

12

AMENDMENT TO H.R. 2419, AS REPORTED
OFFERED BY MR. BLUMENAUER OF OREGON AND

MR. RYAN OF WISCONSIN AND MR. KIND OF WISCONSIN
AND MR. Flake of Arizona

Strike section 1503 and insert the following new section:

1 SEC. 1503. PAYMENT LIMITATIONS.

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

4 (1) in subsection (a), by striking paragraphs
5 (1) and (2) and inserting the following:

6 “(1) ENTITY.—

7 “(A) IN GENERAL.—The term ‘entity’
8 means—

9 “(i) an organization that (subject to
10 the requirements of this section and sec-
11 tion 1001A) is eligible to receive a pay-
12 ment under a provision of law referred to
13 in subsection (b) or (c);

14 “(ii) a corporation, joint stock com-
15 pany, association, limited partnership, lim-
16 ited liability company, limited liability
17 partnership, charitable organization, es-
18 tate, irrevocable trust, a grantor of a rev-

1 ocable trust, or other similar entity (as de-
2 termined by the Secretary); and

3 “(iii) an organization that is partici-
4 pating in a farming operation as a partner
5 in a general partnership or as a participant
6 in a joint venture.

7 “(B) EXCLUSION.—Except in section
8 1001F, the term ‘entity’ does not include a gen-
9 eral partnership or joint venture.

10 “(C) ESTATES.—In defining the term ‘en-
11 tities’ as it will apply to estates, the Secretary
12 shall ensure that fair and equitable treatment is
13 given to estates and the beneficiaries thereof.

14 “(D) IRREVOCABLE TRUSTS.—In defining
15 the term ‘entities’ as it will apply to irrevocable
16 trusts, the Secretary shall ensure that irrev-
17 ocable trusts are legitimate entities and have
18 not been created for the purpose of avoiding the
19 payment limitation.

20 “(2) INDIVIDUAL.—The term ‘individual’
21 means—

22 “(A) a natural person, and any minor child
23 of the natural person (as determined by the
24 Secretary), who, subject to the requirements of
25 this section and section 1001A, is eligible to re-

1 ceive a payment under a provision of law re-
2 ferred to in subsection (b), (c), or (d); and

3 “(B) a natural person participating in a
4 farming operation as a partner in a general
5 partnership, a participant in a joint venture, a
6 grantor of a revocable trust, or a participant in
7 a similar entity (as determined by the Sec-
8 retary).

9 “(3) SECRETARY.—The term ‘Secretary’ means
10 the Secretary of Agriculture.”; and

11 (2) by striking subsections (b) through (f) and
12 inserting the following:

13 “(b) LIMITATION ON DIRECT PAYMENTS.—The total
14 amount of direct payments that an individual or entity
15 may receive, directly or indirectly, during any crop year
16 under subtitle A of title I of the Farm, Nutrition, and
17 Bioenergy Act of 2007 for 1 or more covered commodities
18 or peanuts shall not exceed \$20,000.

19 “(c) LIMITATION ON COUNTERCYCLICAL PAY-
20 MENTS.—The total amount of countercyclical payments
21 that an individual or entity may receive, directly or indi-
22 rectly, during any crop year under subtitle A of title I of
23 the Farm, Nutrition, and Bioenergy Act of 2007 for 1
24 or more covered commodities or peanuts shall not exceed
25 \$30,000.

1 “(d) LIMITATIONS ON MARKETING LOAN GAINS,
2 LOAN DEFICIENCY PAYMENTS, AND COMMODITY CER-
3 TIFICATE TRANSACTIONS.—The total amount of the fol-
4 lowing gains and payments that an individual or entity
5 may receive during any crop year may not exceed \$75,000:

6 “(1)(A) Any gain realized by a producer from
7 repaying a marketing assistance loan for 1 or more
8 loan commodities or peanuts under subtitle B of title
9 I of the Farm, Nutrition, and Bioenergy Act of
10 2007 at a lower level than the original loan rate es-
11 tablished for the loan commodity under that subtitle.

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

18 “(2) Any loan deficiency payments received for
19 1 or more loan commodities under that subtitle.

20 “(3) Any gain realized from the use of a com-
21 modity certificate issued by the Commodity Credit
22 Corporation for 1 or more loan commodities, as de-
23 termined by the Secretary, including the use of a
24 certificate for the settlement of a marketing assist-
25 ance loan made under that subtitle.

