

PUBLIC SUBMISSION

As of: 9/8/26, 11:20 AM
Received: September 04, 2026
Status: Posted
Posted: September 08, 2026
Tracking No. mtn-tvnb-5wxu
Comments Due: September 04, 2026
Submission Type: Web

Docket: FSA-2026-0430

Information Collection Request; General Program Administration

Comment On: FSA-2026-0430-0001

Agency Information Collection Activities; Proposals, Submissions, and Approvals: General Program Administration

Document: FSA-2026-0430-0002

Comment on FR Doc # 2026-13606

Submitter Information

Name: Anonymous Anonymous

General Comment

By declaring under 7 CFR § 1400.100(c) that organizational status as of September 15, 2026 rigidly dictates eligibility, the FSA transforms a procedural reporting mechanism into a substantive forfeiture provision. While it is completely reasonable for the agency to set a strict calendar deadline, however using that deadline as an irrebuttable presumption of ineligibility (where missing the filing date strips away a substantive statutory right that Congress explicitly granted) crosses the line from administrative efficiency into unauthorized rulemaking. Under APA § 706, courts will evaluate whether the Secretary exceeded statutory authority by denying statutory benefits to an entity that was substantively a pass-through structure during the crop year but missed a procedural cutoff date.

The contrast between how the USDA (Farm Service Agency) and the IRS handle strict operational deadlines highlights two completely different administrative philosophies regarding corporate and pass-through entity status. Under IRS Revenue Procedure 2013-30, when an LLC or corporation misses the strict 75-day statutory window under IRC § 1362(b) to elect S-Corporation tax status (Form 2553), the IRS does not permanently strip pass-through treatment. Instead, the IRS provides a process to cure a late filing, by submitting a form alongside a basic "reasonable cause" statement explaining why the deadline was missed. In contrast, when the USDA Farm Service Agency enforces deadline rules for agricultural payment limitations under [7 U.S.C. § 1308] and 7 CFR Part 1400, it treats administrative filing dates as rigid, non-negotiable thresholds. USDA should not utilize procedural deadlines as a structural gatekeeping mechanism. By converting an administrative deadline into a hard eligibility barrier, the proposed rulemaking benefits large well-connected farmers who can with insider knowledge about legal details, hurting honest small American farmers who cannot afford lawyers to stay up-to-date about the details of regulatory rulemaking.

The unfair treatment of small farmers is also evident in how USDA proposed rule in treating legal entity restructuring as a presumptive "Scheme or Device" designation. When a farm operation reorganizes from a sole proprietorship into a multi-member LLC to access statutory pass-through multipliers, 7 CFR §

1400.104 (Substantive Change) and § 1400.5 (Denial of Benefits) treat the restructuring with regulatory skepticism. While it is commendable that these rules were designed around fraud prevention, Congress created the "Actively Engaged in Farming" (AEIF) requirement in 1987 specifically to address this concern. When a farm operation reorganizes from a sole proprietorship into a multi-member LLC to access statutory pass-through multipliers, 7 CFR § 1400.104 (Substantive Change) and § 1400.5 (Denial of Benefits) treat the restructuring with regulatory skepticism. The agency imposes heavy burdens to prove "independent capital" and threatens to penalize operations under "scheme or device" rules, effectively treating the exercise of a statutory right as a presumptively fraudulent attempt to evade payment limits. Under the Statutory Directive, 7 U.S.C. § 1308(e)(5)(C), defines a QPTE in the negative: "a limited liability company that does not affirmatively elect to be treated as a corporation." Under tax law (Treas. Reg. § 301.7701-3), multi-member LLCs are automatically pass-through entities by default. Under 7 CFR § 1400.3, the FSA flips this statutory negative presumption. Rather than treating an LLC as a pass-through by default, county offices require small farmers to submit additional tax filings, corporate resolutions, and IRS forms to prove they haven't elected corporate status. Shifting the evidentiary burden creates an unauthorized administrative barrier for entity validation. True fraud requires intentional misrepresentation as dictated by the False Claim Act (31 U.S.C. § 3729). By converting technical paperwork oversights, such as submitting an updated Form CCC-902 a few days past an arbitrary snapshot date, into an automatic forfeiture of statutory pass-through limits, the agency uses anti-fraud tools to restrict legitimate statutory benefits.

Full comment attached.

Attachments

FSA-2026-0001

nihms-1862951