Secretary.'';

(E) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

(F) by inserting after paragraph (4) the following:

"(5) PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT.—No stockholder or member may provide personal labor or active personal management to meet the requirements of this subsection for any individual or entity that collectively receives, directly or indirectly, an amount equal to more than twice the applicable limits under subsections (b), (c), and (d) of section 1001."; and

(G) in paragraph (6) (as redesignated by subparagraph (E))—

(i) in the first sentence—

(I) by striking "A person" and inserting "An individual or entity"; and

(II) by striking "such person" and inserting "the individual or entity"; and

(ii) by striking the second sentence; and

(3) by adding at the end the following:

"(c) NOTIFICATION BY ENTITIES.—To facilitate the administration of this section, each entity that receives payments or benefits described as being subject to limitation in subsection (b), (c), or (d) of section 1001 with respect to a particular farming operation shall—

"(1) notify each individual or other entity that acquires or holds a beneficial interest in the farming operation of the requirements and limitations under this section; and

"(2) provide to the Secretary, at such times and in such manner as may the Secretary may require, the name and social security number of each individual, or the name and taxpayer identification number of each entity, that holds or acquires such a beneficial interest.".

SEC. 4. SCHEMES OR DEVICES.

Section 1001B of the Food Security Act of 1985 (7 U.S.C. 1308–2) is amended—

(1) by inserting "(a) IN GENERAL.—" before "If";

(2) in subsection (a) (as designated by paragraph (1)), by striking "person" each place it appears and inserting "individual or entity"; and

(3) by adding at the end the following:

"(b) FRAUD.—If fraud is committed by an individual or entity in connection with a scheme or device to evade, or that has the purpose of evading, section 1001, 1001A, or 1001C, the individual or entity shall be ineligible to receive farm program payments described as being subject to limitation in subsection (b), (c), or (d) of section 1001 for—

"(1) the crop year for which the scheme or device is adopted; and

"(2) the succeeding 5 crop years.".

SEC. 5. FOREIGN INDIVIDUALS AND ENTITIES MADE INELIGIBLE FOR PROGRAM BENEFITS.

Section 1001C of the Food Security Act of 1985 (7 U.S.C. 1308–3) is amended—

(1) in the section heading, by striking "**PERSONS**" and inserting "**INDIVIDUALS AND ENTITIES**";

(2) in subsection (a), by striking "person" each place it appears and inserting "individual"; and

(3) in subsection (b)—

(A) in the subsection heading, by striking "CORPORATION OR OTHER"; and

(B) by striking "a corporation or other entity" and inserting "an entity".

SEC. 6. SENSE OF THE SENATE.

It is the sense of the Senate that any savings achieved as a result of the amendments made by this Act should be used to establish a permanent agricultural disaster relief program.

SEC. 7. REGULATIONS.

(a) IN GENERAL.—The Secretary of Agriculture may promulgate such regulations as are necessary to implement this Act and the amendments made by this Act.

(b) PROCEDURE.—The promulgation of the regulations and administration of this Act and the amendments made by this Act shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

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