1 “(e) PAYMENT TO INDIVIDUALS AND ENTITIES.—
2 Notwithstanding subsections (b) through (d), an indi-
3 vidual or entity, directly or indirectly through all owner-
4 ship interests of the individual or entity from all sources,
5 may received payments for a fiscal or corresponding crop
6 year up to but not exceeding twice the limitations estab-
7 lished under subsections (b) through (d).

8 “(f) SINGLE FARMING OPERATION.—Notwith-
9 standing subsections (b) through (d), subject to paragraph
10 (2), an individual or entity that participates only in a sin-
11 gle farming operation and receives, directly or indirectly,
12 any payment or gain covered by this section through the
13 farming operation, may receive payments for a fiscal or
14 corresponding crop year up to but not exceeding twice the
15 limitations established under subsections (b) through (d).

16 “(g) SPOUSAL EQUITY.—

17 “(1) IN GENERAL.—Notwithstanding sub-
18 sections (b), (c), (d), (e), and (f) except as provided
19 in paragraph (2), if an individual and the spouse of
20 the individual are covered by paragraph (2) and re-
21 ceive, directly or indirectly, any payment or gain cov-
22 ered by this section, the total amount of payments
23 or gains (as applicable) covered by this section that
24 the individual and spouse may jointly receive during
25 any crop year may not exceed an amount equal to

1 twice the applicable dollar amounts specified in sub-
2 sections (b), (c), and (d).

3 “(2) EXCEPTIONS.—

4 “(A) SEPARATE FARMING OPERATIONS.—

5 In the case of a married couple in which each
6 spouse, before the marriage, was separately en-
7 gaged in an unrelated farming operation, each
8 spouse shall be treated as a separate individual
9 with respect to a farming operation brought
10 into the marriage by a spouse, subject to the
11 condition that the farming operation shall re-
12 main a separate farming operation, as deter-
13 mined by the Secretary.

14 “(B) ELECTION TO RECEIVE SEPARATE
15 PAYMENTS.—A married couple may elect to re-
16 ceive payments separately in the name of each
17 spouse if the total amount of payments and
18 benefits described in subsections (b), (c), and
19 (d) that the married couple receives, directly or
20 indirectly, does not exceed an amount equal to
21 twice the applicable dollar amounts specified in
22 those subsections.

23 “(h) PUBLIC SCHOOLS.—The provisions of this sec-
24 tion that limit payments to any individual or entity shall
25 not be applicable to land owned by a public school district

1 or land owned by a State that is used to maintain a public
2 school.

3 “(i) TIME LIMITS; RELIANCE.—Regulations of the
4 Secretary shall establish time limits for the various steps
5 involved with notice, hearing, decision, and the appeals
6 procedure in order to ensure expeditious handling and set-
7 tlement of payment limitation disputes. Notwithstanding
8 any other provision of law, actions taken by an individual
9 or other entity in good faith on action or advice of an au-
10 thorized representative of the Secretary may be accepted
11 as meeting the requirement under this section or section
12 1001A, to the extent the Secretary deems it desirable in
13 order to provide fair and equitable treatment.”.

14 (b) SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO
15 ACTIVE FARMERS.—Section 1001A of the Food Security
16 Act of 1985 (7 U.S.C. 1308–1) is amended—

17 (1) by striking subsection (a) and inserting the
18 following:

19 “(a) SUBSTANTIVE CHANGE.—

20 “(1) IN GENERAL.—For purposes of the appli-
21 cation of limitations under this section, the Sec-
22 retary shall not approve any change in a farming op-
23 eration that otherwise would increase the number of
24 individuals or entities (as defined in section 1001(a))
25 to which the limitations under this section apply, un-

1 less the Secretary determines that the change is
2 bona fide and substantive.

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

9 “(3) PRIMARY CONTROL.—To prevent a farm
10 from reorganizing in a manner that is inconsistent
11 with the purposes of this Act, the Secretary shall
12 promulgate such regulations as the Secretary deter-
13 mines to be necessary to simultaneously attribute
14 payments for a farming operation to more than one
15 individual or entity, including the individual or enti-
16 ty that exercises primary control over the farming
17 operation, including to respond to —

18 “(A)(i) any instance in which ownership of
19 a farming operation is transferred to an indi-
20 vidual or entity under an arrangement that pro-
21 vides for the sale or exchange of any asset or
22 ownership interest in 1 or more entities at less
23 than fair market value; and

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

4 “(B) a sale or exchange of any asset or
5 ownership interest in 1 or more entities under
6 an arrangement under which rights to exercise
7 control over the asset or interest are retained,
8 directly or indirectly, by the transferor.”

9 (2) in subsection (b)—

10 (A) by striking paragraph (1) and insert-
11 ing the following:

12 “(1) IN GENERAL.—To be eligible to receive, di-
13 rectly or indirectly, payments or benefits described
14 as being subject to limitation in subsection (b) or (c)
15 of section 1001 with respect to a particular farming
16 operation, an individual or entity (as defined in sec-
17 tion 1001(a)) shall be actively engaged in farming
18 with respect to the farming operation, in accordance
19 with paragraphs (2), (3), and (4).”; and

20 (B) in paragraph (2)—

21 (i) by striking subparagraphs (A),
22 (B), and (C) and inserting the following:

23 “(A) DEFINITIONS.—In this paragraph:

24 “(i) ACTIVE PERSONAL MANAGE-
25 MENT.—The term ‘active personal manage-

1 ment' means with respect to an individual,
2 administrative duties carried out by the in-
3 dividual for a farming operation—

4 “(I) that are personally provided
5 by the individual on a regular, sub-
6 stantial, and continuing basis; and

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

9 “(aa) activities and labor in-
10 volved in the farming operation;
11 and

12 “(bb) on-site services di-
13 rectly related and necessary to
14 the farming operation.

15 “(ii) FAMILY MEMBER.—The term
16 ‘family member’, with respect to an indi-
17 vidual participating in a farming operation,
18 means an individual who is related to the
19 individual as a lineal ancestor, a lineal de-
20 scendant, or a sibling (including a spouse
21 of such and individual).

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

1 “(i) An individual shall be considered
2 to be actively engaged in farming with re-
3 spect to a farming operation if—

4 “(I) the individual makes a sig-
5 nificant contribution, as determined
6 under subparagraph (E) (based on the
7 total value of the farming operation),
8 to the farming operation of—

9 “(aa) capital, equipment, or
10 land; and

11 “(bb) personal labor and ac-
12 tive personal management;

13 “(II) the share of the individual
14 of the profits or losses from the farm-
15 ing operation is commensurate with
16 the contributions of the individual to
17 the operation; and

18 “(III) a contribution of the indi-
19 vidual is at risk.

20 “(ii) An entity shall be considered to
21 be actively engaged in farming with respect
22 to a farming operation if—

23 “(I) the entity makes a signifi-
24 cant contribution, as determined
25 under subparagraph (E) (based on the

1 total value of the farming operation),
2 to the farming operation of capital,
3 equipment, or land;

4 “(II)(aa) the stockholders or
5 members that collectively own at least
6 51 percent of the combined beneficial
7 interest in the entity each make a sig-
8 nificant contribution of personal labor
9 and active personal management to
10 the operation; or

11 “(bb) in the case of an entity in
12 which all of the beneficial interests
13 are held by family members, any
14 stockholder or member (or household
15 comprised of a stockholder or member
16 and the spouse of the stockholder or
17 member) who owns at least 10 per-
18 cent of the beneficial interest in the
19 entity makes a significant contribution
20 of personal labor or active personal
21 management; and

22 “(III) the entity meets the re-
23 quirements of subclauses (II) and
24 (III) of clause (i).

1 “(C) ENTITIES MAKING SIGNIFICANT CON-
2 TRIBUTIONS.—If a general partnership, joint
3 venture, or similar entity (as determined by the
4 Secretary) separately makes a significant con-
5 tribution (based on the total value of the farm-
6 ing operation involved) of capital, equipment, or
7 land, the partners or members making a signifi-
8 cant contribution of personal labor or active
9 personal management and meeting the stand-
10 ards provided in subclauses (II) and (III) of
11 subparagraph (B)(i), shall be considered to be
12 actively engaged in farming with respect to the
13 farming operation.”;

14 (ii) by adding at the end the fol-
15 lowing:

16 “(E) SIGNIFICANT CONTRIBUTION OF PER-
17 SONAL LABOR OR ACTIVE PERSONAL MANAGE-
18 MENT.—

19 “(i) IN GENERAL.—Subject to clause
20 (ii), for purposes of subparagraph (B), an
21 individual shall be considered to be pro-
22 viding, on behalf of the individual or an
23 entity, a significant contribution of per-
24 sonal labor or active personal management,
25 if the total contribution of personal labor

1 and active personal management is at least
2 equal to the lesser of –
3 “(I) 1,000 hours; and
4 “(II) a period of time equal to—
5 “(aa) 50 percent of the com-
6 mensurate share of the total
7 number of hours of personal
8 labor and active personal man-
9 agement required to conduct the
10 farming operation; or
11 “(bb) in the case of a stock-
12 holder or member (or household
13 comprised of a stockholder or
14 member and the spouse of the
15 stockholder or member) that
16 owns at least 10 percent of the
17 beneficial interest in an entity in
18 which all of the beneficial inter-
19 ests are held by family members,
20 50 percent of the commensurate
21 share of hours of the personal
22 labor and active personal man-
23 agement of all family members
24 required to conduct the farming
25 operation.

1 “(ii) MINIMUM LABOR HOURS.—For
2 the purpose of clause (i), the minimum
3 number of labor hours required to produce
4 a commodity shall be equal to the number
5 of hours that would be necessary to con-
6 duct a farming operation for the produc-
7 tion of each commodity that is comparable
8 in size to the commensurate share of an
9 individual or entity in the farming oper-
10 ation for the production of the commodity,
11 based on the minimum number of hours
12 per acre required to produce the com-
13 modity in the State in which the farming
14 operation is located, as determined by the
15 Secretary.”;

16 (C) in paragraph (3)—

17 (i) by striking subparagraph (A), (B),
18 and (C) and inserting the following:

19 “(A) LANDOWNERS.—An individual or en-
20 tity that is a landowner contributing owned
21 land, and that meets the requirements of sub-
22 clauses (II) and (III) of paragraph (2)(B)(i), if
23 as determined by the Secretary—

1 “(i) the landowner share-rents the
2 land at a rate that is usual and customary;
3 and

4 “(ii) the share received by the land-
5 owner is commensurate with the share of
6 the crop or income received as rent.

7 “(B) FAMILY MEMBERS.—With respect to
8 a farming operation conducted by individuals
9 who are family members, or an entity the ma-
10 jority of whose stockholders or members are
11 family members, an adult family member who
12 makes a significant contribution (based on the
13 total value of the farming operation) of active
14 personal management or personal labor and,
15 with respect to such contribution, who meets
16 the requirements of subclauses (II) and (III) of
17 paragraph (2)(B)(i).

18 “(C) SHARECROPPERS.—A sharecropper
19 who makes a significant contribution of per-
20 sonal labor to the farming operation and, with
21 respect to such contribution, who meets the re-
22 quirements of subclauses (II) and (III) of para-
23 graph (2)(B)(i), and who was receiving pay-
24 ments from the landowner as a sharecropper
25 prior to the effective date of this Act.”;

1 (D) in paragraph (4)—

2 (i) in the paragraph heading, by strik-
3 ing “PERSONS” and inserting “INDIVID-
4 UALS AND ENTITIES”;

5 (ii) in the matter preceding subpara-
6 graph (A), by striking “persons” and in-
7 serting “individuals and entities”; and

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

10 “(B) OTHER INDIVIDUALS AND ENTI-
11 TIES.—Any other individual or entity, or class
12 of individuals or entities, that fails to meet the
13 requirements of paragraphs (2) and (3), as de-
14 termined by the Secretary.”;

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

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

19 “(5) PERSONAL LABOR AND ACTIVE PERSONAL
20 MANAGEMENT.—No stockholder or member may
21 provide personal labor or active personal manage-
22 ment to meet the requirements of this subsection for
23 individuals or entities that collectively receive, di-
24 rectly or indirectly, an amount equal to more than

1 twice the applicable limits under subsections (b), (c),
2 and (d) of section 1001.”;

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

5 (i) in the first sentence—

6 (I) by striking “A person” and
7 inserting “An individual or entity”;
8 and

9 (II) by striking “such person”
10 and inserting “the individual or enti-
11 ty”; and

12 (ii) by striking the second sentence;
13 and

14 (3) by adding at the end the following:

15 “(c) NOTIFICATION BY ENTITIES.—To facilitate the
16 administration of this section, each entity that receives
17 payments or benefits described as being subject to limita-
18 tion in subsection (b), (c), or (d) of section 1001 with re-
19 spect to a particular farming operation shall—

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

24 “(2) provide to the Secretary, at such times and
25 in such manner as the Secretary may require, the

1 name and social security number of each individual,
2 or the name and taxpayer identification number of
3 each entity, that holds or acquires such a beneficial
4 interest.”.

5 (c) SCHEMES OR DEVICES.—Section 1001B of the
6 Food Security Act of 1985 (7 U.S.C. 1308-2) is amended—

7 (1) by inserting “(a) IN GENERAL.—” before
8 “If”;

9 (2) in subsection (a) (as designated by para-
10 graph (1)), by striking “person” each place it ap-
11 pears and inserting “individual or entity”; and

12 (3) by adding at the end the following:

13 “(b) EXTENDED INELIGIBILITY.—If the Secretary
14 determines that a person or legal entity, for their benefit
15 or the benefit of any other person or legal entity, has
16 knowingly engaged in, or aided in the creation of fraudu-
17 lent documents, failed to disclose material information rel-
18 evant to the administration of this subtitle requested by
19 the Secretary, or committed other equally serious actions
20 as identified in regulations issued by the Secretary, the
21 Secretary may for a period not to exceed five crop years
22 deny the issuance of payments to the person or legal enti-
23 ty.

24 “(c) FRAUD.—If fraud is committed by an individual
25 or entity in connection with a scheme or device to evade,

1 or that has the purpose of evading, section 1001, 1001A,
2 or 1001C, the individual or entity shall be ineligible to
3 receive farm program payments described as being subject
4 to limitation in subsection (b), (c), or (d) of section 1001
5 for—

6 “(1) the crop year for which the scheme or de-
7 vice is adopted; and

8 “(2) the succeeding 5 crop years.

9 “(d) JOINT AND SEVERAL LIABILITY.—All individ-
10 uals and entities who participate in a scheme or device
11 described in subsection (a) or (b) shall be jointly and sev-
12 erally liable for any and all overpayments resulting from
13 the scheme or device, and subject to program ineligibility
14 resulting from the scheme or device, regardless of whether
15 a particular individual or entity was or was not a payment
16 recipient.

17 “(e) WAIVER AUTHORITY.—The Secretary may fully
18 or partially release an individual or entity from liability
19 for repayment of program proceeds under subsection
20 (a)(2) if the individual or entity cooperates with the De-
21 partment of Agriculture by disclosing a scheme or device
22 to evade section 1001, 1001A, or 1001C or any other pro-
23 vision of law administered by the Secretary that imposes
24 a payment limitation. The decision of the Secretary under

1 this subsection is vested in the sole discretion of the Sec-
2 retary.”;

3 (d) FOREIGN INDIVIDUALS AND ENTITIES MADE IN-
4 ELIGIBLE FOR PROGRAM BENEFITS.—Section 1001C of
5 the Food Security Act of 1985 (7 U.S.C. 1308–3) is
6 amended—

7 (1) in the section heading, by striking “**PER-**
8 **SONS**” and inserting “**INDIVIDUALS AND ENTI-**
9 **TIES**”;

10 (2) in subsection (a), by striking “person” each
11 place it appears and inserting “individual”; and

12 (3) in subsection (b)—

13 (A) in the subsection heading, by striking
14 “CORPORATIONS OR OTHER”; and

15 (B) by striking “a corporation or other en-
16 tity” and inserting “an entity”.

17 (e) REGULATIONS.—

18 (1) IN GENERAL.—The Secretary of Agriculture
19 may promulgate such regulations as are necessary to
20 implement this Act and the amendment made to this
21 Act.

22 (2) PROCEDURE.—The promulgation of the reg-
23 ulations and administration of this Act and the
24 amendments made by this Act shall be made without
25 regard to

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

3 (B) the Statement of Policy of the Sec-
4 retary of Agriculture effective July 24, 1971
5 (36 Fed. Reg. 13804), relating to notices of
6 proposed rulemaking and public participation in
7 rulemaking; and

8 (C) chapter 35 of title 44, United States
9 Code (commonly known as the “Paperwork Re-
10 duction Act”).

11 (3) CONGRESSIONAL REVIEW OF AGENCY RULE-
12 MAKING.—In carrying out this section, the Secretary
13 shall use the authority provided under section 808 of
14 title 5, 21 United States Code.

In the amendment made by section 2104(b), strike
“1,000,000 acres” and insert “1,750,000 acres”.

In section 2401(e), relating to funding for the Wild-
life Habitat Incentive Program, strike “2012” and insert
“2007, and \$90,000,000 in each of fiscal years 2008
through 2012”.

In the amendment made by section 8101, strike
“\$17,000,000” and insert “\$32,000,000”.